



NAGIOS RESELLER AGREEMENT

BY BECOMING A NAGIOS RESELLER, YOU AGREE TO THE FOLLOWING TERMS AND CONDITIONS. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND THE COMPANY TO THE TERMS OF THIS AGREEMENT. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS, DO NOT BECOME A VALUE-ADDED RESELLER OF NAGIOS ENTERPRISES.

Definitions.

- (a) **"Nagios"** shall mean Nagios Enterprises, LLC, or a legal entity which may acquire or become the whole owner of Nagios Enterprises, LLC at some future date.
- (b) **"VAR"** shall mean (1) the company, its officers, directors, agents, and employees and users, or (2) an individual, in the case of a non-legal entity, as defined in the registration information provided to Nagios Enterprises.
- (c) **"Product"** shall mean any product or service listed in the most current version of Nagios' reseller catalog, which shall be provided to VAR from time to time as necessary.

1. Introduction.

This Value Added Reseller Agreement ("Agreement") is made and effective upon acceptance, by and between Nagios Enterprises, LLC ("Nagios") and VAR. Nagios provides certain products and services which it markets directly to end users and also markets through intermediaries such as VAR. VAR is in the business of creating and adding value to existing software and technology products and remarketing the value-added products to end users. VAR desires to take a license in certain of Nagios' products and to add value to same and remarket the value-added products, all pursuant to this Agreement.

2. Nonexclusive Appointment.

VAR is hereby appointed a nonexclusive value-added reseller of the Products for sale pursuant to this Agreement. VAR accepts such appointment and agrees to serve as a value-added reseller of the Products to end users as provided herein. This Agreement is not exclusive to VAR, and Nagios reserves the unrestricted right to sell, license, market and distribute or to grant to others the right to sell, license, market and distribute the Products and value added versions thereof anywhere in the world.

3. Price and Discounts.

Prices, discounts, and other terms, if any, for the Products are subject to change at any time.

4. Product Changes.

Nagios has the right to modify, alter, amend or delete from the Products at any time at its discretion. VAR agrees not to remove from the Products any copyright notice included therein.

5. Ordering, Delivery, and Shipment.

- (a) Purchases of Product pursuant to this Agreement shall be made by Nagios' purchase forms at the nagios.com website.
- (b) All orders must specify the Product or Products to be purchased; the appropriate purchase price; the

requested delivery date if applicable.

- (c) VARs shall be responsible to pay, or reimburse Nagios, as appropriate, for any sales, use, excise or similar tax levied on the transactions hereunder, or any personal property tax attributable to the license granted VAR herein.

6. License.

- (a) Nagios grants and VAR accepts a limited, nonexclusive license to the Products as provided in this Agreement. The license granted herein shall permit VAR to combine or include the Products with VAR's other software, hardware, or services for the purpose of adding to or increasing the value, functionality or utility of such software or hardware for VAR's end user customers. VAR may not copy any of the Products or distribute or transfer the Products except as provided herein.
- (b) Nagios hereby grants VAR a limited, nonexclusive license to grant sublicenses of the Product to VAR's end user customers in the normal course of business. Any sublicense of the product by VAR shall be pursuant to the following terms:
 - 1) VAR's sublicensee shall have no right to copy, modify, reproduce, publish or convey any part of any Product.
 - 2) VAR's sublicensee shall acquire no ownership in the Product.
 - 3) VAR's sublicensee shall look solely to VAR in the event of any defect, damage or inoperability of the product or part thereof.
- (c) If VAR's sublicensee fails to perform any material obligation with respect to Product pursuant to this Agreement, then VAR shall cooperate with Nagios to protect and enforce Nagios' rights and title with respect to the Products.

7. Confidentiality.

In the performance of this Agreement, each party may have access to confidential, proprietary or trade secret information owned or provided by the other party relating to software computer programs, object code, source code, marketing plans, business plans, financial information, specifications, flow charts and other data ("Confidential Information"). All Confidential Information supplied by one party to another pursuant to this Agreement shall remain the exclusive property of the disclosing party. The receiving party shall use such Confidential Information only for the purposes of this Agreement and shall not copy, disclose, convey or transfer any of the Confidential Information or any part thereof to any third party, except that VAR may sublicense the Products as set forth in this Agreement. Neither party shall have any obligation with respect to Confidential Information which: (i) is or becomes generally known to the public by any means other than a breach of the obligations of a receiving party; (ii) was previously known to the a receiving party or rightly received by a receiving party from a third party; or (iii) is independently developed by or a the receiving party.

8. VAR Sales Organization and Activities.

In connection with the performance of its obligations in this Agreement in a professional and businesslike manner, VAR agrees to:

- (a) Hire, train and employ at its place or places of business competent, professional and ethical sales, technical and support personnel to sell and support products.

