

License Agreement

This software license agreement (the '**Agreement**') contains the terms and conditions under which you, as a (legal) entity ('**Customer**') may use certain Software (as defined below) of **VirtualMetric B.V.**, a limited liability company incorporated under the laws of the Netherlands, having its registered office in Amsterdam, the Netherlands, and its office address at Kabelweg 37, (1014 BA) Amsterdam, registered at the Dutch Chamber of Commerce with registration number 65058143 (hereinafter: '**VirtualMetric**').

If you are accepting this Agreement on behalf of a company, organization, institution or other legal entity, you represent and warrant that you have the power and authority to bind such entity as the Customer to the terms of this Agreement.

VirtualMetric has developed a full-stack monitoring and reporting software program for the IT infrastructure and applications, the full stack (the '**Software**'). Further details of the Software are included as Annex 1;

VirtualMetric is willing to grant the Customer the right to use the Software under the terms and conditions set forth in this Agreement.

The effective date (the '**Effective Date**') on which this Agreement becomes applicable between VirtualMetric and Customer, is the date on which the Customer submits an order form or purchase order (PO) to VirtualMetric.

VirtualMetric and Customer may hereinafter jointly be referred to as the '**Parties**' and each individually as a '**Party**'.

1 Definitions

1.1 Any capitalized terms used in this Agreement and not otherwise defined herein, shall have the following meanings:

Business Days means any weekday (Monday – Friday) that is not a national holiday in the Netherlands.

Confidential Information means any non-public or sensitive information, data or materials belonging to, related to or in the possession or control of a Party, in any format disclosed or made available by or on behalf of a Party ('**Disclosing Party**') to the other Party ('**Receiving Party**'), regardless of whether such information is specifically designated as confidential. Confidential Information will not include information, data or materials that are:

- a) already in the public domain other than by a breach of the Agreement;
- b) rightfully received from a third party not in breach of any obligations of confidentiality;
- c) independently developed by a Party without use of or referral to the Confidential Information of the other Party; or
- d) proven to be already known to the Receiving Party at the time of disclosure.

Customer	means the organization that has entered into this Agreement with VirtualMetric for the use of the Software.
Documentation	means the manuals, installation instructions and other materials and information describing the Software, being technical information used or useful in or relating to the design, use or maintenance of the Software, including but not limited to, operating instructions, set-up, configuration and support manuals.
Service Level Agreement (SLA)	means the agreement concerning support and maintenance in respect of the Software attached to this Agreement as Annex 2 which may be amended by VirtualMetric from time to time.
Software	means the software which VirtualMetric markets under the name 'VirtualMetric', which is full stack monitoring and reporting software program for bare metal servers and virtualization. Further details of the Software are included Annex 1.

2 Delivery and license

- 2.1 Forthwith after the Effective Date of this Agreement, Virtual Metric shall provide the Customer with a license key to download and install one copy of the Software. Each license key represents a non-exclusive, non-transferable, annual subscription license to use for the Customer's internal business purposes only, one copy of the most recent version of the Software on the day on which the license key is issued by VirtualMetric to the Customer. Each license key can be used to install the Software on a maximum of 4 (four) servers of the Customer.
- 2.2 No right(s), title and/or interest in and to the Software shall be transferred to the Customer other than the limited rights granted in this Agreement.
- 2.3 VirtualMetric shall make up to date versions of the Software and Documentation available to the Customer through <https://cloud.virtualmetric.com/>. The Customer is entitled to download and install updates, upgrades and new releases of the Software if and as long the subscription is active and not terminated according to article 16.

3 Delivery and acceptance

- 3.1 Each copy of the Software shall be deemed delivered and accepted upon provision of a license key to the Customer.

