

## 6WIND VSR - END USER - PERPETUAL LICENSE AGREEMENT

THIS AGREEMENT is made and entered into by and between **6WIND S.A.**, a company duly organized and existing under the laws of France and having offices at Immeuble Le Carré, 3 avenue des Prés, 78180 Montigny-le-Bretonneux, France (“6WIND”) and the End User.

6WIND PROVIDES THE SOFTWARE SOLELY ON THE TERMS AND CONDITIONS SET FORTH IN THIS AGREEMENT AND ON THE CONDITION THAT END USER ACCEPTS AND COMPLIES WITH THEM. IF END USER DOES NOT AGREE TO THE TERMS OF THIS AGREEMENT, 6WIND WILL NOT AND DOES NOT LICENSE THE SOFTWARE TO END USER AND END USER MUST NOT DOWNLOAD OR INSTALL, COPY OR OTHERWISE USE THE SOFTWARE OR DOCUMENTATION.

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT OR END USER’S ACCEPTANCE OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, NO LICENSE IS GRANTED (WHETHER EXPRESSLY, BY IMPLICATION, OR OTHERWISE) UNDER THIS AGREEMENT, AND THIS AGREEMENT EXPRESSLY EXCLUDES ANY RIGHT, CONCERNING ANY SOFTWARE THAT END USER DID NOT ACQUIRE LAWFULLY OR THAT IS NOT A LEGITIMATE, AUTHORIZED COPY OF 6WIND’S SOFTWARE.

NOW THEREFORE, in consideration of the foregoing and the mutual covenants set forth below, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is hereby agreed as follows:

### 1. DEFINITIONS

The following terms whenever used in this Agreement shall have the meaning herein assigned to them:

“Active / Hot Standby” means a High Availability Configuration that works as follows: at a given time, one copy of the Software (the “Active Instance”) is processing traffic as part of the network while exchanging information with a second copy (the “Hot Standby Instance”) to synchronize network status in both instances. Doing so, the Hot Standby Instance is ready to replace the Active Instance in case of a failure.

“Active / Warm Standby” means a High Availability Configuration that works as follows: at a given time, the Active Instance is processing traffic as part of the network while the other one (the “Warm Standby Instance”) takes no part of the active network architecture and is ready to replace the Active Instance in case of a failure.

“Capacity” means the parameter that defines the performance of the Licensed Software. The available Capacities of the Licensed Software are provided in the Appendix 1. 6WIND shall have the right to limit the usage of the Software if End User exceeds the Capacity.

“Confidential Information” means any information received by a Party (“receiving Party”) from the other Party (“disclosing Party”), whether before or after Effective Date, which is marked or described by the disclosing Party in writing as being “Confidential”, “Secret” or “Proprietary” at the time of such disclosure. The Parties acknowledge that the Software and the License Keys and the terms of this Agreement are Confidential Information of 6WIND.

“Delivery” is defined in Section 3 below.

“Documentation” means 6WIND written documents that are provided by 6WIND with and in support of the Software.

“Effective Date” is defined in Section 6.1 below.

“Error” means any malfunction which prevents the documented functionalities of the Software being used in operating conditions compliant with the Documentation and this Agreement when executing on the Reference Platform.

“Error Correction” is defined in the Section 5 the Maintenance Agreement.

“High Availability Configuration” is defined as two (2) copies of the Software installed to provide network high availability capabilities.

“License” means the license to use the Software under the specific terms and conditions of this Agreement.

“License Fee” means the fee payable by End User under Section 5 below and Purchase Order.

“License Key” means a data string that allows and verifies the authorized access to the Software.

“License Key Activation” means the process to activate a Unit of the Software with a valid License Key. The License Key Activation is based on a secured communication between the Software and the License Key Server.

“License Key Server” means an Internet remote server controlled and managed by 6WIND that distributes and activates License Keys and verifies Licenses. Each Unit of the Software shall have a direct or proxy-based network connection with the License Key Server. End User has access to the information about his License Keys on the License Key Server.

