



Opsview Ltd.

t: +44 800 862 0606

Enterprise Centre

w: [www.opsview.com](http://www.opsview.com)

Whiteknights Road

e: [sales@opsview.com](mailto:sales@opsview.com)

Reading, RG6 6BU

## OPSVIEW ENTERPRISE LICENCE & SUBSCRIPTION TERMS & CONDITIONS

PLEASE READ THIS AGREEMENT CAREFULLY BEFORE PURCHASING AND/OR USING OPSVIEW PRODUCTS OR SERVICES. BY ACQUIRING OR USING OPSVIEW SOFTWARE OR SERVICES, CUSTOMER SIGNIFIES ITS ASSENT TO AND ACCEPTANCE OF THESE TERMS & CONDITIONS AND ACKNOWLEDGES IT HAS READ AND UNDERSTANDS THESE TERMS & CONDITIONS. AN INDIVIDUAL ACTING ON BEHALF OF A CUSTOMER REPRESENTS THAT HE OR SHE HAS THE AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF THAT CUSTOMER. IF CUSTOMER DOES NOT ACCEPT THESE TERMS & CONDITIONS, THEN IT MUST UNINSTALL ANY OPSVIEW SOFTWARE AND NOT USE OPSVIEW SOFTWARE OR SERVICES FOR ANY PURPOSE.

These Opsview Enterprise Licence & Subscription Terms & Conditions, including the attachments and any documents referenced at included URLs constitute the agreed terms ("Agreement") between Opsview Limited, a United Kingdom registered company, with its principal place of business at Enterprise Centre, Whiteknights Road, Reading, RG6 6BU, United Kingdom ("Opsview"), and the Customer. This Agreement permits Customer to purchase Opsview products, software, subscriptions and services from Opsview pursuant to Opsview Order Forms referencing this Agreement and sets forth the terms and conditions under which Opsview Products are licensed.

Version: 1.0, Revision Date: 1<sup>st</sup> September 2019

### 1. Definitions

"Customer" means the individual or organisation that is named in the Order Form, as detailed in Clause 2.

"Confidential Information" means all information of a confidential or trade secret nature relating to either party and/or its respective Group Companies and/or its or their respective clients and suppliers and staff disclosed by either party or either party's Group Companies to the other party (whether in writing, verbally or by any means and whether directly or indirectly), whether before or after the date of this Agreement. The contents of this Agreement, the Software and Subscription Services and the pricing agreed between Customer and Opsview shall all be deemed to be Confidential Information.

"Customer Success Centre" means Opsview's support and engineering facility

"Defect" means either (a) a failure of the Software to conform to the specifications set forth in the Documentation, resulting in the inability to use, or restriction in the use of the Software and/or (b) a problem requiring new procedures, clarifications or additional information.

"Documentation" means the technical specification and description generally made available by Opsview for the Software.

"Effective Date" means the date identified on the Order Form as the commencement date of the Agreement.

"Fees" means the fees payable by the Customer for the Opsview Products and Subscription Services as set out in the Order Form.

"Force Majeure Event" means any event beyond the reasonable control of a party including, without limitation, strikes, lock-outs and/or labour disputes (except those involving the workforce of the

parties), acts of God, war, riot, civil commotion, malicious damage, overriding emergency procedures, fire, flood or storm but not the failure of a party's agents or contractors or an obligation to make payment.

"Group Company" means in relation to any company, any body corporate which is from time to time a holding company of that company, a subsidiary of that company or a subsidiary of a holding company of that company ("holding company" and "subsidiary" having the meanings attributed to them by s.1159 of the UK Companies Act 2006) and shall include any company in which a member of the Group has a shareholding of 50% or more.

"Incident" means a single instance of a reported issue or question relating to the Software that requires the Customer Success team to undertake investigative and/or take remedial action.

"Host" means an autonomous computing device, such as (but not limited to), a server, virtual server, a slave server, database server, workstation, PC, network device, storage device, sensor, tablet or mobile device. The number of end hosts counted is not changed by the method of data collection (e.g. if sent directly to Opsview, or indirectly through other hardware, software or third party services).

"Intellectual Property" means all intellectual property, including patents, rights to inventions, copyright and related rights, moral rights, trademarks and service marks, trade names and domain names, rights to goodwill or to sue for passing off rights in designs, rights in computer software, database rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

"Major Releases" means publicly released code with enhancements, corrections, patches and updates to the Software,

as designated by a change in the first or second significant digit in software version number.

“Maintenance Releases” means publicly released code corrections, patches, updates and minor version releases of the Software, as designated by a change in the third significant digit in software version number.

“Opsview Free Plan” means the free version of the software that is provided by Opsview under a commercial licence.

“Opsview Core” means the version of the software that was provided by Opsview under the GNU General Public Licence V2 licence.

“Opsview Products” means the Software, Third Party Software, Documentation and Updates delivered to the Customer under this Agreement.

“Opsview System” is collectively the number of master monitoring servers, test servers, development servers, modules and associated Hosts up to the maximum defined in the Customer’s Subscription level as defined in Appendix 1.

“Reseller” is an authorised Opsview Reseller that has been approved by Opsview to resell the Software and/or the Subscription Services to the Customer or is an organisation that the Customer is using to purchase Opsview Software and Subscriptions Services on their behalf and is acceptable to Opsview.

