

# OpsVeda Terms of Service

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# OPSVEDA SAAS GENERAL TERMS AND CONDITIONS

## 1 Definitions

1.1 “**Affiliate**” of a party means any legal entity in which a party, directly or indirectly, holds more than fifty percent (50%) of the shares or voting rights or controls or is under common control with that legal entity. “Control” means the direct or indirect possession of the power to direct or cause the direction of the management and policies of an entity, whether through ownership, by contract or otherwise. Any such company shall be considered an Affiliate for only such time as such interest or control is maintained.

1.2 “**Agreement**” means these General Terms and Conditions and any Order Form referencing these General Terms and Conditions, and any other schedules, supplements, statements of work, exhibits or appendices thereto, whether attached or incorporated by reference.

1.3 “**Cloud Materials**” mean any materials produced by or on behalf of OpsVeda pursuant to this Agreement, including in the course of providing any support or Consulting Services to Licensee. Cloud Materials include materials created for or in cooperation with Licensee, but do not include any Licensee Data, Licensee Confidential Information or the Service. For clarity, some services may be performed under a statement of work, which statement of work will be governed by the terms and conditions of this Agreement.

1.4 “**Confidential Information**” includes, with respect to Licensee, the Licensee Data, marketing and business plans and/or Licensee financial information, and with respect to OpsVeda: (i) the Service, including, without limitation, all (a) computer software (both object and source codes) and related Service documentation or specifications; (b) techniques, concepts, methods, processes and designs embodied in or relating to the Service; and (c) all application program interfaces, system security and system architecture design relating to the Service; and (ii) OpsVeda research and development, product offerings, pricing and availability. In addition to the foregoing, Confidential Information of either OpsVeda or Licensee (the party disclosing such information being the “disclosing party”, and the receiving party being the “receiving party”) may also include information which the disclosing party protects against unrestricted disclosure to others that (a) the disclosing party or its representatives designate as confidential at the time of disclosure; or (b) should reasonably be understood to be confidential given the nature of the information and the circumstances surrounding its disclosure; including, without limitation, information about or concerning any third party that is disclosed to receiving party under this Agreement.

1.5 “**Consulting Services**” means implementation, configuration, training, and other similar services related to the Service.

1.6 “**Customer**” or “**Licensee**” means the entity or individual that has consented to this Agreement by execution of an Order Form that references these General Terms and Conditions or by any other legally binding method of acceptance of this Agreement.

1.7 “**Customer Data**” or “**Licensee Data**” means any content, materials, data and information that Licensee or its Named Users enter into the Service.

1.8 “**Documentation**” means OpsVeda's then-current technical and functional documentation for the Service which is made available to Customer with the Service, including, but not limited to, configuration workbooks or release notes, as applicable.

1.9 "**Intellectual Property Rights**" means patents of any type, design rights, utility models or other similar invention rights, copyrights, mask work rights, trade secret or confidentiality rights, trademarks, trade names and service marks and any other intangible property rights, including applications and registrations for any of the foregoing, and whether or not perfected, now existing or hereafter filed, issued, or acquired.

1.10 "**Licensed Level**" shall mean a) when referenced in the context of a Named User, the number of Named Users licensed to access the software -and- b) when referenced in the context of a Package, the quantity of Metric for which each individual Package is licensed.

1.11 "**Metric**" or "**usage metric**" shall mean when referenced in the context of a Package, the individual business or process metric corresponding with each Package.

1.12 "**Named User**" means Customer's and its Affiliates' employees, agents, contractors, consultants, suppliers or other individuals who are authorized by Customer to use the Service.

1.13 "**Order Form**" means any document identified as an Order Form and signed by the parties.

1.14 "**Package License**" shall mean the Metric and Licensed Level applicable to each Package.

1.15 "**Service**" means the hosted, on demand service, including Licensee's Use of the Software described in this Agreement, including updates and new releases thereto made generally available by OpsVeda to its customers.

1.16 "**Software**" shall mean (i) any and all software products licensed to Licensee under this Agreement as specified in Order Forms hereto and delivered (or made available) to Licensee hereunder; (ii) any new releases thereof and (iii) any complete or partial copies of any of the foregoing. Software includes software owned by Licensor itself (sometimes referred to as "OpsVeda Software"), and any software owned by a third party and bundled by Licensor under this Agreement ("Third Party Software").

Each Software and/or Third-Party Software product licensed pursuant to the Agreement may be referred to as a "Software Package" (when referencing only Software) or "Third Party Software Package" (when referencing only Third-Party Software) or "Bundled Package" (when referencing both Software and Third-Party Software).

"Software Package", "Third Party Software Package" or "Bundled Package" may be referred to in this agreement as "Package".

1.17 "**Software Use License (Non-Perpetual)**", means a license type that grants a non-exclusive, limited right to Use the Software included in the Bundled Package during the term of the license identified in the applicable Exhibit, subject to the terms and conditions of the Agreement to the extent it is compliant with the license metric and level outlined in the accompanying Order Form.

1.18 "**Software Use License (Trial)**", means a license type that grants a non-exclusive, limited use right to use the "OpsVeda, Operational Intelligence Software" for the sole purpose of evaluation. The evaluation copies of the Bundled Package and the Software shall be destroyed and/or any access discontinued at the end of the evaluation period.