“License Verification” means the process to verify the validity of a License Key. The License Verification process is based on a periodic secured communication between the Software and the License Key Server as described in the Documentation. If the License Verification process is not periodically executed, the Software will stop working.

“License Usage Report” means the report of the usage of the Licensed Software. The License Usage Report can be checked at any time by End User by using management commands as explained in the Documentation. The License Usage Report is provided to 6WIND at each License Verification and by End User to 6WIND with the written report when a Case is open (pursuant to Section 5.4 of the Maintenance Agreement). No information other than as listed in the Documentation about the License Usage Report will be transferred from the Software to 6WIND.

“Maintenance Agreement” means a separate agreement for the maintenance of the Software executed by 6WIND and End User.

“Maintenance Release” means any release of the Software and Documentation containing corrections of Errors to the Software. A Maintenance Release shall change the z numeral of a release version x.y.z.

“Maintenance Services” means the delivery of Updates, Upgrades and Error Correction Service.

“Major Release” means any release of the Software and Documentation containing architecture changes to the Software. A Major Release shall change the x numeral of a release version x.y.z.

“Master Copy” means a copy of the Software that can be used by End User to duplicate the Software.

“Minor Release” means any release of the Software and Documentation containing functionality enhancements of the Software. A Minor Release shall change the y numeral of a release version x.y.z.

“Modification(s)” means all improvements, modifications or adaptations to any part of the Software.

“Object Code” means a binary representation of a series of program instructions in machine language resulting from the translating and/or compiling of the Source Code for purposes of machine execution.

“Party” or “Parties” means 6WIND and/or End User.

“Point of Contact” means a person working at the Primary Authorized Location, solely allowed to contact 6WIND maintenance engineers. Should this person be unavailable, he/she would be replaced by the Secondary Point of Contact. Names and coordinates of these two persons are listed in the Purchase Order. End User may change these contacts by simply notifying 6WIND, provided that these persons have already attended a training delivered by 6WIND.

“Publicly Available Software” means each of: (a) any software that contains, or is derived in any manner (in whole or in part) from, any software that is distributed as free software, open source software (e.g. Linux) or similar licensing or distribution models; and (b) any software that requires as a condition of use, modification and/or distribution of such software that such software or other software incorporated into, derived from or distributed with such software (i) be disclosed or distributed in Source Code form, (ii) be licensed for the purpose of making derivative works, or (iii) be redistributable at no charge. Publicly Available Software includes, without limitation, software licensed or distributed under any of the following licenses or distribution models, or licenses or distribution models similar to any of the following: (1) GNU’s General Public License (GPL) or Lesser/Library GPL (LGPL); (2) the Artistic License (e.g., PERL); (3) the Mozilla Public License; (4) the Netscape Public License; (5) the Sun Community Source License (SCSL); or the (6) BSD Open-Source License.

“Purchase Order” means is a commercial document issued by End User to 6WIND or to a 6WIND’s reseller, indicating Software Licensed by End User, Software options, number of Units of the Software ordered, Reference Platform, Point of Contact, payment terms and agreed License Fee pricing for Software.

“Reference Platform” means a computer board or system on which the Software is used by End User for which 6WIND provides Maintenance Services.

“Software” means 6WIND computer software programs and any Updates and Upgrades thereto provided by 6WIND pursuant to this Agreement. The list of the Software products covered by this Agreement is provided in Appendix 1 attached hereto. The Software is delivered to the End User in Object Code with configuration and management files.

“Source Code” means documentation for a software program as written in programming languages, including all comments and procedural code, such as job control language statements, in a form intelligible to trained programmers and capable of being translated into Object Code for operation on computer equipment through assembly or compiling.

“Unit” means a copy of the Software used by End User.

“Updates” means Maintenance Releases and Minor Releases.

