

# END-USER LICENSE AGREEMENT

BETWEEN

**CENTREON**, a limited liability company (LCC), with a share capital of 500.000 EUR, registered in France under number 483 494 589 RCS Paris, whose registered office is 46/52 rue Albert, 75013 Paris, acting through its legal representative, duly authorized hereby,

Hereinafter "**CENTREON**",

And

The company signatory of the Order Form (such as defined hereinafter), or designated in the Order form signed in its name and on its behalf by its authorized representative, as the beneficiary of the Agreement (such as defined hereinafter),

Hereinafter the "**User**",

CENTREON and the User are hereinafter referred to jointly as the "**Parties**" and individually as "**Party**".

## 1. PURPOSE AND CONTRACTUAL DOCUMENTS

The object of these contractual stipulations is to define the conditions under which CENTREON grants to the User an end-user license on the Product(s)(s) (such as defined hereinafter) listed in the Order form (such as defined hereinafter), excluding the Open Source and free Centreon Product(s) package released by CENTREON under GPL v2 or Apache licenses. These contractual stipulations and the Order form together constitute the agreement (hereinafter the "**Agreement**").

The Product(s), object of this end-user license, enables to extend the use of the Centreon open source solution and offers new functionalities. Its use requires the use of the Centreon open source solution.

This Agreement includes all rights and obligations of the Parties with respect to the subject matter hereof. It cancels and replaces all document formerly exchanged between the Parties with respect to the subject matter hereof. The Parties expressly agree that the data recorded by CENTREON relating to the Agreement constitutes the evidence of all commercial operations entered into by them.

## 2. DEFINITIONS

"**Documentation**" refers to guides and instruction manuals and all other document required for their use and relating to the Product(s), whatever its medium, delivered to the User with the Product(s) describing the functionalities and the operating instructions.

"**IT Instance**" refers to the User's computing environment(s) on which the User is susceptible of implementing the Product(s). The IT Instance(s) on which the User is authorized to install and use the Product(s) are specified in the Order form.

"**Order form**" refers to the document, to which this license is annexed, handed over to the User and signed by him at the time of the order, which defines notably the list of the Product(s) that are the object of the license, the price of the license and some of its terms and conditions, such as the authorized IT Instance(s). The Order form and the present stipulations together form an integrated whole (hereinafter the "**Agreement**").

"**Product(s)**" refers to the computer program(s) developed by CENTREON, including the adaptations, developments and upgrades, as the case may be, as well as the relating Documentation, as identified in the Order form, on which CENTREON grants to the User an end-user license under this Agreement. Product(s) requires the use of Centreon, developed and published by CENTREON under GPL v2 or Apache license, which the User acknowledges having read the terms and accepting them.

"**Source code**" refers to the instructions list constituting the Product(s) and the relevant Documentation, that enables to understand how the Product(s) was created, including notably the analysis documents, the

algorithms, the flow diagrams, the description of the Product(s) layout and of their elementary procedures, as well as the used language syntax, to the extent that this is not well-known. This term also refers to the procedures that enable to re-generate and to install an executable version of the Product(s).

## 3. OBLIGATIONS OF THE PARTIES

### 3.1 Common obligations

The Parties undertake to cooperate in good faith and to facilitate the execution of their respective obligations. The Parties undertake therefore to closely, actively and regularly collaborate under this Agreement and to communicate each other all information necessary to the execution of this Agreement and to inquire all event or difficulty, that they are aware of, potentially having an impact on its proper execution.

### 3.2. CENTREON' obligations

CENTREON undertakes to deliver the Product(s), in conformity with this Agreement, with the required care and in conformity with the state of the art. The delivery is effective upon the provision by CENTREON to the User of a temporary Product(s) activation key on a digital medium. The User undertakes to install such program in compliance with this Agreement to obtain a definitive activation key.

### 3.3. User's obligations

To enable CENTREON to perform its obligations in conformity with this Agreement, the User undertakes to fulfill its obligations under this Agreement and notably:

- To comply with the terms of the end-user license;
- To proceed to all necessary back-up of data, files, programs and other information to ensure their securities, in order to avoid any loss and, if required, to allow a recovery of the concerned elements without delay, and in this respect to implement recovery procedures following a daily periodicity, and to check the medium readability;
- To subscribe appropriate insurance policies, if required, with respect to all consequence of a potential loss of data, files, programs and other information;
- To apply all of CENTREON's recommendations relating to Product(s) use.