4 Further license restrictions

- 4.1 Except when explicitly agreed otherwise in writing, the Customer shall not modify in any way, copy or otherwise reproduce the Software for any purpose outside the scope of this Agreement and the rights granted herein to the Customer.
- 4.2 The Customer shall never be entitled to:

- (i) in any way modify, copy or otherwise reproduce the Software other than in as far technically necessary for the ordinary use of the Software by the Customer within the scope of this Agreement;
- (ii) sublicense, transfer, (sub)lease and/or sell the Software;
- (iii) obtain or attempt to obtain access to the source code or object code of the Software;
- (iv) decompile or reverse engineer the Software except if and to the extent such would be permitted under applicable mandatory law;
- (v) remove or change any indication with respect to the confidential nature of the Software, or with respect to copyrights, trademarks, trade names or any other intellectual property right pertaining to the Software, or to have such indication removed or changed;
- (vi) remove, change or circumvent any technical measures taken by VirtualMetric in respect of the Software to prevent non-compliance with this Agreement.

5 Service Level Agreement

5.1 For each copy of the Software for which the Customer obtains a license key under this Agreement, the Customer receives support and maintenance according to the service level selected by the Customer with the subscription. The VirtualMetric 'Service Level Agreement (SLA) is attached as Annex 2.

5.2 Customer is obliged to select a single service level for all products bought from VirtualMetric.

6 Software

6.1 VirtualMetric reserves the right to modify, enhance, replace or make additions to the Software from time to time at its sole discretion. This right includes the right to introduce new versions of the Software as well as to withdraw any Software or any part or functionality thereof from the range of Software and/or services provided by VirtualMetric.

6.2 In the event VirtualMetric envisages a modification to the Software that will in VirtualMetric's reasonable opinion have a material impact on the Customer, VirtualMetric shall notify the Customer of such modification at least 10 (ten) Business Days in advance. In the event of an actual material degradation of the Software provided to the Customer, such Customer's sole remedy shall be that the Customer may opt to terminate any active SLA with respect to the Software against the end of the then current term. In the period between the notice of termination and the end date of the then current term, the Customer shall not be obliged to install the modified Software.

7 Price and payment

7.1 The Software and all standard services VirtualMetric provides under an active SLA will be provided to the Customer at the subscription fees per license as quoted.

7.2 Any additional services provided by VirtualMetric to the Customer shall be invoiced on a time/material basis against the then applicable hourly rates of VirtualMetric unless agreed otherwise in writing.

7.3 All fees are expressed in Euros and excluding VAT.

- 7.4 Customer will be invoiced for the first time per the date on which the license key(s) is made available by VirtualMetric to the Customer. Subsequent fees for the ongoing services shall be invoiced in advance of each subscription term.
- 7.5 The Customer shall pay all undisputed invoices within 14 (fourteen) days after the invoice date.
- 7.6 Except as specifically set forth in this Agreement, all orders to obtain license keys, including all payment obligations related thereto, are non-cancellable and all payments made are non-refundable.
- 7.7 If the Customer fails to pay any undisputed amount when due, and this failure continues for 30 (thirty) days following written notice of such failure, VirtualMetric may suspend all of its obligations and services towards Customer until all past due amounts have been paid, without incurring any obligation or liability to Customer by reason of such suspension. The suspension rights laid down in this article are without prejudice to any other rights and remedies which VirtualMetric may have in the event of non-payment or untimely payment.
- 7.8 In the case of undue or late payments, the statutory commercial interest is payable by the Customer on any outstanding sum. Such interest shall be due after VirtualMetric has sent the Customer a reminder and payment has not been made within 14 (fourteen) days after the date of such reminder.
- 7.9 If the Customer disputes any portion of the fees set forth on any invoice in good faith, the Customer shall, within 30 (thirty) days of the date of the applicable invoice: i) pay the undisputed portion of the fees on said invoice, and ii) notify VirtualMetric, in writing, of its basis for contesting the disputed fees. Parties agree to discuss any such dispute in good faith within 10 (ten) days of VirtualMetric's receipt of such notification.
- 7.10 All fees under the Agreement are subject to indexation in accordance with the indexation rate of the Dutch central bureau for statistics (CBS). All fees will be reviewed at the beginning of each calendar year and the indexation will apply as of 1 January of such calendar year. The application of this indexation cannot lead to a fee reduction.
- 7.11 In addition to its right to indexation, Virtual Metric is entitled to make changes in the fees and payment schedule from time to time. VirtualMetric shall notify the Customer of any increase (above the indexation rate) in the applicable fees at least 3 (three) months prior to the increase becoming applicable.