“Upgrades” means Major Versions.

## **2. GRANT OF LICENSE**

2.1 Subject to the provisions and conditions set forth in this Agreement and the timely payment of all applicable fees and other amounts payable hereunder, 6WIND hereby grants to End User a nonexclusive, nontransferable and royalty-bearing license during the term of this Agreement to:

- i Replicate implementation of Software delivered in Object Code form using the Master Copy within End User’s organization;
- ii Activate the Software with a valid License Key;
- iii Use the Software according to its Capacity;
- iv Use a Hot Standby Instance or a Warm Standby Instance of the Software paired with an Active Instance of the Software for High Availability Configurations and;
- v Train internal users within End User’s organization on implementation of Software.

2.2 Except as expressly permitted by the license terms of Publicly Available Software that is delivered with the Software, End User shall have no right to use Software, Documentation, or any part thereof, for any other purpose than specified in Section 2.1 above and, without limiting the generality of the foregoing, End User may not:

- i Distribute Software directly or through a distribution chain to external users outside End-User’s organization;
- ii Use the Software without a valid License Key;
- iii Share Licenses Keys outside the End User organization,
- iv Use the Software in excess of its Capacity;
- v Use a Hot Standby Instance or a Warm Standby Instance of the Software not paired with an Active Instance of the Software for High Availability Configuration;
- vi Make Modifications to the Software;
- vii Reverse engineer, reverse assemble, disassemble, decompile or otherwise attempt to decipher any code used in the Software that is provided to End User in Object Code form;
- viii Directly or indirectly license, sell, lease, distribute or loan the Software or Documentation, in whatever form;
- ix Reproduce the Software or Documentation in any form whatsoever, except as expressly permitted by this Agreement; a reasonable number of back-up or archive copies are permitted in that context subject to the restrictions contained herein;

- x Use the Software or Documentation to create any product competing with the Software;
  - xi Use or sublicense the Software for the purposes of third parties, other than permitted under this Agreement.
- 2.3 Except as expressly permitted herein, End User shall have no right under this license to take any action, and End User agrees not to take any action, that would require End User to distribute or make available to a third party any Source Code of the Software.
- 2.4 Except for the licenses and rights expressly granted to End User in Section 2.1 End User acquires no other licenses or rights in or to the Software and Documentation, and no such licenses or rights shall be construed. End User shall not, nor permit any other person to, sublicense, use, copy, modify, distribute or disclose the Software, Documentation or the License Keys except as expressly permitted by this Agreement.
- 2.5 End User may use sub-contractors for the tasks referred to in Section 2.1 above on the following conditions:
- i End User shall be responsible and liable for any breach of this Agreement resulting from sub-contractor's actions and shall indemnify, defend and hold 6WIND harmless from any direct or indirect Costs based on a breach of this Agreement resulting from End User's use of a sub-contractor; and
  - ii The subcontractor shall be bound in writing to protect the Software, the Documentation and 6WIND's Confidential Information with protections at least as restrictive as those contained in this Agreement.

### **3. DELIVERY OF THE SOFTWARE**

- 3.1 Within five (5) business days after the receipt, by 6WIND, of an accepted Purchase Order for the Software, 6WIND shall (i) make available for downloading a Master Copy of the Software and any Documentation to End User, (ii) make available the License Keys corresponding to the Purchase Order on the License Key Server to let End User use the Software with the defined Capacity and High Availability Configuration and (iii) provide credentials to allow End User to access information about End User's License Keys on the License Key Server.
- 3.2 Software and any Documentation shall be delivered via electronic means by download from 6WIND's website. "Delivery" is deemed to have been made on the date when End User is notified of availability for download of the Software and Documentation on the website and availability of the License Keys.

### **4. MAINTENANCE**

- 4.1 Maintenance Services for the Software shall be provided to End User as set forth in the 6WIND Maintenance Agreement.