1.19 "**System Availability**" means the average percentage of total time during which the production version of the Service is available to Customer during a calendar month, excluding (i) any

maintenance windows (including any maintenance windows defined in a supplement to this Agreement); (ii) delays due to conditions beyond the reasonable control of OpsVeda; (iii) delays caused by systems outside of the Service, including, but not limited to, Customer's network, equipment and systems; (iv) micro outages (meaning an inaccessibility that lasts less than thirty (30) minutes, provided that there are no more than three (3) micro outages within a calendar month); and (v) inaccessibility due to Customer's requests or where Customer approved the same in advance.

1.20 "**Territory**" means worldwide (unless otherwise specifically restricted in the Order Form, or the End User License Agreement), subject to applicable export control laws.

1.21 "**Use**" means to activate the processing capabilities of the Software, load, execute, access, employ the Software, or display information resulting from such capabilities.

## 2 Usage Rights

2.1 OpsVeda shall make the Service available to Licensee in accordance with and during the term stated in the Order Form to permit Named Users to remotely access and use the Service solely for Licensee's own internal business purposes as permitted by and subject to the terms of this Agreement (including usage metrics stated in this Agreement) and the Documentation.

2.2 Licensee shall not sublicense, license, sell, lease, rent or otherwise make the Service available to third parties (other than Named Users who are using the Service in accordance with Licensee's authorized use of the Service). Licensee shall be responsible for the acts and omissions of its Named Users as if they were the acts and omissions of Licensee. Named User access credentials issued to access or utilize the Service cannot be shared or used by more than one individual at a time, provided however, a Named User's access rights may be transferred from one individual to another if the original Named User is removed from the Service, no longer requires, or is no longer permitted access to or use of the Service.

2.3 OpsVeda or its licensors own all right, title and interest in any and all copyrights, trademark rights, patent rights and other intellectual property or other rights in the Service, any Cloud Materials, and any improvements, design contributions or derivative works thereto. Except as otherwise agreed in writing, Licensee is granted the nonexclusive right to use the Cloud Materials in connection with its use of the Service and subject to the terms of this Agreement. Except for the limited rights expressly granted herein, this Agreement does not transfer from OpsVeda any proprietary right or interest in the Service or the Cloud Materials. All rights not expressly granted to Customer in this Agreement are reserved by OpsVeda and its licensors.

2.4 When using the Service, Licensee shall not, and shall ensure that its Named Users do not: (i) copy, translate, disassemble, decompile, reverse-engineer or otherwise modify any parts of the Service; (ii) transmit any content, data or information that is unlawful, abusive, malicious, harassing, tortious, defamatory, vulgar, obscene, libelous invasive of another's privacy right or right of publicity, or racially or ethnically objectionable; (iii) infringe the Intellectual Property Rights of any entity or person; (iv) interfere with or disrupt the Software or OpsVeda systems used to host the Service, or other equipment or networks connected to the Service; (v) use the Service in the operation of a service bureau, outsourcing or time-sharing service; (vi) circumvent or disclose the user authentication or security of the Service or any host, network, or account related thereto; (vii) access the Service for the purpose of building a competitive product or service which copying its features or user interface; (viii) permit access to the Service by a direct competitor of OpsVeda; or (ix) make any use of the Service that violates any applicable local, state, national, international or foreign law or regulation.

2.5 The Service may contain links to external Web sites (including embedded widgets or other means of access) and information provided on such external websites by OpsVeda partners and third-party

service providers. OpsVeda shall not be responsible for the contents or performance of any linked Web site.

2.6 OpsVeda shall be entitled to remotely monitor Licensee's number of Named Users (or other applicable usage metric stated in the Order Form) regarding usage of the Service to ensure Licensee's compliance with this Agreement and, subject to Section 11 below, OpsVeda may utilize the information concerning Licensee's use of the Service to improve OpsVeda products and services and to provide Licensee with reports on its use of the Service.

2.7 OpsVeda reserves the right to change or modify the Service, including and not limited to underlying third party software packages, during the Term of the Agreement provided there is not a decrease in any material respect to the overall functionality, availability or speed of the Service.

2.8 If Customer is granted access under this Agreement to a free (no fee) version of the Service, to the extent permitted by applicable law, Customer agrees that (i) OpsVeda has no obligation to provide any particular service level or support services; and (ii) OpsVeda may cease providing the Service at any time without notice. This Section 2.8 supersedes any conflicting term of this Agreement.

2.9 OpsVeda may offer and Licensee may choose to accept access to functionality that is not generally available and not validated and quality assured in accordance with OpsVeda' standard processes ("Beta Functionality"). Beta Functionality will be clearly described as such in the Documentation, which will be provided to Licensee before its acceptance thereof. OpsVeda may require Licensee to accept additional terms to use Beta Functionality. Any production use of the Beta Functionality is at Licensee's sole risk. OpsVeda does not warrant the correctness and completeness of the Beta Functionality, and OpsVeda shall not be liable for errors or damages caused by the usage of the Beta Functionality.

2.10 Licensee agrees that its purchase of subscription(s) for the Service is neither contingent upon the delivery of any future functionality or features nor dependent upon any oral or written public comments made by OpsVeda, including any roadmaps, with respect to future functionality or features.

### **3 Support, Set up and Security**

3.1 OpsVeda will provide support and maintenance for the Service as set forth in the Support and Maintenance Terms associated with the Order Form and other relevant sections of this Agreement.

