Pro.Monitor

for SAP NetWeaver® | SAP HANA® | SAP S/4HANA® | SAP BUSINESSOBJECTS®

End user license agreement

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This License Agreement ("Agreement") is a legal agreement between either an individual or an entity ("Customer") and Agentil S.A., a Swiss company headquartered in Geneva Switzerland or any Agentil's Affiliate ("Licensor" and together the "Parties").

By (i) downloading, installing or unsealing Licensor's Software and/or Documentation or (ii) selecting the "Accept" or "Yes" button when prompted to do so, Customer agrees to be bound by the terms of this Agreement.

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In the event of a conflict between the terms of this Agreement and any ordering document, the terms of this Agreement will govern and control. The present Agreement shall prevail over any other agreement relating to the provision and use of the Product as defined below, unless an express reference to this Agreement is made when deviating from the terms and conditions below.

SECTION 1   DEFINITIONS

(a)   *"Affiliate"* means any legal entity that owns, is owned by, or is commonly owned by a party, whereby *"own"* means having more than 50% ownership or the right to direct the management of the entity;

(b)   *"Claim(s)"* means all third-party claims, actions, demands, proceedings, damages, costs and liabilities of any kind;

(c)   *"Documentation"* means any documentation provided with the Product, i.e. documentation sufficient to allow Customer to use the Software;

(d)   *"Fees"* has the meaning set forth under Section 4;

(e)   *"Intellectual Property Rights"* or *"IP"* means all intellectual property rights throughout the world, whether existing under statute, at common law or equity, registered or unregistered, now or hereafter in force or recognized, including, copyrights, trade secrets, trademarks and service marks, patents, petty patents, inventions, designs, logos and trade dress, database rights, mask works, publicity rights, and privacy rights or any right in relation to the Software; and **a**ny application or right to apply for any of these rights and all renewals, extensions and restorations;

(f)   "*Agentil Pro.Monitor for SAP"* means Licensor's core component of the Product;

(g)   *"Personal Data"* means, unless defined otherwise by any law applicable to the Customer, all information relating to an identified or identifiable person, including, when applicable, the Customer itself, as defined within the Swiss Federal Act of 19 June 1992 on Data Protection (FADP). Any reference to the FDAP shall always also include a reference to the Ordinance to the FADP (the OFADP) and any other provision of the substantive Swiss data protection law;

(h)   *"Product"* means Licensor's Platform, Documentation and Software;

(i)   *"Reseller"* means a third party authorized by Licensor to distribute the Product under the terms of this Agreement;

(j)   *"Revisions"* means any Software fixes, updates, upgrades, improvement and new versions of the Software that Licensor provides to Customer;

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(k)   *"Services"* means the Support and Maintenance services for the Product as set forth in section 6 of this Agreement and detailed in the Support and Maintenance Agreement;

(l)   *"Software"* means the software licensed to the Customer by the Licensor as may be amended and updated by the parties, including all Revisions.

SECTION 2   GRANT

Subject to payment of all applicable Fees to Licensor or to the Reseller as agreed in any ordering document, and as long as Customer complies with the terms of this Agreement, Licensor grants to Customer a personal, non-exclusive, non-sub licensable and non-transferable license to (i) use the Product and any of its Revisions according to this Agreement, to (ii) access the Product on Agentil's specific web site for licensing and, to (iii) install the Product solely on Customer's internal systems, unless otherwise agreed in writing.

The right to use, access and install the Product is limited to the component of the Product acquired by Customer. Furthermore, the Product is licensed under a "per SAP system" model and the exercise of the rights granted in this Section 2 will be limited to the number of SAP systems for which the Product have been licensed to Customer.

This Agreement hereby cancels and fully replaces any previous license agreement entered into between Licensor and the Customer, in particular license agreements regulating the use of previous versions of the Product.

Customer is expressly prohibited from using the Product on behalf of, or for the benefit of, parties not licensed to use the Product (e.g. Customer may not use the Product for consulting purposes or project proof of concepts or for such similar arrangements where Customer is performing services for an unlicensed third party).

Additional rights, and in particular the right to use the Product on behalf of or for the benefit of a third party, may be expressly granted in a separate written agreement to a Licensor's business partner acting as a Managed Service Provider.

SECTION 3   PROVISION AND ACCESS

Upon receipt of a purchase order or any similar ordering document, the Product shall be provided to Customer by electronics means and the rights granted under section 2 shall be activated by the insertion on Customer's Pro.Monitor for SAP platform of a license key provided to Customer by Licensor.

Customer shall be regularly informed of the status of its Licenses; in particular, Customer shall receive automatic reminders with sufficient advance notice about the License expiration date in cases of Subscription Licenses as defined under section 5 below, informing Customer of the renewal conditions and possible subscription termination or modification options.