### **5. LICENSE FEE**

- 5.1 For each Unit of the Software, End User shall pay 6WIND a License Fee for the amount, and with payment terms, as specified in the Purchase Order. The License Fee is subject to annual pricing revision.
- 5.2 Provided the End User has paid the applicable License Fees, End User will have the right to use the number of Units of the Software subject to the Capacity for the Software and, if applicable, the Licensed High Availability Configuration. In case the number of used Units of the Software reaches the number of Units of the Software End User has paid a License Fee for, End User shall provide a new Purchase Order to 6WIND to increase the maximum number of Units of the Software End User is authorized to use. In the event that End User plans to use the Software in excess of its Capacity, End User shall provide a new Purchase Order to 6WIND to increase the Capacity of the Software. In the event that End user plans to use a Hot Standby Instance or a Warm Standby Instance as an Active Instance, End User shall provide a new Purchase Order to 6WIND to convert the License of the Hot Standby Instance or Warm Standby Instance in a License for an Active Instance. IN THE EVENT THAT END USER EXCEEDS THE CAPACITY FOR THE SOFTWARE, USAGE OF THE SOFTWARE WILL BE LIMITED AND/OR

THE SOFTWARE WILL NOT FUNCTION AND/OR MAINTENANCE SERVICES MAY BE INTERRUPTED.

- 5.3 In case End User fails to pay License Fees when due, all outstanding sums shall become immediately payable without prejudice to any other rights or recourse open to 6WIND; End User shall be obligated to pay in addition thereto: (i) The amount of 1.50% interest per month, or the highest rate permitted by applicable law, whichever is less, on any outstanding account balance; and (ii) any costs related to collect amounts due to 6WIND, including but not limited to attorney fees. 6WIND reserves the right to suspend the performance of its Maintenance Services and Engineering Consulting Services until the payment has been made in full.
- 5.4 End User is liable for all taxes (including sales, use, property, excise, value added and gross receipts but not including taxes based on 6WIND's net income) and import duties and fees levied on used Units of the Software. End User agrees that if any of the foregoing is paid by 6WIND, End User shall reimburse 6WIND for the amount paid plus any related expenses incurred and interest assessed. In the event that End User is prohibited by law from making such payments unless such deductions are made or withheld there from, then End User shall be entitled to withhold these amounts, provided however that End User duly proves to 6WIND that these deductions are indeed income tax payments made on behalf of 6WIND, and that End User provides 6WIND with an official receipt issued and stamped by the relevant tax authorities.

## **6. TERM AND TERMINATION**

- 6.1 This Agreement shall be deemed to have been entered into on the date of Delivery of the Software by 6WIND to End User ("Effective Date") and shall remain in force unless sooner terminated according to provisions below.
- 6.2 This Agreement may be terminated immediately by either Party by written notice to the other Party in any of the following events:
- i if the other Party is in breach or default of any of the material terms or conditions of this Agreement including, without limitation: (i) use by End User of the Software without a valid License Key; (ii) unauthorized duplication and distribution of the Software and the License Key; (iii) usage by the End User of the Software in excess of its Capacity; and, (iv) usage by the End User of a Hot Standby Instance or a Warm Standby Instance not paired with an Active Instance of the Software for High Availability Configuration; and shall fail to remedy such breach or default within thirty (30) days of receipt of a written notice from the other Party asserting the breach or default, or
  - ii if the Party's performance is delayed in accordance with the provisions of Section 16.3 below; or by 6WIND, in the case of non-payment of Licenses Fees by End User.
- 6.3 6WIND may terminate this Agreement in the event that 6WIND ceases to do business in the ordinary course or otherwise suspends or discontinues business, or indicates its intention to suspend or discontinue business, or if 6WIND becomes insolvent, makes a general assignment for the benefit of creditors, files a voluntary petition of bankruptcy, suffers or permits the appointment of a receiver for its business or assets, or becomes subject to any proceedings under any bankruptcy or insolvency law, whether domestic or foreign, or has wound up or liquidated, voluntarily or otherwise.
- 6.4 Termination of the Maintenance Agreement shall not be deemed to form a cause for termination of this Agreement.