“Software” means all Opsview proprietary software, programs, configurations and scripts supplied by Opsview, but excluding any Third-Party Software.

“Subscription” means a licence to use the Opsview Products and Subscription Services for a specified Term and as described in Clause 3 of this Agreement.

“Subscription Services” means all Major Releases and Maintenance Releases of the Software, email and telephone support with a response time service level agreement (SLA) as defined in Appendix 1. The Subscription Services do not include developer assistance, which might include, but is not limited to, Customer’s customisations of the Software or Customer’s integrations of the Software with Customer-developed or third-party developed software. Unless otherwise stated, all Subscription Services are offered during the support hours as defined in Appendix 1.

“Support Heartbeat” means the facility provided in Opsview Products that collects customer and usage information and electronically communicates this information to Opsview. This information is subject to the confidentiality terms of Clause 15.

“Taxes” means any form of sales, use, value added or other form of taxation and any fines, penalties, surcharges or interest, but excluding any taxes based solely on the net income of Opsview.

“Term” means the period of time specified in an Order Form for which the Customer is authorised to use the Opsview Products and Subscription Services. Once the Term expires, the Customer’s right to use the Opsview Products and Subscription Services under this Agreement is terminated.

“Third Party Software” means any software made publicly available in source or object code form and subject to a separate licence that

accompanies that code. Any third-party software that is provided by Opsview as part of the Opsview Products is provided with the associated licence and Customer’s use of such third party software is governed by those associated licence terms and not by this Agreement. A list of the third-party software provided or used as part of the Opsview Products is shown at <http://ops.vu/2xCRPzw>

“Update” means either a software modification or addition that, when made or added to the Software, corrects the Defect, or a procedure or routine that, when observed in the regular operation of the Software, eliminates the practical adverse effect of the Defect or brings the Software into compliance with the Documentation.

“Upgrade” means a revision of the Software released by Opsview to its end user customers to add new and different functions or to increase the capacity of the Software. An Upgrade does not include the release of a new product or additional modules.

## 2. Order Form

The specific Opsview Products and Subscription Services that Opsview will provide to Customer will be described in an “Order Form” signed by the parties or otherwise accepted by Opsview which may consist of (a) one or more mutually agreed order forms, statements of work, or similar transaction documents, or (b) an order placed by Customer with a Reseller, or (c) an order placed through the Opsview website by clicking the “Confirm” button and downloading the product. The parties agree that the terms of this Agreement will govern all purchases and use by Customer of Opsview Products and Subscription Services unless otherwise agreed by the parties in writing.

## 3. Opsview Subscription

In consideration for the Customer paying the Fees to Opsview or Reseller in accordance with the terms of this Agreement, Opsview agrees to provide the Opsview Products and Subscription Services to the Customer in accordance with the terms of this Agreement. If Customer does not renew its Subscriptions before the expiration date, a reinstatement fee may be applied. Subscriptions may only be used for Customer’s own internal use (including authorised Group Companies). Distributing any portion of an Opsview Product or Subscription to a third party or using any Opsview Product or Subscription for the benefit of a third party is a material breach of this Agreement. Opsview Products and Subscriptions may be used in accordance with the terms of this Agreement by third parties acting on Customer’s behalf, such as contractors, subcontractors or outsourcing vendors, provided Customer remains responsible for its obligations and the acts and omissions of these third parties. Any unauthorised use of the Opsview Products or Subscriptions, such as (a) only purchasing or renewing Subscriptions for some, but not all systems on which Customer installs, uses or executes the Software, or (b) using Subscriptions to maintain or support systems running Opsview Core or Opsview Free Plan software, is a material breach of this Agreement.

### 3.1. Updates

Opsview will make commercially reasonable efforts to provide an Update designed to solve or by-pass a reported Defect. If such Defect has been corrected in a Maintenance Release, Customer must install and implement the applicable Maintenance Release; otherwise, the Update may be provided in the form of a temporary fix, procedure or routine, to be used until a Maintenance Release containing the permanent Update is available. Customer shall reasonably determine the severity level of Defects, pursuant to the following protocols:

**a. Severity One Issues:** A Severity One Issue means the production Opsview System is severely impacted or completely shut down. Severity 1 issues must be reported by the Customer via web or email (and optionally by telephone) and Customer must have technical contacts available for the duration of the Severity 1 issue. If neither of these is the case, Opsview reserves the right to designate the issue as Severity 2. Opsview will promptly initiate the following procedures: (1) assign specialist(s) to correct the issue on an expedited basis; (2) provide on-going communication on the status of an Update; and (3) begin to provide a temporary workaround or fix.

**b. Severity Two Issues:** A Severity Two Issue means (i) the production Opsview System is functioning with limited capabilities, or (ii) is unstable with periodic interruptions. Opsview will assign a specialist to begin addressing the issue, and provide additional, escalated procedures as reasonably determined to be necessary by Opsview Customer Success staff. Opsview will exercise commercially reasonable efforts to provide a workaround or include a fix for Severity Two Issues in the next Maintenance Release.