8 Intellectual Property

- 8.1 All right, title, and interest in and to the Software and Documentation, including all intellectual property rights, knowhow and trade secrets therein, are and will remain with VirtualMetric. The Customer has no right, license, or authorization with respect to any of the Software or Documentation, except as expressly set forth in this Agreement.

9 Data Protection

- 9.1 If required given the nature of the services to be provided by VirtualMetric to the Customer, the Parties will enter into a separate Data Processing Agreement in accordance with article 28 GDPR, to the extent VirtualMetric processes personal data on behalf of the Customer.

10 Warranties

- 10.1 VirtualMetric warrants that it will provide the Software and ancillary services in a professional manner consistent with general industry standards, and that the Software will perform substantially in accordance with the Documentation.
- 10.2 VirtualMetric does not warrant or guarantee that the Software and ancillary services will be uninterrupted, virus-free or error-free, nor that VirtualMetric shall correct all Software errors or defects. VirtualMetric shall not be liable for unauthorized alternation, theft, or destruction of the Customer's data, files, or programs.
- 10.3 Both Parties must comply with all laws applicable to them:
- (a) VirtualMetric will comply with all laws applicable to its obligations hereunder in providing the Software. However, VirtualMetric is not responsible for compliance with any laws or regulations applicable to Customer or Customer's industry that are not generally applicable to information technology service providers.
 - (b) Customer must comply with all laws applicable to its use of the Software.
- 10.4 VirtualMetric represents, warrants and covenants to the Customer, during the term of the Agreement that VirtualMetric will perform further development services regarding the Software using personnel of required skill, experience and qualifications and in a professional manner in accordance with generally recognized industry standards for similar services and will devote adequate resources to meet its obligations under this Agreement.
- 10.5 Except for the express warranties set forth in this agreement, all Software and Documentation are provided "as is" and VirtualMetric hereby disclaims all warranties, whether express, implied, statutory or other, and VirtualMetric specifically disclaims all implied warranties of fitness for a particular purpose and all warranties arising from course of dealing, usage or trade practice. Without limiting the foregoing, VirtualMetric makes no warranty of any kind that the Software or Documentation, or any products or results of the use thereof are compatible or work with any software, system or other services except if and to the extent expressly set forth in the Documentation.

11 Indemnifications

- 11.1 Each Party will indemnify the other Party and such Party's officers, directors, employees, agents, successors and assignees against any and all damages arising from, related to, or in any way connected with, third party claims arising from an infringement, misappropriation or other violations of that third party's intellectual property rights, because of systems, services or other resources provided by the first Party to the other Party. This section does not diminish the Parties' respective obligations to mitigate any loss or damage to the extent possible.
- 11.2 VirtualMetric shall have no obligation under article 11.1 for any claims, losses and/or damages arising out of or relating to any:
- (a) access to or use of the Software or Documentation in combination with any hardware, system, software, network or other materials or service not provided or authorized in the Documentation or otherwise in writing by VirtualMetric;

