**END USER LICENSE TERMS AND CONDITIONS**

**version March 2023**

### 1. Definitions

"**Development Use**" means use of the Software by Client to design, develop and/or test new applications for Production Use.

"**Documentation**" means the operating instructions and user manuals provided with the Software and/or available on Supplier's website.

"**Foreign Elements**" means viruses, worms, Trojan Horses, time bombs or other alike foreign elements.

"**Client's Customer**" Client will, when agreed in the Order, identify and provide the Client's Customers for the Software, provided the total number of agreed Client's Customers is never exceeded.

"**Host**" means any physical or virtual OS instance on which Client can run multiple processes (e.g. applications, databases, services and containers). Containers (e.g. Docker) are not counted as Hosts.

"**Component**" means a representation of a physical or logical element in Client's IT landscape on which Client can plot metrics and checks. A component is represented as a box in the StackState topology.

"**Term**" means, unless otherwise specified in the related Order, a term of 1 year after Effective Date.

"**License**" means the License defined in clause 2.1 hereafter.

"**Order**" means the document by which Software and Support are ordered by Client. The Order and any subsequent orders by Client shall be governed by the terms and conditions of these License T&Cs.

"**Production Use**" means use of the Software by Client for its own internal business purposes only.

"**Software**" means the object code versions of the software as described on an Order and in the related Documentation.

"**Subscription**" means the License and Support together.

"**Subsidiary**" means any corporate entity in which Client owns or controls, directly or indirectly, the majority of the issued share capital of that corporate entity and over which it exercises effective control.

"**Support**" means the technical support for the Software pursuant to the Support T&Cs attached to the Order as Annex 2.

"**Territory**" means the territory agreed to by the parties as set forth on the Order.

"**User**" means the specific individual(s) as indicated by Client who are therewith authorized to use the Software on behalf of Client within the scope of this License. The number of the initial Users are indicated on the Order.

The terms '*Client*', '*Supplier*', '*Effective Date*', '*Agreement*', '*License T&Cs*' and 'Support T&Cs' shall have the meanings ascribed to them in the Order.

### 2. License

2.1 Supplier grants Client a non-exclusive and non-transferable (except as permitted herein) license for the term of this Agreement to use the Software and the Documentation within the Territory, solely for Client's Production Use and/or Development Use, subject to the License T&Cs (the "**License**"). The License is limited to the total number of Client's (Customers) Hosts and/or Components indicated on the Order, unless otherwise agreed between the parties. For the avoidance of doubt, Production Use and/or Development Use do not include the right to reproduce the Software for sublicensing, resale, or distribution to any other third party.

2.2 Client may only allow its third-party consultants to access and use the Software for Client's Production Use or other operations provided they have signed an agreement with Client protecting Supplier's intellectual property with terms no less stringent than these terms and conditions and that Client ensures that such consultant's use of the Software complies with the terms of these License T&Cs.

2.3 Client's Subsidiaries may only use the Software and the Documentation in the Territory for Production Use and/or Development Use after prior written approval from Supplier which approval of Supplier will not be unreasonably withheld.

2.4 The following limitations apply:

(i) Client agrees not to lease, rent or sublicense the Software to any third party, or otherwise use it except as permitted in this Agreement;

(ii) Client agrees not to reverse engineer, decompile, disassemble, or otherwise attempt to determine source code or protocols from the Software;

(iii) Client may not copy the Software, except after prior written approval from Supplier and if so, limited to

archival or disaster recovery purposes. If Client does copy for these purposes, Client will preserve any proprietary rights notices on the Software and place such notices on any and all copies Client has made or makes;

(iv) Client shall not create or attempt to create any derivative works from the Software except and only to the extent permitted by law.

2.5 Supplier retains all rights not expressly granted to Client in these License T&Cs.

2.6 This License is granted under the condition that the Subscription fee(s) is/are paid to Supplier.

## 3. Fees and audit

3.1 All amounts mentioned in this Agreement are exclusive applicable sales, use, VAT and other consumption taxes and other taxes.

3.2 The total non-refundable, non-cancellable Subscription fees for each Order will be due and payable within 30 days from the date of receiving Supplier's invoice. Supplier may assess interest charges of 1,5% per month for late payments.