3.2 (i) OpsVeda will use commercially reasonable security technologies (such as user authorization, encryption, password protection and firewall protection) in providing the Service.  
(ii) OpsVeda represents and warrants that it will maintain administrative, and technical safeguards for protection of the security, confidentiality and integrity of Licensee Data and Licensee Confidential Information. Those safeguards will include, but will not be limited to, measures for preventing access, use, modification or disclosure of Licensee Data by Licensor personnel except (a) to provide the purchased Service and prevent or address service or technical problems, (b) as compelled by law in accordance with Section 11.1 herein, or (c) as Licensee expressly permits in writing.

### **4 Customer Responsibilities and Obligations**

4.1 Subject to Section 11 below, Licensee grants to OpsVeda the nonexclusive right to use Licensee Data for the sole purpose of and only to the extent necessary for OpsVeda to provide the Service to Licensee, unless otherwise set forth in a product supplement or Order Form.

4.2 Licensee shall be responsible for entering its Licensee Data into the Service and Licensee shall be responsible for the content of the Licensee Data supplied by it. Licensee agrees that it has collected and shall maintain and handle all Licensee Data in compliance with all applicable data privacy and protection laws, rules and regulations. Further, Licensee is solely responsible for determining the suitability of the Service for Licensee's business and complying with any regulations, laws, or conventions applicable to the Licensee Data and Licensee's use of the Service(s). If OpsVeda receives information that content/ Data loaded by the Licensee may violate applicable laws or third-party rights, OpsVeda may so notify the Licensee and in such an event Licensee will promptly remove such content/ Data from the system.

4.3 Licensee shall maintain commercially reasonable security standards for its and its Named Users use of the Service. In the event that Licensee notifies OpsVeda that the credentials for one of its Named Users has been compromised, OpsVeda agrees to promptly disable such credentials and issue new credentials.

## **5 Additional Services**

5.1 This Agreement does not include Consulting Services other than those purchased in an Order Form or a separate statement of work. If Licensee elects to have any services for the Service provided by a third party, OpsVeda shall have no liability for any defect or failure of the Service caused by such third-party services, and Licensee shall not be entitled to any reduction in fees for the Service. OpsVeda may deny access to the Service to any third-party service provider which OpsVeda determines in its reasonable discretion poses a security or confidentiality risk to OpsVeda systems, data or intellectual property.

## **6 Prices and Terms of Payment**

6.1 Licensee shall pay to OpsVeda the fees for the Service provided hereunder, in the amount as set forth in the Order Form, within thirty (30) days of receipt of invoice.

6.2 The fees set forth in this Agreement shall be fixed or variable as provided in the Order Form or the associated Software End User License Agreement.

6.3 Licensee may add additional Named Users or other applicable usage metrics during the term of this Agreement by executing an addendum or additional schedule to this Agreement, as applicable, which shall then become an integral part of the amended Agreement. The term of each addendum or schedule shall be coterminous with the then-current term of the Agreement irrespective of the effective date of such addendum and all fees shall be prorated accordingly. Notwithstanding the above, additional Named Users may be added simply by written request of Licensee, as provided in the Software End User License Agreement.

6.4 Licensee is responsible for monitoring its use of the Service. Licensee shall promptly report to OpsVeda any actual use in excess of the number of Named Users (or other applicable usage metric authorized in the Order Form). OpsVeda shall invoice and Licensee shall pay for any usage in excess of the usage metrics set forth in the applicable Order Form and Licensee agrees to execute an addendum to such Order Form to reflect any excess. Such fees shall accrue from the date the excess use began. The parties agree, however, that Licensee may reduce usage and licensed metrics at the beginning of any Renewal Term.

6.5 Except as expressly set forth in this Agreement, all purchases of subscriptions hereunder are non-cancelable, and all fees are non-refundable. Customer shall have no right to withhold or reduce fees under this Agreement or set off any amount against fees owed for alleged defects in the Service.

6.6 All fees not paid when due shall accrue interest at the rate of one and half percent (1.5%) per month and may result in suspension of Customer's ability to access the Service until payment is made.

6.7 "Taxes" means all taxes, levies, imposts, duties, fines or similar governmental assessments imposed by any jurisdiction, country or any subdivision or authority thereof including, but not limited to federal, state or local sales, use, property, excise, service, transaction, privilege, occupation, gross receipts or similar taxes, in any way connected with this Agreement or any instrument, order form or agreement required hereunder, and all interest, penalties or similar liabilities with respect thereto, except such taxes imposed on or measured by a party's net income. Notwithstanding the foregoing, Taxes shall not include payroll taxes attributable to the compensation paid to workers or employees and each party shall be responsible for its own federal and state payroll tax collection, remittance, reporting and filing obligations. Fees and charges imposed under this Agreement or under any order form or similar document ancillary to or referenced by this Agreement, shall not include Taxes except as otherwise provided herein. Licensee shall be responsible for all of such Taxes. If, however, OpsVeda has the legal obligation to pay Taxes and is required or permitted to collect such Taxes for which Licensee is responsible under this Section, Licensee shall promptly pay the Taxes invoiced by OpsVeda unless Licensee has furnished OpsVeda with valid tax exemption documentation regarding such Taxes at the execution of this Agreement or at the execution of any subsequent instrument, order form or agreement ancillary to or referenced by this Agreement. Licensee shall comply with all applicable tax laws and regulations. Licensee hereby agrees to promptly pay or reimburse OpsVeda for any Taxes and related costs paid or payable by OpsVeda attributable to Taxes that would have been Licensee's responsibility under this Section 6.7 if invoiced to Licensee. Licensee shall promptly pay or reimburse OpsVeda for all costs and damages related to any liability incurred by OpsVeda as a result of Licensee's non-compliance or delay with its responsibilities herein. Licensee's obligation under this Article 6.7 shall survive the termination or expiration of this Agreement.