- (b) use of the Software in a manner inconsistent with the Documentation or in violation of the Agreement;
 - (c) modification of the Software or Documentation other than: (i) by or on behalf of VirtualMetric; or (ii) with VirtualMetric's written approval in accordance with VirtualMetric's written specification; or
 - (d) failure to timely implement any modifications, upgrades, replacements, or enhancements that require the Customer's action to implement, and that are made available to Customer by or on behalf of VirtualMetric.
- 11.3 Each Party shall promptly notify the other Party in writing of any third party claim for which such Party believes it is entitled to be indemnified pursuant to article 11.1. The Party seeking indemnification (the '**Indemnitee**') shall cooperate with the other Party (the '**Indemnitor**') at the Indemnitor's sole cost and expense. The Indemnitor shall immediately take control of the defence and investigation of such third party claim and shall employ counsel of its choice to handle and defend the same, at the Indemnitor's sole cost and expense. The Indemnitee may participate in and observe the proceedings at its own cost and expense with counsel of its own choosing.
- 11.4 At its option and sole cost and expense, VirtualMetric is entitled to mitigate the risk or losses of any actual or threatened infringement of any third party's intellectual property right by:
- (a) obtaining the right for the Customer to continue to use the Software and Documentation materially as contemplated by this Agreement;
 - (b) modifying or replacing the Software and Documentation, in whole or in part, to make the Software and Documentation (as so modified or replaced) non-infringing, while providing materially equivalent features and functionality, in which case such modifications or replacements will constitute Software and Documentation, as applicable, under this Agreement; or
 - (c) if options (a) or (b) of this subsection are not commercially reasonable from VirtualMetric's perspective, by written notice to the Customer, terminating this Agreement with respect to all or part of the Software requiring the Customer to immediately cease any use of the Software or any specified part or feature thereof, adjusting fees going forward, and issuing the Customer a pro rate refund of any prepaid amount. In the event that VirtualMetric partly terminates the Agreement, requiring the Customer to cease any use of a specified part or features of the Software and Documentation and this results in the situation where the Customer is left with a service that is no longer reasonably useful to it, the Customer may terminate the Agreement without becoming liable for damages as a result of such termination.
- 11.5 This article 11 sets forth the Customer's sole remedies and VirtualMetric's sole liability and obligation for any actual, threatened or alleged claims that this Agreement or any subject matter hereof (including the Software and Documentation) infringes, misappropriates or otherwise violates any third-party intellectual property right. If and to the extent that mandatory law prevents the content of this article to be the sole remedy in the relevant situation(s), the limitation of liability set forth in article 12.1 shall apply mutatis mutandis to any of Virtual Metric's indemnification obligations.

12 Liability

- 12.1 VirtualMetric's liability will be limited to foreseeable, direct, and personal damages suffered. In no event shall a Party be liable for any consequential, indirect, incidental, special, punitive, loss of profits, business, business opportunities, reputation, turnover or revenue, loss of anticipated savings or wasted expenditure (including management time), loss, or liability under or in relation to any other contract, or loss of goodwill, in each case, however caused, under any theory of liability, including, without limitation, contract, tort, warranty, negligence or otherwise, even if such party has been advised as to the possibility of such damages.
- 12.2 Except as otherwise provided in article 12.3, in no event will the aggregate liability of VirtualMetric under or in connection with this Agreement or its subject matter, including any orders, under any legal or equitable theory, including breach of contract, tort (including negligence), strict liability and otherwise, exceed the total amount of the subscription fees that the Customer has paid to VirtualMetric in the twelve months preceding the incident giving rise to the damage in relation to the license key(s) under which the damage arose.
- 12.3 The exclusions and limitations in this article 12 do not apply to: (a) fraud or fraudulent misrepresentation or wilful misconduct of VirtualMetric's directors, or (b) negligence of VirtualMetric causing death or personal injury.

13 Force Majeure

- 13.1 Neither Party shall be liable to the other for delay, degradation or non-performance of its obligations under the Agreement to the extent such delay, degradation or non-performance is due to circumstances beyond the control of the relevant Party. Examples of circumstances beyond the control of a Party include (without limitation): war, terrorism, rebellion, riots, explosions, strike or social conflicts, defects in the other Party's equipment and defects in telecommunications and IT equipment of third parties.
- 13.2 Whenever a Party is delayed or prevented from performing its obligations under the Agreement as a consequence of a force majeure situation, that Party shall notify the other as soon as reasonably possible with details of the force majeure situation, its reasonably anticipated effect on the relevant obligations and its estimated duration. The affected Party shall use all reasonable endeavours to mitigate the effect of the force majeure situation upon the performance of its obligations under the Agreement. As soon as reasonably possible following the end of the force majeure situation, the affected Party shall notify the other Party and the Agreement will continue to be performed on the terms existing immediately before the occurrence of the force majeure situation.
- 13.3 If any force majeure situation prevents a Party from fulfilling its obligations under the Agreement for a continuous period of more than 3 (three) months, the other Party may terminate the relevant part of the Agreement with immediate effect by written notice.