- (b) Provide prompt, reliable and competent technical and other assistance to VAR's end user customers with respect to the Products.
- (c) Conduct its business in a professional, businesslike manner that will reflect favorably on Nagios and the Products, and not engage in deceptive, fraudulent, misleading, illegal or unethical business practices, whether with respect to the Products or otherwise.
- (d) Diligently promote, sell, and support the Products in accordance with Nagios' business goals.
- (e) Represent Nagios and the Products in a highly ethical and accurate manner.
- (f) Inform Nagios of competitive products and activities in the VAR's territory.
- (g) Protect Nagios' business plans and other confidential information from disclosure to competitors
- (h) Not develop or manufacture any product that substantially competes against Nagios' Products.
- (i) Not copy, reverse engineer, decompile, disassemble, decrypt, nor modify the Products in whole or part.

9. Nagios' Sales Assistance.

Nagios will provide reasonable commercial and technical assistance to VAR as may be necessary and appropriate to assist VAR in effectively carrying out its obligations under this Agreement and in the promotion and sale of the Products to VAR's end user customers. Nagios will from time to time and subject to availability provide to VAR and its agents sales promotion materials, technical manuals, sales aides and other materials helpful in the promotion or sales of the Products. Nagios may also provide consulting and implementation services to VAR at standard billing rates.

10. Limited Warranties.

- (a) Nagios warrants that it is the owner of or otherwise has the right to license the Products and otherwise perform its obligations set forth herein.
- (b) Nagios warrants that each Product will perform the functions substantially according to Nagios' regular specifications document with respect to such Product. In the event of any breach the warranty set forth in this section 10.B., VAR's sole remedy, and Nagios' sole liability, will be that Nagios must promptly repair the Products so as to conform to the warranty or, at Nagios' election, refund the purchase price.

11. Disclaimer.

IN NO EVENT SHALL NAGIOS BE LIABLE TO VAR FOR INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES INCLUDING, WITHOUT LIMITATION, LOSS OF DATA OR PROFITS, WITH A CLAIM BY REASON OF BREACH OF WARRANTY OR BASED ON CONTRACT, STRICT LIABILITY OR OTHERWISE, REGARDLESS OF WHETHER NAGIOS HAS BEEN ADVISED OF THE RISK OF SUCH DAMAGES IN ADVANCE.

12. Restricted Goods and Services.

With respect to any Product or service which is provided, directly or indirectly, by Nagios, VAR represents and warrants to Nagios that:

- (a) VAR has inquired or will inquire of each of the users of its products and services which utilizes any Products or services of Nagios, and has confirmed or will confirm that such Products and services will not, directly or

indirectly, be exported into or used by any country which is prohibited by any laws, rules, regulations or executive orders of the United States or in any other manner which is prohibited by any laws, rules, regulations or executive orders of the United States.

- (b) VAR has obtained all necessary licenses and permits or exemptions from the United States government for each product that is subject to export controls, non-proliferation restrictions or any other laws, rules, regulations or executive orders of the United States.
- (c) VAR will defend and indemnify Nagios against any demands, notices, fines, penalties, sanctions, claims, liabilities and costs, including attorneys fees, which result from VAR's breach of any representation or warranty herein.

The indemnification provisions of this section shall survive the expiration or termination of this Agreement.

13. Indemnification.

- (a) VAR agrees to indemnify and hold harmless Nagios from and against loss, suit, damage or claim including reasonable attorney's fees and costs, arising out of or connected with:
 - (1) The sale, sublicense or use of any of the Products which have been modified by VAR or anyone else.
 - (2) Any allegation that the VAR's use of the Licensed Marks violates Nagios' trademark policy published at <http://www.nagios.com/legal/trademarkpolicy/>.
 - (3) The VAR's direct, or indirect, sale, sublicense or use of any of the Products in a manner that violates the Restricted Goods and Services section 12 of this Agreement.

All of the provisions of this section shall survive the termination or expiration of this Agreement.

- (b) Nagios shall, at its own expense, defend any suit that may be instituted against VAR or any end user customer of VAR for any alleged infringement of any United States trademark or copyright related to the Product as provided by Nagios hereunder, provided that:
 - (1) Such alleged infringement consists only of the use of the Product in the manner for which the Product was designed by itself, and does not relate to any modification or alteration or combination with other works.
 - (2) VAR gives Nagios immediate notice in writing of any such suit and permits Nagios, with counsel of its choice, to defend such suits.
 - (3) VAR provides Nagios all of the necessary information, assistance and authority, to enable Nagios to defend such suit, and similarly causes all VAR's end user customers to similarly provide all needed information, assistance and authority, all at VAR's expense.
 - (4) Nagios' indemnity shall not apply with respect to any claim arising out of or based upon any modification or alteration of the Products created by or for Nagios.

14. Relationship of the Parties.

It is expressly understood and agreed that the relationship between the parties is solely that of "seller" and "buyer". VAR is not, and shall not be, a partner, agent, representative or joint venturer of Nagios. VAR has no authority to assume or create any obligation for or on behalf of Nagios, express or implied, with respect to the Products or

otherwise.