## **7. EFFECTS OF TERMINATION**

- 7.1 In the event of termination of this Agreement for whatever reason, and on the date of such termination:
- i End User shall cease to use the Software;
  - ii 6WIND will revoke the License Keys and the Software will no longer function;
  - iii Maintenance Services and Engineering Consulting Services will terminate.

- 7.2 Any termination of this Agreement shall be without prejudice to the accrued rights of the Parties under this Agreement. The following Sections shall survive the termination of this Agreement: 1, 5.1, 5.3, 5.4, 7, 8, 9, 11, 12, 14, 16.2, 16.4, 16.5, and 16.7.

## **8. PROPRIETARY RIGHTS**

- 8.1 End User is hereby on notice that the Software may contain Publicly Available Software, and as such may create an obligation on behalf of End User with respect to such software. The Software that contains Publicly Available Software is identified in all Software deliveries.
- 8.2 End User hereby acknowledges that 6WIND or its licensors own all intellectual property rights, including without limitation all patents, copyrights, trade secrets and moral rights relating to the Software and Documentation. This Agreement does not assign any of 6WIND's intellectual property rights to End User. End User may not use any trademarks, service marks or logos of 6WIND without the express written permission of 6WIND.
- 8.3 End User agrees to take all measures necessary to protect the rights of 6WIND and its licensors in the Software, both internally and with any third parties. End User may not remove any proprietary notices on the Software or Documentation.

## **9. INTELLECTUAL PROPERTY RIGHTS INFRINGEMENT**

- 9.1 6WIND agrees to indemnify, defend and hold End User harmless from and against all reasonable costs, damages, fees, penalties, fines and expenses (including reasonable attorneys' fees) (collectively, "Costs") incurred by End User pursuant to a final award, judgment or settlement amount with respect to a claim that a part of the Software provided by 6WIND which is proprietary to 6WIND (the "6WIND Original Software"), as delivered, infringes or violate a copyright, patent, trademark, trade secret or other intellectual property rights brought against End User in Europe, United States, Canada, Israel, Korea, Japan or any other country in which 6WIND is currently selling its products (collectively, the "Indemnified Territory").
- 9.2 The foregoing indemnification is subject to the following conditions: (i) End User must notify 6WIND of any claim of infringement within fifteen (15) calendar days following knowledge of any such claim, threatened or actual; (ii) 6WIND has sole control of the defense and all related settlement negotiations with respect to the claim; and, (iii) End User provides all reasonably requested assistance, information and cooperation for the defense against such claim, at 6WIND's expense. 6WIND shall have no liability to End User under this Section if any infringement is based upon End User's use of the 6WIND Original Software in combination with any software not furnished by 6WIND, if the 6WIND Original Software is used in a manner for which it is not designed or permitted, or if the infringement is based upon Modifications of the 6WIND Original Software by End User
- 9.3 If a final injunction is obtained against End User's use of the 6WIND Original Software in an Indemnified Territory by reason of such infringement, or if in 6WIND's opinion the 6WIND Original Software is likely to become the subject of a claim for such infringement, 6WIND shall, at its sole option and expense: (i) obtain the right for End User to use the 6WIND Original Software; (ii) replace the 6WIND Original Software with a functionally equivalent product which is non-infringing; (iii) modify the 6WIND Original Software to be non-infringing and functionally equivalent; or, (iv) if, in 6WIND's opinion, none of the foregoing options are available, then 6WIND shall refund a pro rata portion of the License Fees paid by End User for that part of the 6WIND Original Software no longer able to be used.
- 9.4 The remedies set forth in this Section 9 shall be End User's sole and exclusive remedies in the event of a claim of infringement based on the 6WIND Original Software.

