

OPENNEBULA SUBSCRIPTION AGREEMENT

JANUARY 2022 - REV20220110

This Subscription Agreement (the "Subscription Agreement") is by and between OpenNebula Systems ("ONS") 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 Subscription 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 ONS company holidays published at the ONS Customer Portal. The Order Form can define a different time range and zone.

"Customer" means an ONS customer with an active subscription.

"Customer Portal" means the Customer Portal listed at the Order Form.

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

"Enterprise Repository" means the Enterprise Repository referenced in the Customer Portal.

"Hosted Services" means services to host and manage Product control plane instances, which may include, without limitation, automated client notifications, configuration management, updates, upgrades, incident and problem management, and monitoring.

"Hosted Cloud Guide" means the then-current Hosted Cloud Guide description available at the ONS Customer Portal. In the event of any conflict between this Agreement and the Hosted Cloud Guide information applicable to Customer, Hosted Cloud Guide will control.

"Managed Cloud Guide" means the then-current Managed Cloud Guide description available at the ONS Customer Portal. In the event of any conflict between this Agreement and the Managed Cloud Guide information applicable to Customer, the Managed Cloud Guide will control.

"Managed Services" means services to manage the cloud infrastructure which may include, without limitation, automated client notifications, configuration management, updates, upgrades, incident and problem management, and monitoring.

"Managed Services SLA Policy" means the then-current description of SLA for Managed Services available at the ONS Customer Portal.

"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 or Quote signed by the customer, completed in the ONS Website, or otherwise accepted by ONS.

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

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

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

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

“Support Policy” means the then-current Support Policy description available at the ONS Customer 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.

“Website” means the web sites created and managed by ONS under the domains OpenNebula.io and OpenNebula.pro.

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

2. Subscription Program

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

2.2 ONS may add to or modify the 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 support SLA and uptime SLA (for Managed and Hosted Services) apply 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 From time to time, ONS may offer certain promotional pricing or programs during a specific term or the opportunity to evaluate the Service, without charge, up to certain quotas, limits and/or thresholds and its use, in each case, is subject to the terms and conditions of this Agreement.

2.5 ONS may offer the option to access beta versions of services and products, or to preview certain new unsupported features prior to release for a limited period. Customer is responsible for determining the suitability of using the Beta and Technology Preview services and products as they may result in application data loss or service unavailability including on platform and customer workloads.

2.6 Access to ONS Customer Portal and Enterprise Repository 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 Subscription Guide. Such access will terminate immediately in the event of termination of the Agreement.

3. Licenses in the Elemental Subscription Program

3.1 Membership to the Elemental Subscription 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 ONS Enterprise Repository. 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 Subscription Program.

3.2 In a cloud instance, each managed Server needs a valid subscription and all Servers must have the same subscription level. 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 ONS 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 ONS does not provide any Support to Customer under the Elemental Program The scope of Services provided to the Customer under this Agreement is subject to the then-current Support details set forth at the ONS Support Policy and the Subscription Guide. Any Service will terminate immediately in the event of termination of the Agreement.

4. Licenses and Services in the Standard and Premium Subscription Programs

4.1 Membership to the Production Subscription 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 ONS Enterprise Repository. 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 In a cloud instance, each managed Server needs a valid subscription and all Servers must have the same subscription level. 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 ONS 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). Downgrades from a higher level to a lower level of subscription are not possible mid-term.

4.3 ONS 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 ONS Support Policy and the Subscription Guide. ONS will use commercially reasonable efforts to provide Support Services in accordance with the Support Policy. Any Support will terminate immediately in the event of termination of the Agreement.