3.3 Subscription fees shall be paid by Client for at least the entire Term and invoiced by Supplier annually in advance.

3.4 Upon expiration of the Term, Supplier may apply an indexation increase to its Subscription fee(s) or prices and may be indexed by Supplier during the term of this agreement in accordance with the derived CBS service price index of the previous year with a maximum of 3% per each subsequent renewal term.

3.5 After all conditions and agreements have been met regarding the purchase of any License or an Additional License Purchase, Supplier shall issue the invoice for payment. The invoice shall include the fees attached to the License under purchase inclusive of the relevant tax charges. For other charges or fees, an invoice shall be issued monthly or any agreed period inclusive of the relevant tax charges. Client is then prompted to pay the relevant amount due as stated in the invoice. Payment of such fees shall be made within 30 calendar days. The fees payable are free from any withholding tax or deductions. If, however, the Client is required by applicable law to deduct or withhold the applicable tax but the deduction or withholding is not removed, Supplier shall have the right to increase the amount due in the invoice in order to arrive at a net sum originally owed by Customer under that invoice.

3.6 Supplier may, at any time during the term of this Agreement and with 30 days prior written notice, request to and audit to determine and verify that Client is in compliance with these terms and conditions. Client will promptly cooperate with Supplier in such audit. The audit will be restricted in scope, manner and duration to that reasonably necessary to achieve its purpose and not disrupt Client's operations. Client shall be liable for promptly remedying any underpayments revealed during the audit. If the audit reveals an underpayment in excess of 5%, Client will also be liable for the costs of the audit.

## 4. Delivery

4.1 The Subscription is ordered monthly in advance of Supplier's provision of the Subscription.

4.2 Except as otherwise provided herein, Subscription fees paid are non-refundable.

4.3 Supplier shall deliver the Software electronically unless otherwise agreed between the parties.

4.4 Installation of the Software shall be performed by Client, unless parties agree on an Order that installation of the Software will be performed by Supplier. If installation of the Software is performed by Supplier, Supplier will charge Client on the basis of time and material against the then current rates of Supplier with a minimum of 4 hours per installation performed by Supplier.

## 5. Warranty

5.1 Supplier warrants that it is entitled to license the Software to Client.

5.2 Supplier warrants that the Software does not contain Foreign Elements at delivery of the Software to the Client.

5.3 For a period of 90 days after first delivery of the Software following the initial date of the Agreement, Supplier warrants that the Software shall conform in all material respects to the Documentation. Supplier does not warrant that operation of the Software will be uninterrupted or "bug" free.

If Supplier breaches the foregoing warranty and Client promptly notifies Supplier in writing of the nature of the breach, Supplier shall make commercially reasonable efforts to promptly repair or replace the non-conforming Software without charge. If, after a reasonable opportunity to cure, Supplier does not repair or replace the non-conforming Software, Client must return the Software and Documentation to Supplier, or certify in writing that all copies have been destroyed, and Supplier will refund the subscription fee received from Client for the affected Software less a usage charge based on a 12 month amortization schedule.

5.4 THE FOREGOING WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, AND MERCHANTABILITY.

## 6. Intellectual Property

6.1 Title, ownership rights and all intellectual property rights in and to the Software shall remain the sole and exclusive property of Supplier and its licensors.

6.2 If a third party claims that Client's use of the Software infringes any patent subsisting in the Territory, copyright, trademark or trade secret, Client must promptly notify Supplier in writing. Supplier will defend Client against such claim if Client reasonably cooperates with Supplier and allows Supplier to control the defense and all related settlement negotiations, and then Supplier will indemnify Client from and against any damages finally awarded for such infringement.

6.3 If an injunction is sought or obtained against Client's use of the Software as a result of a third party infringement claim, Supplier may, at its sole option and expense, (i) procure for Client the right to continue using the affected Software, (ii) replace or modify the affected Software with functionally equivalent software so that it does not infringe, or, if either (i) or (ii) is not commercially feasible, (iii) terminate the Subscription and refund the Subscription fee received from Client for the affected Software less a usage charge based on a 12 month amortization schedule.

