

PROFESSIONAL SERVICES TERMS AND CONDITIONS MAY 2015 - REV20150528

These Professional Service Terms and Conditions ("Terms") set forth the basis upon which OpenNebula Systems ("ONE") will provide Professional Services ("Services") using ONE materials ("ONE Materials") at specified locations and times agreed with customer ("Customer"). These Terms and the Professional Services Order Form make up the Entire Agreement ("Agreement") of the parties concerning the Professional Services. This Agreement is effective as of the Effective Date of the Professional Services Contract.

1. Ordering. Customer shall provide ONE with firm requests for Services via signature of the Professional Services Order Form. Requests shall include at a minimum the Scheduled Date, Location, Duration and Name of the Requested Professional Service. All requests placed by Customer shall be governed by these Terms, and any terms set forth in Customer's ordering document in addition to or inconsistent with these Terms shall be of no force or effect. These Terms supersede all prior statements, representations, discussions, negotiations and agreements by the parties, both oral and written. All requests are subject to ONE's acceptance. Services shall commence on the dates specified by ONE in its acceptance.

2. Payment. Customer agrees to pay for Services according to ONE's prices defined in the Order Form current as of the date of ONE's acceptance of Services request, unless otherwise agreed. If no rate or fixed fee is specified, Customer agrees to pay for Services at current published rates of ONE. All payments, whether by credit card or other form acceptable by ONE must be received at least fifteen (15) days prior to the commencement of Services. For reservations made within fifteen (15) days of Services, payment must be received prior to the commencement of Services. All applicable local sales or use taxes, duties and other imposts, if any, due on account of purchases hereunder shall be paid by Customer. This Agreement is for Services and does not include parts, materials or goods.

3. Services. ONE shall make reasonable endeavors to provide Services on a timely basis, subject to availability of qualified personnel and the difficulty and scope of the Services to be provided. However, ONE shall not be liable for its failure to do so, nor will it be in breach of this Agreement solely by reason of such failure. ONE may reassign and substitute personnel at anytime and may provide the same or similar Services to other customers. Services supplied by ONE under this Agreement are provided to assist Customer. Customer, not ONE, will be responsible for determining objectives.

4. Responsibility of Customer

4.1. Prerequisite requirements. ONE reserves the right to refuse or limit any Services if a Customer fails to satisfy the requirements for a Service as published or provided to Customer by ONE prior to the start of such Service. In such cases no refund or cancellation fee will be paid.

4.2. Good conduct. ONE reserves the right to refuse, limit or cancel any Service if a Customer in the opinion of ONE has displayed unreasonable behavior or is deemed to be violent, abusive or disruptive. In such cases no refund or cancellation fee will be paid.

4.3. Same condition. Customer agrees that all facilities and equipment licensed for use during the Services shall at the end of the Services be in the same condition as initially provided, wear and tear excepted.

5. Ownership of Materials. Ownership of all copyright and other intellectual property rights in the Services Material, including any documentation, data, technical information and know-how provided to Customer as part of the Service remains vested in ONE or its suppliers. All such information shall be held in confidence and may not be disclosed or copied to third parties, without the express written permission of ONE or its suppliers. Upon payment of all sums due, ONE grants Customer a non-exclusive, non-transferable license to use internally a single copy of the ONE Material.

6. Property Rights. Any ideas, concepts, inventions, know-how, data-processing techniques,

software or documentation developed by ONE personnel (alone or jointly with Customer) in connection with Services provided to Customer will be the exclusive property of ONE, except to the extent that such items are a derivative of Customer's property. Upon payment of all sums due, ONE grants Customer a non-exclusive, royalty-free, nontransferable (without right to sublicense) license to use the software or other proprietary rights in Services developed under this Agreement. ONE may provide Customer with specific, customized or unique suggestions or information as part of the Services developed by ONE, which suggestions or information do not have application to other customers of ONE. ONE will identify all Customer-Owned Information and furnish that information to Customer subject to the qualifications set forth in this Agreement, and Customer will own all of ONE's right, title and interest in the Customer-Owned Information.