## 4. LICENSE

Subject to the entire payment of the License price by the User, CENTREON, intellectual property rights' holder of the Product(s) and its Documentation, grants to the User a personal, non-exclusive right to use the Product(s) for its internal needs and in compliance with its Documentation and its objectives.

This right to use is subject to the following limits and conditions:

- The User undertakes to use the Product(s) only on the IT Instance(s) listed in the Order form. If the User wished to use the Product(s) on several IT Instances, they must be expressly mentioned in the Order form. Any use of the Product(s) on one or several IT Instance(s) not mentioned in the Order form constitutes a breach of the present Agreement;
- The User acknowledges that the Product(s) contains an activation key system. After the Product(s) installation by using a temporary activation key provided upon delivery of the Product(s), the User shall install and execute a tool supplied by CENTREON, generating a unique identifier for the server and then communicate this identifier to CENTREON in order to obtain a unique activation key for the server;
- To the exception of one back-up copy of the Product(s), the User is not authorized to copy the Product(s) without prior written approval of CENTREON;
- CENTREON reserves the right to fix Product(s) defects within the framework of a separate maintenance agreement. Therefore, the User forbids itself to make any intervention on the Product(s) for the purposes of correction, without prior written approval of CENTREON;

- The User has the ability to observe, to study and to test the Product(s) within the limits of the applicable legal provisions, it being specified that the User has the obligation to inform CENTREON, by registered letter with an acknowledgement of receipt, of its intention to decompile the Product(s) for interoperability to enable CENTREON to appreciate the lawfulness of this demand and, if required, to supply the necessary information, as referred to in article L.122-6 of the French Intellectual Property Act.

The User undertakes to respect and to ensure that its employees respect the intellectual property rights of CENTREON, especially on the Product(s), the brands and the logos belonging to CENTREON.

The User obliges itself to respect and to ensure that its employees respect the property provisions appearing on the Product(s) and the Documentation.

## 5. INSTALLATION

The User is informed that the Installation and use of the Product(s) require that the User's computer system comply with the technical prerequisites defined in the Documentation.

The User acknowledges that the Product(s) contain an activation key for the duration of the subscription for the authenticated server of the User. The User is not allowed to use the Product(s) without the activation key. This system prevents the use of the Product(s) on unauthenticated servers. As a consequence, if the User needs to transfer the Product(s) from one server to another, it shall inform CENTREON by completing on-line a request for a new activation key. In such case, the User undertakes to uninstall the Product from the initial server within two (2) weeks in case of installation on another server.

The Product(s) is supplied to the User on a digital medium, via the Internet.

In order to enable the User to use the Product(s), CENTREON provides the User:

- Different programs constituting the Product(s) under executable format in the exploitation environment, in conformity with the Documentation;
- The Documentation under electronic or paper format.

The User undertakes to proceed to the Product(s) installation and configuration, at its own cost and under its liability, in compliance with the installation instructions appearing in the Documentation of the Product(s) supplied by CENTREON.

It is up to the User to ensure that it has received, as well as its employees, the necessary training to correctly use the Product(s).

## 6. FEES AND PAYMENT TERMS

The pre-tax amount of the royalties owed by the User is fixed in the Order form.

Invoices are due and payable within thirty (30) days of the date of the invoice issuance, net without any discount and in advance, unless otherwise specified in the Order form.

The license-fees are invoiced in Euros, the risk of a change rate is supported by the User. All license-fees are exclusive of taxes (including in the case of source withhold), which is payable by the User at the rate and in the manner from time to time prescribed by applicable law. The price including all taxes is indicated on the corresponding invoice.

