

opslab

Enterprise Software and Support Terms and Conditions

1. Background

These Enterprise Software and Support Terms and Conditions (the “Agreement”) govern the provision or license of Software by OpsLab Inc. (“OpsLab”) to a respective customer (“Customer”).

2. Definitions

2.1. “Confidential Information” has the definition set forth in Section 9.1.

2.2. “Customer Data” means any data, information or material processed or stored by Customer in the Software.

2.3. “Documentation” means any user instructions, manuals or other materials, and online help files regarding the use of the Software that are generally provided by OpsLab in connection with the Software.

2.4. “Feedback” means suggestions, enhancements, feature requests or other feedback provided by the Customer or Users to OpsLab with respect to the Software.

2.5. “Maintenance and Support” means the services described in Section 6.1.

2.6. “Order” means the Enterprise Software and Support Order completed by Customer setting forth the license or access to the Software to be provided to Customer by OpsLab.

2.7. “SaaS” means access to software provided as a service.

2.8. “Software” means the on-premises computer software program in executable form or online configurator SaaS offering specified in the Order, along with all Updates thereof released by OpsLab during the term of this Agreement.

2.9. “Update” means a release or version of the Software containing functional enhancements, extensions, error corrections or fixes that is generally made available free of charge to OpsLab’s customers.

2.10. “Usage Data” means diagnostic and usage related content from the operation of the Software and may include, but is not limited to, type of browser and systems that are used and/or accessed, licensing, system and service performance data. Usage Data does not, however, include Customer Data, except in aggregated and de-identified form.

2.11. “Users” means all end users of the Software licensed or made available to Customer under this Agreement.

3. License and Use of Software

3.1. On-Premises Software License Grant. If the Software is provided under any on-premises license, as indicated in the Order:

3.1.1. Grant. OpsLab hereby grants to Customer, subject to the limitations in this Section 3 and in Section 4, a nonexclusive and nontransferable license to: (a) use the Software for its own internal information processing needs, and to make sufficient copies as necessary for such use, and (b) use the Documentation in connection with use of the Software.

3.1.2. Delivery. OpsLab shall deliver to Customer one machine-readable copy of the Software along with one copy of the Documentation.

3.1.3. Copies. Customer may make a reasonable number of electronic copies of the Software for backup or disaster recovery purposes. All copies of the Software will be subject to all terms and conditions of this Agreement. Whenever Customer is permitted to copy or reproduce all or any part of the Software or Documentation, Customer shall use reasonable efforts to reproduce and not efface any and all titles, trademark symbols, copyright symbols and legends, and other proprietary markings thereon.

3.2. SaaS (Software-as-a-Service). If Customer is provided SaaS, as indicated in the Order:

3.2.1. Use of Software. OpsLab will provide access to the Software to Customer and Customer’s authorized Users. Customer shall use the Software only in accordance with the Documentation and any authorized user policies promulgated by OpsLab.

3.2.2. Data. Customer is solely responsible for entering its Customer Data (including personally identifiable information) into the Software. OpsLab will have the right to use the Customer Data for the sole purpose of providing the Software to Customer and to perform its obligations under this Agreement, including to prevent or address support, service or technical problems. Customer shall not upload any Customer Data into the Software without sufficient rights to do so. Without limiting the foregoing, Customer, and not OpsLab, will be responsible for entering into any licenses from third parties who may have intellectual property rights in the Customer Data that may be necessary to use

the Customer Data in connection with the Software, and Customer shall ensure that its use of the Customer Data complies with any non-disclosure obligations of Customer, and any applicable privacy policies or laws. In the course of providing Customer with access to the Software, OpsLab may also collect, use, process and store Usage Data in order to create and compile anonymized and aggregated statistics about the Software. Customer is solely responsible for (a) the accuracy, integrity, and legality of Customer Data and the means by which it acquires and uses such Customer Data, (b) determining the suitability of the Software for Customer's business, and (c) complying with any regulations and laws, (including, without limitation, export, data protection and privacy laws) applicable to Customer Data and Customer's use of the Software. OpsLab will have the right to use such data in any manner, subject only to the confidentiality obligations of Section 9.

3.3. Proprietary Rights. Except for the rights expressly granted in this Agreement, OpsLab reserves all right, title and interest in and to the Software and Documentation, including all intellectual property rights therein.

4. License and Use Restrictions

4.1. Types of Enterprise Licenses. Customer shall abide by the following applicable restrictions, based on the product indicated on the Order.

