

**XANDROS CORPORATION**

**BridgeWays Management Pack Beta Test Agreement**

Xandros Corporation ("Xandros") is currently in the process of developing a version of a System Center Operations Manager Cross-platform Management Packs (the "Product" or "Products") under the name *Xandros BridgeWays*. An important part of the software release process is the "Beta" testing by certain users under controlled conditions, prior to making the software available for general use. By participating in this Beta test program, you, the undersigned (the "User"), gain access to the Product months before it is generally available and have the opportunity to provide feedback to Xandros with suggested changes to the release.

Xandros has requested that the undersigned provide, and the undersigned has agreed to provide, Beta testing services regarding the Beta version of *Xandros BridgeWays*, subject to the terms and conditions set out below.

1. **Appointment as Beta Tester.** Subject to the terms and conditions herein, Xandros appoints the User as a member of the Beta testing program for the Products.
2. **Provision of Services.** In consideration of the User's appointment as a member of the beta testing program (the "Beta test Program"), User acknowledges and agrees as follows:
  - (a) User shall provide all hardware and software necessary to enable User to effectively evaluate the Product.
  - (b) The User shall not copy the Product except as reasonably required for backup or archival purposes, and shall include Xandros' and its licensors' copyright and other proprietary rights notices on all such copies. The Xandros Software (as defined in paragraph 5(b) hereof) forming part of the Product shall remain the exclusive property of Xandros or its licensors. Xandros reserves all rights not expressly granted to Customer.
  - (c) The User shall not publish reviews of the Product nor discuss the Product with any representative of the media, or any person other than a Xandros employee or other members of the Xandros Beta Test Program participating in the Product Beta Testing Forum.
3. **Term.** The term (the "Term") of this Agreement shall be 360 days after the delivery of the Product by Xandros to User, unless this Agreement is terminated prior to that date pursuant to section 11 hereof.
4. **Products.** Xandros shall provide to the User, at no charge to User, one test copy of the Product and related technical information or documentation identified (collectively the "Product"). Xandros is not required to provide any updates of the Product to the User during the Term.
5. **Future Availability.** Xandros reserves the right at any time not to release the Product or, even if released, to alter prices, features, specifications, capabilities, functions, release dates, general availability, or other characteristics of the Product.
6. **Disclaimer of Warranties.** USER ACKNOWLEDGES THAT THE PRODUCTS ARE PRE-RELEASE PRODUCTS AND ARE PROVIDED ON AN "AS IS" BASIS AND WITHOUT WARRANTY. THE PRODUCTS MAY CONTAIN BUGS, ERRORS AND OTHER PROBLEMS THAT COULD CAUSE SYSTEM FAILURES OR MAY NOT PERFORM ALL FUNCTIONS FOR WHICH IT IS INTENDED OR REPRESENTED AND THE USE OF SUCH PRODUCTS IS ENTIRELY AT THE USER'S RISK. THIS DISCLAIMER IS IN LIEU OF ALL WARRANTIES WHETHER EXPRESS OR IMPLIED, ARISING BY STATUTE, OPERATION OF LAW OR OTHERWISE, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, MERCHANTABLE QUALITY OR FITNESS FOR A PARTICULAR PURPOSE.

7. **Limitation of Liability.** NEITHER XANDROS NOR ITS LICENSORS SHALL BE LIABLE FOR ANY LOSS OR DAMAGE TO USER, ITS CUSTOMERS, OR ANY THIRD PARTIES CAUSED BY THE PRODUCT OR BY XANDROS' PERFORMANCE OF THIS AGREEMENT. XANDROS SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, WHETHER BASED ON CONTRACT, TORT OR ANY OTHER LEGAL THEORY, ARISING OUT OF ANY USE OF THE PRODUCT OR ANY PERFORMANCE OF THIS AGREEMENT WHETHER XANDROS OR ITS SUPPLIERS IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR SUCH DAMAGES ARE FORESEEABLE.

8. **Intellectual Property Rights.** All right, title and interest to all intellectual property with respect to the Xandros Software and Confidential Information (as hereinafter defined) shall remain with Xandros. No license or other right of any kind is granted by Xandros hereunder, except for the limited right to use and test the Xandros Software as part of the Product as expressly provided in this Agreement.

9. **Confidential Information.** The Xandros Software forming part of the Product, including the specific design, structure and logic of individual programs, their interactions both internal and external, and the programming techniques employed therein, as well as non-public information that Xandros designates as being confidential or which, under the circumstances surrounding disclosure ought to be treated as confidential are considered confidential and trade secrets of Xandros and/or its licensors (the "Confidential Information"), the unauthorized disclosure of which would cause irreparable harm to Xandros. The User shall use the same degree of care and means that it uses to protect its own information of a similar nature, and in any event, shall use reasonable efforts to prevent the disclosure of Confidential Information to any third parties. The User shall not use, reproduce or distribute the Confidential Information other than for the purposes authorized by this agreement. This confidentiality obligation shall continue to apply to the Confidential Information following the termination hereof, provided that the confidentiality provisions contained herein shall not apply to Confidential Information which (i) was known by the User prior to disclosure, as evidenced by its business records; (ii) was lawfully in the public domain prior to its disclosure, or becomes publicly available other than through a breach of the confidentiality provisions contained herein; (iii) was disclosed to the User by a third party, provided such third party or any other party from whom such third party receives such information is not in breach of any confidentiality obligation in respect of such information; (iv) is independently developed by the User, as evidenced by its business records; or (v) is disclosed when such disclosure is compelled pursuant to legal, judicial, or administrative proceeding, or otherwise required by law, provided that the User shall give all reasonable prior notice to Xandros to allow it to seek protective or other court orders. The User agrees to notify Xandros immediately upon discovery of any unauthorized use or disclosure of Confidential Information or breach of this Agreement.

10. **Termination.** In the event that User fails at any time to comply with the terms and conditions of this Agreement or the Beta Guidelines, Xandros may at its sole discretion, terminate this Agreement without further notice. User may terminate this Agreement on fifteen (15) days prior written notice to Xandros. The rights and responsibilities of the parties pursuant to sections 7 to 11 inclusive of this Agreement shall survive the termination of this Agreement. Upon the expiration of the Term or earlier termination of this Agreement, User shall promptly destroy or, at the request of Xandros, return to Xandros all copies of the Software and all originals, copies, reproductions and summaries of Confidential Information.

11. **Miscellaneous.**

(a) This Agreement contains the entire understanding and agreement of the parties relating to the subject matter hereof. Any representation, promise or condition not explicitly set forth in this Agreement shall not be binding on either party. Any amendments to this Agreement shall be in writing and signed by the authorized representatives of each party.

- (b) Neither party hereto shall have the right to bind the other to any agreement with a third party or to incur any obligation or liability on behalf of the other party.
- (c) If any term of this Agreement shall be held to be illegal or unenforceable by a court of competent jurisdiction, the remaining terms shall remain in full force and effect.
- (d) This Agreement supercedes any and all prior arrangements, whether oral or written, with respect to the provision of Beta testing services and the Confidential Information.
- (e) This Agreement is personal and non-transferable and may not be assigned or transferred in whole or in part by the User.
- (f) This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein. The United Nations Convention on the International Sale of Goods shall not apply to this agreement or the transactions contemplated hereunder.
- (g) This agreement shall enure to the benefit of and be binding upon the parties hereto and their respective executors, heirs, personal representatives, successors and permitted assigns.