

# CUSTOMER SUBSCRIPTION AGREEMENT

## OCTOBER 2018 - REV20181008

This Customer Subscription Agreement (the "Subscription Agreement") is by and between OpenNebula Systems ("ONE") and Customer as identified on Customer Subscription Order Form (the "Order Form"). This Subscription Agreement and the Order Form collectively make up the Entire Agreement (the "Agreement") of the parties concerning the OpenNebula Support Program (the "Program"). This Agreement is effective as of the Effective Date of the Order Form.

### 1. Definitions

**"Business Hours"** means 9:00 a.m. - 6:00 p.m. Central European Time or 8:00 a.m. - 5:00 p.m. Eastern Standard Time of Business Days excluding ONE company holidays published at the ONE Support Portal. The Order Form can define a different time range and zone.

**"ONE Website"** means the web sites created and managed by ONE under the domains OpenNebula.systems, vOneCloud.com, OpenNebula.org and OpenNebula.pro.

**"ONE Support Portal"** means the Support Portal listed at the Order Form.

**"Customer"** means a ONE customer with an active subscription.

**"Effective Date"** means the date on which ONE transmits written, faxed, or e-mailed acceptance of an Order Form.

**"Mark"** means a trademark, trade name, service mark, logo, designs, trade dress or other brand designations owned by a party to the Agreement.

**"Order Form"** means the applicable Order Form signed by the customer, completed in the ONE Website, or otherwise accepted by ONE.

**"Product"** means a complete and unchanged copy of the code of the ONE software product(s) listed on the Order Form, limited to the listed version(s) and limited to the code obtained from the ONE Websites. Product includes any Upgrade, Update or Maintenance Releases made generally available by ONE during the Term.

**"Production Use"** means using the Product with Customer's applications to operate Customer's ordinary business, which may include third party Customer's access to or use of such applications. "Non-Production Use" means use of the Product solely in a development or testing environment for application development, proof of concept, demonstrating or quality-assurance.

**"Release"** of software can be:

- **"Upgrade Release"** means a new major release of the Product during the Term that typically includes substantial changes.
- **"Update Release"** means a new revision release of the Product during the Term that typically includes small changes and new features.
- **"Maintenance Release"** means a new incremental release of the Product during the Term that typically includes bug fixes.

**"Server"** means a single machine, which processes data using one or more CPUs. In the event such a machine contains Server Blades, each Server Blade is a separate Server.

**"Server Blade"** means a complete computing system on a single circuit board. A Server Blade will include one or more CPUs, memory, disk storage, operating system and network Connections. A Server Blade is designed to be hot-pluggable into a space-saving rack; each rack may contain many Server Blades.

“**Support Subscription Guide**” means the then-current Support Subscription Guide description available at the ONE Support Portal. In the event of any conflict between this Agreement and the Support Guide information applicable to Customer, the Support Subscription Guide will control.

“**Subscription Fee**” means the nonrefundable annual fee payable to ONE for Support, as set forth on the Order Form. Support Fees for subsequent years during the Term shall be as provided on the relevant price list.

“**Support**” means the level of ONE annual support listed on the Support Subscription Guide for Customers.

“**Support Policy**” means the then-current Support Policy description available at the ONE Support Portal.

“**Term**” means the period in which Customer is entitled to receive support and maintenance under this Agreement. Term could be any number of years between 1 and 5 as specified in the Order Form. Complete upfront payment should be made at the beginning of each Term.

“**Year**” means twelve months of Support beginning upon initial purchase date or the anniversary of such date.

## **2. Support Subscription Program**

2.1 Program features, fees, rights, and obligations are as set forth in the Entire Agreement, including the Support Subscription Guide. Customer’s participation in the Program is contingent on ONE’s acceptance of Order Form, Customer’s compliance with this Agreement and the Support Subscription Guide, and Customer’s payment to ONE of the applicable annual Program fees.

2.2 ONE may add to or modify the Support Subscription Guide at its sole discretion on a non-discriminatory basis and the additional or modified rights and obligations shall come into effect after the termination of the Term for new renewal Terms.

2.3 Order Form states which service level applies to Customer. Customer’s participation in the Program shall be limited, non-transferable (except as expressly stated in the Agreement), and non-exclusive.

2.4 Access to ONE Support Portal is available to Customer as a Program benefit. Any such access will be subject to the terms of this Agreement and the then-current description and subscription terms and conditions available in the Support Subscription Guide. Such access will terminate immediately in the event of termination of the Agreement.