**c. Severity Three Issues:** A Severity Three Issue means there (i) are minor issues in a fully operational production Opsview System, (ii) is a need to clarify procedures or information in documentation, or (iii) is a request for a product enhancement. Opsview may include an Update to address Severity Three issues in the next Maintenance Release.

#### 4. Maintenance Releases and Upgrades

During the Term, Opsview shall make Maintenance Releases and Upgrades available to the Customer if and when Opsview makes any such Maintenance Releases or Upgrades generally available to its customers. If a question arises as to whether a product offering is an Upgrade or a new product, module or feature, Opsview's reasonable opinion will prevail, provided that Opsview treats the product offering as a new product, module or feature for its end user customers generally.

#### 5. Conditions for Providing Support

Opsview's obligation to provide Subscription Services to Customer either directly or via a Reseller is conditional upon the following: (a) the Customer installs and operates the Software on an Opsview supported software stack, as identified at <http://knowledge.opsview.com/>; (b) the Customer makes reasonable efforts to correct the Defect after consulting with Opsview or its Reseller; (c) the Customer provides Opsview with reasonably sufficient information and resources to correct the Defect either at Opsview's Customer Success Centre or via remote access to Customer's Opsview System, as well as access to the personnel, hardware, and any additional software involved in discovering the Defect; (d) the Customer promptly installs all Maintenance Releases; (e) the Customer procures, installs and maintains all equipment, servers, telephone lines, software operating systems, communication interfaces and other hardware necessary to operate the Opsview Products; (f) the Customer provides a mechanism for remote administrative access to the Opsview System to allow problem diagnosis and troubleshooting; (g) the Customer permanently maintains the Support Heartbeat capability back to Opsview (h) the Customer has read the release notes and any other available documentation before installing or upgrading the Opsview Products and has tested the Opsview Products before deploying them in a production environment and (i) the Customer runs backups on its production systems on a regular basis and those backups are available if needed for support and diagnostic purposes.

#### 6. Technical Support Contacts

The Opsview Customer Success Centre will provide support to a number of designated Customer support contacts (as defined in the Customer's subscription level), who maintain or support the Opsview System ("Technical Support Contacts"). The Technical Support Contacts should have "read, write and execute" access to the necessary files and software, English language communication skills and relevant technical knowledge. The Customer may modify its designated Technical Support Contacts at any time during the Term by notifying Opsview in writing and giving Opsview five (5) business days to process the change. Technical Support Contacts will be the only interface to the Opsview Customer Success Centre. In a Severity One situation, an Opsview Customer Success Engineer will begin working on a Defect for an unauthorised contact on an exception basis, subject to later verification and involvement of a named Technical Support Contact.

#### 7. Exclusions from Opsview's Subscription Services

Opsview is not obligated to provide Subscription Services in the following situations: (a) the Opsview Products have been modified or damaged; (b) the Defect is caused by Customer's or its Group Companies' negligence or its and/or their software, hardware or network malfunction or is caused by any Third Party Software which forms part of the Opsview Products; (c) the Defect is caused by third party software not licensed through Opsview or provided by Opsview; (d) the Customer has not installed and implemented the latest Maintenance Release(s) so that the Software is a version supported by Opsview; (e) the Customer has not paid the Fees when due; (f) Opsview Products are provided on a no-charge or trial basis; or (g) the Opsview Products version is no longer supported (where a supported version is either one released within the last two years or is the current or two prior Major Releases, whichever is the longer).

#### 8. Fair Usage limits

The number of Incidents available under a Subscription Service is defined in Appendix 1. The number of Incidents used in providing Subscription Services to the Customer will be recorded by Opsview. Each incident has a maximum fair usage limit of 4 hours of support service time.

#### 9. Resellers

Opsview has entered into agreements with Resellers to promote, market, sell, and support certain Opsview Products and Subscription Services. When Customer purchases Opsview Products and Subscription Services through a Reseller, Opsview confirms that it is responsible for providing the Opsview Products and Subscription Services to Customer under the terms of this Agreement. Any other terms agreed between Reseller and the Customer will not be valid unless agreed in writing by Opsview. Opsview is not responsible for (a) the acts or omissions of Resellers, (b) any additional obligations Resellers have to Customer, or (c) any products or services that Resellers supply to Customer under any separate agreement between a Reseller and Customer.

#### 10. Reporting and Records

##### 10.1. Reporting

Customer shall notify Opsview (or the Reseller from whom Customer purchased the Opsview Products and Subscription Services) promptly if the actual number of Opsview Systems, master monitoring servers or Hosts exceeds the number for which

Customer has paid the applicable Fees. In its notice, Customer shall include the number of additional Opsview Systems, master monitoring servers or Hosts and the date(s) on which the Opsview Products were first used. Opsview (or the Reseller if applicable) will invoice Customer for the additional applicable Fees and Customer shall pay such Fees no later than fourteen (14) days from the date of the invoice.

## 10.2. Records Retention

Customer shall maintain accurate records necessary to verify the number of Opsview Systems, master monitoring servers and Hosts used. Upon Opsview's written request, Customer shall provide Opsview with such records within ten (10) business days. If Customer has more Opsview Systems, master monitoring servers or Hosts in use than Customer has paid for, Opsview (or the Reseller if applicable) will invoice Customer for the additional applicable Fees and Customer shall pay such Fees no later than fourteen (14) days from the date of the invoice.