7. Contribution to OpenNebula. Any software or documentation developed by ONE personnel (alone or jointly with Customer) in connection with Services provided to Customer may be contributed back to OpenNebula and distributed under the Apache v2.0 license based on criteria of interest for the product and the community. The new code and documentation will publicly acknowledge the funding support of the Customer, and the OpenNebula web site will include Customer on the list of featured contributors.

8. Warranty. ONE warrants that its personnel are suitably qualified and experienced to perform Services. Except as expressly represented otherwise, and to the extent not prohibited by law, all Services, including any documentation, publications, software programs or code, and other information provided by or on behalf of ONE or its suppliers to Customer are furnished on an "AS-IS" basis, without warranty of any kind, whether express, implied, statutory or otherwise especially as to quality, reliability, timeliness, usefulness, sufficiency and accuracy. ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION ALL IMPLIED WARRANTIES OF CONDITION, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE DISCLAIMED BY ONE AND ITS SUPPLIERS. NO ORAL OR WRITTEN INFORMATION PROVIDED BY ONE SHALL CREATE A WARRANTY UNLESS INCORPORATED INTO THESE TERMS.

9. Limitation of Liability. TO THE EXTENT NOT PROHIBITED BY LAW, ONE AND ITS SUPPLIERS WILL NOT BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL OR OTHER INDIRECT DAMAGES, SUCH AS LOST PROFITS, ARISING FROM THESE TERMS EVEN IF ONE HAS KNOWLEDGE OF THE LIKELIHOOD OF SUCH DAMAGES. IN THE EVENT THAT ONE SHALL FAIL TO PROVIDE SERVICES IN ACCORDANCE WITH THESE TERMS, ONE'S ENTIRE LIABILITY AND CUSTOMER'S EXCLUSIVE REMEDY FOR BREACH OF THESE TERMS SHALL BE FOR ONE TO USE ITS REASONABLE EFFORTS TO REPERFORM THE SERVICES WITHIN A REASONABLE PERIOD OF TIME; PROVIDED, THAT IN THE EVENT ONE IS UNABLE TO REPERFORM, ONE MAY ELECT TO REFUND ALL PAYMENTS ACTUALLY RECEIVED BY ONE FROM CUSTOMER FOR THE SERVICES IN QUESTION, IN FULL SATISFACTION OF ONE'S OBLIGATIONS. SUCH REFUND SHALL CONSTITUTE ONE'S ENTIRE LIABILITY AND CUSTOMER'S EXCLUSIVE REMEDY FOR SUCH BREACH. IN NO EVENT SHALL THE AGGREGATE LIABILITY FOR DAMAGES OF ONE, ITS EMPLOYEES OR AGENTS, ARISING FROM THESE TERMS WHETHER BY CONTRACT OR TORT EXCEED THE AMOUNTS CUSTOMER ACTUALLY PAID ONE. TO THE EXTENT NOT PROHIBITED BY LAW, THE LIMITATIONS IN THIS SECTION SHALL APPLY TO PERSONAL INJURY AND DEATH.

10. Confidentiality. To the extent permitted by law, both parties agree to preserve the confidentiality of data and information relating to the other's business, including data and information belonging to third parties, that is either in writing marked as confidential or, if disclosed orally, communicated as confidential at time of disclosure and confirmed as confidential in writing within thirty (30) days of disclosure ("Confidential Information"). Neither party will have any obligation to maintain the confidentiality of any data or information which (a) was in the receiving party's lawful possession prior to the submission thereof by the owning party (b) is lawfully obtained by the receiving party from a third party under no obligation of confidentiality, (c) is or becomes generally known or available other than by unauthorized disclosure, or (d) is independently developed by either party. Both parties will keep all Confidential Information in confidence and will not disclose any item of Confidential Information to any person other than employees, agents, or contractors who need to know the same in the performance of their duties to the parties. The receiving party will protect and maintain the confidentiality of all Confidential Information with the same degree of care as it employs to protect its own Confidential Information, but in any event with at least a reasonable degree of care. ONE is not precluded from developing and marketing products,

which provide the same or similar functionality as the Services, provided that such products do not use Customer's Confidential Information or incorporate work originally created by or owned by Customer. Neither party may export the other's Confidential Information without the other party's written consent. The obligations created under this Section shall survive termination of this Agreement for a period of five (5) years.