## **3. Licenses and Services for Basic Support Programs**

3.1 Membership to the Basic Support Program grants a permanent, non-exclusive and non-transferable Product license for internal development/non-production use only to manage no more than the total number of Servers for which subscription fees have been paid. Customer shall obtain its updated copy of Product by download from the ONE Websites. Customer shall not copy Product onto any public or distributed network or otherwise distribute or disclose Product to any third parties; or change any proprietary rights notices, which appear in Product. The license for production use can be obtained through the Production Support Program.

3.2 If, at any time during a Term, Customer increases the quantity of its Servers utilizing all or part of Product, no later than thirty (30) days after each such addition Customer shall notify ONE and pay the Subscription Fees applicable to such additional Servers beginning from the first date of such utilization. All such additional Servers will be covered under this Agreement coterminous with Customer’s then-current Term. Subscription Fees for additional Servers during a Term shall be calculated at the then-current annual per-Server price prorated over the number of days remaining in such Term (based on 365 days per year).

3.3 ONE will provide Basic Support to Customer and Customer agrees it will use or apply such Services on no more than the quantity of Servers set forth in this Agreement. Any

unauthorized use of Services will be deemed to be a material breach of this Agreement. The scope of Services provided to the Customer under this Agreement is subject to the then-current Support details set forth at the ONE Support Policy and the Support Subscription Guide. Any support will terminate immediately in the event of termination of the Agreement.

#### **4. Licenses and Services for Production (Standard and Premium) Support Programs**

4.1 Membership to the Production Support Programs grants to Customer a permanent, non-exclusive and non-transferable license to use Product on production environments to manage no more than the total number of Servers for which subscription fees have been paid. Customer shall obtain its updated copy of Product by download from the ONE Website. Customer shall not copy Product onto any public or distributed network or otherwise distribute or disclose Product to any third parties; or change any proprietary rights notices, which appear in Product.

4.2 If, at any time during a Term, Customer increases the quantity of its Servers utilizing all or part of Product, no later than thirty (30) days after each such addition Customer shall notify ONE and pay the Subscription Fees applicable to such additional Servers beginning from the first date of such utilization. All such additional Servers will be covered under this Agreement coterminous with Customer's then-current Term. Subscription Fees for additional Servers during a Term shall be calculated at the then-current annual per-Server price prorated over the number of days remaining in such Term (based on 365 days per year).

4.3 ONE will provide Production Support to Customer and Customer agrees it will use or apply such Services on no more than the quantity of Servers set forth in this Agreement. Any unauthorized use of Services will be deemed to be a material breach of this Agreement. The scope of Services provided to the Customer under this Agreement is subject to the then-current Services details set forth at the ONE Support Policy and the Services Program Guide. Any support will terminate immediately in the event of termination of the Agreement.

#### **5. Program Fees, Taxes and Audit Rights**

5.1 Program Subscription Fees are due to ONE upon the Effective Date and the anniversary thereof during the term of the Agreement. ONE will endeavor to invoice Customer at least thirty (30) days prior to the commencement of each Renewal Term. All fees under this Agreement are due upon the date(s) set forth in this Agreement and are payable within the Payment Term specified in the Order Form from the date of ONE's invoice. All payments shall be made in the quoted currency without any right of set-off or deduction and are nonrefundable.

5.2 Any amount not paid when required to be paid under this Agreement shall accrue interest at the rate of one and one-half percent (1.5%) per month (eighteen percent (18%) per annum) on the remaining amount required to be paid, or at the highest amount permitted by applicable law (if lower), such interest to accrue on a daily basis from the payable date until the remaining amount is paid. Upon written notice, ONE may elect to discontinue Support to the Customer under this Agreement if timely payment is not received for an applicable Term, for the period such non-payment continues.

5.3 All fees are exclusive of applicable local, state, federal and international sales, value added, withholding and other taxes and duties of any kind. Customer shall be responsible for payment of such taxes and duties of any kind payable with respect to the Program benefits furnished pursuant to the Agreement, provided however that ONE shall be responsible for payment of taxes levied or imposed based upon ONE's net income.