SECTION 4   FEES

The Fee shall be paid by Customer as set forth in the ordering document in accordance with Licensor's then-current payment policy set forth below and/or on Licensor's electronic payment platform.

The Customer who has been licensed the Product on a subscription basis shall pay the Fee on a yearly basis to be paid in advance each subscription year, within 30 days upon receipt of the invoice.

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Licensor may apply volume or duration discounts on the payment of the Fee, based on the number of endpoints assigned to the Product and/or the duration of the granted License. Details of the Licensor's discount policies are made available to Customer and may be freely updated by Licensor at any time, in which case it shall be notified to Customer at least thirty (30) days prior to the entering into force of the modification.

Unless provided otherwise in writing, the Fees paid by Customer are not refundable, even after termination of this Agreement between Licensor and Customer.

SECTION 5   DURATION AND TERMINATION

The Product may be licensed to Customer under the following models:

- <u>Subscription License</u>: if the Product is licensed under a subscription model, the License is granted for a minimum one to a maximum of five year's duration, depending on the selected subscription period (the "**Subscription Term**"). The Subscription License shall be automatically renewed, at the the-current applicable Fee at the time of renewal, for an equivalent Subscription Term unless terminated or replaced by a different subscription period or a different License model upon Customer's request notified at least 30 days prior to the expiration of the current License. If the subscription is replaced by a different period than initially subscribed or if Customer chooses a different License model, the pricing will be adjusted accordingly. The Customer's rights under the License will terminate automatically at the end of the applicable Subscription Term that has not been automatically renewed.

- <u>Perpetual License</u>: the Product may be licensed under a perpetual model, in which case the License is granted on a perpetual basis.

The Customer's rights under the License will terminate automatically without notice if Customer fails to comply with any terms of this Agreement. In particular, in case of non-payment of the Fees in accordance with section 4 above, the License granted under Section 2 above will automatically terminate.

Upon termination of the License, this Agreement shall also expire and Customer shall cease all use of the Product, and destroy all copies, full or partial, of the Product.

Early termination conditions may be agreed upon in writing by the Parties in a separate agreement.

SECTION 6   SUPPORT AND MAINTENANCE SERVICES

Services shall be provided to Customers that have been granted the Product under a subscription License model at no additional cost. The provision of Services and the Support and Maintenance Agreement shall terminate simultaneously to this Agreement.

Customers that have been granted the Product under a perpetual License model may purchase Services separately.

Terms and conditions regulating the provision of Services are governed by the Agentil's Support and Maintenance Agreement.

SECTION 7   LIMITED WARRANTY AND CONDITIONS

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CUSTOMER EXPRESSLY ACKNOWLEDGES AND AGREE THAT USE OF THE PRODUCT IS AT CUSTOMER'S SOLE RISK AND THAT THE ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE, ACCURACY AND EFFORT IS WITH CUSTOMER. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE PRODUCT AND ANY SERVICES PERFORMED OR PROVIDED BY THE PRODUCT ("SERVICES") ARE PROVIDED "AS IS" AND "AS AVAILABLE", WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND, AND LICENSOR HEREBY DISCLAIMS ALL WARRANTIES AND CONDITIONS WITH RESPECT TO THE PRODUCT AND ANY SERVICES, EITHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES AND/OR CONDITIONS OF MERCHANTABILITY, OF SATISFACTORY QUALITY, OF FITNESS FOR A PARTICULAR PURPOSE, OF ACCURACY, OF QUIET ENJOYMENT, AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS. LICENSOR DOES NOT WARRANT THAT THE FUNCTIONS CONTAINED IN, OR SERVICES PERFORMED OR PROVIDED BY, THE PRODUCT WILL MEET YOUR REQUIREMENTS, THAT THE OPERATION OF THE PRODUCT OR SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT DEFECTS IN THE PRODUCT OR SERVICES WILL BE CORRECTED. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY LICENSOR OR ITS AUTHORIZED REPRESENTATIVE OR RESELLER SHALL CREATE A WARRANTY.

SECTION 8   LIMITATION OF LIABILITY AND INDEMNIFICATION

Licensor's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or contemplated performance of any contract shall be limited to fees paid for the License within the last 12 months. Nothing in this provision shall limit or exclude Licensor's liability (i) for fraud (ii) gross negligence or (iii) any liability which cannot be excluded by law.

In no event shall the Licensor be liable for any of the following losses or damage (whether such losses were foreseen, foreseeable, known or otherwise): loss of use, interruption of business, loss of actual or anticipated profit (including, without limitation, loss of profit on contracts), loss of revenue, loss of the use of money, loss of anticipated savings, loss of opportunity, loss of goodwill, loss of reputation, loss of, damage to or corruption of data, or indirect, special, incidental or consequential loss or damage of any kind, regardless of the form of action, whether in contract, tort (including, without limitation, negligence), strict liability or otherwise.

