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## OPSVIEW CONSULTING SERVICES TERMS & CONDITIONS

These Opsview Consulting Services Terms & Conditions (the "Agreement"), govern the provision of all consulting services between:

1. **Opsview Limited**, a company registered in England, with its principal place of business at Enterprise Centre, Whiteknights Road, Reading, RG6 6BU ("Opsview"), and
2. The customer that authorises an Opsview Consulting Order Form (the "Customer").

This Agreement and an authorised Opsview Consulting Order Form establish the terms and conditions that apply to Customer's use of Opsview Consulting Services. Specific consulting services to be provided to Customer and Customer's payment obligations shall be as detailed in one or more Opsview Consulting Order Forms.

Version: 1.0, Revision Date: 25<sup>th</sup> May 2018

### 1. Definitions

"Affiliate" means and includes any entity that directly or indirectly controls, is controlled by, or is under common control of the Customer, where "control" means the ownership of, or the power to vote, at least fifty percent (50%) of the voting stock, shares or interests of such entity.

"Confidential Information" means all confidential or proprietary information of a party ("Disclosing Party") disclosed orally or in writing to the other party ("Receiving Party") that is identified as confidential or that reasonably should be understood to be confidential given the nature of the information and circumstances of disclosure, including the terms and conditions of this Agreement (including prices and other terms reflected in all Opsview Consulting Order Forms hereunder), Customer data, business and marketing plans, technology and technical information, product designs, and business processes. Confidential information shall not include any information that: (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party; (ii) was known by the Receiving Party prior to its disclosure by the Disclosing Party without any breach of obligation owed to the Disclosing Party; (iii) was independently developed by the Receiving Party without any breach of any obligation owed to the Disclosing Party; or (iv) is received from a third party without any breach of any obligation owed to the Disclosing Party.

"Customer" means the organisation that is named on the Opsview Consulting Order Form or any wholly-owned subsidiaries or Affiliates of

such Customer (each a "Customer Entity"). Customer represents and warrants that any Customer Entity will perform its obligations in accordance with the terms and conditions of this Agreement and the relevant Opsview Consulting Order Form.

"Consulting Services" means the work performed by Opsview pursuant to an Opsview Consulting Order Form under this Agreement.

"Opsview Consulting Order Form" ("Order Form") means Opsview's standard form for ordering Consulting Services, which specifies the extent and scope of the work to be performed by Opsview and the applicable Fees for such work. Each Order Form will be governed by these terms and conditions and must be executed by both parties to be effective.

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

"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 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 any Opsview licence terms.

## 2. Cooperation

Each party agrees to cooperate reasonably and in good faith with the other in the performance of the Consulting Services and acknowledges that delays may otherwise result. Customer agrees to provide, or provide access in a timely manner and if requested by Opsview to the following: office workspace, telephone and other facilities, suitably configured computer equipment and Internet access, complete and accurate information and data from its employees, administrative access to its Opsview system(s), supervised access to other computer systems (as required), coordination of on-site, online and telephone meetings, relevant Customer personnel and any other resources as may reasonably be required for satisfactory and timely performance of the Consulting Services. Each party agrees its respective employees and agents will reasonably and in good faith cooperate with each other in a professional and courteous manner in performance of their duties under this Agreement. Either party may suspend performance hereunder immediately upon written notice should the other party's employees or agents fail to act accordingly.

Customer is also responsible for the following: (i) assigning an internal project manager for each Order Form to serve as a single point of contact for Opsview; (ii) defining and maintaining the business objectives and requirements that will guide the Consulting Services and the use of its Opsview systems; (iii) reviewing Opsview's work and/or deliverables in a timely manner for conformance against any stated requirements; (iv) training its users generally in the use of Opsview software; and (v) administering the Opsview system(s) generally for its own internal business purposes.

### 2.1 Resource Booking and Delays

Except where the relevant Order Form provides otherwise, scheduling of Opsview's resources must be agreed by the Customer at least ten (10) business days prior to the date Opsview's work is required to begin. Subsequent scheduling changes requested by the Customer may result in additional fees. Customer may delay or postpone the start date of any Order Form at any time by providing Opsview at least five (5) business days prior written notice. Should any such notice not have been received by Opsview, Customer will be invoiced for the planned hours under the Order Form or, in the case of a fixed fee Order Form, a prorated amount corresponding to the planned work. Delays caused by Customer for work that has commenced will be billed as follows: (i) offsite planned resources will be billed at 50% of the planned work hours during the period of delay; and (ii) onsite planned resources will be billed at 100% of the planned hours during the period of delay, with a maximum of 8 hours per business day. If Customer fails to schedule work within six months of the effective date of the Order Form, Opsview reserves the right to cancel the relevant Order Form.