## 10.3. Inspection

During the Term of this Agreement and for one (1) year thereafter, Opsview or its designated agent may inspect and review Customer's facilities and records in order to verify Customer's compliance with this Agreement. Any such inspection and review will take place only during Customer's normal business hours and upon no less than ten (10) days prior notice. Customer will be responsible for the cost of the audit in the event that the audit reveals an underpayment of 5% or greater in the Fees payable by Customer.

## 11. Termination of Subscription Services

Opsview reserves the right to discontinue the Opsview Products or Subscription Services should Opsview, in its sole discretion, determine that continued support for any Opsview Products or Subscription Services is no longer economically practicable. Opsview will give the Customer at least three (3) months prior written notice of any such discontinuance of Opsview Products or Subscription Services and will refund any unaccrued Fees the Customer may have prepaid with respect to the affected Opsview Products or Subscription Services. Opsview shall have no obligation to support or maintain any version of the Opsview Products or operating system combination except (i) the then current Major Release of the Opsview Products and operating system combination, or (ii) the immediately preceding two Major Releases of the Opsview Products and operating system combinations or (iii) a Major Release within twenty-four (24) months after such Major Release was made generally available. Opsview reserves the right to suspend performance of the Subscription Services upon prior written notice if the Customer fails to pay any amount that is payable to Opsview or the Reseller under this Agreement within thirty (30) days after such amount becomes due. Opsview reserves the right to immediately discontinue the Subscription Services should Opsview, in its sole discretion, determine that Customer is offering Opsview support, Opsview software development or consulting services relating to Opsview to third parties without Opsview's prior written consent. In such circumstances, this Agreement will be terminated with immediate effect and any unaccrued Fees will be forfeited by Customer.

## 12. Licence and Ownership

### 12.1. Grant to Customer

Subject to Customer's compliance with the terms and conditions of this Agreement, including timely payment of the Subscription Fees

for the initial term and any renewal terms, Opsview grants to Customer: (a) a non-exclusive, non-transferable, non-sublicensable, licence to use the Opsview Products and Documentation only for Customer's own internal use and limited to the number of Opsview Systems, master monitoring servers and Hosts designated in the applicable Order Form; (b) the rights in the Third Party Software provided with the Software as set forth in the licences applicable to such Third Party Software; and (c) the right to receive Subscription Services for the Opsview Products.

### 12.2. Restrictions

Customer shall not, directly or indirectly: (a) sublicense, resell, rent, lease, distribute, market, commercialise or otherwise transfer rights or usage to: (i) the Opsview Products, (ii) any modified version or derivative work of the Opsview Products created by the Customer or for the Customer, or (iii) Opsview Core or Opsview Free Plan, for any purpose including timesharing, managed services or service bureau purposes; (b) modify, translate, reverse engineer, decompile, disassemble (except as expressly permitted by applicable law) or create derivative works based upon the Opsview Products or Documentation (c) remove or alter any copyright, trademark or proprietary notice in the Software; (d) delete, remove, hide, move or alter any icon, image or text that represents Opsview or any derivation thereof; (e) copy the Software or Documentation (except for back-up or archival purposes); (f) transfer or use the Opsview Products in violation of any laws or regulations of any government or governmental agency; (g) use any of the Subscription Services for the Opsview Core or Opsview Free Plan software or for any Opsview System for which a Subscription has not been purchased; (h) reverse engineer, decompile or modify any encrypted or encoded portion of the Opsview Products; or (i) disable or block the Support Heartbeat capability.

### 12.3. Proprietary Rights

Opsview and its licensors own all right, title and interest to the Software, Subscription Services, Documentation, technology, information, code and services provided to Customer, including all Updates, Upgrades, modifications, derivative works, copies thereof. Customer acknowledges that it is receiving only a limited licensed right to the Software under this Agreement and that no ownership rights in or to the Software are being conveyed to Customer under this Agreement or otherwise. Customer agrees not to register, or attempt to register, directly or indirectly, any intellectual property rights of Opsview or any domain names that are the same or substantially the same as Opsview's registered trademarks.

## 13. Representations and Warranties

### 13.1. General Representations

Opsview represents and warrants that: (a) it has the authority to enter into this Agreement with Customer; and (b) to Opsview's knowledge, the Software does not, at the time of delivery to Customer, include malicious or hidden mechanisms or code for the purpose of damaging or corrupting the Software.

### 13.2. Software Warranty

Opsview warrants for a period of thirty (30) days following delivery or download of the Software ("Warranty Period"), that the Software will perform substantially in conformance with the published Documentation. The foregoing warranty applies only to failures in operation of the Software that are reproducible in standalone form and does not apply to: (i) Software that is modified or altered by Customer or any third party without the prior authorisation of

Opsview; (ii) Software that is otherwise operated in violation of this Agreement or other than in accordance with the published Documentation; (iii) failures which are caused by Third Party Software or any other software or hardware products; or (iv) failure of the Software which results from accident, abuse or misapplication by or on behalf of Customer. To the maximum extent permitted under applicable law, Opsview's entire liability and Customer's exclusive remedy for any breach of the foregoing warranty, will be, at Opsview's sole option and expense, promptly to repair or replace any medium or Software which fails to comply with this warranty or, if Opsview is unable to repair or replace the medium or the Software, refund to Customer the applicable pro-rata Fees paid upon return, if applicable, of the non-conforming item to Opsview. Opsview will have no obligation under this warranty unless notified of a claim within the Warranty Period.