## **10. WARRANTIES**

- 10.1 6WIND represents and warrants to End User that:
- i For thirty (30) days after Delivery of the Software, the Software will perform in substantial conformance with the features, as described in the Documentation, on the Reference Platform; if the Software does not comply with this warranty, and this does not result from non-compliant use of the Software, 6WIND, at its option, may: repair the Software within a reasonable period of time; supply End User with a new version of the Software; or, cancel the sale of the Software

and reimburse the paid License Fees; in no case shall the warranty as defined herein be a substitute for the Maintenance Services;

- ii The Software is free and clear of any security interest, lien or encumbrances;
- iii The Software is free from contamination by any known or detectable computer virus or deleterious material by means of recognized diagnostic and security procedures.

10.2 EXCEPT FOR THE EXPRESS WARRANTIES STATED HEREIN, THE SOFTWARE IS PROVIDED ON AN "AS IS" BASIS AND 6WIND DISCLAIMS ALL OTHER WARRANTIES, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. 6WIND DOES NOT WARRANT THAT USE OF THE SOFTWARE WILL BE UNINTERRUPTED OR FREE FROM ERRORS, BUGS OR DEFECTS OR THAT ALL PROBLEMS OR ERRORS WILL BE RESOLVED.

## 11. LIMITATION OF LIABILITY

IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER OR ANY THIRD PARTY FOR SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES RELATED TO THE LOSS OF USE, DATA, BUSINESS OR PROFITS, GOODWILL, WORK STOPPAGE, OR ANY AND ALL OTHER COMMERCIAL DAMAGES OR LOSSES EVEN IF THE OTHER PARTY SHALL HAVE BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES, WHETHER ARISING FROM AN ACTION OF CONTRACT, TORT, OR OTHER LEGAL THEORY. IN NO EVENT SHALL 6WIND'S LIABILITY FOR DIRECT DAMAGES WITH RESPECT TO THIS AGREEMENT, THE SOFTWARE OR SERVICES EXCEED LICENSE FEES PAID BY END USER FOR THE SOFTWARE OR SERVICE WHICH GIVES RISE TO THE CLAIM. THE FOREGOING LIMITATIONS OF LIABILITY SHALL NOT APPLY TO: (I) LIABILITY FOR DEATH OR PERSONAL INJURY OR A; (II) EITHER PARTY'S INDEMNIFICATION OBLIGATIONS UNDER THIS AGREEMENT; (III) EITHER PARTY'S BREACH OF CONFIDENTIALITY OBLIGATIONS UNDER SECTION 12; (IV) A BREACH OF END USER'S OBLIGATIONS UNDER SECTION 2; OR (V) END USER'S FAILURE TO PERFORM ITS OBLIGATIONS UNDER SECTION 13.1. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

## 12. CONFIDENTIALITY

- 12.1 Both Parties agree to maintain the other Party's Confidential Information in confidence and shall use the same degree of care, but in no event less than reasonable care, to avoid disclosure of such Confidential Information as it uses with its own confidential and proprietary information of similar type and importance. Both Parties agree to use the other Party's Confidential Information only for the purposes permitted under this Agreement and to disclose the other Party's Confidential Information only to those of their employees and sub-contractors who have a bona fide need to know solely for the purpose (and to the extent) of exercising its rights contemplated under this Agreement.
- 12.2 The confidentiality obligation under this Section shall not cover information which: (i) was at the time of receipt published or otherwise generally available to the public; (ii) has been published or become generally available to the public otherwise than through any act or omission on part of the receiving Party; (iii) was lawfully in the possession of the receiving Party at the time of receipt without any restrictions on disclosure; (iv) was rightfully acquired from third parties without any undertaking of confidentiality imposed by such third parties; or (v) was developed independently by the receiving Party.
- 12.3 The obligations set forth in this Section shall remain in force for a period of three (3) years as of the date of disclosure of the Confidential Information in question, regardless of an earlier termination of this Agreement. However, the Software, and the License Keys and the terms of this Agreement shall remain confidential indefinitely.
- 12.4 The receiving Party acknowledges that due to the unique value of the Confidential Information of the disclosing Party, in the event of any breach of this Section by the receiving Party, the disclosing Party may not have an adequate remedy at law, and shall be entitled to enforce its rights hereunder by an action for damages, or specific performance and injunctive or other equitable relief without the necessity of proving actual damage or posting a bond.