## 3. Subcontractors

Opsview may, at its sole discretion, use suitably qualified third-party contractors to perform any of its obligations hereunder. Any third-party contractor will be bound by the same or similar terms contained in this Agreement

## 4. Fees

Customer shall pay the Fees in the amounts and by the dates specified in the Order Form. Unless expressly stated in the Order Form, all Consulting Services shall be provided on a Time & Materials ("T&M") basis, at Opsview's then current T&M rates at the time work is performed. If an estimated total amount of Fees is stated in the Order Form, that amount is solely a good faith estimate for Customer's budgetary purposes and not a guarantee that the work will be completed for that amount. If the estimated amount is expended, Opsview will continue to supply T&M Consulting Services at the same rates and terms until the work under the relevant Order Form is completed. If Customer has pre-paid the Fees in advance of delivery and Opsview has cause to cancel an Order Form under Clause 2.1, Customer agrees to forfeit any unused pre-paid Fees.

## 5. Changes to Scope

Any changes in the scope of work under an Order Form shall be made in writing by a change order or amendment to the Order Form and include the adjustment (if any) to the Fees. Such change order or amendment must be signed by authorised representatives of each party prior to implementation of such changes.

## 6. Expenses

Reasonable material, administrative, travel and subsistence expenses will be charged at cost in addition to any Fees stated on such Order Form and as incurred in the delivery of the Consulting Services.

## 7. Invoicing and Payment

Opsview shall invoice Customer in advance or as stated in the applicable Order Form. Fees will be due and payable within fourteen (14) days from the date of the invoice or as stated on the applicable Order Form, and considered overdue if paid thereafter. Except as otherwise set forth in this Agreement, all fees paid to Opsview are non-refundable. Opsview reserves the right to charge interest on the whole amount of any overdue invoice at the interest rate of 1.5% per month from the due date until the outstanding amount is received by Opsview. Customer must provide a signed Order Form and, if required by the Customer, an associated Customer purchase order, before commencement of the Consulting Services. Opsview may, without prejudice to any other rights it may have, set off any liability of Customer to Opsview against any liability of Opsview to Customer.

## 8. Taxes

The Fees for Consulting Services hereunder do not include any direct, indirect, local, state, federal or foreign taxes, levies, duties or similar governmental assessments of any nature, including value added, sales, use

or withholding taxes, (collectively "Taxes"). Customer is responsible for paying all Taxes associated with purchases of Consulting Services made under this Agreement, excluding any taxes due on Opsview's net income or property, unless Customer is tax exempt. If Opsview has the legal obligation to pay or collect Taxes for which Customer is responsible under this clause, the appropriate amount will be added to the invoice and paid by Customer, unless Customer provides a valid tax exemption certificate authorised by the relevant tax authority.

## 9. Indemnity and Remedy

Each party ("Provider") shall defend and indemnify the other party ("Recipient") against any claim that the information, design, specification, instruction, data or material provided by the Provider ("Material") and used by the Recipient in connection with the Consulting Services infringes a copyright, patent or intellectual property right of a third party, provided that: (i) Recipient notifies Provider in writing within thirty (30) days of becoming aware of the claim; (ii) Provider has sole control of the defence and all related settlement negotiations; and (iii) Recipient provides Provider with the assistance, information and authority reasonably necessary to perform the above. Reasonable expenses incurred by the Recipient in providing such assistance shall be reimbursed by Provider.

Provider shall have no liability for any claim or infringement resulting from (i) Recipient's use of a superseded or altered release of some or all of the Material if the infringement would have been avoided by the use of a subsequent or unaltered release of the Material which was provided to Recipient or (ii) any information, design, specification, instruction, data or material not furnished by Provider.

For the purposes of this clause, Material specifically excludes Software and Third-Party Software, which are provided under separate agreements or subscription contracts. Such separate agreements or subscription contracts will govern all use by Customer of such Software and Third-Party Software.

### 9.1 Remedy

In the event that some or all of the Material is held to infringe the intellectual property rights of a third party, Provider shall have the option, at its expense, to (i) modify the Material to be non-infringing; (ii) obtain for Recipient a licence to continue using the Material; or (iii) require the return of the infringing Material and all rights thereto from Recipient.