Customer is fully and solely responsible and liable for the installation and use of the Product, including by its employees and/or auxiliaries and for the strict compliance of such installation and use with applicable law, notably with regard to data protection and copyright. Customer will indemnify and hold Licensor harmless from and against all liability, loss, cost, damage or expense, including reasonable attorney's fees, arising from Customer and its employees and/or auxiliaries' installation or use of the Product, including any Claims made by Customer's customers or other third parties.

Customer's exclusive remedy in case of defect of the Product under this Agreement will be for Licensor to use commercially reasonable efforts to remedy defects covered by this warranty and condition within a reasonable period of time. This limited liability shall not apply if (a) the Product is not used in accordance with applicable documentation; (b) Product defect has been caused by Customer's malfunctioning equipment; or (c) Customer has made modifications to the Product not expressly authorized in writing by Licensor. No employee, agent, or representative of Licensor nor any Reseller has the authority to bind Licensor to any oral representations, warranties or conditions concerning the Product. Any written representation, warranty or condition not expressly contained in this Agreement shall not be enforceable.

SECTION 9   THIRD PARTY SOFTWARE

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- Apache License V2.0

Nothing in this Agreement shall restrict, limit or otherwise affect any rights or obligations that Customer may have, or conditions to which Customer may be subject, under any applicable open source licenses to any open source code contained in the Software.

SECTION 10   DATA

Customer understands that, by using the Product, certain information or data about the Customer, its employees or any user of the Customer IT system, in particular data relating to the SAP system connections, executions, binaries, executables, applications, packages, engines as well as data relating to the Customer's right to use the Product, which may be deemed Personal Data, may be read, collected and processed by the Product. Customer hereby expressly represents and warrants that any and all appropriate consents for such collection and processing have been properly secured and that the relevant rules imposed upon the Customer by applicable privacy and data protection laws will be fully complied with by Customer and the end-users of the Product throughout the entire duration of this Agreement.

Customer shall fully indemnify and hold Licensor harmless in case of any breach of the above representations and warranties.

SECTION 11   ASSIGNMENT

Neither this Agreement nor any of Customer's rights, licenses or obligations hereunder may be assigned or delegated by Customer to any third party, including without limitation in connection with a merger, acquisition, reorganization, outsourcing, change of control or under any other circumstance. Any such purported assignment or delegation shall be void and of no effect and shall constitute an incurable breach of this Agreement resulting in the automatic termination of this Agreement and all rights and licenses granted to Customer hereunder.

SECTION 12   FORCE MAJEURE

Neither Party shall be liable for any breach of this Agreement due to any circumstances outside Licensor's reasonable control including but not limited to acts of God, fire, acts of Government, war, military operation or riot, accidents, embargo, industrial actions, terrorist threat, hereinafter referred to as "Force Majeure". In case of Force Majeure, each party shall without delay notify and furnish the other party in writing with all relevant information thereto.

SECTION 13   WAIVER AND SEVERABILITY

The waiver by a Party of one breach or default by another Party under this Agreement will not constitute the waiver of any subsequent breach or default. No waiver shall be effective unless made in writing and signed by an authorized representative of the waiving Party.

If any court or competent jurisdiction determines that any provision of this Agreement is illegal, invalid or unenforceable, the remaining provisions will remain in full force and effect.

SECTION 14   EXPORT

Customer will not export, re-export or import the Product in any form in violation of export laws and regulations.

SECTION 15   GOVERNING LAW AND JURISDICTION

This Agreement and the License shall be governed by and interpreted according to Swiss substantive laws and the Parties hereby irrevocably submit to the exclusive jurisdiction of the courts of the Canton de Genève, Switzerland.

APPENDIX   LIST OF LICENSES

Apache License
                Version 2.0, January 2004
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1. Definitions.

   "License" shall mean the terms and conditions for use, reproduction,
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   "Licensor" shall mean the copyright owner or entity authorized by
   the copyright owner that is granting the License.

   "Legal Entity" shall mean the union of the acting entity and all
   other entities that control, are controlled by, or are under common
   control with that entity. For the purposes of this definition,
   "control" means (i) the power, direct or indirect, to cause the
   direction or management of such entity, whether by contract or
   otherwise, or (ii) ownership of fifty percent (50%) or more of the
   outstanding shares, or (iii) beneficial ownership of such entity.

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   "Work" shall mean the work of authorship, whether in Source or
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END OF TERMS AND CONDITIONS

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