5.4 During the term of this Agreement and for a five (5) year period following termination or expiration, ONE shall have the right (at ONE's own expense) to conduct periodic reviews of Customer's records relating to its reproduction and use of the Product for the purpose of verifying Customer's compliance with the terms of this Agreement. ONE shall exercise this right upon no fewer than thirty (30) days' prior notice. Customer will provide ONE with reasonable use of available office equipment and access to all relevant Customer personnel and records during normal business hours. ONE shall deliver to Customer a copy of the results of any such review. If an underpayment is identified, Customer shall immediately pay the full amount of any underpayment. Customer shall also pay ONE the cost of any review, including (without limitation) travel expenses and the costs of any attorneys and consultants, if the

review determines that Customer has underpaid fees for the period audited in excess of five percent (5%) of the proper amount owed to ONE.

## **6. Term & Termination**

6.1 This Agreement shall commence on the Effective Date and continue for the Initial Term unless terminated earlier as set forth below. Thereafter, this Agreement shall renew for successive one-year Renewal Terms (unless an alternative period is agreed in writing by the parties) if it is explicitly requested by the Customer.

6.2 ONE may terminate the Agreement immediately in the event Customer fails to pay Program fees when required to be paid. Either party may terminate the Agreement immediately in the event that (i) the other party commits a non-remediable material breach of the Agreement; or (ii) the other party commits a remediable material breach of the Agreement and fails to remedy that breach within thirty (30) days of receipt of notice of material breach. Either party may terminate the Agreement at any time and for any or no reason upon the provision of at least thirty (30) days notice to the other. In the event that ONE terminates the Agreement without cause, ONE will provide Customer with a pro rata refund of any applicable Program fees paid for the remainder of the months in the then-current term of the Agreement.

## **7. Proprietary Rights and Confidentiality**

7.1 The intellectual property and proprietary rights of whatever nature in the Product and related documentation, including derivative works, are and shall remain the exclusive property of ONE and/or its suppliers. Except as expressly set forth in this Agreement, nothing in this Agreement should be construed as transferring any aspects of such rights to Customer or any third party. ONE and its suppliers reserve any and all rights not expressly granted in this Agreement. ONE trademarks shall not be used by Customer without ONE's express authorization.

7.2 ONE and Customer will retain in confidence all information and know-how transmitted by the other party during each Term, and for a period of five (5) years beyond the Term, that is clearly designated as being proprietary and/or confidential or that, by the nature of the circumstances surrounding the disclosure, ought reasonably to be treated as proprietary and/or confidential, and will make no use of such information and know-how except to further the purposes set forth in this Agreement. Services, Commercial Software, and Upgrades thereof are the confidential information of ONE.

7.3 Notwithstanding Section 7.2, ONE and Customer shall not have an obligation to maintain the confidentiality of information that (a) is now or subsequently becomes generally known or available by publication, commercial use or otherwise through no fault of the recipient; (b) is known by the recipient at the time of disclosure and is not subject to restriction; (c) is independently developed by the recipient without use of the discloser's confidential information; (d) is not designated as proprietary and/or confidential or would not reasonably be considered as such; or (e) is lawfully obtained from a third-party who has the right to make such disclosure. Further, the recipient may disclose confidential information as required by government or judicial order, provided the recipient gives the disclosing party written notice prior to such disclosure and complies with any protective order (or equivalent) imposed on such disclosure. The terms of confidentiality under this Agreement shall not be construed to limit either party's right to independently develop or acquire products without use of the other party's confidential information.

## **8. Trademarks and Promotion**

8.1 During the term of the Agreement, Customer grants to ONE a non-transferable, non-exclusive, license to reproduce and display Customer's Marks so that ONE may refer to Customer as a participant in the Services Program should ONE so desire, such as on a portion of the ONE website, in press releases and in other marketing materials.

## **9. Customer Conduct**

9.1 Customer will not send unsolicited commercial e-mail ("spam") that makes reference to ONE or any products, services or programs of ONE, or that includes a link to ONE, a Customer referral code or all or any part of a ONE URL. Customer also will not force visitors to the ONE,

website via any mechanism that acts as an automatic transport, such as "meta refresh" or "forced exit" scripts.

9.2 Customer will (i) conduct business in a manner which reflects favorably at all times on the products, goodwill and reputation of ONE; (ii) avoid deceptive, misleading or unethical practices which are or might be detrimental to ONE or its products; and (iii) refrain from making any false or misleading representations, warranties, or guarantees with regard to ONE or its products.

9.3 Customer will comply with all applicable laws and regulations in performing its obligations under the Agreement including, without limitation, all applicable data privacy laws and regulations.