15. Nagios' Marks.

- (a) Nagios hereby grants to VAR a limited, nonexclusive right to use Nagios' regular trade names, trademarks, titles and logos (the "Licensed Marks") in the advertising, promotion and sale of the Products. VAR shall not make or permit alteration or removal of tags, labels, or identifying marks placed by Nagios on or within the Software program of any product. VAR will not use Nagios' trade names or abbreviations (with the exception of a logo or mark or graphic design provided by Nagios which indicates VAR is an authorized reseller of Nagios) in VAR's corporate title, or name or in any way that might result in confusion as to separate and distinct identities of Nagios and VAR. Upon the expiration or earlier termination of this Agreement, the license granted to VAR in the Licensed Marks shall immediately terminate and VAR shall immediately cease and desist all use of the Licensed Marks.
- (b) VAR recognizes and acknowledges Nagios' ownership and title to the Licensed Marks and the goodwill related thereto and agrees that any goodwill which accrues because of VAR's use of such marks shall become the property of Nagios. VAR further agrees not to contest or take any action in opposition to any trademark, service mark, trade name or logo of Nagios or to use, employ or attempt to register any mark or trade name which is similar to any mark or name of Nagios.
- (c) VAR shall apply the Licensed Marks only to products which have been manufactured in accordance with the standards of quality in materials, design, workmanship, use, advertising and promotion set forth in Nagios' trademark policy and any use specifications and product control specifications (collectively, "Control Specifications") , which may be furnished to VAR from time to time.
- (d) Nagios shall have the right at any time to conduct examination of products created by VAR to determine compliance of such products with the applicable Control Specifications. If at any time such products shall, in the sole opinion of Nagios, fail to conform with the standards of quality in materials, design, workmanship, use, advertising, and promotion set forth in such Control Specifications, Nagios shall so notify VAR. Upon such notification, VAR shall promptly cease to use the Licensed Marks on such products and shall not sell such nonconforming products until the standards of quality contained in the applicable Control Specifications have been met to the satisfaction of Nagios.

16. Term and Termination.

- (a) This Agreement shall commence upon acceptance and continue for a Term of one year. Thereafter, this Agreement shall continue until a party shall give notice to the other party of its desire to terminate this Agreement upon at least thirty (30) days prior written notice.
- (b) In the event that VAR has failed to pay any amount when due or is in breach or default of any other material obligation set forth in this Agreement, then Nagios may notify VAR and if VAR has not paid the entire amount due or cured its other breach or default within 30 days following such notice, then Nagios may elect to terminate this Agreement.
- (c) In the event of any other breach or default of any material obligation owed by Nagios in this Agreement, then the VAR may provide notice to Nagios and if such breach or default is not cured within 30 days following such notice, the Agreement may be terminated by VAR.

17. Force Majeure.

Neither party shall be responsible for any failure to perform or delay in performing any of its obligations hereunder where and to the extent that such failure or delay results from causes outside the control of the party.

18. Notices.

Any notice required by this Agreement or given in connection with it, shall be in writing and shall be given to the appropriate party by personal delivery or by certified mail, postage prepaid, or recognized overnight delivery services;

If to Nagios:

Nagios Enterprises, LLC
1295 Bandana Blvd N #165
Saint Paul, MN 55108

19. Severability.

If any term of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then this Agreement, including all of the remaining terms, will remain in full force and effect as if such invalid or unenforceable term had never been included.

20. Governing Law.

This Agreement shall be construed and enforced in accordance with the laws of the state of Minnesota.

21. Modification to Terms.

Nagios reserves the right to change the terms and conditions of this Agreement or its policies relating to the Products at any time and shall notify VAR by posting an updated version of this Agreement on the nagios.com website. VAR is responsible for regularly reviewing this Agreement. Continued use of Products after any such changes shall constitute VAR's consent to such changes.

22. Headings.

Headings used in this Agreement are provided for convenience only and shall not be used to construe meaning or intent.



BY BECOMING A NAGIOS RESELLER, YOU ARE CONSENTING TO BE BOUND BY AND ARE BECOMING A PARTY TO AGREEMENT ABOVE. IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THE AGREEMENT AS SET FORTH ABOVE, DO NOT BECOME A VALUE-ADDED RESELLER OF NAGIOS.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date of last signature below.

For:	NAGIOS	VAR
Company	Nagios Enterprises, LLC	
Type	Limited Liability Company	
Phone	+1 651-204-9102	
Fax	+1 651-204-9103	
Email Address (sales contact email)	sales@nagios.com	
Address	1295 Bandana Blvd N #165	
City	Saint Paul	
County/State/Province	MN	
Post Code/Zip Code	55108	
Country	USA	
Printed Name	Ethan Galstad	
Title	President	
Signature		
Date		