11. Term. This Agreement shall terminate on the End Date. If no End Date is specified, this Agreement shall terminate twelve (12) months from the date of this Agreement. This Agreement may be renewed or extended upon the mutual consent of the parties. Customer will have the right to terminate this Agreement after work has commenced upon ten (10) days written notice, provided that Customer will pay to ONE all charges for Services performed and all expenses incurred by ONE up to the effective date of such termination. ONE may at its option terminate this Agreement immediately if Customer has (i) failed to cure any breach of this Agreement within thirty (30) days of written notice from ONE, (ii) breached the terms of section 9, or (iii) failed to pay an outstanding sum within five (5) days of written notice of delinquency. In addition, ONE may at its option suspend Services immediately upon Customer's failure to make payment in accordance with this Agreement.

12. Non-Solicitation. During the term of this Agreement, and for one (1) year thereafter, Customer shall not offer employment to, or employ, an employee or contractor of the other party directly involved in the Services, or induce such employee or contractor of ONE to breach any employment agreement or services contract with the ONE. This provision shall not preclude Customer from making offers of employment through public advertisements.

13. Publicity. In connection with ONE's promotion of its professional services, including but not limited to, the listing on its web site of customers who have utilized such services, Customer grants to ONE a worldwide non-exclusive royalty free license to publicly use Customer's name and trademark(s). ONE agrees to make reasonable efforts to adhere to any trademark guidelines that Customer may wish ONE to adopt, as delivered in writing to ONE from time to time.

14. Cancellation.

14.1. Customer may cancel Services prior to the start date by providing email notice with receipt confirmation to ONE at services@opennebula.systems. ONE is not responsible for errors in the delivery of cancellation or reschedule notices. When notice is received at least fifteen calendar days (15) days or more in advance of the estimated start date of Services, the Customer is entitled to a refund if payment was prepaid, or may reschedule for a later available date without penalty. There are no refunds or reschedule allowances for travel expenses, and for Service changes made within fourteen (14) calendar days of the estimated start date of Services.

14.2. ONE reserves the right to cancel or reschedule Services dates at any time, or replace personnel who may be assigned to deliver the Services. If ONE cancels a Service, the Customer is entitled to a refund if payment was prepaid, or may reschedule for a later available date without penalty. ONE shall not be responsible for any loss incurred by Customer as a result of a cancellation or reschedule.

15. General.

15.1. If you are located in US, then you are contracting with OpenNebula Systems USA, LLC and this Agreement is governed by the laws of the Commonwealth of Massachusetts, U.S.A. without reference to conflicts of law principles. For contracts with OpenNebula Systems USA, LLC both parties consent to the exclusive jurisdiction and venue of courts in Boston, Massachusetts, U.S.A. for all disputes arising out of or relating to the use of Services. If you are not located in US, then you are contracting with OpenNebula Systems SL and this Agreement is governed by Spanish Law. Any dispute related to it will be resolved by the Courts and Tribunals of the city of Madrid.

15.2. Neither party shall be liable for any delay or failure to meet its obligations under these Terms due to circumstances beyond its reasonable control, including but not limited to war, riot, insurrection, civil commotion, labor strikes or lockouts, shortages, factory or other labor conditions, fire, flood, earthquake or storm. If any provision of these Terms should be held to be unenforceable or invalid for any reason, such unenforceability or invalidity shall not affect

the enforceability or validity of the remaining provisions, and the parties will substitute for such provision an enforceable and valid provision that most closely approximates the intent and economic effect of the unenforceable or invalid provision. No modification to these Terms will be binding unless it is in writing and signed by an authorized representative of each party. ONE may use subcontractors to perform Services. No assignment is permitted by Customer under these Terms and any attempt to assign shall be null and void.