9.4 The Agreement will terminate immediately without written notice if Customer breaches any portion of this Section.

## **10. Disclaimer of Warranties**

10.1 ONE MAKES NO EXPRESS OR IMPLIED WARRANTIES OR REPRESENTATIONS WITH RESPECT TO THE PROGRAM, THE ONE MARKS, THE ONE WEBSITE, OR ANY PRODUCTS, SERVICES OR OTHER ITEMS OFFERED, SOLD OR LICENSED THROUGH THE PROGRAM, INCLUDING (WITHOUT LIMITATION) IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, SYSTEM INTEGRATION, NON-INTERFERENCE AND ACCURACY OF INFORMATIONAL CONTENT.

10.2 ONE warrants that during each Term it will use its commercially reasonable efforts to ensure that Services are conducted in a workmanlike manner by qualified personnel. Except for the foregoing, PRODUCT IS PROVIDED TO CUSTOMER "AS IS," WITHOUT ANY WARRANTIES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, WARRANTIES CONCERNING THE INSTALLATION, USE OR PERFORMANCE OF PRODUCT. ONE AND ITS SUPPLIERS DISCLAIM ANY AND ALL WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY FITNESS FOR A PARTICULAR PURPOSE AND/OR NON-INFRINGEMENT. ONE AND ITS SUPPLIERS DO NOT WARRANT THAT PRODUCT WILL MEET CUSTOMER'S REQUIREMENTS OR THAT THE OPERATION THEREOF WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ERRORS WILL BE CORRECTED. Without limiting the generality of the foregoing disclaimer, Product is not specifically designed, manufactured or intended for use in the planning, construction, maintenance, control, or direct operation of nuclear facilities; aircraft navigation, control or communication systems; weapons systems; or direct life support systems.

## **11. Limitation of Liability**

11.1 IN NO EVENT WILL EITHER PARTY OR THEIR SUPPLIERS HAVE ANY LIABILITY UNDER THE AGREEMENT FOR CONSEQUENTIAL, EXEMPLARY, SPECIAL, INDIRECT, INCIDENTAL OR PUNITIVE DAMAGES, INCLUDING (WITHOUT LIMITATION) ANY LOST PROFIT OR LOST SAVINGS (WHETHER RESULTING FROM IMPAIRED OR LOST DATA, SOFTWARE OR COMPUTER FAILURE, SERVICES FAILURE, OR ANY OTHER CAUSE), EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT FOR CUSTOMER'S INFRINGEMENT OR MISAPPROPRIATION OF ONE'S INTELLECTUAL PROPERTY RIGHTS, IN ANY EVENT, AND NOTWITHSTANDING ANY OTHER PROVISION IN THE AGREEMENT, THE AGGREGATE LIABILITY OF A PARTY FOR ANY REASON AND UPON ANY CAUSES OF ACTION UNDER THIS AGREEMENT SHALL BE LIMITED TO (i) FOR ONE'S LIABILITY, THE AMOUNT PAID OR OWING TO ONE UNDER THIS AGREEMENT; AND (ii) FOR CUSTOMER'S LIABILITY, THE AMOUNT PAID OR OWING TO ONE UNDER THIS AGREEMENT.

## **12. Indemnification**

12.1 ONE will defend Customer from any unaffiliated third party claim that Customer's use of the ONE-certified Product, when used within the scope of this Agreement during a Coverage Period (as defined below), infringes or misappropriates a copyright, patent, trademark, or trade secret owned by the third party in the U.S., Canada, Japan or any country that is a member of the European Union ("Claim"). ONE will pay (a) counsel hired by ONE to defend the Claim; (b) the reasonable and verifiable out-of-pocket costs incurred directly by Customer

in connection with defending the Claim and/or assisting ONE in the defense thereof; and (c) subject to Section 11, any damages finally awarded to such third party by a court of competent jurisdiction (after any appeals) or any settlements of the Claim to which ONE consents. The foregoing obligations shall be subject to Customer notifying ONE promptly in writing of any claim, giving ONE the exclusive control of the defense and settlement of the Claim, and providing all reasonable assistance in connection with the Claim without prejudicing ONE in any manner. Subject to the foregoing conditions, nothing in this Agreement shall prohibit Customer from hiring separate counsel, at its own expense.

12.2 “Coverage Period” means any Term(s) for which Customer subscribed to Product at the Standard or Premium levels and paid ONE (excluding payments of any applicable taxes) an amount equal to an annual average of at least One Hundred Thousand Euros (or the then-equivalent amount in the Agreement’s quoted currency) for Product.