When license fee is yearly basis, fees are annually and automatically revised, on 1<sup>st</sup> January of each year, in proportion with the SYNTEC index on the basis of the application of the formula  $P = P_0 * SI/S_0$ , in which P is the revised amount, P<sub>0</sub> the initial amount or from the last reviewing, S<sub>0</sub> the index value in force from the date of entry into force of the Agreement or at the last reviewing, S<sub>1</sub> the index value for the considered year. If this index disappears, the Parties will substitute it with a replacement index. In case of dispute, a new index will be chosen by the Paris court of first instance for commercial matters.

Any payment by compensation is excluded. In the event the User fails to pay any undisputed invoice, the User shall pay to CENTREON late payment interests, at the rate applied by the European Central Bank increased by ten (10) points, notwithstanding the payment of a fixed late payment indemnity of forty (40) EUR per unpaid invoice and the reimbursement to CENTREON of any collection expenses and any damages, which CENTREON could claim.

## 7. AUDIT

Throughout the duration of this Agreement and during a period of twelve (12) months from its expiration or termination for any reason whatsoever, CENTREON has the right, with a thirty (30) days' prior notice, to audit or to require a third-party to audit at its costs and yearly, the lawful performance of this Agreement. The audit is effected in the User's premises during normal business hours and ensuring that it doesn't excessively disturb the User's activities.

In case the audit reveals that the Product(s) is used beyond the scope defined under this Agreement, CENTREON will charge to the User a license extension corresponding to the difference between the right acquired by the User and its effective Product(s) use at the applicable public price. The User reimburses to CENTREON the audit fees upon presentation of supporting documents.

The payment of the license extension by the User leads to the automatic modification of the license scope, as the case may be.

## 8. WARRANTY AND LIABILITY

### 8.1 Warranty

CENTREON warrants that the Product(s) complies with their Documentation. Within three (3) months of the delivery of the Product(s), CENTREON undertakes to correct all reproducible defects of the Product(s).

After this warranty period, all defects attributable to the Product(s) are taken in charge by CENTREON under the support and Product(s) updates Agreement.

CENTREON warrants the User against all claims, demands, actions, costs, expenses losses and damages arising from or incurred by reason of any claim for infringement of any Intellectual Property Right arising from the use of Product(s).

In this regard, CENTREON shall indemnify and hold harmless the User against all damages that it shall pay further to a definitive court decision and having for exclusive grounds the demonstration of such infringement.

This warranty is subject to the following express conditions:

- The User shall promptly notify CENTREON if any claim or demand is made or action brought against the User;
- CENTREON shall lead the proceedings and be free to settle the case;
- The User shall at the request of CENTREON provide to CENTREON all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the User;
- The alleged infringement could not have been avoided by the installation and use by the User of an upgrade provided by CENTREON.

If any Product(s) provided by CENTREON infringes or is likely to infringe on a third party's Intellectual Property Rights, CENTREON will promptly and at its own expense make its best efforts to:

- obtain the right for the User to continue using such Product(s); or
- replace the Product(s) to make its use non-infringing; or
- modify the Product(s) to make its use non-infringing; or
- reimburse to the User the price received under this Agreement in proportion to the Product(s) which have become unusable as a consequence of the infringement, and, when applicable, to the duration of the impossibility of use suffered by the User.

The previous provisions set out the only appeal which the User can resort to; and the limits of CENTREON's warranty for counterfeiting matters.

CENTREON excludes any warranty of any sort other than those stipulated hereinabove, whether express or implicit, and notably any guarantee of merchantable capacity or of adaptation to a particular need of the User.

**In particular, the warranties do not cover:**

- Defects that were visible as of the date of delivery of the Product(s);
- Defects, failures, or deteriorations resulting notably from any use of the Product(s) which does not comply with the Agreement and/or the recommendations for use made by CENTREON and, in particular, from the non-compliance with the standard conditions concerning the environment of use, or from the use of accessories or consumables non-compliant with CENTREON's specifications;
- Defects, failures, or deteriorations resulting from computer viruses, from a malfunction or perturbation of computer or telecommunication networks and especially of the internet, from failures of software developed by third parties, or from any equivalent event;
- Defects, failures, or deteriorations resulting from a change in the environment of the Product(s) that has not been previously accepted by CENTREON and, in particular, from any modification of the configuration of the hardware and software of implementation, such as, notably, a modification of its architecture, or the addition of any software which is not compatible with the Product(s) and the existence and specifications of which have not been brought to CENTREON's knowledge previously to their installation or implementation;
- Defects, failures, or deteriorations resulting from modifications of the Product(s) and/or from their configuration, where they are made without a previous authorization from CENTREON.