4.4 Customer acknowledges that Support Services do not include support for any open source versions of ONS's software applications. ONS does not provide Support Services for (a) advice on architecture, design, development or prototyping; (b) non-ONS Online Subscriptions or software, including but not limited to devices, operators, applications, infrastructure or tools that you or a third party provide or create; (c) access management or any security related processes that apply only to Your Account; (d) any work performed under a separate professional services engagement; (e) individuals who are not your Support Contact(s); (f) ONS Online Subscriptions running in excess of the number of Units you have purchased or outside the usage restrictions or (g) for any changes you make to the infrastructure which negatively impacts the operation of the Online Services.

4.5 Customer is responsible for testing the Product and Services before deploying them in its environment and for providing support to its Authorized Users and for its Applications. Customer will back up its Data on a regular basis and have those backups available if needed for support or other purposes.

4.6 Access to Managed Services is available to Customers with the Managed Cloud Subscription

Extension. The services will be subject to the terms of this Agreement, the then-current description and services terms and conditions available in the Managed Cloud Guide, and the Managed Services SLA Policy. ONS will use commercially reasonable efforts to maintain availability of the Service according to the Managed Services SLA Policy. Such access will terminate immediately in the event of termination of the Agreement. Customer's access and usage of the Managed Services may not exceed the number of Instances, Clusters, and Nodes purchased by Customer pursuant to this Agreement.

4.7 Access to Hosted Services is available to Customers with the Hosted Cloud Subscription Extension. The services will be subject to the terms of this Agreement and its Annex A, the then-current description and services terms and conditions available in the Hosted Cloud Guide, and the Managed Services SLA Policy. ONS will use commercially reasonable efforts to maintain availability of the Service according to the Managed Services SLA Policy. Such access will terminate immediately in the event of termination of the Agreement. Customer's access and usage of the Hosted Services may not exceed the number of Instances, Clusters, and Nodes purchased by Customer pursuant to this Agreement.

5. Program Fees, Taxes and Audit Rights

5.1 Program Subscription Fees are due to ONS upon the Effective Date and the anniversary thereof during the term of the Agreement. ONS 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 ONS'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, ONS 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 ONS shall be responsible for payment of taxes levied or imposed based upon ONS's net income.

5.4 During the term of this Agreement and for a five (5) year period following termination or expiration, ONS shall have the right (at ONS'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. ONS shall exercise this right upon no fewer than thirty (30) days' prior notice. Customer will provide ONS with reasonable use of available office equipment and access to all relevant Customer personnel and records during normal business hours. ONS 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 ONS 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 twenty percent (20%) of the proper amount owed to ONS.

5.5 Certain Subscriptions may be available for purchase on a consumption basis ("On Demand"). If Customer wishes to purchase Subscriptions on an On Demand basis, ONS will generate invoice(s) based on the amounts consumed. Customer must purchase an underlying annual Subscription to be eligible to purchase Subscriptions on an On Demand basis and any Fees owing based on On Demand usage will be invoiced in the same currency as the annual Online Subscription.

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 ONS 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. In the event that ONS terminates the Agreement

without cause, ONS 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. In the event that Customer terminates the Agreement without cause, the paid subscription and services cannot be refunded.

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 ONS 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. ONS and its suppliers reserve any and all rights not expressly granted in this Agreement. ONS trademarks shall not be used by Customer without ONS's express authorization.

7.2 ONS 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 ONS.

7.3 Notwithstanding Section 7.2, ONS 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 ONS a non-transferable, non-exclusive, license to reproduce and display Customer's Marks so that ONS may refer to Customer as a participant in the Services Program should ONS so desire, such as on a portion of the ONS 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 ONS or any products, services or programs of ONS, or that includes a link to ONS, a Customer referral code or all or any part of a ONS URL. Customer also will not force visitors to the ONS 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 ONS; (ii) avoid deceptive, misleading or unethical practices which are or might be detrimental to ONS or its products; and (iii) refrain from making any false or misleading representations, warranties, or guarantees with regard to ONS 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 ONS MAKES NO EXPRESS OR IMPLIED WARRANTIES OR REPRESENTATIONS WITH RESPECT TO THE PROGRAM, THE ONS MARKS, THE ONS 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 ONS 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. ONS 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. ONS 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 ONS'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 ONS'S LIABILITY, THE AMOUNT PAID OR OWING TO ONS UNDER THIS AGREEMENT; AND (ii) FOR CUSTOMER'S LIABILITY, THE AMOUNT PAID OR OWING TO ONS UNDER THIS AGREEMENT.