### 13. GOVERNMENTAL APPROVALS

- 13.1 End User shall take the proper steps at its own expense to obtain all necessary governmental approvals and validations and other official licenses, permits and certificates for the implementation of this Agreement in any countries into which End User uses the Software.
- 13.2 Notwithstanding the provisions of Section 13.1 above, 6WIND shall apply for its own export permission in France or elsewhere if needed for the 6WIND Original Software.
- 13.3 End User must be aware that, when including IPsec VPN encryption feature, this product is a dual use good under export control in accordance with EU regulation 1334/2000 June 24th, 2000.

### 14. APPLICABLE LAW – DISPUTES

- 14.1 If End User is incorporated outside of France, the rights and obligations under this Agreement will not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded, but such rights and obligations will instead be governed by the laws of the State of New York, United States, excluding its conflicts of law rules.

If End User is incorporated in France, THIS AGREEMENT IS GOVERNED BY LAW OF FRANCE, regardless of form and claim.

- 14.2 If End User is incorporated outside of France, all disputes, which may arise under or in relation to this Agreement, other than a claim for equitable or injunctive relief, shall be submitted to arbitration unless mutually settled in an amicable way during the period of sixty (60) days. The arbitration shall be held in Chicago, Illinois in accordance with the Comprehensive Commercial Arbitration Rules of JAMS then in effect. The Federal Rules of Evidence shall apply to any arbitration. The arbitration shall be before one mutually agreed upon neutral arbitrator who has technical expertise relating to telecommunication and software. Each party shall bear its own costs in connection therewith, except that the prevailing party shall be entitled to recover, and the arbitrator shall be empowered to award, costs and reasonable attorneys' fees to the prevailing party. Any arbitration award shall be in writing and shall specify the factual and legal bases for the award. The award rendered by the arbitration shall be finally binding and has fully legal effect upon the Parties hereto.

If End User is incorporated in France, all disputes, which may arise under or in relation to this Agreement, other than a claim for equitable or injunctive relief, shall be submitted to arbitration unless mutually settled in an amicable way during the period of sixty (60) days. The arbitration shall be held in Paris in accordance with the Rules of Arbitration and Conciliation of International Chamber of Commerce. The arbitration panel shall consist of three (3) arbitrators who have the expertise in legal matters in respect of telecommunication and software and the arbitration shall be conducted in French language. The award rendered by the arbitration shall be finally binding and has fully legal effect upon the Parties hereto.

### 15. AGREEMENT AS A REFERENCE

- 15.1 End User agrees to work with 6WIND on the following joint marketing initiatives:
- i Provide a customer success story once the Software has been successfully deployed,
  - ii Provide a customer testimonial/quote 6WIND can use in marketing materials,
  - iii Act as a reference for 6WIND on a reasonable basis.
- 15.2 Neither Party may publicize or disclose to any third party, without the written consent of the other Party, the terms of this Agreement. Without limiting the generality of the foregoing sentence, no press releases may be made without the mutual written consent of each Party.

### 16. MISCELLANEOUS CLAUSES

- 16.1 Assignment. End User shall not, without the prior written consent of 6WIND, assign or otherwise transfer its rights and obligations under this Agreement in whole or in part.
- 16.2 Relations of the Parties. No agency, partnership, joint venture, collaboration, or employment is created as a result of this Agreement. Neither Party shall have any authority to bind the other Party to any



obligation nor to represent the other Party in any circumstance and both Parties agree not to so bind or represent the other.