**8.2 Limitations of liability**

The User is solely liable for the choices of the Product(s) and the Product(s) compatibility with its needs and its computer system. The User has the liability to define and, if required, to configure the Product(s) in conformity with its needs and its internal processes. CENTREON cannot warrant either the Product(s) capacity to satisfy the User's objectives, or that they are adapted to its specific needs or capable of integration and personalization processes planned by the User. The User agrees that it is liable to ensure, if required with third-expert assistance, the Product(s) compatibility with its needs and to check that the Product(s) enables to achieve its own objectives.

The User has sole responsibility for the use of the Product(s) and for the consequences of their good or bad use.

The User expressly acknowledges that in the event of damages, losses, or expenses underwent by the User as an exclusive result of its fault, failure, or negligence, or of one of its employees or of any person placed under its responsibility, or as a result of any failure by it or its employees to comply with its obligations pursuant to the present Agreement, CENTREON cannot incur any liability.

In any event, the User has sole responsibility for the data, analyzes and results that it produces by using the Products(s). CENTREON is therefore responsible neither for these data, analyzes and results, nor for their direct or indirect consequences.

CENTREON's liability is in any case limited to the direct damages suffered by the User, which excludes any indirect damages of any nature, such as, notably, any loss of profits, loss of opportunity, loss of result or of exploitation, any loss of data or reputational damage. In particular, CENTREON is not responsible for potential deteriorations, degradations, destructions, losses or overwritings of information, programs, files, software, or databases, resulting from the use of the Products. It is not responsible for the expenses of any nature incurred for the restoration of the User's data, softwares, databases, computing systems, equipments or hardware.

CENTREON cannot be held responsible, in any way, of the consequences of the violation by the User of the right of use granted to him under the present license. Should the User violate any of the terms and conditions of this license, CENTREON would be entitled to terminate it immediately without having to file any claim before the competent court to this effect ("*de plein droit*"), and without prejudice to other remedies available for any damages suffered. The Product(s) shall then be uninstalled and deleted or erased of all the User's systems and the potential backup copies shall be removed.

In any event, CENTREON's aggregate liability for all damages of any sort arising from or related to the object of this license Agreement is limited to fifty percent (50%) of the price of said license, as specified in the Order form, actually paid as of the date of the concerned event.

**9. TERM AND TERMINATION**

The Agreement takes effect on the date of signature by the Parties for the duration of use of the licensed Product(s), namely, depending on the specifications of the Order form:

- For a period of thirty (30) years from the day of the delivery of the Product(s); or
- For a duration specified in the Order Form of no more than twelve (12) months from the day of the delivery of the Product(s). In this second hypothesis, the Agreement is tacitly renewed for successive periods of the same duration as the initial Agreement, unless otherwise expressed by email and/or post letter no later than thirty (30) days before its renewal date. CENTREON will inform the User of the possibility of terminating this Agreement no later than fifteen (15) days before the termination deadline.

The delivery will be effective upon activation of the Product(s). Unless otherwise expressly agreed in the Order form, the activation of the Product(s) cannot occur more than five (5) days after the date of receipt of the order by CENTREON. If the Product(s) are not activated by the User at the end of this period, they will be automatically activated by CENTREON in its register, and this activation will trigger the invoicing.

For the proper functioning of the activation key system associated with some Product(s), CENTREON may have to deliver by email, on a regular basis and up to several times a year, new activation keys to the User. The User must implement these keys within the period indicated in the email through which they are sent to the User.

In the case of a serious breach by either Party of its obligations hereunder, this Agreement may be terminated by the non-breaching Party, without having to file any claim before the competent court to this effect ("*de plein droit*") and without prejudice to other remedies available for any damages suffered, subject to a thirty (30) days notice period as from the date of receipt of the acknowledgement of the registered letter notifying the said breach to the breaching Party, if the breaching Party does not cure its breach within thirty (30) days of the date of receipt of the failure notification.