14 Confidentiality

- 14.1 A Receiving Party shall:
- (a) keep Confidential Information strictly confidential unless agreed otherwise;
 - (b) use or make copies of Confidential Information only to the extent reasonably necessary for the purposes of the Agreement, or for the Parties' discussions regarding potential Services under the Agreement;

- (c) treat Confidential Information with the same degree of care that it treats its own Confidential Information of likewise importance, and with at least a reasonable standard of care;
 - (d) take all reasonable technical measures to avoid unauthorized use or disclosure of Confidential Information;
 - (e) promptly notify the Disclosing Party of any unauthorized disclosure or unauthorized use of any of the Confidential Information by the Receiving Party or any third party.
- 14.2 The Parties undertake to limit the disclosure of and access to the Confidential Information to their Affiliates, directors, managing directors, employees, subcontractors, agents and/or external advisors (i) who are directly involved with the performance of the relevant part of the Agreement, (ii) for whom the Confidential Information is essential in this respect and (iii) upon the condition that they are bound by obligations of confidentiality substantially similar to the provisions of this article 14.
- 14.3 Notwithstanding the foregoing, in the event disclosure of Confidential Information is mandated or requested by applicable Law, or by a competent governmental authority, then (i) if not so prohibited by a governmental authority, the Receiving Party shall promptly notify the Disclosing Party of such requirement, (ii) if so requested by the Disclosing Party and at the expense of such Party, the Receiving Party shall use good faith efforts, in consultation with the Disclosing Party, to secure a protective order or other confidential treatment of the Confidential Information to be disclosed and (iii) the Receiving Party shall furnish only that portion of the Confidential Information required to be disclosed.
- 14.4 Each Party will return or destroy the other Party's Confidential Information and any copy thereof in its possession or control within 60 (sixty) calendar days immediately following written request by the other Party, unless with regard to backup archives which will be stored in accordance with article 14.5, unless agreed otherwise or unless provided otherwise by applicable laws.
- 14.5 A Party is entitled to retain a copy of the other Party's Confidential Information which is stored within electronic back-ups or in accordance with that Party's internal archival policies or procedures provided that such back-ups and archives take place in the ordinary course of business and in accordance with good industry practice and lawfully, without making the Confidential Information easily accessible to any persons in the course of day-to-day operations, and subject to continuing obligation of confidentiality.
- 14.6 Neither the performance of the Agreement, nor the furnishing of any Confidential Information by either Party, shall be construed as granting to the other Party expressly, by implication or otherwise, any license under any invention, patent, trademark, copyright or other proprietary right now or hereafter owned or controlled by the Party furnishing the same.
- 14.7 The confidentiality obligations expire 2 (two) years after termination of this Agreement (by expiry of its term, termination or otherwise) or so long as the Confidential Information, or any part thereof, qualifies as a trade secret under the Dutch Trade Secret Act.
- 15 Audit rights**
- 15.1 Upon reasonable request from VirtualMetric, the Customer shall (i) provide VirtualMetric with reasonable information, and (ii) permit VirtualMetric with reasonable access to the Customer's premises, systems, and files, in each case as is reasonably necessary for VirtualMetric to verify the Customer's compliance with the terms and conditions of this Agreement. VirtualMetric agrees that its access to the foregoing information, premises, systems and files, including any information

learned as a result of exercise of its rights under this article, may be used only for the purpose of verifying the Customer's compliance with the terms and conditions of this Agreement. Unless VirtualMetric has reasonable suspicions that the Customer is not compliant with the terms and conditions of this Agreement, any request from VirtualMetric for information or access pursuant to this article 15.1 must be made with reasonable advance notice and must not be unduly disruptive to the Customer's ordinary business operations. VirtualMetric shall bear the costs of the audit. However, in case the audit uncovers the Customer's incompliance, the costs of the verification will be borne by the Customer. Unless VirtualMetric has reasonable suspicions that the Customer is not compliant with the terms and conditions of this Agreement, VirtualMetric shall not be entitled to make a request for verification and carry out an investigation at/on the Customer's premises and/or systems more than once per calendar year.