12. Indemnification

12.1 ONS will defend Customer from any unaffiliated third party claim that Customer's use of the ONS-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"). ONS will pay (a) counsel hired by ONS 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 ONS 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 ONS consents. The foregoing obligations shall be subject to Customer notifying ONS promptly in writing of any claim, giving ONS the exclusive control of the defense and settlement of the Claim, and providing all reasonable assistance in connection with the Claim without prejudicing ONS 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 ONS (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 ONS receives information about an infringement claim related to Product, ONS 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 ONS 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, ONS will, at its sole option, perform one of the remedy options listed in Section 12.3. If ONS selects option (b), (c) or (d), Customer shall immediately refrain from use of the allegedly infringing Product.

12.5 ONS shall have no liability for any Claim arising out of or relating to (a) Customer's use of the Covered Product after ONS notifies Customer to discontinue use due to such a Claim; (b) the combination of the Covered Product with a non-ONS application, product, data or business process; (c) damages attributable to the value of a non-ONS application, product, data or business process; (d) modifications to Software other than modifications made by ONS; (e) Customer's distribution of Product

to any third party; (f) changes made by ONS to Product in accordance with any designs, specifications or instructions provided to ONS by or on behalf of Customer; (g) continued use of any Product for which ONS 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 ONS for any costs or damages that result from any of the foregoing actions.

12.6 Customer hereby agrees to indemnify ONS against any damages finally awarded against ONS 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 ONS 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 ONS in writing: (i) Customer is given immediate and complete control over the defense and/or settlement of the claim; and (ii) ONS 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 ONS's prior consent (at ONS's sole discretion). Any attempt by Customer to assign the Agreement without ONS'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, ONS 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 the 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 the 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 ONS 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 Attorney 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 ONS 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. ONS 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 ONS website, 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. ONS's acceptance of any document submitted by Customer to ONS 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 ONS. 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 ONS and participate in a ONS 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 ONS Customers or prospects from time to time about its use of ONS 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 ONS case study that describes Customer's successful use of Product. ONS may publish the case study without limitation with respect to quantity and form. Prior to publishing the case study, ONS 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.

16.2 ONS may issue a press release in which ONS 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.

ANNEX A. Hosted Cloud Customer Agreement

A.1 ONS may update the content, features, functionality, and user interface of the Hosted Product instances from time to time on its sole discretion, and may discontinue or suspend all or any portion of the Hosted Services at any time on its sole discretion, including during a Subscription Term, provided, that ONS will give Customer at least thirty (30) days' advance notice before ONS discontinues the Hosted Service or ONS materially decreases the functionality of the Hosted Service during the Subscription Term.

A.2 Customer is responsible for ensuring that (a) the Hosted Service is suitable for its needs and (b) its use, and the use by any Authorized Users is in compliance with this Agreement and all applicable laws, including but not limited to data privacy and security laws. If you become aware of any violation by any Authorized User, you agree to promptly bring the Authorized User into compliance which may include removing content that violates these terms or terminating access. Customer will use reasonable measures to prevent and will promptly notify ONS of any known or suspected unauthorized use of Authorized User access credentials. If you develop or use applications that operate in conjunction with the Hosted Product instances for and/or on behalf of any third party, ONS may require the third party to obtain Subscriptions from ONS such that their use is subject to the terms and conditions of this Agreement

A.3 If ONS reasonably believes that you or any of your Authorized Users has breached this Agreement, ONS may notify you of the breach and provide twenty-four (24) hours to rectify the issue. If the issue has not been remediated within twenty-four (24) hours, ONS reserves the right (but has no obligation) to suspend or terminate your access to the Subscriptions or disable access by you or your Authorized Users until such issue has been rectified to ONS's reasonable satisfaction. ONS shall have no liability with respect to such a suspension or termination.