6.8 Licensee shall reimburse OpsVeda for all reasonable, pre-approved and appropriately documented travel and related expenses incurred by OpsVeda in performing any support or Consulting Services for Licensee under this Agreement, subject to Licensee's vendor travel and expense policies, copies of which will be provided to OpsVeda. All travel and related expenses will be billed at actuals, or at pre-approved terms.

## **7 Term, Termination and Termination Support**

7.1 The term of this Agreement begins on the Initial Term Start Date as set forth in the Order Form or the Software End User License Agreement and shall continue in effect as described in this Agreement. Where multiple Order Forms are in effect, termination of individual Order Forms shall leave other Order Forms unaffected.

7.2 A party may terminate this Agreement upon thirty (30) days written notice to the other party of such other party's material breach of any provision of this Agreement unless the breaching party has cured such breach during such thirty (30) day period. In case of termination in accordance with this Article 7.2 by Licensee, Licensee shall be entitled to a pro-rata refund of prepaid fees for the applicable Service. Except for termination in accordance with this Article 7.2 or Article 7.4 by Licensee, termination will not relieve Licensee from the obligation to pay fees that remain unpaid.

7.3 Notwithstanding OpsVeda's right to terminate as set forth in Section 7.2 above, OpsVeda may, in its reasonable determination, deactivate Licensee's user name(s) and password(s) and/or temporarily suspend access to the Service or a portion thereof, if and to the extent OpsVeda can substantiate in advance in writing that the continued use of the Service by Licensee may result in harm to the Service (including the security of the systems used to provide the Service) or other OpsVeda

Licensees, or the rights of third parties, upon prior written notice to Licensee as the circumstances permit.

7.4 Either party may terminate this Agreement immediately upon notice if the other party: (i) makes a general assignment for the benefit of creditors; (ii) is adjudicated bankrupt; (iii) files a voluntary petition for bankruptcy or reorganization, or has a petition filed against it for an adjudication in bankruptcy or reorganization and such petition is not dismissed within sixty (60) days; or (iv) applies for or permits the appointment of a receiver, trustee or custodian for any of its property or assets.

7.5 Upon the effective date of termination, Licensee's access to the Service will be terminated. Licensee shall have the ability to access its Licensee Data at any time during the subscription term set forth in the applicable Order Form, unless earlier terminated pursuant to this Article 7. Licensee may export and retrieve its Data during a subscription term, which will be subject to technical limitations caused by factors such as (i) the availability of self-service extraction tools compatible with the Service, (ii) the size of Customer's instance of the Service; and (iii) the frequency and/or timing of the export and retrieval.

7.6 Upon expiration or termination of this Agreement, the rights and obligations of the parties hereunder will cease, except that: a) each party shall immediately return or securely destroy (and provide written certification of such destruction within five (5) days) the Confidential Information of the other party; and b) Sections 6.7, 7, 9, 10, 11, and 12 shall survive the expiration or termination of this Agreement.

## **8 Warranties by OpsVeda**

8.1 OpsVeda warrants that the Service will substantially conform to the specifications stated in the Documentation. The foregoing warranty shall not apply to the extent: (i) the Service is not being used in accordance with this Agreement and/or any Documentation; or (ii) any non-conformity is caused by third party products, content or service being accessed through the Service that are identified as third-party products, content or service; or (iii) the Service being used was provided for no fee or is a trial license of the Service. Subject to Section 8.3, Licensee's sole and exclusive remedy, and OpsVeda's entire liability for breach of the limited warranty in this Section 8.1, shall be correction of the warranted non-conformity or, if OpsVeda fails to correct the warranted non-conformity within thirty (30) days of the date Customer reported the non-conformity, after using reasonable commercial efforts, OpsVeda may terminate access to the non-conforming Service and refund the pro-rata subscription fees paid by Customer for such Service (as identified in the applicable Order Form) for the remainder of the subscription term (starting on the date Customer reported the non-conformity).

8.2 OpsVeda warrants that (i) it will perform any Consulting Services in a workmanlike and professional manner consistent with generally accepted industry practices, and (ii) the Consulting Services and Cloud Materials will conform in all material respects with the descriptions set forth in this Agreement, and in any other applicable Order Form, statement of work or deployment descriptions. Subject to Section 8.3, Licensee's sole and exclusive remedy, and OpsVeda's entire liability for breach of the limited warranty in this Section 8.2, shall be the re-performance of such deficient Consulting Services; and if OpsVeda fails to re-perform such Consulting Services as warranted within thirty (30) days, Customer shall be entitled to recover the fees paid to OpsVeda for such deficient Consulting Services and OpsVeda will provide a pro-rata refund of the pre-paid fees for the applicable service.

8.3 Licensee shall provide OpsVeda with prompt written notice of any non-conformity described in Sections 8.1 and 8.2 as follows: (i) for any non-conformity of the Service, within sixty (60) days of Licensee's discovery of such non-conformity, and (ii) for any non-conformity of any Consulting Service, within thirty (30) days of completion of the applicable Consulting Service.