In the case of a termination of this Agreement, the User remains under the obligation to pay any outstanding amounts until the effective date of termination, and more generally, to pay all invoices unpaid, despite the effective termination.

The User undertakes to remove all copy, even incomplete, of the Product(s) still in its possession, within a period of eight (8) days from the expiration or termination for any reason whatsoever.

**10. CONFIDENTIALITY**

Any information provided by one Party to the other Party or to whom a Party has access during the negotiation and/or execution of the Agreement of any nature whatsoever (technical, financial, legal, commercial, strategic, computer-based) transferred either in material form (containing inside a physical medium of any form or nature whatsoever) or in immaterial form (verbally, digital or audiovisual media, etc.) is confidential.

In particular, any information relating to the Product(s), the documentation, the commercial proposals of CENTREON, as well as to the commercial strategies and business processes of one or other of the Parties are considered as confidential.

The Parties undertake to keep confidential the aforesaid information and to apply at least the same provisions than those usually applied to protect their own confidential information, and must uphold the same obligation of confidentiality for all their employees of any position whatsoever for any confidential information as defined hereinabove.

The Parties acknowledge that the following information should not be considered as confidential:

- information that is in the public domain;
- information previously known by the receiving Party, which is not subject to an obligation of confidentiality;
- information lawfully obtained from a third-party or independently of the execution of the Agreement.

The provisions of this article remain in force during the term of the Agreement and for five (5) years from the expiration or the termination for any reason whatsoever.

While using CENTREON Products, CENTREON may collect information relating to the use of its Products on User's server for the purpose of allowing proper use of the Products and produce statistics on the use of Products. This information only concerns the use of Products and are not personal data or technical parameters, configurations or monitoring data of the User. This collect can be disabled by the User through the settings of the Products.

#### **11. COMMERCIAL REFERENCE**

Unless otherwise expressly agreed in the Order form, the User authorizes CENTREON to disclose its name as a commercial reference in its presentations, its commercial propositions, its commercial documentation, its website and to make reference to this Agreement. Any other type of communication shall be specifically subject to a prior written approval of the User.

#### **12. FORCE MAJEURE**

No Parties shall not, in any case, be liable and no indemnity can be requested for delay or in consequence of damages in the event of force majeure as defined by article 1218 of the French Civil Code.

The event of force majeure suspends the performance of the Agreement and the current orders, except the obligation for the User to pay the due sums until the date of force majeure.

If such force majeure event results in a critical impediment, the Agreement can immediately be terminated at no cost, by way of a registered letter with an acknowledgement of receipt, without having to file any claim before the competent court to this effect ("*de plein droit*").

#### **13. MISCELLANEOUS PROVISIONS**

If any provision of this Agreement is held to be invalid or unenforceable for any reason, it will be deemed to be severed from this Agreement and the remaining provisions will continue in full force and effect.

The fact that one or other Party does not require, temporally or definitely, the application of a provision of this Agreement shall not be considered as a waiver of the rights, which are held by this Party.

Any exchange of postal or electronic mail between the Parties cannot modify this Agreement. Any change of this Agreement require an order form or an amendment signed by the Parties.

The User may not sell, assign or transfer its rights or delegate its duties under this Agreement in whole or in part without prior written approval of CENTREON. CENTREON reserves the right to transfer this Agreement or all or part of its rights or duties under the Agreement to any transferee of its choice.

The Parties are independent contractor and shall not be considered agent of each other.

None of the Parties has the power to bind or commit the other Party.

#### **14. GOVERNING LAW AND JURISDICTION**

The Agreement is governed by the French law.

ANY DISPUTE ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT WHICH CANNOT BE SETTLED AMICABLY SHALL BE BROUGHT EXCLUSIVELY BEFORE THE TRIBUNAL DE GRANDE INSTANCE OF PARIS (subject to the specific jurisdiction of the Paris Court of first instance for commercial matters regarding prices' issues, as stipulated in Article 6 hereinabove), EVEN IN THE CASE OF A THIRD-PARTY PROCEEDING, A PLURALITY OF DEFENDANT OR A PROCEDURE FOR INTERIM MEASURES.