### 13.3. Subscription Services Warranty

Opsview represents and warrants that: (a) it will use reasonable skill and care in providing the Subscription Services; and (b) the Subscription Services will be performed in a professional and workmanlike manner by qualified personnel. For any breach of the warranty set forth in this Clause 13.3, Customer's exclusive remedy and Opsview's entire liability will be the re-performance of the deficient services, or if Opsview cannot substantially correct a breach in a commercially reasonable manner, Customer may terminate the relevant services and receive a pro rata refund of the Fees paid for the deficient services as of the effective date of termination.

### 13.4. Disclaimer of Warranty

EXCEPT AS EXPRESSLY PROVIDED IN CLAUSES 13.1, 13.2 AND 13.3, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE OPSVIEW PRODUCTS, SOFTWARE AND SUBSCRIPTION SERVICES PROVIDED BY OPSVIEW ARE PROVIDED "AS IS" AND WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY, SATISFACTORY QUALITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE. OPSVIEW DOES NOT GUARANTEE THAT THE USE OF THE SOFTWARE OR SUBSCRIPTION SERVICES WILL BE UNINTERRUPTED, COMPLY WITH REGULATORY REQUIREMENTS OR BE ERROR FREE, THAT THE SOFTWARE WILL ACHIEVE CUSTOMER'S INTENDED RESULTS AND THAT THE SOFTWARE HAS BEEN DEVELOPED TO MEET THE INDIVIDUAL REQUIREMENTS OF CUSTOMER OR THAT OPSVIEW WILL CORRECT ALL SOFTWARE ERRORS OR DEFECTS.

## 14. EXCLUSION AND LIMITATION OF LIABILITY

### 14.1. Exclusion of Liability

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

### 14.2. Limitation of Liability

Opsview's maximum aggregate liability to Customer under this Agreement in respect of any claim or series of claims ("Claim") shall be limited to a sum equal to 100% of the Subscription Fees paid or payable by Customer under this Agreement in the 12 month period preceding the Claim. In the event that the Claim arises in the first 12 months of this Agreement then a reasonable estimate of the Subscription Fees to be paid or payable over the first 12 months will be used when determining the limit of liability. Customer acknowledges and agrees that Opsview's Fees reflect this allocation of risk. The parties agree that the limitations specified in this clause (Limitation of Liability) will survive and apply even if any limited remedy specified in this Agreement is found to have failed its essential purpose. Nothing in this Agreement excludes the liability of either party for the breach of its respective obligations set out in Clause 15, death or personal injury caused by the other party's negligence or for fraud or fraudulent misrepresentation, or any other liability that cannot lawfully be excluded.

## 15. Confidentiality

Customer and Opsview each agree to maintain the confidentiality of any Confidential Information received from the other during the term of this Agreement and after the termination of this Agreement (howsoever terminated) for a three year period and shall not disclose such Confidential Information to any third party, and shall protect the secrecy of and avoid unauthorised use of such Confidential Information to the same degree that Customer and Opsview (as the case may be) protects its own Confidential Information and in no event with less than reasonable care. The provisions of this clause shall not apply to any Confidential Information to the extent that such information: a) is in the public domain or becomes publicly known otherwise than by breach of this Agreement; b) which the receiving party can show by its written records was in its possession prior to receiving it from the disclosing party (or from a third party on its or their behalf) and which it had not previously obtained from the disclosing party (or from a third party on its or their behalf) under an obligation of confidence; c) is acquired by the receiving party from someone other than the disclosing party who was entitled to disclose such Confidential Information to the receiving party without imposing an obligation of confidence; or d) is required to be disclosed by law, by any court of competent jurisdiction or by any other regulatory body provided that the receiving party undertakes to give the disclosing party not less than 14 days' notice of such required disclosure in writing wherever practicable. Each party agrees not to use said Confidential Information of the other party for any purpose except as necessary to fulfil its obligations and exercise its rights under this Agreement.

## 16. Intellectual Property Rights

Nothing in this Agreement shall affect the ownership of Intellectual Property rights existing prior to this Agreement or generated outside of the scope of this Agreement or through the provision of the Opsview Products or Subscription Services and no right, title or interest in a party's Intellectual Property rights shall pass to the other party except as specifically provided for in this Agreement. In particular all copyright, trademarks and other Intellectual Property rights subsisting in the Software, Documentation and Subscription Services are and remain the sole property of Opsview.

### 16.1. Indemnification

Opsview shall, subject to the limitation of liability in Clause 14.2, fully indemnify and keep fully indemnified the Customer against any and all damages, costs, charges and expenses which the Customer may incur or suffer as a result of any claims or proceedings brought

against the Customer by any third party alleging that the Software infringes a U.S patent, U.S copyright or U.S trademark to the extent that such claim arises from anything done deliberately, recklessly or negligently by or with the knowledge of Opsview which infringes such third party rights.