8.4 EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, NEITHER OPSVEDA NOR ITS AFFILIATES MAKE ANY REPRESENTATION OR WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, REGARDING ANY MATTER, INCLUDING THE MERCHANTABILITY, SUITABILITY, ORIGINALITY, OR FITNESS FOR A PARTICULAR USE OR PURPOSE, NON-INFRINGEMENT OR RESULTS TO BE DERIVED FROM THE USE OF OR INTEGRATION WITH THE SERVICE, OR ANY CONSULTING SERVICES, SOFTWARE, HARDWARE OR OTHER MATERIALS PROVIDED UNDER THIS AGREEMENT, OR THAT THE OPERATION OF ANY SUCH SERVICE, SOFTWARE, HARDWARE OR OTHER MATERIAL WILL BE SECURE, UNINTERRUPTED OR ERROR FREE.

## 9 Third Party Claims

9.1 OpsVeda shall indemnify, defend (at its sole expense) and hold Licensee and its Affiliates and their respective officers, shareholders, employees and agents harmless against lawsuits, claims, demands, penalties, costs, expenses and other liabilities (collectively "Claims") brought against Licensee or its Affiliates by any third party, arising from or related to (i) an allegation that Licensee's use of the Service, the Consulting Service, the Cloud Materials or the Software infringes, misappropriates or violates any patent claim(s), copyright, trade secret or other Intellectual Property Rights of a third party (an "Infringement Claim"), (ii) any breach by OpsVeda of this Agreement or (iii) the negligence or willful misconduct of OpsVeda or any of its employees, officers, agents or Affiliates. OpsVeda will pay all damages losses, expenses, costs, liabilities, and settlements with respect to such claims, and will pay reasonable attorney's fees in connection with such defense incurred by Licensee or its Affiliates as and when incurred by Licensee or its Affiliates. For an Infringement Claim, this obligation of OpsVeda shall not apply to the extent the alleged infringement or misappropriation results from use of the Service in conjunction with any other software or service not provided or suggested by OpsVeda.

9.2 In the event an Infringement Claim under Section 9.1 is made or in OpsVeda's reasonable opinion is likely to be made, OpsVeda may, at its sole option and expense: (i) procure for Licensee the right to continue using the Service under the terms of this Agreement; or (ii) replace or modify the Service to be non-infringing without material decrease in functionality. If OpsVeda provides written notice to Licensee that the foregoing options are not reasonably available, OpsVeda or Licensee may terminate this Agreement and OpsVeda shall refund to Licensee all prepaid fees for the remainder of its term after the date of termination.

9.3 Licensee shall indemnify, defend (at its sole expense) and hold OpsVeda and its Affiliates and their respective officers, shareholders, employees and agents harmless against Claims brought against OpsVeda by any third party arising from or related to (i) any use of the Service in violation of any applicable law or regulation; (ii) an allegation that the Licensee Data or Licensee's use of the Service in violation of this Agreement violates, infringes or misappropriates any patent claim(s), copyright, trade secret or other Intellectual Property Rights of a third party or (iii) the gross negligence or willful misconduct of Licensee or any of its employees, officers, agents or Affiliates. Licensee will pay damages awarded against OpsVeda (or the amount of any settlement Customer enters into) with respect to such Claims and will pay reasonable attorney's fees in connection with such defense incurred by OpsVeda as and when incurred by OpsVeda. The foregoing shall apply regardless of whether such damage is caused by the conduct of Licensee and/or its Named Users or by the conduct of a third party using Licensee's access credentials (other than access credentials that should have been disabled by OpsVeda pursuant to Section 4.3).

9.4 The obligations under this Section 9 are conditioned on (i) the party against whom a third party claim is brought timely notifying the other party in writing of any such claim, provided however that a party's failure to provide or delay in providing such notice shall not relieve a party of its obligations under this Section 9 except to the extent such failure or delay prejudices the defense; (ii) the party

who is obligated hereunder to defend a claim having the right to fully control the defense of such claim; provided, the indemnifying party shall keep the indemnified party informed of, and consult with the indemnified party in connection with the progress of such litigation or settlement; and (iii) the party against whom a third party claim is brought reasonably cooperating in the defense of such claim. Any settlement of any claim shall not include a financial or specific performance obligation or admission of liability by the party against whom the claim is brought, provided however that for an Infringement Claim, OpsVeda may settle any claim on a basis requiring OpsVeda to substitute for the Service with an alternative substantially equivalent non-infringing service. The party against whom a third-party claim is brought may appear, at its own expense, through counsel reasonably acceptable to the party obligated to defend claims hereunder. Neither party shall undertake any action in response to any infringement or misappropriation, or alleged infringement or misappropriation that is prejudicial to the other party's rights.

9.5 THE PROVISIONS OF THIS SECTION 9 STATE THE SOLE, EXCLUSIVE, AND ENTIRE LIABILITY OF THE PARTIES, THEIR AFFILIATES AND THEIR LICENSORS TO THE OTHER PARTY, AND IS THE OTHER PARTY'S SOLE REMEDY, WITH RESPECT TO THIRD PARTY CLAIMS COVERED HEREUNDER AND TO THE INFRINGEMENT OR MISAPPROPRIATION OF THIRD-PARTY INTELLECTUAL PROPERTY RIGHTS.