4.1.1. Enterprise License (Lighthouse). If an "Enterprise License (Lighthouse)" is indicated in the Order, Customer's copy of the Software may contain a blocking code restricting use of the Software after the time indicated on the Order. Customer may use the Software solely during the evaluation period indicated on the Order. All Feedback will be given by Customer entirely voluntarily. Customer grants and agrees to grant to OpsLab a royalty-free, transferable, irrevocable, worldwide, fully paid-up license under Customer's intellectual property rights to use, disclose, reproduce, license (with rights to sublicense through multiple tiers of sublicensees), sell, offer for sale, distribute, import and otherwise exploit Feedback without restriction or obligation of any kind or nature. Notwithstanding anything to the contrary in this Agreement, all Software subject to such Enterprise License (Lighthouse) is delivered "AS-IS," without any express or implied warranties, and no warranties or maintenance obligations will apply to OpsLab. OPSLAB HEREBY DISCLAIMS ALL WARRANTIES WITH RESPECT TO SUCH SOFTWARE, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO SUCH SOFTWARE.

4.1.2. Enterprise License (Subscription). If an "Enterprise License (Subscription)" is indicated in the Order, Customer may allow any number of Users to use the Software solely for its own computing needs, and not on behalf of any other entity or affiliate.

4.1.3. Enterprise License (Per-User). If a number of Users is indicated in the Order, OpsLab will provide Customer access to the Software solely for Users authorized by Customer. Customer shall not allow access to the Software by more than the number of Users indicated on the Order. Customer shall not allow access to the Software by any User other than Customer's authorized Users.

4.2. Responsibility for Users. Customer will be responsible for its Users' compliance with this Agreement. User accounts and passwords are specific to individual Users, and may not be shared among or by other Users. Customer administrators may reassign a User account during the subscription term, if a former User no longer requires access to or use of the Software. All Users must be (a) employees of Customer, or (b) agree in writing to abide by the terms of this Agreement.

4.3. Additional Restrictions. Customer shall not itself, or via any third party:

4.3.1. sell, lease, license or sublicense the Software or the Documentation or provide access to the Software to any third party or for "service bureau" use;

4.3.2. decompile, disassemble, or reverse engineer the Software, in whole or in part; or

4.3.3. attempt to gain unauthorized access to, or disrupt the integrity or performance of, the Software.

4.4. Community Edition. Some or all of the Software is also available from OpsLab under the Apache License, version 2.0 on OpsLab's website at: <https://opslab.com>. Nothing in this Agreement will restrict any rights Customer may have under such license.

5. License Fee

5.1. Payment of Fees. Customer shall pay OpsLab the fees specified on the Order. Unless otherwise indicated therein, the fee is due and payable in full upon the Effective Date and on any license or SaaS term renewal.

5.2. Additional Licenses. Customer will have the option to expand the license or use rights to increase the licensed number of Users, or otherwise change the scope of the license, upon OpsLab's receipt of additional license fees for such expanded scope at the prices set forth on the Order.

5.3. Taxes. All charges and fees provided for in this Agreement are exclusive of any taxes, duties, or similar charges imposed by any government. Customer shall pay or reimburse OpsLab for all federal, state, dominion, provincial, or local sales, use, personal property, excise or other taxes, fees, or duties arising out of this Agreement or the transactions contemplated by this Agreement (other than taxes on the income of

OpsLab). OpsLab shall pay to the applicable taxing authorities any such amounts invoiced to Customer.

6. Maintenance and Support

6.1. Support. OpsLab shall provide “Maintenance and Support” as indicated in the Order for the time-limited licenses and SaaS. At no additional charge, OpsLab shall provide Updates, if any, and appropriate Documentation.

6.2. Eligibility of Software. Maintenance and Support for on-premises deployments will not include services requested as a result of, or with respect to, the following:

6.2.1. accident; unusual physical, electrical or electromagnetic stress; neglect; misuse; failure of electric power, air conditioning or humidity control; failure of rotation media not furnished by OpsLab; operation of the Software with other media not meeting or not maintained in accordance with the manufacturer’s specifications; or causes other than ordinary use;

6.2.2. improper installation by Customer or use of the Software that deviates from any operating procedures established by OpsLab in the applicable Documentation;

6.2.3. modification, alteration or addition or attempted modification, alteration or addition of the Software undertaken by persons other than OpsLab or OpsLab’s authorized representatives; or

6.2.4. Customer’s use of software or technology of any party other than OpsLab that is not approved by OpsLab in connection with the Software.

6.3. Customer’s Obligations.

6.3.1. Customer shall provide OpsLab with access to Customer’s personnel during normal business hours to assist with Maintenance and Support.