12.3 If ONE receives information about an infringement claim related to Product, ONE may, at its expense but without obligation to do so, either: (a) procure for Customer the right to continue to use Product; (b) replace Product with a functional equivalent; (c) modify Product so that it becomes non-infringing (including disabling the challenged functionality); or (d) refund the unused portion of the Subscription Fees paid by Customer for the allegedly infringing Product during the then-current Term, and terminate the Agreement. If ONE selects option (b), (c) or (d), Customer shall immediately refrain from use of the allegedly infringing Product.

12.4 If as a result of a Claim, a court of competent jurisdiction issues a final injunction (which has not been appealed) against Customer’s use of any part of Product, ONE will, at its sole option, perform one of the remedy options listed in Section 12.3. If ONE selects option (b), (c) or (d), Customer shall immediately refrain from use of the allegedly infringing Product.

12.5 ONE shall have no liability for any Claim arising out of or relating to (a) Customer’s use of the Covered Product after ONE notifies Customer to discontinue use due to such a Claim; (b) the combination of the Covered Product with a non-ONE application, product, data or business process; (c) damages attributable to the value of a non-ONE application, product, data or business process; (d) modifications to Software other than modifications made by ONE; (e) Customer’s distribution of Product to any third party; (f) changes made by ONE to Product in accordance with any designs, specifications or instructions provided to ONE by or on behalf of Customer; (g) continued use of any Product for which ONE has provided Customer with modifications or substitute software if use of such modifications or substitute software would have prevented the Claim; or (h) use of the Covered Software in a manner prohibited under the Agreement. Customer shall reimburse ONE for any costs or damages that result from any of the foregoing actions.

12.6 Customer hereby agrees to indemnify ONE against any damages finally awarded against ONE by a court of competent jurisdiction in connection with: (a) the use of the Product in a manner prohibited under this Agreement, or in a manner for which the Product was not designed; (b) changes made by Customer to the Product, where use of unmodified Product would not infringe; or (c) changes made to the Product by ONE in compliance with any designs, specifications or instructions provided by or on behalf of Customer; provided that: (d) Customer is given prompt written notice of the claim; and (e) if Customer has elected to pay for defense of the claim and so notified ONE in writing: (i) Customer is given immediate and complete control over the defense and/or settlement of the claim; and (ii) ONE provides cooperation and assistance in the defense of such claim and does not prejudice in any manner Customer’s conduct of such claim.

12.7 The foregoing provisions of this Section state the parties’ entire obligations and liability with respect to the infringement or violation of any third-party property right, and shall be subject to the limitations in Section 11 of this Agreement.

### **13. Miscellaneous**

13.1 Severability. If any part of the Agreement is held by a court of competent jurisdiction to be illegal or unenforceable, the validity or enforceability of the remainder of the Agreement shall not be affected and such provision shall be deemed modified to the minimum extent necessary to make such provision consistent with applicable law and, in its modified form, such provision shall then be enforceable and enforced.



13.2 Assignment. Customer may not assign the Agreement or its rights or obligations under the Agreement to any person or party, whether by operation of law or otherwise, without ONE's prior consent (at ONE's sole discretion). Any attempt by Customer to assign the Agreement without ONE's prior consent shall be null and void. In the event of the direct or indirect taking over or assumption of control of Customer or of substantially all of its assets by any government, governmental agency or other third party, ONE may terminate this Agreement upon written notice to Customer. Subject to the foregoing conditions, the Agreement shall be binding upon and inure to the benefit of each party and its respective successors and assigns. There are no intended third party beneficiaries of the Agreement.

13.3 No Waiver; Limitations. Failure by either party to exercise any right or remedy under this Agreement does not signify acceptance of the event giving rise to such right or remedy. To the extent permitted by applicable law, no action, regardless of form, arising out of this Agreement may be brought by Customer more than one (1) year after the cause of action has accrued.

13.4 Governing Law. 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. In no event shall either the United Nations Convention on Contracts for the International Sale of Goods or any adopted version of the Uniform Computer Information Transactions Act (or equivalent legislation) apply to, or govern, the Agreement. The parties shall comply at their own expense with all relevant and applicable laws related to the subject matter of the Agreement.