## **10 Limitation of Liability**

10.1 NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, EXCEPT FOR THE PARTIES' OBLIGATIONS UNDER ARTICLE 9, DAMAGES RESULTING FROM UNAUTHORIZED USE OR DISCLOSURE OF CONFIDENTIAL INFORMATION, AND OPSVEDA'S RIGHT TO COLLECT UNPAID FEES DUE HEREUNDER, UNDER NO CIRCUMSTANCES AND REGARDLESS OF THE NATURE OF ANY CLAIM SHALL EITHER PARTY (OR THEIR RESPECTIVE AFFILIATES OR OPSVEDA'S VENDORS) BE LIABLE TO EACH OTHER OR ANY OTHER PERSON OR ENTITY UNDER THIS AGREEMENT (I) FOR AN AMOUNT OF DAMAGES IN EXCESS OF THE FEES PAID FOR THE APPLICABLE SERVICE IN THE TWELVE (12) MONTH PERIOD PRECEDING THE DATE OF THE INCIDENT GIVING RISE TO LIABILITY; AND (II) FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR INDIRECT DAMAGES, LOSS OF GOOD WILL OR BUSINESS PROFITS, WORK STOPPAGE OR FOR EXEMPLARY OR PUNITIVE DAMAGES.

10.2 The provisions of this Agreement allocate the risks between Licensor and Licensee. The Service fees reflect this allocation of risk and limitations of liability herein. The aforementioned liability limitations shall include any claims against employees of, subcontractors of, or any other persons authorized by, either party.

## **11 Confidentiality**

11.1 Neither party shall use or reproduce the Confidential Information of the other party in any form except as required to accomplish the intent of this Agreement. Any reproduction of any Confidential Information of the other party shall remain the property of the disclosing party and shall contain any and all confidential or proprietary notices or legends which appear on the original. With respect to the Confidential Information of the other, each party (i) shall take all Reasonable Steps (defined below) to keep all Confidential Information strictly confidential; and (ii) shall not disclose any Confidential Information of the other to any person other than individuals whose access is necessary to enable it to exercise its rights and/or perform its obligations hereunder and who are under obligations of confidentiality substantially similar to those set forth herein. As used herein "Reasonable Steps" means those steps the receiving party takes to protect its own similar proprietary and confidential information, which shall not be less than a reasonable standard of care. Confidential Information of either party disclosed prior to execution of this Agreement shall be subject to the protections afforded hereunder. If the receiving party is compelled by law or legal process to disclose Confidential

Information of the disclosing party, it shall provide the disclosing party with prompt prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the disclosing party's expense, if the disclosing party wishes to contest the disclosure.

11.2 The above restrictions on the use or disclosure of the Confidential Information shall not apply to any Confidential Information that: (i) is independently developed by the receiving party without reference to the disclosing party's Confidential Information, or is lawfully received free of restriction from a third party having the right to furnish such Confidential Information; (ii) has become generally available to the public without breach of this Agreement by the receiving party; (iii) at the time of disclosure, was known to the receiving party free of restriction; or (iv) the disclosing party agrees in writing is free of such restrictions.

11.3 Licensee shall not disclose the terms and conditions of this Agreement or the pricing contained herein to any third party. Licensee agrees to provide telephone references to prospective OpsVeda customers and Industry analysts, from time to time, and such references shall not be unreasonably withheld.

11.4 Licensee may provide, or OpsVeda may solicit, input regarding the Service, including, without limitation, comments or suggestions regarding the possible creation, modification, correction, improvement or enhancement of the Service or any other OpsVeda site, service or product, or input as to whether Licensee believes OpsVeda's development direction is consistent with Customer's business and IT needs, the technology marketplace in general, and the like (collectively "Feedback"). Licensee acknowledges and agrees that any information disclosed by OpsVeda during discussions related to Feedback shall be considered OpsVeda Confidential Information and shall be protected from disclosure in accordance with the terms of this Agreement. In order for OpsVeda to utilize such Feedback, Licensee hereby grants to OpsVeda a non-exclusive, perpetual, irrevocable, worldwide, royalty-free license, with the right to sublicense to OpsVeda's licensees and customers, to use, publish, and disclose such Feedback in any manner OpsVeda chooses and to display, perform, copy, make, have made, use, sell, and otherwise dispose of OpsVeda's and its sub-licensee's products or services embodying Feedback in any manner and via any media OpsVeda chooses, without reference to the source. OpsVeda shall be entitled to use Feedback for any purpose without restriction or remuneration of any kind with respect to Licensee and/or Licensee's representatives. Licensee acknowledges that the information related to the Service disclosed by OpsVeda under this Agreement is only intended as possible strategies, developments, and functionalities of the Service and is not intended to be binding upon OpsVeda to any particular course of business, product strategy, and/or development.

11.5 Licensee is not permitted to (i) modify, adapt, translate, process, arrange or otherwise rework the OpsVeda Software or make derivative works of the Software, nor (ii) to reproduce the results achieved from any of these acts, unless, in each case of (i) and (ii), such acts are necessary for the rectification of defects preventing or impairing the designated use of the Software and Licensor has not offered, upon notification by Licensee of any such defect to Licensor in writing, rectification within a reasonable period and subject to the then current reasonable terms, conditions and prices offered by Licensor for performing such rectification or has not performed the rectification within a reasonable time period after having been commissioned by Licensee to do so. Any unauthorized works listed in (i) or (ii) above developed by Licensee, and any Intellectual Property Rights embodied therein, shall be the sole and exclusive property of Licensor or the respective Affiliates, and Licensee hereby assigns all rights in them (including moral rights) to Licensor or its designated Affiliates. To the extent that Intellectual Property Rights embodied therein are not eligible to be transferred by operation of the law, Licensor or its Affiliates shall be granted exclusive rights to use to the widest extent lawfully possible.

