

## BACKBASE SOFTWARE END-USER LICENSE AGREEMENT

### 1. Definitions. As used in this Agreement:

- (I) "**CPU**" means the number of (web) server CPUs that deliver presentation logic (including Backbase) to a web browser. In order to calculate the number of CPUs, you can count the number of central developer servers, test & acceptance servers, fail-over servers and production servers. Backbase doesn't charge for developer workstations.
- (II) "**Documentation**" means all online help files or written instruction manuals regarding the use of the Software;
- (III) "**Minor Version**" means a set of the Software in which detected shortcomings are being remedied, i.e. 3.1.1 > 3.1.2.
- (IV) "**Major Version**" means a set of the Software in which in addition to possible corrections of detected shortcomings, small functional enhancements have been included, i.e. 3.1 > 3.2.
- (V) "**Release**" means a set of the Software in which substantial new –but successor- functionalities or other substantial changes are introduced, i.e. 3.0 > 4.0.
- (VI) "**Software**" means the object code of the computer program(s) specified in the applicable Product Order Form.

### 2. Rights of Licensee. Subject to the terms and conditions set forth in this License Agreement and the Product Order Form (the "Agreement"), Backbase grants to Licensee the perpetual, non-exclusive, non-transferable right to:

- (I) install and/or use the Software on one or more computers, provided, however, that the total number of CPUs from all of the computers in which the Software is installed does not exceed the total number of CPU licenses purchased for such installation and use,
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(I) EXCEPT WITH RESPECT TO ANY SAMPLE APPLICATION CODE, TRIAL VERSIONS AND THE COMMUNITY EDITION OF THE SOFTWARE, BACKBASE WARRANTS SUBSTANTIAL COMPLIANCE OF THE SOFTWARE IN REGARD TO THE DOCUMENTATION FOR A PERIOD OF NINETY (90) DAYS FROM THE EFFECTIVE DATE. NON-COMPLIANT SOFTWARE OR DEFECTIVE MEDIA WILL BE CORRECTED OR REPLACED AS APPROPRIATE OR, IF NEITHER OF THE ABOVE IS COMMERCIALY PRACTICABLE, THE AGREEMENT WILL TERMINATE WITH RESPECT TO THE NON-COMPLIANT SOFTWARE OR PART THEREOF AND LICENSEE WILL BE REFUNDED THE LICENSE FEES PAID FOR SUCH SOFTWARE OR PART THEREOF

(II) EXCEPT WITH RESPECT TO ANY SAMPLE APPLICATION CODE, TRIAL VERSIONS AND THE COMMUNITY EDITION OF THE SOFTWARE, BACKBASE WARRANTS INDEPENDENT DEVELOPMENT OF THE SOFTWARE. SHOULD A CLAIM OR ACTION BE BROUGHT AGAINST LICENSEE ALLEGING THAT THE SOFTWARE INFRINGES ANY EU OR US PATENT OR COPYRIGHT ENFORCEABLE UNDER APPLICABLE LAW, BACKBASE WILL, AT ITS EXPENSE, DEFEND OR SETTLE ANY SUCH CLAIM OR ACTION AND MODIFY OR REPLACE THE SOFTWARE WITH NON-INFRINGEMENT SOFTWARE HAVING SUBSTANTIALLY THE SAME OR BETTER CAPABILITIES; OR OBTAIN FOR LICENSEE THE RIGHT TO CONTINUE USING THE SOFTWARE; OR IF NEITHER OF THE FOREGOING IS COMMERCIALY PRACTICABLE, TERMINATE THIS AGREEMENT WITH RESPECT TO THE INFRINGING PART OF THE SOFTWARE AND REFUND THE MONIES PAID BY LICENSEE FOR THE INFRINGING PART THEREOF LESS ONE-TWELFTH (1/12) THEREOF FOR EACH MONTH OR PORTION THEREOF THAT THIS AGREEMENT HAS BEEN IN EFFECT.

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(V) IF APPLICABLE LAW REQUIRES ANY WARRANTIES WITH RESPECT TO THE SOFTWARE, ALL SUCH WARRANTIES ARE LIMITED IN DURATION TO NINETY (90) DAYS FROM THE EFFECTIVE DATE.