## 16.2. Injunctive Relief

If an injunction is, or in Opsview's opinion is likely to be sought or obtained against Customer's use of the Software as a result of a third party infringement claim, Opsview will, at its sole option and expense, (i) procure for Customer the right to continue using the affected Software consistent with this Agreement, (ii) replace or modify the affected Software with functionally equivalent software so that it does not infringe, or, if either (i) or (ii) is not available on a basis that Opsview finds commercially feasible, (iii) terminate the applicable licences without further liability under this clause and, if Customer then confirms in writing that they have ceased using the Software that is subject to the Claim, Opsview will refund on a pro-rata basis any prepaid Fees relating to the affected Software.

## 16.3. Exclusions

Opsview will have no liability for any Claim based upon (a) use of other than the then current, unaltered version of the applicable Opsview Products, unless the infringing portion is also in the then current, unaltered version; (b) use, operation or combination of the applicable Opsview Products with non-Opsview programs, data, equipment or documentation if such infringement would have been avoided but for such use, operation or combination; (c) Opsview's compliance with any designs, specifications or instructions provided by Customer; (d) facts or circumstances constituting a breach of this Agreement or Order Form by Customer; (e) use by Customer after notice by Opsview to discontinue use of all or a portion of the Opsview Products; (f) Customer's claim or lawsuit related to the Opsview Products against a third party; or (g) any Third Party Software. Opsview will have no obligations under this clause if, as of the Effective Date, Customer has received notice of allegations of infringement or is engaged in litigation concerning the subject matter of what would otherwise be a Claim under this Agreement or with respect to a product substantially similar to the Opsview Products. This clause constitutes the entire liability of Opsview, and Customer's sole and exclusive remedy with respect to any third-party claims of infringement of intellectual property rights and supersedes any other Opsview obligation related to the subject matter of this clause.

## 17. Fees and Payment

### 17.1. Fees

Customer shall pay to Opsview (or Reseller, if applicable) the Fees detailed on the signed Order Form. Payment for the Subscription Fees shall be due and payable according to the terms specified in the Order Form or on Opsview's website for on-line purchases. Opsview Fees for the following years and for renewals shall be in accordance with the then current fees and policies. If Customer is paying by credit card, Customer authorises Opsview to bill Customer's credit card for the initial Term and for the then current fee due at the renewal date. The Customer agrees to pay any additional fees if the Customer exceeds the master server or Host limit for the Opsview Product purchased. Additional fees will be effective at the then current list price. Except as otherwise set forth in this Agreement, all fees paid to Opsview or Reseller are non-refundable. If Customer is paying Reseller for the subscription, then access to the Opsview Products and the commencement of the Subscription Services will only be granted when Opsview receives and accepts the signed Order Form and purchase order from the

Reseller in respect of the Customer's subscription. Opsview or Reseller reserves the right to charge interest on the whole amount of any overdue invoice at the rate of 1.5% per month or the maximum amount permitted by law, whichever is less, for any month or part of a month that an undisputed invoice is overdue.

## 17.2. Taxes

All Fees are exclusive of Taxes. Customer shall pay Opsview or the Reseller an amount equal to any Taxes arising from or relating to this Agreement or an applicable Order Form which are paid by or are payable by Opsview or the Reseller. If Customer is required to withhold or deduct any portion of the payments due to Opsview or the Reseller, Customer will increase the sum payable to Opsview or the Reseller by the amount necessary so that Opsview or the Reseller receives an amount equal to the sum it would have received had Customer made no withholdings or deductions.

## 17.3. Expenses

Reasonable travel and subsistence expenses will be charged at cost for any Opsview Subscription Services delivered at Customer's premises and will be agreed in writing with the Customer before being incurred.

## 18. Term and Termination

### 18.1. Term

The initial Term shall commence on the Effective Date of this Agreement and shall continue for the Term defined on the Order Form or in the website order confirmation email. Opsview (or Reseller, if applicable) shall contact the Customer in writing no less than 90 days prior to the end of the initial Term (and any subsequent renewal term) to confirm the renewal of this Agreement for a mutually agreed term or by default a period equal to the initial Term. The Customer will confirm acceptance or termination of such renewal at least 60 days prior to the end of the initial Term or any renewal term. Provided that Opsview has notified the Customer in accordance with this clause, in the absence of any acceptance or termination by the Customer, this Agreement will automatically renew on the same terms and at the then current fees. Customer shall remain obligated for all fees through to the date of termination. Customer will be required to renew its Subscription on-line unless otherwise agreed by Opsview. The Customer must renew the Subscription through the payment of the Fees prior to the expiration of the Term to continue to use the Opsview Products and receive Subscription Services and Updates. Otherwise the Customer must stop using the Opsview Products and destroy all copies thereof.

### 18.2. Termination

Either party may terminate this Agreement prior to the end of a term if (i) the other party materially breaches its obligations hereunder and, where such breach is curable, such breach remains uncured for thirty (30) days following written notice of the breach or (ii) if the other party is unable to pay its debts as they fall due or makes any voluntary arrangement with its creditors, becomes subject to an administration order, has an administrative receiver or receivers appointed in respect of the whole or any part of its assets, goes into liquidation (voluntary or otherwise save for any voluntary liquidation entered into solely for the purposes of a bona fide reconstruction or amalgamation) or is made the subject of a bankruptcy order or ceases or threatens to cease carrying on its business. In the event of a breach of Confidentiality no cure period will be applicable.