6.3.2. Customer shall use reasonable efforts to provide supervision, control and management of the use of the Software.

6.3.3. Customer shall document and promptly report all errors or malfunctions of the Software to OpsLab. Customer shall take all steps necessary to carry out procedures for the rectification of errors or malfunctions within a reasonable time after such procedures have been received from OpsLab.

6.3.4. Customer shall use reasonable efforts to maintain a current backup copy of all Customer Data. OpsLab will not be responsible for loss of Customer Data.

6.3.5. Customer shall properly train its personnel in the use and application of the Software.

6.3.6. Customer shall use reasonable efforts to implement procedures for the protection of information and the implementation of backup facilities in the event of errors or malfunction of the Software.

7. Warranty Disclaimer and Limitation of Liability

7.1. Disclaimer. Customer's sole remedy for any error or defect in the Software is OpsLab's Maintenance and Support obligations under Section 6. OpsLab makes no warranties, whether express, implied, or statutory regarding or relating to the Software or the Documentation, or any materials or services furnished or provided to Customer under this Agreement, including Maintenance and Support. OPSLAB HEREBY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE SOFTWARE, DOCUMENTATION AND SAID OTHER MATERIALS AND SERVICES, AND WITH RESPECT TO THE USE OF ANY OF THE FOREGOING.

7.2. Limitation of Liability. EXCEPT FOR LIABILITY ARISING OUT OF SECTION 8, IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY LOSS OF PROFITS, LOSS OF USE, BUSINESS INTERRUPTION, LOSS OF DATA, OR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND IN CONNECTION WITH OR ARISING OUT OF THE FURNISHING, PERFORMANCE OR USE OF THE SOFTWARE OR SERVICES PERFORMED HEREUNDER, WHETHER ALLEGED AS A BREACH OF CONTRACT OR TORTIOUS CONDUCT, INCLUDING NEGLIGENCE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT FOR LIABILITY ARISING OUT OF SECTION 8, EACH PARTY'S LIABILITY UNDER THIS AGREEMENT FOR DAMAGES WILL NOT, IN ANY EVENT, EXCEED THE LICENSE FEE PAID BY CUSTOMER TO OPSLAB UNDER THIS AGREEMENT. The provisions of this Section 7 allocate risks under this Agreement between Customer and OpsLab. OpsLab's pricing of the Software reflects this allocation of risks and limitation of liability.

8. Indemnification

8.1. Indemnification by OpsLab. OpsLab shall, at its expense, defend, indemnify and hold harmless Customer and its affiliates, directors, agents, and users against any claim, action or allegation brought against Customer that the Software infringes any intellectual property right of any third party and shall pay any damages or judgments awarded or settlements entered into. Customer shall give prompt written notice to

OpsLab of any such claim, action or allegation of infringement and give OpsLab the authority to proceed as contemplated herein. OpsLab will have the exclusive right to defend any such claim, action or allegation and make settlements thereof at its own discretion, and Customer may not settle or compromise such claim, action or allegation, except with prior written consent of OpsLab. Customer shall give such assistance and information as OpsLab may reasonably require to settle or oppose such claims. Customer may participate in such defense with counsel of its own choice, at its own expense.

8.2. Indemnification by Customer. Subject to OpsLab's obligations under Section 8.1, Customer shall, at its expense, defend, indemnify and hold harmless OpsLab and its affiliates, directors, agents, and users, against any third-party claims, actions and demands brought against OpsLab or OpsLab's affiliates, directors, agents, and users. Customer shall pay all damages, if any, finally awarded against OpsLab indemnified parties or agreed upon in settlement by Customer (including other reasonable out-of-pocket costs incurred by OpsLab, including reasonable attorneys' fees, in connection with enforcing this Section 8.2) arising from: (i) Customer's breach or violation of Customer's responsibilities under Sections 3.2, 4, or 5, (ii) claims that Customer Data or use thereof in the Software infringes or violates the rights of a third party, or (iii) claims that Customer's or its affiliates, directors, agents, and Users use of the Software or services in violation of this Agreement infringes or violates the rights of such third party.

8.3. Options. In the event any such infringement, claim, action or allegation is brought or threatened accusing the Software, OpsLab shall, at its sole option and expense:

8.3.1. procure for Customer the right to continue use of the Software or infringing part thereof;

8.3.2. modify or amend the Software or infringing part thereof, or replace the Software or infringing part thereof with other software having substantially the same or better capabilities, or, if neither of the foregoing is commercially practicable; or

8.3.3. terminate this Agreement and repay to Customer all amounts paid by Customer hereunder.