If Provider is Opsview and such return materially affects Customer's ability to meet its objectives under the relevant Order Form, then Customer may, at its option and upon thirty (30) days prior written notice to Opsview, terminate such Order Form, in which case Customer shall be entitled to recover the fees paid for that portion of the Material giving rise to the claim. If Customer is Provider and such return materially affects Opsview's ability to meet its objectives under the relevant Order Form, then Opsview may, at its option and upon thirty (30) days prior written notice to Customer, terminate such Order Form, in which case Customer shall pay Opsview for Consulting Services rendered through to the date of termination on a T&M or percent completion basis as appropriate.

## 10. Warranty and Disclaimers

Opsview warrants that the Consulting Services will be performed in a professional manner, in accordance with generally accepted industry standards. Customer must report any deficiencies in the Consulting Services to Opsview in writing within thirty (30) days of performance of such services in order to receive warranty remedies. This warranty is exclusive and in lieu of all other warranties and conditions either expressed or implied by statute, common law or otherwise, including any implied warranty of merchantability, satisfactory quality or fitness for any particular purpose.

### 10.1 Warranty Remedy

For any breach of the warranty in this clause, Customer's exclusive remedy and Opsview's entire liability shall be the re-performance of the defective Consulting Services. If Opsview is unable to re-perform the defective Consulting Services as warranted, Customer shall be entitled to recover the fees paid to Opsview for the deficient portion of the Consulting Services.

## 11. Limitation of Liability

In no event shall Opsview be liable, whether in tort (including for breach of statutory duty), contract, misrepresentation or otherwise, for any indirect, incidental, special or consequential damages, or damages for loss of profits, revenue, business, goodwill, anticipated savings or use or loss or corruption of data or information incurred by Customer or any third party, even if Customer, the third party or any other person has been advised of the possibility of such damages.

## 12. Maximum Liability

Opsview's maximum aggregate liability (including any liability for the acts or omissions of its employees, agents and sub-contractors) for or in respect of any loss or damage suffered by Customer shall be limited to the total amount of fees paid and/or due by Customer under the applicable Order Form under which the liability arises (except for death or personal injury arising from Opsview's negligence, or from any fraudulent representation, in which case Opsview's liability shall not be limited).

## 13. Confidentiality

Customer and Opsview mutually agree to maintain the confidentiality of any Confidential Information during, or prior to entering into, this Agreement during the term of this Agreement and after the termination of this Agreement for a two-year period. Both parties agree not to use said Confidential Information for any purpose except as necessary to fulfill its obligations and exercise its rights under this Agreement. Except as otherwise permitted under this clause, the Receiving Party shall not disclose the Disclosing Party's 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 it protects its own Confidential Information and in no event using less than reasonable care.

If the Receiving Party is compelled by law or order or requirement of a court, administrative agency, or other governmental or regulatory body to disclose Confidential Information of the Disclosing Party, it shall provide the

Disclosing Party with prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure.

### **13.1 Remedy**

If the Receiving Party discloses or uses (or threatens to disclose or use) any Confidential Information of the Disclosing Party in breach of the confidentiality obligations in this Agreement, the Disclosing Party shall have the right, in addition to other remedies available to it, to seek injunctive relief to enjoin such acts, it being specifically acknowledged by the Parties that any other available remedies are inadequate.

### **14. Intellectual Property Rights**

All copyright, trademarks and other intellectual property rights subsisting in or used in connection with the Consulting Services are and remain the sole property of Opsview or their respective owners. Opsview grants the Customer a worldwide, perpetual, non-exclusive, non-transferable, royalty-free licence to use for Customer's internal business purposes anything newly created by Opsview for Customer under this Agreement ("Contract IPR") and any background material of Opsview incorporated in any Material provided by Opsview to Customer under this Agreement ("Background Material"). Opsview will retain all ownership rights in the Contract IPR and Background Material.

### **15. Relationship between the Parties**

Opsview is an independent contractor; nothing in this Agreement shall be construed to create a partnership, joint venture, or agency relationship between the parties. Each party shall be solely responsible for payment of all compensation owed to its employees, as well as employment-related taxes.

### **16. Law and Jurisdiction**

This Agreement shall be governed by and construed in accordance with the laws of England and Wales and the parties hereby submit to the exclusive jurisdiction of the English courts in respect of any dispute or matter arising out of or connected with this Agreement and/or any Order Form although Opsview shall have the right to commence and pursue proceedings in alternative jurisdictions. In terms of the enforceability of this Agreement, this Agreement shall be deemed "in writing" and "accepted" by both parties.

