

END USER SOFTWARE LICENCE AGREEMENT

PARTIES

- (1) Bcrypt Limited, a company registered in England and Wales with company number 04328430 whose registered office is at Artillery House, 11-19 Artillery Row, London SW1P 1RT, England ("Bcrypt");
- (2) The person or entity on whose behalf this licence is accepted for the use of the Software ("Licensee").

INTRODUCTION

Bcrypt is the owner and/or authorised licensor of the Software and is willing to grant a license to the Licensee to use the Software subject to the terms and conditions of this Agreement.

OPERATIVE PROVISIONS

1. INTERPRETATION

- 1.1 The following words and expressions shall, where the context permits, have the meanings set opposite them below:

"Effective Date" means the date this Agreement is read by the End User;

"Intellectual Property Rights" means all copyrights, design rights, trade marks, service marks, trade secrets, know-how, database rights and other rights in the nature of intellectual property rights (whether registered or unregistered) and all applications for the same, anywhere in the world;

"Materials" means any documentation or other materials including physical media provided by Bcrypt to the Licensee;

"Order" means the written order accepted by Bcrypt for the Software;

"Software" means the computer programs specified in the relevant purchase order for the Software to be provided by Bcrypt to Licensee;

"User" means a single user of the Software.

- 1.2 The headings in this Agreement shall not affect its interpretation.

2. LICENCE

- 2.1 Bcrypt grants the Licensee a non-exclusive, non-transferable licence to use the Software in object code form for the number of Users for which the Licensee has paid the applicable licence fees as agreed by Bcrypt.
- 2.2 Save as stated in this clause 2, the Licensee shall have no right to copy, adapt, reverse engineer, decompile, disassemble, modify, sell, sub-licence, transfer or distribute the Software in whole or in part.
- 2.3 If the Licensee intends to attempt the decompilation of any of the Software for error correction or any other purpose in the exercise of derived statutory rights, the Licensee will first give reasonable notice to Bcrypt of its intention.

3. EXPORT LICENSING

- 3.1 The Licensee acknowledges that the Software and/or Materials may be subject to export control laws including compliance with Council Regulation (EC) No. 1334/2000 ("CGEA") under English and/or European law. The Licensee acknowledges its obligations not to re-export the Software and/or Materials from the country to which Bcrypt delivers the Software and/or Materials or authorises the Licensee in writing to use the Software and/or Materials or use the Software and/or Materials in any manner contrary to CGEA or to cause Bcrypt to breach its export permission for the Software and/or Materials pursuant to the CGEA export rules.
- 3.2 The Licensee indemnifies and shall hold Bcrypt harmless against all costs, loss and damage arising from the Licensee's breach of clause 3.1.

4. TERM

- 4.1 This Licence Agreement is effective upon the Effective Date and shall continue until terminated unless otherwise set out in the Order. Clause 20 is applicable to fixed term orders only. Bcrypt may terminate this Licence Agreement upon the breach by you of any term hereof, which remains uncured after thirty (30) days' notice of such breach. Termination of this Licence Agreement shall not relieve Licensee of its obligation to pay for Software provided to Licensee prior to such termination.
- 4.2 This Agreement is independent of any Software support being provided by Bcrypt, to the extent that the Licensee's licence to use the Software will survive any termination of Bcrypt's obligations to support the Software, whether in this Agreement or any other contract.

5. RIGHTS IN THE SOFTWARE

- 5.1 No title or rights of ownership or any other Intellectual Property Rights in the Software or Materials including all upgrades, modifications, new versions and releases of the Software, is or will be transferred to the Licensee and all such rights shall at all times remain with Bcrypt.
- 5.2 The Licensee understands that the Software and/or Materials contains proprietary information and agrees that it will not provide or otherwise make any of the Software available for any reason to any other person, firm, company or organisation.
- 5.3 The Licensee will not copy or permit the Software and/or Materials to be copied, except for reasonable security and backup purposes. Any copies made must include all copyright or other proprietary notices.