6.4 Supplier shall have no liability for any third party claim of infringement based upon (i) use of other than the then current, unaltered version of the applicable Software, unless the infringing portion is also in the then current, unaltered release; (ii) use, operation or combination of the applicable Software with non-Supplier programs, data, equipment or documentation if such infringement would have been avoided but for such use, operation or combination; or (iii) any third party software that was not included by Supplier on its own behalf into the Software. The foregoing constitutes the entire liability of Supplier, and Client's sole and exclusive remedy with respect to any third party claims of infringement of such intellectual property rights.

## 7. Limitation of Liability

7.1 Except for parties' intentional or gross negligence, parties' aggregate liability to the other party for damages concerning performance or non-performance by either party or in any way related to this Agreement, and regardless of whether the claim for such damages is based in contract, tort, strict liability, or otherwise, shall not exceed the Subscription fee received by Supplier from Client for the affected Software for the 12 month period preceding the occurrence of such liability.

7.2 In no event shall either party be liable for any indirect, incidental, special, punitive or consequential damages, lost data or lost profits, even if a party has been advised as to the possibility of such damages.

7.3 Parties are adequately insured and shall continue to be adequately insured during the term of this Agreement.

## 8. Term and Termination

8.1 The Subscription ends after its Initial Term. An automatic renewal does not apply, unless parties agree otherwise.

8.2 At the expiration of the Initial Term and each agreed consecutive term, Client may continue to receive a Subscription in 1 year increments under these unchanged terms and conditions. Supplier shall provide Client reasonable notice of the possibility to renew its Subscription against the Subscription fees agreed in this Agreement taking into consideration a possible indexation increase as stipulated in 3.4 of this Agreement. If Client elects not to renew its Subscription, Client shall notify Supplier of its intent not to renew.

8.3 Either party will be in default if it declares bankruptcy or otherwise fails to perform any of its duties or obligations and does not undertake an effort to substantially cure such default within 30 days after written notice is given to the defaulting party, except that any breach of clause 10.1 (*Confidentiality*) shall be grounds for immediate termination. In the event of default, the non-defaulting party may terminate this Agreement by providing written notice of termination to the defaulting party.

8.4 If this Agreement is terminated, for any reason whatsoever, Client must promptly, at Supplier's direction, destroy or return all affected Software and Documentation.

8.5 Termination of this Agreement explicitly does not release parties from those obligations which, by their nature, are intended to remain in effect, including the provisions with respect to confidentiality, engaging of third parties and liability for taxes and premiums, intellectual property, liability, and applicable law and dispute resolution.

## 9. Support

9.1 Support is provided pursuant to the Support T&Cs.

9.2 Supplier will provide Support during the term of this Agreement under the condition that the applicable Subscription fee(s) is/are paid to Supplier.

9.3 Support can only be purchased and renewed as part of the Subscription.

## 10. Miscellaneous

10.1 *Confidentiality*. Each of the parties warrants that all of the information received by the other party which is known to be or should be known to be confidential in nature, shall remain secret and be kept confidential, unless a legal obligation mandates disclosure of that information. The party receiving confidential information shall only use it for the purpose for which it has been provided. Information shall in any event be considered confidential if it is designated by either of the parties as such. Client acknowledges that the Software contains valuable trade secrets and confidential information of Supplier.

10.2 *Force Majeure*. Neither party shall be liable for any delay or failure in performance due to Force Majeure. "**Force Majeure**" means any event beyond a party's reasonable control such as, but not limited to, strikes or other labour trouble, fire or other natural casualty, and governmental pre-emption of priorities or other controls in connection with a national or other public emergency.

10.3 *Assignment*. Client may not assign this Agreement without Supplier's prior written consent.

10.4 *Severability*. If any part of this Agreement is held to be unenforceable, in whole or in part, such holding will not affect the validity of the other parts of the Agreement.

10.5 *Waiver*. The waiver of a breach of any provision of this Agreement will not operate or be interpreted as a waiver of any other or subsequent breach.

10.6 *Notices*. All notices permitted or required under this Agreement shall be in writing and shall be delivered by registered mail to the address of the party specified above or such other address as either party may specify in writing. Such notice shall be deemed to have been given upon receipt.

10.7 *Governing Law*. This Agreement will be governed by the laws of The Netherlands, excluding its conflict of law rules and the UN Convention for the International Sale of Goods (CISG). Any dispute regarding this Agreement, or disputes arising from this Agreement, shall be subject to the exclusive jurisdiction of the court located within The Netherlands.