(VI) NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY BACKBASE, ITS DEALERS, DISTRIBUTORS, AGENTS OR EMPLOYEES SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF ANY WARRANTY PROVIDED HEREIN.

(VII) (USA only) SOME STATES DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO YOU. THIS WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS AND YOU MAY ALSO HAVE OTHER LEGAL RIGHTS THAT VARY FROM STATE TO STATE.

**6. Liability.** EXCEPT WHERE APPLICABLE LAW PROVIDES FOR UNLIMITED LIABILITY, IN NO EVENT WILL BACKBASE BE LIABLE FOR ANY DAMAGES, CLAIMS OR COSTS WHATSOEVER OR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL DAMAGES, OR ANY LOST PROFITS OR LOST SAVINGS, EVEN IF A BACKBASE REPRESENTATIVE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS, DAMAGES, CLAIMS OR COSTS OR FOR ANY CLAIM BY ANY THIRD PARTY. THE FOREGOING LIMITATIONS AND EXCLUSIONS APPLY TO THE EXTENT PERMITTED BY APPLICABLE LAW. BACKBASE'S AGGREGATE LIABILITY UNDER OR IN CONNECTION WITH THIS AGREEMENT SHALL BE LIMITED TO THE SOFTWARE LICENSE FEE RECEIVED BY BACKBASE FROM LICENSEE.

(II) (USA only) SOME STATES DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU AND YOU MAY ALSO HAVE OTHER LEGAL RIGHTS THAT VARY FROM STATE TO STATE.

(III) THE FOREGOING LIMITATIONS ON LIABILITY ARE INTENDED TO APPLY TO THE WARRANTIES AND DISCLAIMERS ABOVE AND ALL OTHER ASPECTS OF THIS EULA

**7. Indemnification.** Should a claim or action be brought against Backbase that arise or result from the use and distribution of Licensee's programs that make use of the Software, Licensee, will, at its expense, defend or settle any such claim or action and indemnify and hold Backbase harmless provided that Backbase has given prompt written notice to Licensee of any such claim, action and given Licensee the authority to represent Backbase as contemplated in this section.

**8. Default.** A party who fails to perform any obligation under this Agreement by the date provided in or under the Agreement, shall only be in default if the other party has given it written notice of default by registered letter and no performance has taken place within the reasonable period specified in the notice.

**9. Confidential Information.** Confidential Information of the other party will be used solely for the purpose of this Agreement and will not be directly or indirectly disclosed, by action or omission to any third party without the other party's prior written consent. Each party agrees to exercise due care in protecting the Confidential Information from unauthorized use and disclosure. Nothing herein prevents Licensee from participating in routine discussions in a "Backbase Software user group" context or the parties from divulging Licensee's intended use of the Software. Either party may refer to the other as either supplier or customer, as appropriate.

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**10. Payments.** In consideration of the rights granted herein, Licensee agrees to pay Backbase the amounts ("the Fees") specified in the applicable Product Order Form(s). Backbase's pricing reflects the allocation of risks and limitation of liability. Except as otherwise provided in the warranties section, the Fees are non cancelable and non-refundable and due and payable in full within thirty (30) days as of the Effective Date. All charges and fees provided for in this Agreement are exclusive of and do not include any VAT-taxes, similar governmental charges and Licensee agrees to reimburse Backbase for the aforementioned taxes and charges (if any). Any amounts due not paid within thirty (30) days will be subject to interest of one (1) per cent per month, of which the interest will be immediately due and payable.

**11. Non-assignment.** Neither this Agreement nor any rights under this Agreement may be assigned or otherwise transferred by Licensee, in whole or in part, whether voluntary or by operation of law, including by way of sale of assets, merger or consolidation, without the prior written consent of Backbase, which will not be unreasonably withheld or delayed. Subject to the foregoing, this Agreement will be binding upon and will inure to the benefit of the parties and their respective successors and assigns.