### 18.3. Consequences of Termination

Upon termination or expiry of this Agreement, Customer shall cease any and all use of the Opsview Products and Subscription Services, destroy all copies of Opsview Products, immediately delete the Opsview Products from all equipment, storage media and from all other files and return the Documentation, other original materials and any existing copies thereof to Opsview, including without limitation all Opsview Confidential Information and certify in writing to Opsview that it has done so. Customer's obligation to make a payment of any outstanding, unpaid Fees shall survive expiry or termination of this Agreement.

### 19. Non Solicitation

Neither party will, during the continuance of this Agreement and for a period of 12 months afterwards, either directly, or indirectly, offer employment to any of the directors, staff or consultants of the other party involved in the Subscription Services provided under this Agreement without the prior written consent of the other party. Nothing in this Clause shall limit the ability of either party to engage or employ bona fide applicants who respond to advertisements or opportunities made known to the public.

### 20. General

#### 20.1. Force Majeure

If either party is prevented, hindered or delayed from or in performing any of its obligations under this Agreement by a Force Majeure Event then that party's obligations under this Agreement shall be suspended for so long as and to the extent that the Force Majeure Event continues provided that, as soon as reasonably possible after the Force Majeure Event starts, the affected party shall have notified the other party of the occurrence of the Force Majeure Event; and the affected party shall use all reasonable efforts to mitigate the effects of the Force Majeure Event upon the performance of its obligations under this Agreement.

#### 20.2. Headings

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

#### 20.3. Amendment

Neither this Agreement nor any Order Form may be amended or modified except in writing signed by the parties, which writing makes specific reference to this Agreement or the applicable Order Form. Opsview reserves the right to change future agreement terms and conditions and notices under which Opsview Products and Subscription Services are offered, including but not limited to future Fees. Such changes will become effective five business days after being posted on the Opsview website. Any changes will be designated by a change to the revision date shown on page 1 of this Agreement.

#### 20.4. Counterparts and Signature

In the event an Order Form is executed with signatures, the Order Form may be executed in counterparts, each of which will be deemed an original and all of which will constitute one and the same document. The parties may exchange signature pages by facsimile or email and such signatures will be effective to bind the

parties to all the terms contained in the Order Form and this Agreement.

In the event this Agreement or an Order Form is executed using an electronic signature system, each Party warrants that the person signing the Agreement or Order Form on behalf of that Party has the requisite authority to bind that Party by means of the electronic signature system. By affixing their respective electronic signatures, the signatories acknowledge and agree that they intend to bind the respective Parties on behalf of whom they are signing.

#### 20.5. Third Party Rights

This Agreement is binding on the parties to this Agreement, and other than the rights conferred on Resellers in Clauses 9,10,17 and 18, nothing in this Agreement or in any Order Form grants any other person or entity any right, benefit or remedy of any nature whatsoever, except for the parties' Group Companies as expressly provided in this Agreement.

#### 20.6. Assignment

This Agreement is assignable by either party only with the other party's prior written consent, which will not be unreasonably withheld, conditioned or delayed; provided, however, that either party may, upon written notice and without the prior approval of the other party, (a) assign this Agreement to a Group Company as long as the Group Company has sufficient credit to satisfy its obligations under this Agreement and the scope of Subscription Services is not affected; and (b) assign this Agreement pursuant to a merger or a sale of all or substantially all of such party's assets or stock.

#### 20.7. Independent Contractor

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

#### 20.8. Severability

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

#### 20.9. Survival

If this Agreement or an Order Form expires or is terminated for any reason, Clauses 10, 12, 13.4, 14, 15, 16, 17, 18.3 and 19 of this Agreement (as the same are incorporated into each Order Form) and all other provisions of this Agreement which are intended to have effect or to bind either party following its expiry or



termination, including Confidentiality, will survive such expiry or termination.

#### **20.10. Export and Privacy**

Customer may not download or otherwise export or re-export the Opsview Products or any underlying information or technology except in full compliance with all applicable country laws and regulations. Opsview may supply Customer with technical data that is subject to export control restrictions. Customer is responsible for compliance with applicable export obligations or requirements for this technical data and agrees to comply with all applicable export control restrictions. If Customer breaches this clause or any provision referencing this clause, Opsview may terminate this Agreement and/or the applicable Order Form without any liability to Opsview. Customer acknowledges and agrees that to provide the Subscription Services, it may be necessary for Customer Confidential Information to be transferred between Opsview, its Group Companies, Resellers, and/or subcontractors, which may be located worldwide.

#### **20.11. Waiver**

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

#### **20.12. Governing Law**

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

#### **20.13. Dispute Resolution**

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

#### **20.14. Customer Reference**

Customer agrees that Opsview can use Customer's name and logo for marketing purposes.