### **17. Term and Termination**

The term of this Agreement shall commence on the Effective Date of the first Order Form and shall continue in effect unless terminated in accordance with this clause. Either party may terminate an Order Form for convenience with ten (10) business days prior written notice except for Order Forms that are billed in advance or expressly do not allow for cancellation or termination for convenience. If an Order Form is terminated for convenience prior to its completion, Opsview will stop work promptly following receipt of Customer's notice and Customer will be billed for: (i) in the case of a T&M Order Form, the planned hours during the period of

notice; (ii) in the case of a fixed fee Order Form, the pro-rated amount corresponding to the work planned during the period of notice. Opsview may terminate this Agreement at any time for convenience by providing Customer five (5) business days prior written notice, provided however, that any Order Form outstanding at the time of termination shall continue to be governed by this Agreement as if it had not been terminated.

### **17.1 Termination for Material Breach**

Either party may terminate this Agreement and/or any Order Form if the other party is in material breach of this Agreement and/or such Order Form and has not cured such breach within thirty (30) days of written notice from the other party specifying the breach. Consent to extend the cure period shall not be unreasonably withheld, so long as the breaching party has commenced cure of the breach during the thirty (30) day period and is pursuing such cure diligently and in good faith.

### **17.2 Failure to Make Payment**

Notwithstanding anything in this Clause 17 to the contrary, if Customer fails to make payment on any due date, Opsview shall have the right to suspend Consulting Services hereunder and, if such failure to make payment has not been cured within fourteen (14) days of the due date, upon written notice, terminate this Agreement and any or all outstanding Order Forms hereunder without any penalty or liability owed to the Customer whatsoever.

### **17.3 Termination for Insolvency**

Either party may terminate this Agreement and all Order Forms immediately upon written notice if the other party enters into insolvency or bankruptcy proceedings of any sort.

### **17.4 Effect of Termination**

Termination of this Agreement and/or any Order Form shall not limit either party from pursuing any other remedies available to it, including injunctive relief under applicable law, nor shall termination relieve Customer of its obligations to pay all fees and expenses accruing prior to the end of the termination notice period. In addition to those provisions which by their nature are intended to survive any termination of this Agreement, the parties' rights and obligations under Clauses 9, 10, 11, 12, 13, 14, 16, 17, 18 and 19 (to the extent appropriate) shall survive termination of this Agreement and/or any Order Form hereunder.

### **18. 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 Consulting 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.

## 19. GENERAL

### 19.1 Force Majeure

Neither party shall be liable for any delay or failure in performance due to causes beyond its reasonable control including, without limitation: acts of God, flood, drought, earthquake or other natural disaster; terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo; any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent; any labour or trade dispute, strikes, industrial action or lockouts; interruption or failure of a utility service.

### 19.2 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.

### 19.3 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.

### 19.4 Counterparts and Signature

In the event this Agreement is executed with signatures, it 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 this Agreement.

In the event an Agreement is executed using an electronic signature system, each Party warrants that the person signing the Agreement 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.

### 19.5 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.

### 19.6 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.

### 19.7 Severability

If any part of this Agreement is held to be invalid or unenforceable, in whole or in part, such holding shall not affect the validity of the other parts of this Agreement and the remaining terms shall remain in full force and effect.

### 19.8 Waiver

The waiver of a breach of any provision of this Agreement shall not operate or be interpreted as a waiver of any other or subsequent breach. Except for actions of non-payment, 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 occurred.

### 19.9 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 legal proceedings. Notwithstanding the foregoing, either party may take any action reasonably required to protect such party's rights.

### 19.10 Notices

All notices permitted or required under this Agreement shall be in writing and shall be delivered in person, 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, marked for the attention of the C.E.O. All notices shall be deemed to have been given and received on the earlier of actual receipt, the date of transmission by fax, one (1) day from the date of dispatch by overnight courier or five (5) days from the date of postmark.

### 19.11 Third Party Rights

A person who is not a party to this Agreement has no rights under the Contracts (Rights of Third Parties) Act 1999 (the "Act") to enforce, or to enjoy the benefit of, any term of this Agreement, but this does not affect

any right or remedy of a third party which exists or is available apart from the Act or that is expressly provided for under this Agreement.

#### **19.12 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.

#### **19.13 Entire Agreement**

Any amendment or modification to this Agreement and/or an Order Form must be in writing signed by duly authorised representatives of Customer and Opsview. This Agreement constitutes the entire agreement and supersedes all prior or contemporaneous oral or written agreements, proposals or representations regarding the subject matter hereof. The terms and conditions of this Agreement and the applicable Order Form shall prevail regardless of any preprinted or conflicting terms on any Customer purchase orders or similar order form. If a conflict arises between this Agreement and an authorised Order Form, then the terms of this Agreement will take precedence unless otherwise expressly provided in the Order Form.

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.