A.4 Except as otherwise expressly set forth in this Agreement, Customer will not and will not permit any third party to:

(a) sublicense, sell, transfer, assign, distribute or otherwise grant or enable access to the Hosted Product instances in a manner that allows anyone to access or use the Hosted Product instances without an Authorized User subscription, or to commercially exploit the Hosted Product instances;

(b) copy, modify or create derivative works based on the Hosted Product instances;

(c) reverse engineer or decompile the Hosted Product instances;

(d) copy any features, functions or graphics of the Hosted Product instances;

(e) allow Authorized User subscriptions to be shared or used by more than one individual Authorized User;

or (f) access to or use of the Hosted Product instances: (i) to send or store infringing, obscene, threatening, or otherwise unlawful, unethical and/or potentially harmful material, including without limitation incitements to violence, defamatory material, public disinformation campaigns, and/or material violative of third-party privacy rights; (ii) in violation of applicable laws; (iii) to send or store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, or agents; (iv) in a manner that interferes with or disrupts the integrity or performance of the Hosted Product instances (or the data contained therein); (v) to gain unauthorized access to the Hosted Product instances (including unauthorized features and functionality) or its related systems or networks; (vi) Circumvent defined limits on an account in an unauthorized manner; (vii) Abuse referrals, promotions or credits to get more features than paid for; or (viii) Access, search, or create accounts for the Hosted Product instances by any means other than ONS's publicly supported interfaces (for example, "scraping" or creating accounts in bulk).

A.5 Customer has exclusive control and responsibility for determining what data Customer submits to the Cloud Service, for obtaining all necessary consents and permissions for submission of Customer Data and processing instructions to ONS, and for the accuracy, quality and legality of Customer Data.

A.6 Customer grants ONS a worldwide, non-exclusive license to host, copy, process, transmit and display Customer Data as reasonably necessary for ONS to provide the Hosted Service in accordance with this Agreement. Subject to this limited license, as between Customer and ONS, Customer owns all right, title and interest, including all related Intellectual Property Rights, in and to the Customer Data.

A.7 Customer agrees that following termination of this Agreement, ONS may immediately deactivate Customer's account(s) for the Hosted Service, and ONS has the right to delete those accounts, including all Customer Data, from ONS site unless legally prohibited. Customer acknowledges and agrees that it is responsible to retrieve Customer Data from the Cloud Service prior to expiration of this Agreement.

A.8 Customer agrees to indemnify and hold harmless ONS, its affiliates and their licensors and vendors, and each of their respective employees, officers, directors, and representatives from and against any

claims, damages, losses, liabilities, costs, and expenses (including reasonable attorneys' fees and associated litigation expenses) arising out of or relating to: (a) your use and/or your Authorized Users' use of the Service in violation of any law or regulation or third party right; (b) any claim or allegation that Your Content infringes, violates, or misappropriates the intellectual property or privacy rights of any third party; (c) ONS's response to any third party subpoena, warrant, audit, agency action or other legal order or process concerning Your Content, Your Account and/or use by you and/or your Authorized Users of the Service or (d) any dispute between you and a Third Party Offering provider or you and any of your Authorized User(s). ONS will provide you with written notice of any claim, suit or action, but its failure to do so does not relieve you of your obligations under this Section.

A.9 The Hosted Product instances may require Customer to procure Infrastructure Services from a third party cloud provider to provision cloud clusters. Customer is solely responsible for complying with any terms and conditions between them and the provider of the Infrastructure Services, paying any fees associated with the Infrastructure Services and obtaining any applicable permissions from the third party provider to allow ONS to provide the Subscription Services offered herein.