## 12 Miscellaneous

12.1 It is the intent of the parties that in case any one or more of the provisions contained in this Agreement shall be held to be invalid or unenforceable in any respect, such invalidity or unenforceability shall not affect the other provisions of this Agreement, and this Agreement shall be construed as if such invalid or unenforceable provision had never been contained herein.

12.2 If either party should waive any breach of any provision of this Agreement, it shall not thereby be deemed to have waived any preceding or succeeding breach of the same or any other provision hereof.

12.3 The Order Form may be signed in two counterparts, each of which shall be deemed an original and which shall together constitute one Order Form. Signatures sent by electronic means (facsimile or scanned and sent via e-mail or signed by electronic signature service where legally permitted) shall be deemed original signatures.

12.4 The Service, Documentation and other OpsVeda materials are subject to the export control laws of various countries, including without limitation the laws of the United States. Licensee agrees that it will not submit the Service, Documentation or other OpsVeda materials to any government agency for licensing consideration or other regulatory approval without the prior written consent of OpsVeda, and will not export the Service, Documentation and OpsVeda materials to countries, persons or entities prohibited by such laws. Licensee shall also be responsible for complying with all applicable governmental regulations of the country where Customer is registered, and any foreign countries with respect to the use of the Service, Documentation or other OpsVeda materials by Customer and its Named Users.

12.5 Any dispute arising out of or relating to this Agreement, or the breach hereof, shall be settled by binding arbitration before a single arbitrator in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The exclusive place for arbitration shall be Santa Clara County, California. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction. This arbitration clause shall be construed in accordance with the Federal Arbitration Act; this Agreement shall otherwise be construed in accordance with the internal laws of the State of California. THE APPLICATION OF THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS IS EXPRESSLY EXCLUDED. The Uniform Computer Information Transactions Act as enacted shall not apply. Either party must initiate a cause of action for any claim(s) arising out of or relating to this Agreement and its subject matter within one (1) year from the date when such party knew, or should have known after reasonable investigation, of the facts giving rise to the claim(s).

12.6 All notices pursuant to this Agreement shall be in writing and shall be deemed duly given when delivered (certified or registered mail or by an overnight courier services with delivery receipt) to the respective executive offices of OpsVeda or Licensee at the address first set forth in any Order Form directed to the General Counsel, or in the case of notices by OpsVeda relating to the operation of the Service, such notices may, at OpsVeda's option, be in the form of an electronic notice delivered by OpsVeda to the authorized administrator identified by Licensee in the applicable Order Form or as otherwise agreed by the parties. Where in this Article 12.6 or elsewhere in this Agreement, a written form is required, except for notification of any notice of termination or notice of a material breach, that requirement can be met by facsimile transmission, exchange of letters or other written form, including email.

12.7 Force Majeure. Any delay or nonperformance of any provision of this Agreement (other than for the payment of amounts due hereunder) caused by conditions beyond the reasonable control of the performing party shall not constitute a breach of this Agreement, and the time for performance of such provision, if any, shall be deemed to be extended for a period equal to the duration of the conditions preventing performance.

12.8 This Agreement constitutes the complete and exclusive statement of the agreement between OpsVeda and Customer in connection with the parties' business relationship related to the subject matter hereof, and all previous representations, discussions, and writings (including any confidentiality agreements) are merged in, and superseded by this Agreement and the parties disclaim any reliance on any such representations, discussions and writings. This Agreement may be modified only in writing, signed by both parties. This Agreement shall prevail over any additional, conflicting, or inconsistent terms and conditions which may appear on any purchase order furnished by one party to the other, and any additional terms and conditions in any such purchase order shall have no force and effect, notwithstanding the non-furnishing party's acceptance or execution of such purchase order.

12.9 Customer, without limitation, may assign all rights and delegate all duties and obligations hereunder to a successor in interest or an affiliate of Licensee. OpsVeda may assign this Agreement to any of its Affiliates. OpsVeda may in its sole discretion sub-contract parts of the Service to third parties.

12.10 The following order of precedence shall be applied in the event of conflict or inconsistency between the components of this Agreement: (i) the Order Form; (ii) the schedules, product supplements, exhibits and appendices included with or referenced by the Order Form (iii) and these General Terms and Conditions.

12.11 The parties are independent contractors, and no partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties is created hereby. There are no third-party beneficiaries to this Agreement.

12.12 Non-Solicitation/ No-Hire. Neither party shall solicit or hire, in any capacity whatsoever, any of the other party's resources involved in this Agreement during the term of this Agreement and for a period of twelve (12) months from the termination hereof, without the express written consent of the other party. The parties acknowledge and agree that the non-solicitation and non-hire obligations under this Section do not include those situations where an individual applies in response to public advertisements or job postings.