#### **20.15 Data Privacy**

Opsview and the Customer shall comply with duties respectively imposed on them by the General Data Protection Regulation (GDPR) European Directive 2016/679 as enacted by the European Parliament and of the Council with effect from 25<sup>th</sup> May 2018 for the protection of individuals with regard to the processing of personal data and on the free movement of such data, and all local implementing legislation as well as similar legislation in all other legal jurisdictions where the Subscription Services are provided, in the performance of their respective obligations under this Agreement. In this respect, it is recognised that Customer is the Data Controller in respect of all Customer Data and Opsview is the Data Processor. Opsview and the Customer specifically agree that when Customer is located in the European Economic Area ("EEA") the terms "Personal Data", "Process", "Data Controller", "Special Categories of Data", "Processing", "Data Subject", "Third Party Processing" and "Data Processor" will have the meanings given to them in the EU Directive 2016/679. Opsview's Privacy and Cookies Policy available on our website provides additional information on how we manage and process personal data.

#### **20.16. Notices**

All notices permitted or required under this Agreement shall be in English and in writing and shall be delivered in person, by email, by fax, overnight courier service or mailed by first class, registered or certified mail, postage prepaid, to the address of the party specified above or such other address as either party may specify in writing, attention of Legal Department. Delivery shall be deemed to have occurred a) when a delivery receipt notice is received as a result of an email notification being sent to the person named in the Order Form; b) when delivered, if delivered by courier or other messenger (including registered mail) during normal business hours of the recipient; c) when sent, if transmitted by fax and a successful transmission report or return receipt is generated; or d) on the 3rd business day following mailing, if mailed by national first class mail, postage pre-paid

#### **20.17. Entire Agreement**

Each Order Form (a) is a separate agreement and is deemed to incorporate this Agreement and all attachments, URL links and exhibits, unless otherwise expressly provided in that Order Form; (b) constitutes the exclusive terms and conditions with respect to the subject matter of that Order Form, notwithstanding any different or additional terms that may be contained in the form of purchase order or other document used by Customer to place orders or otherwise effect transactions under this Agreement; and (c) represents the final, complete and exclusive statement of the agreement between the parties with respect thereto, notwithstanding any prior written agreements or prior and contemporaneous oral agreements with respect to the subject matter of the Order Form. In the event of any conflict between this Agreement and any Order Form, this Agreement will take precedence unless otherwise expressly provided in the Order Form. Any claim relating to the provision of the Subscription Services by Opsview, its Group Companies or their respective personnel will be made against Opsview alone. Each of the parties acknowledges and agrees that in entering into an Order Form it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to this Agreement or not) other than as expressly set out in an Order Form or this Agreement. Nothing in this Clause, however, shall operate to limit or exclude any liability for fraud or fraudulent misrepresentation. This Agreement and Order Forms replace and supersede any previous proposals, agreements, correspondence, understandings or other



communications whether written or oral and shall prevail over any inconsistent terms or conditions contained or referred to in any document or elsewhere or implied by trade custom, practice or course of dealing.

Appendix 1: Opsview Monitor Plan Features and Service Level Agreement

| Plan   | SMB               | Bronze            | Silver            | Gold              | Platinum          | MSP               |
|--|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|
| Host Coverage  | Up to 300         | 400               | 1,000             | 3,000             | 10,000            | Elastic           |
| Dashboard  | Yes               | Yes               | Yes               | Yes               | Yes               | Yes               |
| Auto Discovery   | Yes               | Yes               | Yes               | Yes               | Yes               | Yes               |
| Service Desk Connector   | Yes               | Yes               | Yes               | Yes               | Yes               | Yes               |
| SMS Messaging  | Yes               | Yes               | Yes               | Yes               | Yes               | Yes               |
| Distributed Monitoring   | Optional          | Yes               | Yes               | Yes               | Yes               | Yes               |
| Full Scalability   | Optional          | Yes               | Yes               | Yes               | Yes               | Yes               |
| Slave Server Clustering  | Optional          | Yes               | Yes               | Yes               | Yes               | Yes               |
| Reports  | Optional          | Yes               | Yes               | Yes               | Yes               | Yes               |
| Sandbox System   | Optional          | Optional          | Optional          | Optional          | Optional          | Optional          |
| Network Analyzer   | Optional          | Optional          | Optional          | Optional          | Optional          | Optional          |
| High Availability  | N/A               | Optional          | Optional          | Optional          | Optional          | Optional          |
| Full Test System   | N/A               | Optional          | Optional          | Optional          | Optional          | Optional          |
| Support Incidents  | 5                 | Unlimited         | Unlimited         | Unlimited         | Unlimited         | Unlimited         |
| Support Hours (UK time zone, excluding weekends and public holidays) | 8am – 6pm         | 8am – 6pm         | 8am – 6pm         | 8am – 6pm         | 8am – 6pm         | 8am – 6pm         |
| Support Contacts   | 2                 | 6                 | 6                 | 6                 | 6                 | 6                 |
| Severity 1 Response (Hours)  | 4                 | 2                 | 2                 | 2                 | 2                 | 2                 |
| Severity 2 Response (Hours)  | 8                 | 4                 | 4                 | 4                 | 4                 | 4                 |
| Severity 3 Response (Hours)  | 16                | 8                 | 8                 | 8                 | 8                 | 8                 |
| 24/7 Support   | N/A               | Optional          | Optional          | Optional          | Optional          | Optional          |
| Contact Method   | Web, Email, Phone | Web, Email, Phone | Web, Email, Phone | Web, Email, Phone | Web, Email, Phone | Web, Email, Phone |