13.5 Notices. Unless otherwise agreed to by the parties, any notice, authorization, or consent required or permitted to be given or delivered under the Agreement shall be in writing and addressed and delivered to Customer at its address listed on the Order Form and to ONE at the applicable address on the Program Guide. Notice shall be deemed to have been received by a party, and shall be effective: (a) on the day given, if sent by confirmed facsimile transmission; (b) on the fifth business day after which such notice is deposited prepaid in the local postal system; or (c) on the day received, if sent with a reputable, expedited overnight or international courier or hand delivered. Either party may change its address for notice purposes upon issuance of notice thereof in accordance with this paragraph.

13.6 Attorneys Fees. Subject to Section 11, for the purposes of any action between the parties relating to the Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs.

13.7 Export Law Assurances. Customer acknowledges that Product may be subject to export and import control laws, and agrees to comply fully with those laws in connection with Product. Customer agrees that Product is not being and will not be acquired for, shipped, transferred, or re-exported, directly or indirectly, to proscribed or embargoed countries or their nationals, nor will it be used for: nuclear activities, chemical or biological weapons, or missile projects unless authorized by the U.S. government. Customer hereby certifies that it is not prohibited by the U.S. government from participating in export or re-export transactions.

13.8 U.S. Government Restricted Rights. If Product is being acquired by or on behalf of the U.S. Government or by a U.S. Government prime contractor or subcontractor (at any tier), in accordance with 48 C.F.R. 227.7202-4 (for Department of Defense ("DOD") acquisitions) and 48 C.F.R. 2.101 and 12.212 (for non-DOD acquisitions), the government's rights in such Product and any documentation, including its rights to use, modify, reproduce, release, perform, display or disclose Product or any documentation, will be subject in all respects to the license rights and restrictions provided in this Agreement.

13.9 Force Majeure. Except for performance of a payment obligation, neither party will be liable to the other by reason of any failure in performance of this Agreement if the failure arises out of the unavailability of communications facilities or energy sources, acts of God, acts of the other party, acts of governmental authority, fires, strikes, delays in transportation, riots,

terrorism, war, or any causes beyond the reasonable control of that party.

13.10 Apache. Customer understands that OpenNebula is a fully open-source Product that is generally available pursuant to the Apache License. This Agreement does not replace or otherwise amend any Customer rights or obligations pursuant to the Apache License with respect to any uses, distributions, or sublicensing of such other ONE software product.

13.11 Entire Agreement. The Agreement comprises the entire agreement between the parties regarding the subject matter hereof and supersedes and merges all prior proposals, understandings and all other agreements, oral and written, between the parties relating to the subject matter of the Agreement. ONE reserves the right to amend or modify the Agreement at any time and in any manner by providing reasonable notice to the Customer. Customer agrees that such reasonable notice may be provided by posting on the ONE web site, email, or other written notice. Except as otherwise set forth herein, the Agreement may be amended or modified only in a writing executed by both parties. ONE's acceptance of any document submitted by Customer to ONE shall not be construed as an acceptance of provisions which are in any way in conflict or inconsistent with, or in addition to, the Agreement, unless such terms are separately and specifically accepted in writing by an authorized representative of ONE. The Agreement may be incorporated in other documents or executed via facsimile or via emailed PDF-format document (or other mutually agreeable document format), and a facsimile or emailed copy of either party's signature shall be deemed and be enforceable as an original thereof. The Agreement may be executed in counterparts, both of which taken together shall constitute one single Agreement between the parties.

#### **14. Endorsement**

14.1 During the term of this Agreement, Customer agrees to be a reference for ONE and participate in a ONE case study, and participate in a press release regarding Customer's subscription to Product, as follows: (a) Reference. As a reference, Customer agrees to speak in good faith with media and/or ONE Customers or prospects from time to time about its use of ONE products and services. Such reference opportunities will be limited to a reasonable quantity and mutually agreed content; (b) Case Study. Customer agrees to make appropriate personnel available to be interviewed for a ONE case study that describes Customer's successful use of Product. ONE may publish the case study without limitation with respect to quantity and form. Prior to publishing the case study, ONE will provide the same to Customer for Customer's review and approval, which approval shall not be unreasonably withheld or delayed; and (c) Press Release.

14.2 ONE may issue a press release in which ONE announces that Customer has subscribed to Product. Customer, at its discretion, may also issue a press release about the mutually agreed content. Neither party shall release its press release without first providing such press release to the other party for its review and approval, which approval shall not be unreasonably withheld or delayed.