- 16.3 Force Majeure. 6WIND may not be held liable for delays or breaches in performance of any contractual obligations, where such delays or breaches result from events due to force majeure or unforeseeable accident, including, without limitation: strikes, blocking of transport and supply routes for any reason whatsoever, natural disasters, blocking of telecommunications including the national switched network, computer breakdown, failure of the public electricity network, and all other cases outside the control of 6WIND which prevent it performing its obligations normally. However, nothing herein shall be interpreted to allow End User to be excused from making any payments under this or any ancillary agreements, regardless of a force majeure event. In the event of a case of force majeure affecting performance in accordance with this Agreement, 6WIND agrees to inform End User as soon as it has knowledge thereof and as soon as practicable. In the event of a force majeure event lasting for a period in excess of three (3) months, either Party may terminate this Agreement.
- 16.4 Headings. The Section headings used in this Agreement are for convenience of reference only. They will not limit or extend the meaning of any provision of this Agreement, and will not be relevant in interpreting any provision of this Agreement.
- 16.5 Severability. If any provision in this Agreement is held invalid or unenforceable by a body of competent jurisdiction, such provision will be construed, limited or, if necessary, severed to the extent necessary to eliminate such invalidity or unenforceability. The Parties agree to negotiate in good faith a valid, enforceable substitute provision that most nearly affects the Parties' original intent in entering into this Agreement or to provide an equitable adjustment in the event no such provision can be added. The other provisions of this Agreement will remain in full force and effect.
- 16.6 Entire Agreement / Amendments. This Agreement sets forth the entire agreement and understanding of the Parties relating to the object hereof and merges all prior discussions and agreements of the matter hereof between them. No purchase order, or other ordering or confirming document or any handwritten or typewritten text issued by End User which purports to modify or supplement the text of this Agreement shall add to or vary the terms of this Agreement. The Parties agree that this Agreement may be amended only by a separate agreement, signed by duly authorized representatives of both Parties, referring to this Agreement and identifying the agreed amendment(s).
- 16.7 Notices. All notices, requests and other communications called for by this Agreement shall be deemed to have been given if sent by regular or certified mail, return receipt requested or U.S. Postal Service Express Mail or Federal Express, UPS or other similar recognized private overnight delivery service, prepaid to the notified Party at the addresses set forth above in the introduction or to such other addresses as either Party shall specify in writing to the other.

## **6WIND VSR - END USER - PERPETUAL LICENSE AGREEMENT**

### **APPENDIX 1**

#### **1. LICENSED SOFTWARE**

This Agreement covers the following 6WIND VSR products:

- 6WIND Virtual Provider Edge Router (6WIND vPE)
- 6WIND Virtual Security Gateway (6WIND vSecGW)
- 6WIND Virtual Cell Site Router (6WIND vCSR)
- 6WIND Virtual Carrier Grade Nat Router (6WIND vCGNAT)
- 6WIND Virtual Border Router (6WIND vBR)
- 6WIND Virtual Customer Premises Equipment Router (6WIND vCPE)

6WIND VSR products (vPE, vSecGW, vCSR, vCGNAT, vBR, vCPE) are licensed as follows:

- A Network License providing basic networking features with a throughput Capacity,
- When Applicable,
  - An IPsec Application License, providing IPsec features with a Capacity of number of tunnels,
  - A CGNAT Application License, providing CG-NAT features with a Capacity of number of sessions,
  - An RTU (Right To Use), providing the rights for the multi-tenancy support,

**Note:** A Network License is required to run an Application License and an RTU.

#### **Software Capacity**

Licensed Software is provided for a defined throughput Capacity. The Capacity is indicated in the Software part number. End User shall not use Software in excess of its Capacity.