

## END USER LICENSE AGREEMENT

### PARTIES:

1. The Backbone B.V., a corporation incorporated and existing under the laws of the Netherlands, hereinafter referred to as: "The Backbone";

and

2. The organization (hereinafter referred to as: "Licensee") trying The Backbone End-User Performance Management Pack (hereinafter: "Product").

The Backbone and Licensee hereinafter are collectively referred to as "Parties" and individually as "Party".

### WHEREAS:

- Licensee wishes to obtain an trial license to trial the Product;
- The Backbone is willing to grant the Licensee a trial license to the Product for internal trial purposes only for the term and specific purpose set forth in this trial license agreement (hereinafter: "License").

### HAVE AGREED AS FOLLOWS:

#### Article 1 Definitions

- 1.1 "Management Group" shall mean a single, not tiered, management group as created and managed by Licensee in Microsoft System Center Operations Manager (SCOM).
- 1.2 "License Email" shall mean the email sent to Licensee containing further License details including, but not limited to, the name of the Management Group.
- 1.3 "Trial Period" shall mean the period as specified in article 2.1 of this License during which The Backbone grants a license to Licensee to use the Product.

#### Article 2 License Grant

- 2.1 The Backbone hereby grants to Licensee a temporary, license fee free, non-exclusive, non-transferable license to install and use the Product licensed from The Backbone or distributed through a distributor reseller or a service provider of The Backbone (collectively referred to as "The Backbone Partner"), in object code form only and solely for internal trial purposes within Licensee's own business, during an Trial Period from the date of delivery of the Product by The Backbone to Licensee, as specified in de License Email.
- 2.2 Licensee may only use the Product in the Management Group as specified in the License Email.

- 2.3 In case the Licensee owns more than one Management Group with the name as specified in the License Email, the Product may only be used in just one of those Management Groups.
- 2.4 The use of the Product is subject to the fulfilment of all requirements stipulated in this License. The rights granted herein are limited to The Backbone's and its licensor's intellectual property rights in the Product. Software products not proprietary to The Backbone ("Third Party Products") are licensed separately from the respective proprietary owner of such Third Party Products.
- 2.5 Licensee acknowledges and agrees that nothing herein transfers or conveys to Licensee any right, title or interest to any intellectual property rights in or to the Product and any part thereof or copy thereof. No title to any intellectual property rights is transferred to the Licensee.

### **Article 3      Restrictions on Use**

- 3.1 Except as expressly permitted by mandatory applicable law and this License, Licensee agrees not to copy, amend, modify, decompile, reverse engineer, disassemble, or otherwise discover, rent, lease, or loan the Product, in whole or in part. Licensee may further not create derivative works from or transmit the Product over any public or distributed network, distribute the functionality of the Product as a packaged service or use the Product to operate in or as a time-sharing, outsourcing, service bureau, application service provider or managed service provider environment.
- 3.2 The Backbone, and as the case may be The Backbone licensors, reserves all right, title, and interest in and to the Product not explicitly licensed herein, including without limitation all copyrights, patents, and other proprietary rights. Licensee shall not remove or obscure any copyright notices or proprietary legends contained within the Product.
- 3.3 Licensee shall not reverse engineer, decompile (get the source code out of the object code) or disassemble the Product or any part thereof except for as provided for by mandatory law that cannot be deviated from by contract. Licensee shall not make any changes to the Product.

### **Article 4      Product Support and Maintenance**

- 4.1 The Backbone makes no commitment to provide any corrections, updates, maintenance or other services in connection with the Product, and any assistance, services or support materials provided by The Backbone shall be at its discretion.

### **Article 5      License Fees**

- 5.1 The Product shall be loaned to Licensee for the duration of the Trial Period at no charge.

### **Article 6      Term and termination**

- 6.1 This License will automatically terminate after the Trial Period as specified in the License Email.
- 6.2 If Licensee breaches any of its obligations under this License, The Backbone shall have the right to terminate the License immediately upon notice to Licensee.

- 6.3 Upon termination of the License, all the rights granted to Licensee under this License shall immediately cease.
- 6.4 Upon termination of the License, Licensee shall destroy all copies of the Product in Licensee's possession and so certify in writing upon The Backbone's request.

#### **Article 7 Limited Warranty**

- 7.1 The Product licensed under this License is provided "as-is". There are no warranties respecting this License, the Product, documentation, or any services provided hereunder, and all warranties are disclaimed, including but not limited to, the implied warranties of merchantability and fitness for a particular purpose. Licensee understands that the Product may contain defects or deficiencies which cannot or will not be corrected by The Backbone.