6. **LICENSEE UNDERTAKINGS**

- 6.1 The Licensee acknowledges that it is licensed to use the Software and Materials only in accordance with the express terms of this Agreement.
- 6.2 The Licensee undertakes to maintain records identifying the location where the Software is installed and used and to promptly make such records available to Becrypt on reasonable notice during normal business hours.
- 6.3 The Licensee warrants that, the Software and Materials and all copies will remain under its control and that it will take all reasonable precautions to safeguard the Software and Materials against unauthorised use.

7. **LICENCE FEE AND PAYMENT TERMS**

- 7.1 The Licensee shall pay the licence fee to Becrypt or our designated agent, against invoice, or as otherwise agreed in writing between the parties.
- 7.2 All fees and charges are exclusive of Value Added Tax and any similar taxes. All such taxes are payable by the Licensee and will be applied in accordance with the relevant UK legislation.
- 7.3 All invoices are payable in accordance with the terms stated on the applicable Order. Payments which are not received when payable will be considered overdue and remain payable by the Licensee together with interest for late payment from the date payable at the statutory rate applicable before as well as after any judgment, and independent of such judgment. This interest will accrue on a daily basis and be payable on demand.
- 7.4 Notwithstanding the above provision for late payment, in the event of overdue payment Becrypt may at its option, and without prejudice to any other remedy to which it is entitled, terminate or temporarily suspend the licence contained in clause 2.
- 7.5 If Becrypt becomes entitled to terminate this Agreement for any reason, any sums then due to Becrypt will immediately become payable in full.
- 7.6 Becrypt or our designated agent may, upon five (5) working days prior written notice to the Licensee, inspect any of the Licensee's facility or systems where the Software is used and conduct an audit for the purpose of confirming the Licensee's use of the Software in compliance with this Agreement. Becrypt may perform only one formal audit per twelve (12) month period unless a previous audit reveals a discrepancy. The audit shall be performed at Becrypt's sole expense; provided however, that if, as a result of an audit, it is determined that the Licensee owes Becrypt additional fees, then the Licensee shall bear the reasonable cost of the audit and pay all past-due fees immediately in accordance with the terms of this Agreement. This clause survives termination of this Agreement for two (2) years.

8. **LIMITED WARRANTY**

- 8.1 Becrypt warrants to the Licensee that for a period of 90 days from delivery:
 - 8.1.1 any media on which the Software is delivered will be free from material defects in materials and workmanship; and
 - 8.1.2 the Software will operate substantially in accordance with the user guide.
- 8.2 The Licensee's remedy and Becrypt's obligations under this limited warranty shall be limited to, at Becrypt's election, return of the Software in question or a refund of the licence fee or replacement of any defective Software. Any replacement shall not extend the original warranty period. This limited warranty shall not apply to Software which Becrypt reasonably determines has been subject to misuse.
- 8.3 Becrypt does not warrant that the Licensee's use of the Software will be uninterrupted or error-free.
- 8.4 The express terms of this Agreement are in lieu of all warranties, conditions, terms and obligations implied by statute, common law, custom, trade usage, course of dealing or otherwise, all of which are hereby excluded to the fullest extent permitted by law.