8.4. Exclusions. OpsLab's obligations under this Section 8 will not apply to the extent the infringement arises as a result of modifications to the Software made by any party other than OpsLab or OpsLab's authorized representative.

8.5. Limitation. This Section 8 states the entire liability of OpsLab with respect to infringement of any patent, copyright, trade secret or other proprietary right.

9. Confidential Information

9.1. Definition. “Confidential Information” means all Software listings, Documentation, information, data, drawings, benchmark tests, specifications, trade secrets, object code and machine-readable copies of the Software, source code relating to the Software, and any information disclosed by either party to the other party, either directly or indirectly, in writing, orally or by inspection of tangible objects that is designated as “Confidential,” “Proprietary” or some similar designation. Information communicated orally will be considered Confidential Information if such information is confirmed in writing as being Confidential Information within a reasonable time after the initial disclosure. Confidential Information may also include information disclosed to a disclosing party by third parties. Confidential Information will not, however, include any information which (a) was publicly known and made generally available in the public domain prior to the time of disclosure by the disclosing party, (b) becomes publicly known and made generally available after disclosure by the disclosing party to the receiving party through no action or inaction of the receiving party, (c) is already in the possession of the receiving party at the time of disclosure by the disclosing party as shown by the receiving party’s files and records immediately prior to the time of disclosure, (d) is obtained by the receiving party from a third party without a breach of such third party’s obligations of confidentiality, (e) is independently developed by the receiving party without use of or reference to the disclosing party’s Confidential Information, as shown by documents and other competent evidence in the receiving party’s possession, or (f) is required by law to be disclosed by the receiving party, provided that the receiving party gives the disclosing party prompt written notice of such requirement prior to such disclosure and assistance in obtaining an order protecting the information from public disclosure.

9.2. Non-Use and Non-Disclosure. Each party agrees not to use any Confidential Information of the other party for any purpose except to exercise its rights and perform its obligations under this Agreement. Each party agrees not to disclose any Confidential Information of the other party to third parties or to such party’s employees, except to those employees of the receiving party with a need to know.

9.3. Maintenance of Confidentiality. Each party agrees that it shall take reasonable measures to protect the secrecy of and avoid disclosure and unauthorized use of the Confidential Information of the other party. Without limiting the foregoing, each party shall take at least those measures that it takes to protect its own most highly confidential information and shall ensure that its employees who have access to Confidential Information of the other party have signed a non-use and non-disclosure agreement in content similar to the provisions hereof, prior to any disclosure of Confidential Information to such employees. Neither party shall make any copies of the Confidential Information of the other party unless the same are previously approved in writing by the other party. Each party shall reproduce the other party’s proprietary rights notices on

any such approved copies, in the same manner in which such notices were set forth in or on the original.

9.4. Return of Materials. Upon the termination of this Agreement, each party shall deliver to the other party all of such other party's Confidential Information that such party may have in its possession or control.

10. Term and Termination

10.1. Term. This Agreement will take effect on the Effective Date and will remain in force until terminated in accordance with this Agreement. Unless otherwise indicated on the Order, the duration of the applicable subscription term will automatically renew for subscription terms of equal duration until this Agreement is terminated pursuant to this Section 10.

10.2. Termination by Customer. Customer may terminate this Agreement (a) upon the material breach of this Agreement by OpsLab, provided that such breach remains uncured for ten days following OpsLab's receipt of written notice of such breach, or (b) upon the expiration of any subscription term, provided Customer provides notice thereof no later than 60 prior to the end of the then-current term.

10.3. Termination Events. OpsLab may, by written notice to Customer, terminate this Agreement if any of the following events ("Termination Events") occur:

10.3.1. Customer fails to pay any amount due OpsLab within 30 days after OpsLab gives Customer written notice of such nonpayment;

10.3.2. Customer is in material breach of any non-monetary term, condition or provision of this Agreement, which breach, if capable of being cured, is not cured within 30 days after OpsLab gives Customer written notice of such breach;

10.3.3. Customer (a) terminates or suspends its business, (b) becomes insolvent, admits in writing its inability to pay its debts as they mature, makes an assignment for the benefit of creditors, or becomes subject to direct control of a trustee, receiver or similar authority, or © becomes subject to any bankruptcy or insolvency proceeding under federal or state statutes;

10.3.4. OpsLab elects to refund Customer's fees in accordance with Section 8.3.3; or

10.3.5. OpsLab may elect not to renew any subscription term upon written notice to Customer no less than 60 days prior to the end of the then-current subscription term.