#### **Article 8 Patent and Copyright Indemnity**

- 8.1 The Backbone shall, at its own expense, defend or settle any suit or proceeding that is instituted against Licensee to the extent such suit or proceeding alleges that any Products licensed by The Backbone hereunder infringes any intellectual property right of a third party, and shall pay all damages awarded therein against Licensee or agreed upon in settlement by The Backbone; provided that Licensee (i) gives The Backbone immediate notice in writing of any such suit, proceeding or threat thereof; (ii) permits The Backbone sole control, through counsel of The Backbone's choice, to answer the charge of infringement and defend and/or settle such suit; and (iii) gives The Backbone all the needed information, reasonable assistance and authority, at The Backbone's expense, to enable The Backbone to defend or settle such suit.
- 8.2 The above provision shall not apply to, and The Backbone shall have no liability or obligation for, any infringement arising from the following: (i) any modification, servicing or addition made to the Product by anyone other than The Backbone; (ii) the use of such a Product as a part of or in combination with any devices, parts or products not provided by The Backbone if the Product would not have been infringing but for such combination; (iii) the use of other than a current unaltered release of the Product available from The Backbone; or (iv) use of any Third Party Products. This exclusion applies to the extent that the infringement would have been avoided but for such modification, combination, compliance with specifications, use of other than the current release.

#### **Article 9 Limitation of Liability**

- 9.1 In no event shall The Backbone be liable for any loss, claim, or damage relating to Licensee's use or possession of the Product. Licensee shall have the sole responsibility for adequate protection of its data and/or equipment used in connection with the Product. Also The Backbone shall in no event be liable for any indirect, incidental or consequential damages, even if it has been advised of the possibility of such damages, including, but not limited to, loss of revenues and loss of profits, or for any matter beyond its reasonable control.

## **Article 10      General Provisions**

### **10.1 Injunctive Relief**

Licensee acknowledges that, due to the nature of the licensed Product and the inherent difficulty of adequately protecting the proprietary rights of The Backbone in the licensed Product, a breach of this License will cause The Backbone irreparable harm for which money damages would be inadequate. Therefore, Licensee agrees that The Backbone is entitled to seek injunctive relief to protect its rights under this License, in addition to any and all remedies available at law.

### **10.2 Export Law Compliance**

Licensee will be responsible for compliance with any local export or other law and any other applicable export control rules, regulations, directives or laws with respect to its use or disposition of the Product and any related technical data, and will not export or re-export Products or any related technical data contrary to such applicable laws and/or regulations.

### **10.3 Waiver**

The failure of either Party to require performance by the other Party of any provision hereof shall not constitute a waiver of the provision itself nor the right to require performance thereunder.

### **10.4 Assignment**

Licensee shall not assign or transfer this License or delegate any of its rights, duties or obligations hereunder without the prior written consent of The Backbone, which consent shall not unreasonably be withheld.

### **10.5 Notices**

All notices, consents, waivers and other communications under this License must be in writing and will be deemed to have been duly given when (i) delivered by hand (with written confirmation of receipt); (ii) sent by a facsimile (with written confirmation of receipt), provided that a copy is also promptly mailed by registered mail, return receipt requested; or (iii) when received by the addressee, if sent by a nationally recognized overnight delivery service (receipt requested), or by registered or certified mail, return receipt requested, in each case to the appropriate addresses and facsimile numbers as a Party may designate by notice to the other Party.

### **10.6 Controlling Law and Dispute Resolution**

This License shall be governed by, and construed in accordance with, the substantive laws of The Netherlands excluding its conflict of law provisions. Any dispute, claim or controversy arising out of or in connection with the License that cannot be settled amicably by the Parties shall be settled by the competent Dutch court of Overijssel, location Almelo, the Netherlands.

### **10.7 Severability**

In the event that any provision of this License shall be unenforceable or invalid, such unenforceability shall not render this License unenforceable or invalid as a whole, and, in such event, such provision shall be changed and interpreted so as to best accomplish the objectives of such unenforceable or invalid provision within the limits of applicable law or court decisions,

provided, however, if the provision rendered unenforceable or invalid shall substantially destroy or impair the bargain represented in this License, the License shall be deemed to be terminated.

#### 10.8 Complete License

This License constitutes the entire agreement between the Parties with respect to the use of the Product and supersedes all prior or contemporaneous understandings regarding such subject matter. No amendment to or modification of this License will be binding unless in writing and signed by The Backbone.