## SUPPORT & MAINTENANCE TERMS

### 1 Definitions

- a. "Licensee Representative" means up to three (3) individual(s) identified in writing to Licensor to serve as Licensee's technical contact for Support.
- b. "Error" means a failure of the Software to perform in material conformance with the applicable Specifications, as reported by a Licensee Representative.
- c. "Upgrade" means a version of the Software which contains major feature and functionality changes and enhancements. Upgrades are included as part of the Subscription Fee as defined in the License Agreement.
- d. "Support Hours" means the hours between 8:00 am and 6:00 pm Eastern Time, Monday through Friday and excluding Licensor holidays.
- e. "Priority 1" means a verifiable, reproducible Error that causes the Software to cease operating and causes a critical and material impact to Licensee's business.
- f. "Priority 2" means a verifiable and reproducible Error in which the Software demonstrates a material degradation (i.e. the Software operates with difficulty or delay) as measured against the specifications.
- g. "Priority 3" means any other report of an Error that does not constitute a Priority 1 or Priority 2 Error, where the Software does not operate in conformance with Specifications.
- h. "Resolution" or "Resolve" means to correct an Error in the Software, where one exists, or to provide a workaround, such that the Software performs in accordance with the applicable Specifications or in any other manner mutually agreed upon by the parties in writing.
- i. "Response" means that Licensor begins working on resolution of the Error but does not include Resolution. Licensor may request Licensee to provide additional information as part of the initial Response from Licensor.

### 2 Error Reporting

The Licensee Representative may report Errors through designated support e-mail as provided by Licensor.

### 3 Support Services and Objectives

Licensor shall provide Support to Licensee for the Software. "Support" means that, Licensor or its designee will use commercially reasonable efforts to:

- a. Respond to any Priority 1 Error report by a Licensee Representative within 4 Support Hours,
- b. Respond to any Priority 2 Error report by a Licensee Representative within 12 Support Hours; and
- c. Respond to any Priority 3 Error report by a Licensee Representative within 48 Support Hours.

Following such Response, Licensor shall use commercially reasonable efforts to Resolve an Error with a level of effort which is commensurate with the Priority of the Error.

## 4 Conditions of Support

Licensee's right to obtain Support is conditioned on adherence to the following terms and conditions:

- a. Licensee has signed up for Licensor services, and is current on Licensor Subscription invoices.
- b. Licensee's request for support regarding an Error is submitted by a Licensee Representative and shall include the following types of information: name, contact information (phone number and email), organization name, product name and version, browser name and version, any relevant operating system and hardware platform, specific background on the Error, and if appropriate, any source files that caused the Error to occur.
- c. Prior to requesting support, Licensee shall use commercially reasonable efforts to identify the source of the problem as an Error with the Software that is not attributable to software or materials not provided by Licensor.
- d. In the event an Error requiring technical support cannot be resolved by telephone or email in a reasonable time, Licensee and Licensor will jointly develop and implement a Resolution plan. This plan may require payment of fees for support outside of Support Hours and reimbursement of reasonable, documented travel expenses for Licensor personnel involved.
- e. Licensor shall not be liable for supporting problems or issues, or Resolving Errors arising solely from system abnormalities or other software applications used in conjunction with or resident on the same computer hardware that is used to access the Software.
- f. Licensor shall not be liable for supporting problems or issues arising from use of the Software on computer operating systems, browser/ versions and/ or devices that are not supported by the Software.
- g. If Licensor, at the request of Licensee, provides Support for a problem which is ultimately determined to have been a problem for which Licensor is not liable for providing Support, then, Licensee shall compensate Licensor for time spent resolving the problem at Licensor's then-current hourly rate for professional services.
- h. Licensor's obligation to provide Support shall not apply to Software that was released more than one year before the then most current version of the Software, excluding Upgrades. Licensor at its option, may provide support and maintenance services for such Software at its then-current hourly rate for such services.
- i. Licensor will not be under any obligation to provide Support: (a) for any modifications, extensions or customizations to the Software not performed or provided by Licensor, (b) if the Software is used in violation of the Agreement or Documentation, or (c) if the equipment on which the Software resides or is accessed from, contains application software not provided, authorized or recommended by Licensor.
- j. In no event is Licensor required to provide Support due to: (a) causes beyond Licensor's reasonable control, or (b) the acts or omissions of Licensee or other third parties.

## SERVICES RATE SCHEDULE

### 1 Consulting Resource Rates

The following categories have been defined for OpsVeda resources:

OV1 = Business Analyst/ Developer  
OV2 = Technical Architect  
OV3 = Sr. Developer/ Lead Architect/ Director  
OV4 = Off-shore Developer/ Analyst/ Coordinator (India)

The rates applicable to each category in US dollars are as follows:

Category	OV1	OV2	OV3	OV4
Hourly Rate	\$125	\$175	\$225	\$75

1. Hourly Rates are applied to consulting services provided by Licensor.
2. For work at Licensee's premises, a minimum charge amounting to four (4) hours for the given resource is billable.
3. Accommodations, meals and use of public transportation will be charged according to actual expenditure.
4. Licensor reserves the right to change the above Rates upon a 60-day notice. Changed Rates shall not apply retroactively.

### 2 System Resource Rates

Typically, development/ testing environments are provisioned by Licensor in support of major deployments or new implementations, provided such implementation is being performed by Licensor resources. Cost of provisioning such environments may be bundled in the implementation Fees.

Nevertheless, Licensee may rent similar development, testing or pre-production staging environments at a nominal fee of \$3,000 per month. The minimum commitment period for such subscription is 1 month and it is contracted in multiples of monthly period units.