**12. Term and Termination.** The license commences on the Effective Date stated in the Product Order Form and will remain in force. Backbase may forthwith terminate this Agreement only if: (i) Licensee breaches this Agreement and such breach is not cured within thirty (30) days after Licensee has been given written notice of such breach; or (ii) if Licensee terminates its business activities or becomes insolvent, is unable to pay its debts as they mature, makes an assignment for the benefit of creditors or becomes subject to direct control of a trustee, receiver or similar authority. No termination on the basis of this provision will entitle Licensee to a refund of any portion of the fees paid to Backbase.

Termination will not affect either party's obligations regarding Confidential Information, payments, limitations of liability, and/or applicable law, which provisions will survive termination of this license. Upon termination of this license, Licensee agrees to forthwith discontinue any use of the Software, related Documentation, Confidential Information and derivative works or copies thereof. Licensee agrees to then supply Backbase with a License Agreement signed by an executive officer of Licensee verifying that this provision has been complied with, and immediately return the Software and Documentation and copies thereof to Backbase.

**13. Waiver.** Any waiver of the provisions of this Agreement, or rights of either party must be in writing to be effective. Failure or delay to enforce any such rights, will not be construed as a waiver and will not affect the validity (in whole or in part) of this Agreement or prejudice such party's right to take subsequent action.

**14. Severability.** If any provision in this Agreement is found to be invalid, unlawful or unenforceable to any extent, the parties will in good faith agree to such amendments that will preserve, as far as possible, the intentions expressed in this Agreement. If the parties fail to agree on such an amendment, such invalid provision will be severed from the remaining provisions, which will continue to be valid and enforceable to the fullest extent permitted by applicable Law.

**15. Standard terms.** No terms or conditions of any purchase order, acknowledgement or other business form that Licensee may use in connection with the acquisition or licensing of the Software and related services will have any effect on the rights, duties or obligations of the parties under, or otherwise modify, this Agreement, regardless of any failure of Backbase to object to such terms, provisions or conditions.

**16. Audit.** Licensee agrees to give Backbase access and assistance as may be necessary for Backbase to audit Licensee's compliance with this Agreement. The audit shall be conducted at Backbase's expense unless the results of such an audit establish that Licensee's use of the Software exceeds the authorized use. Any use in excess will be regularized and the balance will be immediately due and payable.

**17. Applicable Law.** This agreement will be governed by and interpreted in accordance with (a) if you are a North or South American legal entity, the laws of the State of California, without giving effect to principles of conflict of laws, and you hereby consent to the exclusive jurisdiction and venue of the state courts sitting in San Francisco County, California or the federal courts in the Northern District of California to resolve any disputes arising under this EULA, (b) if you are a legal entity anywhere else in the world, the laws of the Netherlands, any dispute arising out of, or in connection with, this Agreement that is not amicably resolved between the parties will be submitted to the District Court of Amsterdam. In each case this EULA shall be construed and enforced without regard to the United Nations Convention on the International Sale of Goods.

**18. Maintenance.** Licensee is entitled to receive generally available Minor Versions of the Software and the related Documentation. Generally available Major Versions and new Releases of the Software will be made available against an upgrade fee and will be shown on the website <http://www.backbase.com>. The level of Maintenances is indicated in the product order form

**19. Support.** Licensee is entitled to receive support pursuant to the support level mentioned in the Product Order Form as shown on the website <http://www.backbase.com> and changed from time to time.

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**22. Force Majeure.** Licensee is aware that the Software is connected with or wholly or partially based on an portfolio of third party technology products, industry standards and/or official standards such as HTML, XHTML, Javascript, CSS/Cascade Style Sheets, XML, XSLT, XPath and e.g. internet related aspects as bandwidth, firewalls, cpu/computer processor units etc. which is ever changing or may be even be succeeded by yet unknown new products or techniques. Therefore performance interruptions due to such cause(s) are excluded from any liability of Backbase to Licensee or any of its affiliates and form a force majeure. Nevertheless Backbase maintenance & support policies are focused to adapt, where possible the Software, to overcome interruptions as mentioned.

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IN WITNESS WHEREOF Backbase and Licensee hereby execute this Agreement effective as of

\_\_\_\_\_ (Effective Date)

Backbase

Licensee

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Name signatory: J.G. Pleiter

Name signatory:

Title: CEO

Title: