

## EULA SERVICEPILOT

### 1. DEFINITIONS

The capitalized terms shall have the meaning set forth hereafter:

**"Affiliate"** shall mean any legal person which controls, is controlled by, or is under common control with a party to this Agreement. The concept of control covers (a) any holding, direct or indirect representing more than 50 % of the issued shares or other titles or securities conferring voting rights or (b) the power to govern or direct the management, whether through possession of shares with voting rights, through contracts or otherwise, in the same conditions as if more than 50 % of the issued shares or other titles or securities conferring voting rights were directly or indirectly owned.

**"Agreement"** shall designate, in a decreasing priority order, the set including the Order, the Delivery Slip, this document, the Technical Support Guide available at the address [https://www.servicepilot.com/Support\\_EN.pdf](https://www.servicepilot.com/Support_EN.pdf), the ServicePilot Privacy Policy, available at the address [https://www.servicepilot.com/Privacy\\_EN.pdf](https://www.servicepilot.com/Privacy_EN.pdf). In case of contradiction between two provisions of the aforementioned documents, the provision of the document of superior rank will prevail.

**"Client"** shall mean any person placing an Order for Products with ServicePilot.

**"Delivery Date"** shall mean one of the events, that is to say the oldest one, as set forth in the definition of "Delivery" hereafter.

**"Delivery Slip"** and **"Delivery"** shall mean the oldest of the following events: the Delivery Slip issued by ServicePilot at the time the Products are being possibly sent, and, any transmission of documents, information enabling a use of the Software, including the document attached to the e-mail by which ServicePilot sends the License Keys in performance of a corresponding Order or the simple sending of the License Keys enabling a use of the Software.

**"Distributor"** shall mean any person which is authorized, by ServicePilot, to resell the Product(s) to its own clients. The Distributor status is set forth in the Proposal.

**"Documentation"** shall mean the user manual and Products documentation that ServicePilot provides with the Software, as well as any copies of these documents.

**"Evaluation License"** shall mean a License which grants the User some rights to use the Software for evaluation purposes and for a duration which is limited in time and determined by ServicePilot, revocable at any time.

**"Free License"** shall mean a License which grants the User some rights to use the Software without payment and for a duration which is limited in time and determined by ServicePilot. All the conditions of the *Evaluation License* apply to the *Free License*.

**"License"** shall mean the rights granted to the User according to the Agreement which allow it to use the Software. The extent of the rights and other terms and conditions of use relating to a Software are specified in this Agreement and especially in the Order.

**"Maintenance Period"** shall mean the period of time in which ServicePilot provides Maintenance Services to the Client in accordance with the provisions of the Agreement. The first Maintenance Period shall start at the Delivery Date for a duration of twelve (12), twenty-four (24) or thirty-six (36) months, in accordance with the content of the corresponding Order, or for any other duration proposed in the Proposal and

specified in the corresponding Order (the ***“Initial Maintenance Period”***). After the Initial Maintenance Period is elapsed, the Maintenance Services may be renewed with the agreement of the Client by additional period of twelve (12), twenty-four (24) or thirty-six (36) months (each a ***“Renewed Maintenance Period”***). ServicePilot will send to the Client, before the end of the considered Maintenance Period, a Maintenance Services renewal Proposal.

***“Maintenance Services”*** shall mean the provision, by ServicePilot to the Client, in compliance with the terms of this Agreement and for the duration of the current Maintenance Period, (i) of patches, updates and/or upgrades of the Software, which are periodically made available to all clients, as well as (ii) an online technical support whose sole mission is to deal with the technical problems relating to the Software use.

***“Malfunctions”*** shall mean the Software malfunctions, which are reproducible, persistent and not caused by a Software misuse or an unauthorized modification of the Software by the Client, the User or any other person not authorized by ServicePilot. The malfunctions of the Software which are caused by malfunctions attributable to other software used in combination with the Products shall not be deemed to be Malfunctions in the sense of this Agreement.

***“Order”*** shall mean the Client’s order for Products formalized through the signing of the ServicePilot Proposal. Any Order shall be exclusively governed by the provisions of this Agreement. Any provision to the contrary, additional, or included in an order which is not in compliance with the Proposal and this Agreement, shall not bind ServicePilot unless expressly accepted by a legal representative of ServicePilot in a written document which expressly refers to the contradicting provisions. In the absence of such a written acceptance, any provision to the contrary shall be deemed not to have been written and non-binding for ServicePilot. Any Order shall imply the irrevocable undertaking of the Client to the Products set forth in the Order.

***“Product(s)”*** shall mean any Evaluation License of License of use of the Software and/or Maintenance Services ordered under this Agreement.

***“Proposal”*** shall mean the document by which ServicePilot proposes to the Client to make an Order for Products. The Proposal specifies (i) if the Client is a User, a Provider of Managed Services or a Distributor, as well as (ii) the duration and the contractual conditions (limitations, duration) which are applicable to the Products mentioned in the Proposal.

***“Provider of Managed Services”*** shall mean the Client who has signed an Agreement with ServicePilot allowing it to make use of the Software with respect to services provided to its own clients (the ***“Managed Services”***). The status of Provider of Managed Services is set forth in the Proposal and shall require the signature of the ServicePilot Agreement for Provider of Managed Services.

***“Software”*** shall mean (i) the version of the software, as delivered in performance of an Order, in object code, and also (ii) any corrections, enhancements or upgrades made to the software which ServicePilot may have provided to the Client in performance of this Agreement for usage of the Software by the User, as well as any copies of these.

***“Territory”*** shall mean the region corresponding to the place where the Client is established: (i) North America and Latin America (ii) Europe, Middle-East and Africa, Asia Pacific.

***“User”*** shall mean any end user having a usage right for the Software under a License (Evaluation License, User License or Provider of Managed Services License) in performance of the Agreement, further to having subscribed directly such license as a Client of ServicePilot, or further to having subscribed it from a Distributor or a Provider of Managed Services authorized by ServicePilot to resell the Products. In

any case, the User is bound by the terms and conditions of this EULA, which it personally undertakes to comply with.

## **2. CONTRACTING PARTIES**

The Agreement ("*Agreement*") is entered into between ServicePilot, the company depending on the criteria as set forth (i) in section 2.1 "North America and Latin America", or (ii) in section 2.2. "Europe, Middle-East and Africa, Asia Pacific", and in any case designated hereafter as "*ServicePilot*") and the Client.

The terms of the Agreement are also binding the User towards ServicePilot given that they govern the terms and conditions of the usage right for the Software.

### **2.1 Latin America and North America**

If the Client who makes an Order has its registered office in Latin America or in North America, ServicePilot shall be ServicePilot Inc., corporation registered under US law, which registered office is at 990 Biscayne Boulevard, Office 701, Miami, FL 33132 – United States of America.

### **2.2 Europe, Middle-East and Africa, Asia Pacific**

If the Client who makes an Order has its registered office in Europe, in the Middle-East or Africa, in Asia or Pacific, ServicePilot shall be ServicePilot Technologies, corporation registered under French law at the trade register of Saint-Nazaire under number 439 416 504, which registered office is at 162 Boulevard des Océanides, 44380 Pornichet – France.

## **3. SUBJECT OF THE AGREEMENT**

After (a) having familiarized itself with the potentials, with the purpose of the functionalities, the operating mode of the Software and having assessed the appropriateness of resorting to its Use considering its own needs, (b) having requested from ServicePilot and/or its Distributor any information and documentations which are necessary for its choice, (c) having checked that the Software complies with its own needs in all its aspects including functionalities, purposes, evolution and compatibility, (d) having checked that it has the required skills necessary for Using the Software, (e) having been informed that it may request Maintenance Services, the Client wishes to order the Product(s).

The Agreement governs the terms and conditions of usage of the Products (i) by a User, (ii) by a Provider of Managed Services, (iii) the terms and conditions of the Distribution of the Products by a Distributor, as well as (iv) the provision by ServicePilot of the Maintenance Services.

## **4. DURATION OF THE AGREEMENT**

The Agreement shall take effect (i) towards the Client: as from the Delivery Date and for the duration set forth in the Proposal or in the present Contract, and (ii) towards the User: as from its first usage of the Software and for a duration which may not exceed the one mentioned in the Proposal.

Unless otherwise stated in a provision contemplating a determined duration for the granting of the license of use of the Software, the usage right is deemed to be granted for an unlimited duration, without prejudice to the provisions of section 11.2.

In this respect, it is hereby agreed that any Order or any usage of a License Key or any usage of the Software shall mean acceptance of the terms and conditions of this Agreement by the Client and the User.

## **5. TERMINATION OF THE AGREEMENT**

### **5.1 Termination by mutual agreement**

At any time, Service Pilot and the Client may, by mutual agreement, terminate this Agreement and terminate the usage rights for the Product granted in accordance with this Agreement.

### **5.2 Termination by the Client**

This Agreement and/or any usage right for the Product granted under this Agreement may be terminated at any time by the Client, for any reason whatsoever, subject to a prior written notice of thirty (30) days and to the provisions of section 6.

### **5.3 Termination by ServicePilot**

This Agreement and/or any usage right for the Product granted under this Agreement may be terminated as of right by ServicePilot in case of breach by the Client or the User of any contractual undertaking which is not cured within a time period of thirty (30) days from the receipt of a written formal notice sent by ServicePilot and describing such breach.

## **6. EFFECTS OF THE TERMINATION OF THIS AGREEMENT**

In case of termination of this Agreement or expiry or termination of a License for any reason whatsoever, any and all rights granted to the Client and to its Users concerning the considered Software(s) shall end and the Client shall immediately: (i) stop using the Software and the Documentation, and (ii) return to ServicePilot or destroy the considered Software as well as any copies of the Software and of the Documentation, (iii) pay to ServicePilot all amounts due under this Agreement, and (iv) ensure that any and all of the Users comply with the provisions of this paragraph.

As an exception to the foregoing, in the event the Client of ServicePilot is not the User, and that the cause for termination of this Agreement is a contractual breach by the Client excluding any breach by the User, or in the event that this Agreement is terminated without cause, the license rights of the Users shall continue for the duration granted under this Agreement, provided that ServicePilot has received from the Client, or receives where appropriate from the User at ServicePilot's public prices, the license fees corresponding to the usage right being granted. Regarding the Maintenance Services, in the event that this Agreement or the ordered Maintenance Services are terminated for any reason whatsoever or in case of non-renewal of the Maintenance Services by the Client, ServicePilot reserves the right to offer directly its maintenance services to the User.

Any termination of this Agreement or of a License shall be without prejudice to any other remedy that the party from which the termination originates, subject to the limitations and exclusions contemplated in this Agreement.

In case of termination of this Agreement by the Client for any reason whatsoever, including in case of alleged contractual breach by ServicePilot, the Client shall not be refunded, in any case, for the license fees amounts that may have been paid for the Software Licenses or any amounts paid for a Maintenance Period. In case of an early termination by the Client as set forth in section 5.2, the Client shall be, in particular, liable for paying any amounts due for the Products which are the subject of the termination, whether invoiced or not by ServicePilot, the notice mentioned in such section rendering any monies owed to ServicePilot, even those that are not yet payable, immediately payable as of right.

## 7. LICENSING CONDITIONS

### 7.1 Licensing Conditions applicable to the User

#### 7.1.1 Evaluation License of the User

In case of an Evaluation License, the User is granted, for a limited period of thirty (30) days as from the Delivery Date of the Software, plus any extension granted in writing by ServicePilot (the “*Evaluation Period*”), a License which allows it to use a Software installation on the Territory for internal evaluation purposes by the User, excluding any usage in production. The possibility, by the User, to benefit from a free evaluation of the Software is limited to one Evaluation Period per version of the Software. The User may, during the Evaluation Period, uninstall the Software completely and reinstall it to continue its evaluation in premises located in the Territory. Any usage of the Software beyond the authorized limits under the Evaluation License shall be considered as an Order for the relevant Product.

The User shall not be allowed to benefit from the Evaluation License if it is a competitor of ServicePilot, unless ServicePilot has confirmed its prior written agreement. The User may not use the Evaluation License for any benchmarking or comparison purpose, and it may not publish any comment or report based on the Evaluation License, unless ServicePilot has confirmed its prior written agreement.

No payment is required from the User for an Evaluation License, except for possible shipping costs and applicable duties and taxes. Notwithstanding any provision to the contrary, the User accepts that the Software provided for evaluation purposes is provided “AS IS” and that ServicePilot does not provide any Guaranty or any Maintenance Services for the Evaluation Licenses. Any and all limitations relating to the License shall also apply to the Evaluation License.

#### 7.1.2 Software License for internal use (in production)

The User acknowledges having been granted the right to evaluate and use the Software under an Evaluation License, and declares (i) that it has familiarized itself with the potentials, with the purpose of the functionalities, the operating mode of the Software, (ii) that it has requested from ServicePilot and/or its Distributor any information and documentations which are necessary for its choice, (iii) that it has checked that the Software complies with its needs in all its aspects including functionalities, purposes, evolution and compatibility, and (iv) that it has checked that it has the required skills necessary for Using the Software.

Subject to the payment by the Client of the corresponding amounts due, ServicePilot grants to the User (who accepts it), under the terms and conditions, limits and for the duration set forth in the Proposal, the Agreement and/or the Delivery Slip, a personal, non-exclusive, non-transferrable license and which may not be sub-licensed, for (i) installing, executing and using on the Territory the quantities of each Product(s) identified in the Delivery Slip for its sole internal needs (or those of its Affiliates), (ii) make a reasonable number of copies of the Software exclusively for archival non-productive purposes or in the context of a passive disaster recovery site, provided that the original and the copy of the Software are not used simultaneously, and (iii) use the copies of the Documentation as reasonably necessary for assisting the User in using the Product(s).

In case the User installs, executes or uses the Products on the Territory for the internal needs of one of its Affiliates, the Affiliate shall become a User in the sense of this Agreement. The User shall keep a list of the Affiliates for which the Products are being used in such a manner on the Territory including the how the Products are used and the location. Communication of such list can be requested by ServicePilot. ServicePilot reserves the right to request any additional information, to place conditions on such use, or to refuse it, in case the Affiliate is a competitor of ServicePilot.

## **7.2 License conditions applicable to the Provider of Managed Services**

### **7.2.1 Evaluation License of the Provider of Managed Services**

ServicePilot grants to the Provider of Managed Services an Evaluation License for installing and using the Software on the Territory for testing purposes, demonstration purposes, and/or pre-production purposes for the clients of the Provider of Managed Services, this license being for a duration which may not exceed sixty (60) days. Any use of the Software governed by an Evaluation License for a duration exceeding this shall require the prior and written agreement of ServicePilot.

### **7.2.2 License for making use of the Software on behalf of third parties (in production)**

The Provider of Managed Services acknowledges having been granted the right to evaluate and use the Software under an Evaluation License, and declares (i) that it has familiarized itself with the potentials, with the purpose of the functionalities, the operating mode of the Software, (ii) that it has requested from ServicePilot any information and documentations which are necessary for its choice, (iii) that it has checked that the Software complies with its needs in all its aspects including functionalities, purposes, evolution and compatibility, and (iv) that it has checked that it has the required skills necessary for Using the Software.

Subject to the payment by the Provider of Managed Services of the corresponding amounts due, ServicePilot grants to the Provider of Managed Services (who accepts it), under the terms and conditions, limits and for the duration set forth in the Proposal, the Agreement and/or the Delivery Slip, a personal, non-exclusive, non-transferrable license and which may not be sub-licensed, for (i) installing, executing and using on the Territory the quantities of each Product(s) identified in the Delivery Slip, (ii) make a reasonable number of copies of the Software exclusively for archival non-productive purposes or in the context of a passive disaster recovery site, provided that the original and the copy of the Software are not used simultaneously, and (iii) use the copies of the Documentation as reasonably necessary for assisting the Provider of Managed Services in using the Product(s).

The Provider of Managed Services shall conform in all respects to the usage limitations set forth in this Agreement and shall ensure that its own clients also conform to them, such clients being Users in accordance with this Agreement. It shall be jointly and severally liable towards ServicePilot for actions and omissions of its own clients relating to their use of the Software and of the Documentation through the Managed Services.

### **7.2.3 Common provisions**

ServicePilot does not provide the hosting service which may possibly be necessary for implementation of the Managed Services.

The Provider of Managed Services shall be the sole authorized to access to the administration functions of the Software and to any corresponding administration account, excluding any third party, including Users, who shall not be granted administration rights whatever is the hosting form chosen by the Provider of Managed Services.

## **7.3 License conditions applicable to all the Users**

### **7.3.1 Usage by sub-contractors**



If the User enters into an agreement with a sub-contractor for implementation, configuration, provision of advice or outsourcing the Software, the sub-contractor may use the Licensed Software and Documentation for the sole purpose of providing its services to the User exclusively, and provided (i) that the User ensures that the sub-contractor uses the Software and the Documentation in compliance with this Agreement and the Order, and (ii) that the Service Provider is not a competitor of ServicePilot. The User shall be jointly and severally liable towards ServicePilot for any actions or omissions of its sub-contractors relating to use of the Software and its Documentation.

#### **7.3.2 Limitation to the User's rights**

Except as expressly contemplated by law, the User is not allowed to proceed to reverse engineering, decompiling, disassembling, or trying to discover or modify, in any manner whatsoever, the underlying source code for all or part of the Software and/or the Documentation. In addition, the User is not allowed to (i) modify, translate, localize, adapt, rent, grant a lease, lend, create or produce derivative works, or apply for patents based on all or part of the Software and/or the Documentation, or (ii) resell the Software or the Documentation or use the Software or the Documentation in time-sharing or to the benefit of a third party (unless the User is a Provider of Managed Services) or for purposes which may be competing with ServicePilot (and, for United States only, use in the operation of a nuclear power plant).

Any authorized copy of the Software or the Documentation made by the User shall contain all the property, trademark, copyright notices and limitation of rights which are included in the original. The User understands and accepts that certain Products operate in conjunction with third party products or software, and the User undertakes to ensure that it will own the required and currently valid licenses for usage of the third party products or software.

Any open source software which may form part, or which is provided by ServicePilot with the Products is subject to the applicable open source licenses provisions.

#### **7.3.3 Reservation of rights and property**

ServicePilot reserves any rights which are not explicitly granted to the Client/to the User in this Agreement. The Client is informed and expressly acknowledges (i) that the Products are protected by copyright and other laws are treaties for the protection of the intellectual property, (ii) that ServicePilot and/or its Affiliates possess the property, copyright and other intellectual property rights on the Products, (iii) that the Software is granted under License and is not assigned in any manner and (iv) that the Agreement does not grant to the Client/to the User any right on the ServicePilot's trademarks.

#### **7.3.4 Backup of data**

In the event the Software or the data stored or processed through the Software are accessible through the Internet or another network environment, the User shall implement, in the context of its usage of the Software, procedures and access-control technical measures, and adequate security requirements and measures for ensuring confidentiality, integrity, security and backup of the data, as well as detection and removal of viruses.

To the extent that the Affiliates of the User or the clients of the Provider of Managed Services (third parties to this Agreement) have access to the Software through the Internet or another networked environment, the User or the Provider of Managed Services shall maintain agreements with such third parties aiming ensuring that the conditions and limitations of the Licenses are complied with and to give adequate protection to the ServicePilot rights on the Software and the Documentation.

### **8. CONDITIONS APPLYING TO THE DISTRIBUTOR**

ServicePilot grants the Distributor (who accepts it), for the Territory, under the conditions and limits set forth in this Agreement, and especially in the Proposal, the non-exclusive, non-transferrable right to distribute the Products to the Users who are designated in the Proposal and in the Delivery Slip. The Distributor is not granted any usage License for the Software and is not allowed to use the Software, whether for itself or on behalf of third parties.

The Distributor undertakes not to allow usage of the Products outside of the applicable Territory mentioned in the Proposal or to other users than the Users designated in the Proposal and in the Delivery Slip.

Subject to the corresponding payment due by the Distributor to ServicePilot, the client of the Distributor shall benefit, in the framework of the agreement entered into by the client of the Distributor with the Distributor, from the rights corresponding to one User License in accordance with the conditions set forth in this Agreement. The Distributor represents and warrants to ServicePilot that the client of the Distributor shall comply with the terms and conditions, limits and duration of the License as set forth in this Agreement, including the License terms and conditions set forth herein (especially in sections 7.1.2 and 7.3 and in the Proposal).

Subject to the payment of the corresponding amounts due by the Distributor, ServicePilot will provide the Distributor, for the duration and the under the terms and conditions set forth in this Agreement, with the Maintenance Services to the benefit of the client of the Distributor which qualifies as an authorized User. The Distributor undertakes to provide its client with a level 1 support (as defined by the Technical Support Guide), levels 2 and 3 being provided by ServicePilot after request by the client qualifying as an authorized User presented to ServicePilot by the Distributor.

## **9. SOFTWARE GUARANTY**

ServicePilot guarantees the Client that, for a duration of thirty (30) days after initial Delivery of the Software further to an Order (the “*Guaranty Period*”), (i) if this relevant because the Parties agreed on the Delivery with media, the media provided by ServicePilot where the Software is recorded shall be free from any manufacturing defect in normal conditions of use, (ii) the operation of the Software will be substantially in compliance with its Documentation and (iii) the Software will not contain viruses, worms, Trojan horses, or other malicious code designed by ServicePilot likely to allow an unauthorized intrusion, deactivation or deletion of the Software (the “*Guaranties*”). The Software may, nevertheless, contain a key limiting its usage to the perimeter and the duration set forth in the Order. ServicePilot may provide successive keys for covering the License period. The license keys issued by ServicePilot for a temporary usage are limited in time.

The Client shall inform ServicePilot in writing or any violation of the Guaranties no later than five (5) days following the expiry of the Guaranty Period on pain of forfeiture. The exclusive remedies of the Client, and sole obligations of ServicePilot, in the event of a breach of these Guaranties, shall be the following ones: (a) for the Guaranty described in item (i), ServicePilot undertakes, at its own costs, to replace any defective media; (b) for the Guaranty described in item (ii), ServicePilot undertakes to correct or propose a workaround for Software errors which are reproducible du Software and causing a violation of the guaranty within a reasonable timeframe depending on the severity of the error and its effect on the Client or, at ServicePilot’s option, to refund the license fees paid for the non-conforming Software after the corresponding Software has been returned and after termination of the License(s) granted in accordance with this Agreement; and (c) for the Guaranty described in item (iii), ServicePilot shall provide a copy of the Software conforming to such guaranty.



The above mentioned Guaranties shall not apply in case of a non-compliance (i) which ServicePilot cannot reproduce on its own systems after having used reasonable efforts to this end; (ii) caused by inadequate usage of the Software or usage of the same in a manner which is not compatible with the Agreement or the Documentation or (iii) resulting from a modification of the Software by an entity other than ServicePilot.

The Client shall not have any rights or remedies against ServicePilot other than the ones expressly set forth in this Agreement. No action or claim may be brought by the Client more than one (1) year after the Client has had knowledge for the first time of the motives for such action or claim.

To the extent that the User is not ServicePilot's Client, but rather the Client's client within the meaning of this Agreement, the User acknowledges that its shall not have, against ServicePilot, any contractual guaranty or remedy against ServicePilot in performance of this section or other provisions of this Agreement, without prejudice to the User's obligations to comply with the terms of this Agreement especially those relating to the license of us of the Software, and the rights and obligations of the User towards the Client of ServicePilot, who is the provider of the Products for the User.

The Client and the User expressly acknowledge that they shall be responsible for maintaining complete and secured backup copies of the data processed in relation to the Software, such data have to be backed-up at least once a day and be available on hardware they have control upon in order to facilitate a quick restoration of such data in case of loss of damage affecting them.

## **10. WARRANTY OF QUIET POSSESSION**

ServicePilot certifies that its owns, on the Delivery Date, for the whole of the Territory and for the duration set forth in the Proposal, all rights in the Software which are needed to entering into this Agreement and grating the License. ServicePilot will, in case of a claim, legal action, third parties claims on the grounds of breach of third party intellectual property, fully guarantee the Client against any costs and damages or compensation which the Client may be sentenced to pay by a final decision without right to a suspensory appeal, provided that the Client notifies ServicePilot as soon as it has knowledge of the claim, legal action or demand of such third party and lets ServicePilot direct the defense relating to such claim, action or demand.

In case the Client is required to stop using all or part of the Software, ServicePilot will, at its own costs, (i) either obtain the right to continue usage of the Software for the Client, (ii) or modify or replace the elements which usage cannot be continued, (iii) or reimburse the License fees paid for the Software concerned by the claim whatever is the manner they were payable, for the period during which the Client is prevented from using the Software, within the limits of the amounts received by ServicePilot as license fees, or in the case where the payment of the license fees is a recurring payment, within the limits of the amounts received by ServicePilot as license fees for the past twelve (12) months.

## **11. MAINTENANCE**

### **11.1 ServicePilot's Obligations**

During all the Maintenance Period and subject to the complete payment of the amounts due, ServicePilot undertakes to provide the Client with the Maintenance Services, as defined in the Technical Support Guide, which is available at the address [https://www.servicepilot.com/Support\\_EN.pdf](https://www.servicepilot.com/Support_EN.pdf). The Technical Support Guide shall form part of this Agreement and may be subject to changes from time to time by ServicePilot. Notwithstanding the foregoing, the changes made to the Technical Support Guide during the Maintenance Period may not reduce the support level for the Software.

In its Maintenance Services, ServicePilot will strive, on the basis of the resources available, to investigate, diagnose and resolve the Malfunctions which occur in connection with use of the Software in compliance with its Documentation. The Client shall communicate to ServicePilot the documentation and detailed explanations which will be requested, as well as any data which are necessary to ServicePilot for reproducing the Malfunction and shall assist ServicePilot in its efforts in investigating, diagnosing and correcting the Malfunction. The Client shall ensure collaboration of the User for the effectiveness of the undertakings set forth in this paragraph.

ServicePilot reserves the right to make on-site maintenance on the Client site(s) with the agreement of the latter if ServicePilot considers that the diagnosis or resolution of the Malfunction requires it. A date shall be then scheduled by mutual agreement between ServicePilot and the Client.

## **11.2 Duration and renewal of the Maintenance Services**

For the whole duration of the Maintenance Period and subject to payment of the relevant amounts due, ServicePilot undertakes to provide the Client with the Maintenance Services. The first Maintenance Period will start at the Delivery Date and will end twelve (12) months after that date (the “*Initial Maintenance Period*”), unless the Proposal contains any provision to the contrary. Subsequently to the Initial Maintenance Period, the Client shall have the option to renew the Maintenance Services for an additional period of twelve (12), twenty-four (24) or thirty-six (36) months (each, a “*Renewed Maintenance Period*”). ServicePilot will inform the Client about the expiry date of the Maintenance Services sixty (60) days before the expiry date of the then current Maintenance Period. The failure to renew the Maintenance Services by the Client shall not end the Client’s right to continue using the Software. At the Maintenance Services’ expiry date, (i) ServicePilot will cease to provide all the current Maintenance Services, including its obligations in performance of section 11.1, (ii) all Guaranties provided by ServicePilot under this Agreement shall cease to apply, and (iii) ServicePilot shall no longer be required to correct possible problems affecting the Product, or providing new patches, corrections or updates. The amounts due for the Maintenance Services are payable in advance before the start of the of the Maintenance Period or of the concerned Renewed Maintenance and shall be subject to the payment conditions set forth in this Agreement.

In case of subscription for a Renewed Maintenance Period, the then current version of the EULA and of the Technical Support Guide shall apply between the parties, including towards the User as necessary, to govern their rights and obligations with respect to the subject matter of this Agreement.

## **12. CYBERSECURITY**

In order to protect the User's computer systems and sensitive data, ServicePilot reminds the User that it is important to apply recent recommendations relating to computer security (non-exhaustive list): use of secure passwords and security software (anti-virus, firewalls, EDR/NDR, ...), software updates, regular backups, network partitioning, use of secure protocols (HTTP2, SNMPv3, etc.), confidentiality policies, ..... ServicePilot recognizes that, at some level, security vulnerabilities are an integral part of any software development process. However, ServicePilot constantly strives to reduce both the severity and frequency of vulnerabilities in its own products and services. In the event of any doubt concerning a vulnerability, the User must inform ServicePilot as soon as possible.

## **13. GENERAL UNDERTAKINGS OF THE PARTIES**

### **13.1 Confidentiality**

“*Confidential Information*” designates the information or documents which are disclosed by one of the parties (the “*Disclosing Party*”) to the other (the “*Receiving Party*”), which are not publicly available and

which, by virtue of their character or nature, would be, under similar circumstances, considered as confidential by a reasonable person, including, without limitation, personal data, financial information, marketing information, trade secrets, know-how, proprietary tools, proprietary knowledge and proprietary methodologies, of the Disclosing Party. In addition, Confidential Information of ServicePilot shall include this Agreement, the Products (as code source and/or object code), the prices and discounts proposed by ServicePilot to the Client herein, the information concerning the functionalities and performances of the Products, the results of benchmark tests of the Products, as well as any license key for the Software provided to the Client. The Confidential Information shall not include the information, or the documents which (a) were, at the date of their disclosure, generally known by the public; (b) become generally known by the public otherwise than subsequently to an act or omission of the Receiving Party; (c) were known by the Receiving Party without being bound by a confidentiality undertaking before receiving them from the Disclosing Party; (d) were lawfully sent to the Receiving Party by a third party without breach by the latter of an agreement or confidentiality undertaking; or (e) have been or were developed independently by the Receiving Party without accessing or using the Confidential Information or the Disclosing Party.

In addition, there shall be no violation of this section if the Receiving Party discloses the Confidential Information of the Disclosing Party in performance of a legal obligation or further to legal proceedings, provided that the Receiving Party informs the Disclosing Party prior to such disclosure, unless such disclosure is expressly forbidden by a tribunal, an arbitration panel or any other legally competent authority. The Receiving Party shall not (i) make available the Confidential Information of the Disclosing Party to its Affiliates, officers, directors, employees, consultants or representatives (collectively the “*Representatives*”) which do not have a “need to know” for performing their obligations under this Agreement; (ii) otherwise disclose the Confidential Information of the Disclosing Party to any third party without its written consent; or (iii) use the Confidential Information of the Disclosing Party for other purposes than those which are contemplated in this Agreement.

The Receiving Party shall inform its Representatives of the confidential character of the Confidential Information of the Disclosing Party and of the requirements regarding the restrictions to their disclosure and use as set forth in this section, and shall only disclose the Confidential Information of the Disclosing Party to its Representatives who strictly have the need to know them, and who shall be bound by confidentiality obligations at least as protective as the ones contained herein. The Receiving Party undertakes to protect the Confidential Information of the Disclosing Party against any unauthorized use or disclosure by using at least the same level of care as the one it implements for protecting its own Confidential Information, which shall not, under any circumstance, be less than a reasonable level. The Receiving Party shall be responsible toward the Disclosing Party for any disclosure or breach of this Agreement by one of its Representatives. The Receiving Party shall promptly inform the Disclosing Party of any unauthorized use or disclosure of the Confidential Information of the Disclosing Party which comes to its knowledge; it shall, in addition, cooperate with the Disclosing Party in any proceeding started by the Disclosing Party against third parties for protecting its property rights.

### **13.2 Authorizations and compliance with applicable law**

The Client and ServicePilot each undertake to comply with all laws and regulations which are applicable to them and to carry out their activities with all the necessary competence and care, in compliance with the rules and practices in use in their respective areas of intervention.

### **13.3 Limitation of liability**

ServicePilot’s liability towards the Client shall be limited to the sole direct damages, excluding any indirect damages and in particular any loss of revenues, or real or future profits, loss of activity, of contracts, of image or reputation, of anticipated savings, of alteration or corruption of data.

ServicePilot's liability shall in no event exceed the amount of the sums paid by the Client for the Products or Maintenance Services which are the subject matter of the claim. Regarding the Maintenance Services or the Products which are recurrently paid, ServicePilot's liability shall not exceed the amount paid for the concerned Product or Maintenance Service during the last twelve (12) months immediately preceding the claim.

The ServicePilot's limitation of liability expressed above shall not apply to (a) breaches of the "Confidentiality" sections, (b) to ServicePilot's obligations contemplated in the section "Warranty of quiet possession".

There shall be no third-party beneficiaries to this Agreement. ServicePilot expressly disclaims any liability towards clients of the Client (including in the case the Client is a Provider of Managed Services or a Distributor), as well as towards any other third-party.

ServicePilot shall in no event be liable for any usage of the Products in breach of the provisions of this Agreement, or in conflict with the limitations, permitted uses, resale Territory, set forth in any Order or contrary to the purpose for which the License Keys have been issued.

#### **13.4 Limitation of the Guaranties**

The Guaranties and remedies which are expressly set forth in this Agreement shall be the sole Guaranties and remedies granted by ServicePilot under this Agreement. To the maximum extent legally possible, any other remedy or guaranty are excluded, whether explicit or implicit, verbally or in writing, including any guaranty of quality and/or fitness for the particular purpose of the Client or the User, of non-infringement of third-party rights, of satisfactory quality, as well as any guaranty arising from the practices in the business, from negotiations or the Agreement's performance modalities. ServicePilot does not guaranty that its Products will operate uninterruptedly or without errors.

#### **13.5 "Force Majeure"**

Each of the parties shall be released from its obligations to fulfill its own commitments as and for the duration where it is prevented from complying with its obligations further to causes beyond its reasonable control without incurring fault or negligence, including, without limitation in case of natural disasters, administrative decision, change of the laws in force, strike, blockade, riots, acts of war, epidemics, breakdown of telecommunications or power supply. Nothing contained herein shall be construed as releasing the Client or its Affiliates from their obligation to pay the amounts due under this Agreement.

#### **13.6 Modifications to the Software or the Documentation**

The Client and the User shall not be allowed to modify the Software, its Documentation, whether in whole or in part, to make any adaptation or translation of these, to use or allow usage of the Products in any manner contrary to the provisions of this Agreement or which would not be specifically covered by an Order or which exceeds the limitations contained in an Order, to use any License Key in any manner contrary to the purpose for which the License Keys have been issued.

#### **13.7 Personal Data**

The Client is informed that ServicePilot is a third party to any processing of personal data within the meaning of the Regulation EU 2016/679 ("GDPR") of 27 April 2016, arising from the use of the Software within the scope of the Agreement, to the extent that the Software is installed in the Client's facilities, that

ServicePilot has no access, directly or indirectly, to these facilities, including under Maintenance Services. As a third party, ServicePilot is neither controller, nor processor, within the meaning of GDPR.

The Client is informed that the use of the Software is likely to generate data, in particular traces and technical data, that might be personal data within the meaning of Article 4 GDPR. The Client, as the Data Controller within the meaning of Article 4 GDPR, is solely responsible for the use of the Software and personal data that he generates, and must therefore comply with regulatory obligations.

Within the framework of Maintenance Services, the Client undertakes to report to ServicePilot, in accordance with the provisions of the article 3.2 of the Technical Support Guide, any issues that do not affect personal data.

#### **14. PAYMENT**

The Client undertakes to pay ServicePilot the amounts set forth in each Order, including the shipping costs and applicable taxes. The Client shall be invoiced at the time of sending the keys and/or the Products or before the start of any Maintenance Period, and shall pay any amounts due to ServicePilot in full within a thirty (30) days period as from the date of each invoice or any other period (if applicable) set forth in the Proposal. Any amounts due by the Client to ServicePilot which remain unpaid after their due date shall be subject to late payment penalties equal to 1.5 % of the invoice amount per month (or the maximal rate authorized by law, if it is lower) starting from the due date, as of right and without need of a prior formal notice, until full payment of the corresponding amount.

#### **15. TAXES**

The Client shall be responsible for paying or reimbursing to ServicePilot or, if the law requires it, to the appropriate governmental body, the taxes which may be imposed on the copies of the Software and its Documentation delivered to the Client, on the granted License or the services provided under this Agreement, or otherwise imposed further to transactions contemplated in this Agreement, including sales or usage taxes, excise duties, value added tax, export or import taxes and the fixed duties and other similar taxes in relation to sums paid to ServicePilot, which do not include such taxes. The Client shall directly pay any taxes which are attributable to it; the Client shall, in addition, refund ServicePilot from any taxes which ServicePilot may be required to pay or collect, if applicable.

#### **16. EXPORT**

The Client and the User acknowledge and agree that the Products shall be subject to the export laws, rules regulations and restrictions, as well as the national security controls of the United States of America and of the European Union countries and control of the competent international agencies (les “*Export Controls*”) without prejudice to other obligations of the Client and the User; the Client and the User undertake not to export or re-export, and not to authorize export or re-export of the Products or any partial or full copy of the Products in breach of the Export Controls. The Client and the User declare herein (i) that they are not a natural or legal person to whom the dispatch of the Products is forbidden by the Export Controls; and (ii) that they commit not to export, re-export or otherwise transfer the Products (a) to any country which is subject to a commercial embargo by the United States of America and/or any country of the European Union, (b) to any citizen or resident of any country which is subject to a commercial embargo by the United States of America and/or any country of the European Union, (c) to any natural or legal person to whom the dispatch of the Products is forbidden by the Export Controls, or (d) if the Client or the User are based in Latin America or North America, any person, to any person participating in activities relating to design, development, production or usage of nuclear materials, nuclear installations, nuclear weapons, missiles or chemical or biological weapons.



## **17. ASSIGNMENT OF THE AGREEMENT**

Unless otherwise agreed in the Proposal, the Client shall not be allowed to assign or transfer all or part of this Agreement or of the rights granted herein without the express and prior written agreement of ServicePilot.

## **18. NOTIFICATION**

The notifications contemplated in this Agreement shall be in writing, delivered in person, sent through facsimile or e-mail, or sent through post by first class mail, postage prepaid, addressed to the registered office of the concerned party. Notifications, formal notices, claims or communications shall all be considered as having effect at the date they are delivered personally or four (4) days after they are sent through post in compliance with this section.

## **19. COMMUNICATION**

ServicePilot may include the Client in its list of clients communicated to its prospective customers as a business reference, and, subject to the written agreement of the Client, to announce in its marketing communications the fact that the Client has chosen ServicePilot.

## **20. USAGE CONTROL**

Further to ServicePilot's request and not more than once a year, the Client shall provide a document signed by a legal representative detailing the installed Products and their use. The Client shall allow ServicePilot to audit its infrastructure and usage of the Products, in order to ensure their compliance with this Agreement. Such audits shall be planned at least fifteen (15) days in advance and shall be conducted during usual business hours on the Client's site; they shall not interfere unreasonably with the Client's activities. Where it is found that Client's usage of the Products exceeds the limits of this Agreement, the amounts due for this shall be invoiced to the Client, who shall pay them under the terms and conditions set forth in this Agreement. In addition, if the unpaid amounts exceed five percent (5%) of the amounts due, the Client shall also pay to ServicePilot the reasonable costs of the audit. This section shall not limit or restrict the rights or remedies of ServicePilot which are otherwise set out in this Agreement or provided by the law.

In the event the User is not the Client, the User acknowledges that the above mentioned obligations apply to it also and that, as a consequence: (i) ServicePilot shall also have a usage control right allowing it to request, not more than once a year, from the User the provision of the document signed by a legal representative detailing the installed Products and their use; and (ii) the User shall allow ServicePilot to audit its infrastructure and usage of the Products, in order to ensure their compliance with this Agreement. The provisions of the foregoing paragraph which governing the details of the audit shall apply between ServicePilot and the User apply equally *mutatis mutandis*. Where it is found that usage of the Products by the User exceeds the limits of this Agreement, ServicePilot reserves the right to request from the User payment of any amounts which may be due to ServicePilot in accordance with the public price list.

## **21. PARTIAL INVALIDITY**

If any of the provisions of this Agreement were to be judged by a competent court as contrary to law, such provision shall be applied in all the extent which is permitted by law and the other provisions of this Agreement shall fully remain in force. Notwithstanding the foregoing, the parties agree to consider the provisions in this Agreement which limit, disclaim or exclude guaranties, remedies or damages, as being independent and remaining in force despite the invalidity or unenforceability or a remedy. The



limitations and exclusions set forth in this Agreement have been determining causes of the consent of the parties to enter this Agreement.

## **22. WAIVER**

Waiver by one of the parties to the performance of its obligations by the other party may be done by written waiver signed by an authorized legal representative of the waiving party, such waiver being only valid for the specific obligation mentioned. Any waiver concerning a particular provision of this Agreement shall, in no case, be considered as a waiver for any other provision, or as a waiver to that same provision on a separate occasion.

## **23. INJUNCTIONS**

Each of the parties acknowledges and agrees that in case of a serious breach of this Agreement, the party which has not committed the breach shall be entitled to apply for any injunctive remedies, without prejudice to its other rights and remedies.

## **24. SECTION HEADINGS**

The sections headings in this Agreement are mentioned for convenience and shall affect in no way its meaning or interpretation. Whenever the term “including” is used in this Agreement, it shall be understood as meaning “including, without limitation”.

## **25. FULL AGREEMENT**

This Agreement constitutes the entire agreement between the parties, and replaces and cancels any prior or contemporaneous agreement. Neither the Agreement, nor any Order, shall be modified or amended, except through an amendment signed by a duly authorized representative of each of the parties. Any other deed, document or usage, shall not be considered as amending or modifying this Agreement or an Order.

## **26. PROVISIONS APPLYING ONLY TO CLIENTS OR USERS ESTABLISHED WITHIN THE UNITED STATES OF AMERICA, CANADA AND IN COUNTRIES OF CENTRAL OR SOUTH AMERICA**

The provisions of this section apply only if the Client who orders the Products, or the User who uses them, are established within the United States of America, Canada or in countries of Central or South America.

### **26.1 Usage by the Government of the United States of America**

This Software is a “commercial item” under FAR 12.201. In compliance with section 12.212 of FAR and with section 227.7202 of DFARS, any usage, modification, reproduction, release, performance, display, disclosure or distribution of the Software or its Documentation by a governmental body of the United States of America shall be exclusively governed by the terms and conditions of this Agreement and shall be prohibited except to the extent expressly permitted by the terms of this Agreement.

### **26.2 Client or User data**

During the course of the performance of this Agreement, the Client shall possess the property and all the rights on his data. The Client’s data are deemed to be Confidential Information. The Client shall comply

with all of the legal requirements, including laws and regulations in force regarding confidentiality, collection, usage, processing and transfer of his data.

### **26.3 Applicable law and jurisdiction**

This Agreement shall be governed by the Laws of the State of Florida, United States of America. The parties fully and specifically exclude the United Nations Convention on Contracts for the International Sale of Goods and the “Uniform Computer Information Transaction Act” (UCITA).

Any dispute arising from this Agreement and its performance shall exclusively be brought before the Federal Courts or the State Courts in Dade County, in the State of Florida, United States of America.

### **27. APPLICABLE LAW AND JURISDICTION APPLYING TO ANY OTHER COUNTRY**

The provisions in this section shall apply if the Client who orders the Products, or the User who uses them, are established in any other country than the United States of America, Canada or any country of Central or South America.

This Agreement shall be governed by French Law. The parties fully and specifically exclude the United Nations Convention on Contracts for the International Sale of Goods.

In compliance with the provisions of Article 48 of the Civil Procedure Code, in the absence of an amicable settlement between the parties in a dispute relating to interpretation, performance or termination of this Agreement, the competent Courts of Paris, France, shall have exclusive jurisdiction.