10.4. If any Termination Event occurs, termination will become effective immediately or on the date set forth in the written notice of termination. Termination of this Agreement

will not affect the provisions regarding Customer's or OpsLab's treatment of Confidential Information, provisions relating to the payment of amounts due, or provisions limiting or disclaiming OpsLab's liability, which provisions will survive termination of this Agreement.

10.5. No later than 30 days after the date of termination of this Agreement for any reason, if the Software was delivered to Customer hereunder, Customer shall return the Software and all copies, in whole or in part, all Documentation relating thereto, and any other Confidential Information in its possession that is in tangible form. Customer shall furnish OpsLab with a certificate signed by an executive officer of Customer verifying that the same has been done. If the Software is provided as a service and not delivered to Customer hereunder, OpsLab may immediately deactivate Customer's account. OpsLab may keep copies of Customer Data solely to the extent necessary for the performance of its obligations under this Agreement; however, OpsLab will not be obligated to keep Customer Data after the date of termination except as may be specifically set forth in the Order. In no event will any termination relieve Customer of the obligation to pay any fees payable to OpsLab for any period prior to the effective date of termination, unless otherwise stated in this Agreement.

11. Miscellaneous

11.1. Nonassignment/Binding Agreement. Neither this Agreement nor any rights under this Agreement may be assigned or otherwise transferred by Customer, in whole or in part, whether voluntarily or by operation of law, including by way of sale of assets, merger or consolidation, without the prior written consent of OpsLab, which consent will not be unreasonably withheld. OpsLab may assign this Agreement upon written notice to Customer. Subject to the foregoing, this Agreement will be binding upon and will inure to the benefit of the parties and their respective successors and assigns.

11.2. Notices. Any notice required or permitted under the terms of this Agreement or required by law must be in writing and must be delivered in person or sent by overnight air courier, in each case properly posted and fully prepaid to the appropriate address set forth below. Either party may change its address for notice by notice to the other party given in accordance with this Section. Notices will be considered to have been given at the time of actual delivery in person, 3 business days after deposit in the mail as set forth above, or one day after delivery to an overnight air courier service.

11.3. Force Majeure. Neither party will incur any liability to the other party on account of any loss or damage resulting from any delay or failure to perform all or any part of this Agreement if such delay or failure is caused, in whole or in part, by events, occurrences, or causes beyond the control and without negligence of the parties. Such events, occurrences, or causes will include, without limitation, acts of God, strikes, lockouts,

riots, acts of war, earthquake, fire and explosions, but the inability to meet financial obligations is expressly excluded.

11.4. Waiver. Any waiver of the provisions of this Agreement or of a party's rights or remedies under this Agreement must be in writing to be effective. Failure, neglect, or delay by a party to enforce the provisions of this Agreement or its rights or remedies at any time, will not be construed and will not be deemed to be a waiver of such party's rights under this Agreement and will not in any way affect the validity of the whole or any part of this Agreement or prejudice such party's right to take subsequent action. No exercise or enforcement by either party of any right or remedy under this Agreement will preclude the enforcement by such party of any other right or remedy under this Agreement or that such party is entitled by law to enforce.

11.5. Severability. If any term, condition, or provision in this Agreement is found to be invalid, unlawful or unenforceable to any extent, the parties shall endeavor in good faith to agree to such amendments that will preserve, as far as possible, the intentions expressed in this Agreement. If the parties fail to agree on such an amendment, such invalid term, condition or provision will be severed from the remaining terms, conditions and provisions, which will continue to be valid and enforceable to the fullest extent permitted by law.

11.6. Integration. This Agreement contains the entire agreement of the parties with respect to the subject matter of this Agreement and supersedes all previous communications, representations, understandings and agreements, either oral or written, between the parties with respect to said subject matter. This Agreement may not be amended, except by a writing signed by both parties.

11.7. Purchase Orders. No terms, provisions or conditions of any purchase order, acknowledgement or other business form that Customer may use in connection with accessing or licensing the Software will have any effect on the rights, duties or obligations of the parties under, or otherwise modify, this Agreement, regardless of any failure of OpsLab to object to such terms, provisions or conditions.

11.8. Export. Customer may not export or reexport the Software without the prior written consent of OpsLab and without the appropriate United States and foreign government licenses.

11.9. Counterparts. This Agreement may be executed in counterparts, each of which so executed will be deemed to be an original and such counterparts together will constitute one and the same agreement.

11.10. Governing Law. This Agreement will be interpreted and construed in accordance with the laws of the State of Delaware and the United States of America, without regard to conflict of law principles. The parties hereby consent to the exclusive jurisdiction of

the state and federal courts located in Middletown, Delaware for resolution of any disputes arising out of this Agreement.

Updated as of August 22, 2020