16 Term and Termination

- 16.1 This Agreement enters into force on the effective date for a definite period of 12 (twelve) months after which this Agreement shall automatically renew with subsequent 12 (twelve) month periods until terminated in accordance with this article 16.
- 16.2 Each Party may terminate this Agreement for convenience taking into account 3 (three) months written notice prior to the end of the then current term.
- 16.3 A Party may terminate this Agreement if the other Party materially breaches this Agreement, and such breach: (a) is incapable of remedying; or (b) being capable of remedying, remains uncured 30 (thirty) days after the non-breaching Party provides the breaching Party with written notice of such breach containing sufficient detail of said breach.
- 16.4 Article 13.3 contains an additional termination option applicable in the event of a force majeure situation.
- 16.5 Each Party may terminate this Agreement with immediate effect by written notice if the other Party is declared bankrupt or otherwise subject of any proceedings relating to its liquidation, winding-up, or insolvency.
- 16.6 In the case that VirtualMetric terminates this Agreement based on the non-performance or default on the Customer's side, all fees that have been invoiced or would have become payable had this Agreement remained in effect will become immediately due and payable, and the Customer shall pay such fees, together with previously accrued but not yet paid fees, on receipt of VirtualMetric's invoice therefore.
- 16.7 If Customer properly terminates this Agreement, the Customer will be relieved of any obligation to pay any applicable fees attributable to the period after the effective date of such termination.
- 16.8 Termination of this Agreement, regardless of the reason for termination, requires the Customer to deinstall and refrain from any further use of the Software. Upon request of VirtualMetric, the Customer shall provide VirtualMetric with a written statement, signed by an executive of the Customer, confirming that the Customer has complied with the obligation to deinstall the Software and that the Customer shall refrain from any future use.
- 16.9 Each provision of this Agreement that, by its nature, should survive termination or expiration of this Agreement, will survive any termination or expiration of this Agreement.

17 Miscellaneous

- 17.1 The Customer is not entitled to assign, transfer or sub-contract any of its rights or obligations under this Agreement to any third party without the prior written consent of VirtualMetric.
- 17.2 Neither Party shall, for any purpose, be deemed to be an agent of the other Party and the relationship between the Parties shall only be that of independent contractors.
- 17.3 VirtualMetric shall have the right to unilaterally amend this Agreement upon prior written notice to the Customer. If the Customer does not agree to the amendment and the amendment has a material adverse effect on Customer, the Customer's sole remedy shall be to terminate the Agreement by written notice effective per the date on which the relevant amendment becomes effective. If the Customer does not provide such notice within 30 (thirty) days after receipt of the notice of amendment, the Customer shall be deemed to have accepted the amendment and shall be bound to the amended Agreement as per the date on which the amendment becomes effective.
- 17.4 If any provision in the Agreement is held to be illegal, invalid or unenforceable, in whole or in part, under any applicable law, that provision or where applicable the illegal, invalid or unenforceable part thereof will be deemed not to form part of the Agreement, and the legality, validity or enforceability of the remainder of the Agreement or provision will not be affected and shall be valid and enforced to the fullest extent permitted by law. Each Party shall use its best efforts to immediately negotiate in good faith a valid replacement provision with an equal or similar economic effect.
- 17.5 Failure by either Party to exercise a right or to apply a sanction cannot be interpreted as a waiver of these rights. No waiver under the Agreement will be effective unless set out in a writing signed by a duly authorized representative of the Party granting such waiver.
- 17.6 VirtualMetric reserves the right to deploy subcontractors for the performance of any services relating to the Software.
- 17.7 VirtualMetric is entitled to use the name and logo of the Customer as reference with respect to VirtualMetric's products and services.

18 Applicable law and jurisdiction

- 18.1 This Agreement is governed by and construed in accordance with the laws of the Netherlands.
- 18.2 Any disputes arising out of or in relation to any agreement between the Parties– if not amicably resolved – in first instance exclusively be submitted to the Court of Amsterdam, the Netherlands.