9. **LIMITATION OF LIABILITY**

- 9.1 Except as prohibited by law, Becrypt shall not be liable to the Licensee for any special, incidental, consequential, indirect, exemplary, or punitive damages or liabilities for any cause whatsoever arising out of or relating to this Agreement. Whether in contract or tort or by way of indemnity or otherwise, including a breach thereof or including damages for liabilities for lost profit, lost revenue, loss of use, loss of goodwill, loss of reputation, loss of data, costs of recreating lost data, the cost of any substitute equipment, program, or data, or claims by any third party regardless of whether the possibility of such damages or liabilities have been communicated to Becrypt and regardless of whether Becrypt has or gains knowledge of the existence of such damages or liabilities.
- 9.2 Except as prohibited by law, the cumulative, aggregate liability of Becrypt, including costs awarded under this Agreement) to the Licensee or for all claims, liabilities and damages arising out of or relating to this Agreement, whether in contract, tort, or otherwise, shall not exceed the maximum of 120% of the licence fees paid or payable to Becrypt by the Licensee for the Software giving rise to the event of default or series of connected events of default in which the liability of Becrypt occurred. The parties agree that the limitations and exclusions set out in this Agreement have been freely negotiated and that Becrypt would not have entered into this Agreement without such limitations.

- 9.3 Nothing in this Agreement shall exclude or limit Becrypt's liability for:
- 9.3.1 fraudulent misrepresentation or other criminal act;
 - 9.3.2 personal injury or death caused by the negligence of its employees in connection with the performance of their duties hereunder; or
 - 9.3.3 any other liability that cannot be excluded by law.
10. **INTELLECTUAL PROPERTY RIGHTS INDEMNITY**
- 10.1 All Intellectual Property Rights in the Software and Materials belong and shall belong to Becrypt.
- 10.2 Becrypt undertakes to defend the Licensee from and against any claim or action that the possession or use of the Software (or any part thereof) infringes the Intellectual Property Rights of a third party in the jurisdiction in which Becrypt deliver or first make the Software available to the Licensee ("Infringement Claim") and shall fully indemnify and hold harmless the Licensee from and against any direct losses, damages, costs (including all legal fees) and expenses reasonably incurred by or awarded against the Licensee as a result of or in connection with any such successful Infringement Claim. Or the avoidance of doubt the Licensee shall mitigate its losses.
- 10.3 The indemnity in clause 9.2 is subject to the following conditions:
- 10.3.1 the Licensee shall as soon as reasonably practicable notify Becrypt in writing of any Infringement Claim of which it has notice;
 - 10.3.2 the Licensee shall not make any admission as to liability or compromise or agree to any settlement of any Infringement Claim without the prior written consent of Becrypt, which consent shall not be unreasonably withheld or delayed; and
 - 10.3.3 Becrypt shall be entitled to have the conduct of or settle all negotiations and litigation arising from any Infringement Claim and the Licensee shall, at Becrypt's request, give Becrypt all reasonable assistance in connection with those negotiations and such litigation.
- 10.4 Without prejudice to clause 10.2, if any Infringement Claim is made, or in Becrypt's reasonable opinion is likely to be made, against the Licensee, Becrypt may at its sole option and expense and at no cost to the Licensee:
- 10.4.1 procure for the Licensee the right to continue using, developing, modifying or maintaining the Software (or any part thereof) in accordance with the terms of this Agreement;
 - 10.4.2 modify the Software so that it ceases to be infringing; or
 - 10.4.3 replace the Software with non-infringing software;
- provided that if Becrypt modifies or replaces the Software, the modified or replacement Software shall comply with the warranties contained in clause 8.
11. **CONFIDENTIALITY AND PUBLICITY**
- 11.1 Each party agrees that it shall, during the term of this Agreement and afterwards, keep confidential all, and shall not use for its own purposes nor without the prior written consent of the other disclose to any third party any, information of a confidential nature (including, without limitation, trade secrets and information of commercial value) which may become known to such party from the other party and which relates to the other party, unless such information is public knowledge or already known to such party at the time of disclosure, or subsequently becomes public knowledge other than by breach of this Agreement, or subsequently comes lawfully into the possession of such party from a third party.
- 11.2 The provisions of clause 11 shall remain in full force and effect notwithstanding any termination of this Agreement for any reason.
12. **WAIVER**
- 12.1 No forbearance or delay by either party in enforcing its rights shall prejudice or restrict the rights of that party and no waiver of any such rights or of any breach of any contractual terms shall be deemed to be a waiver of any other right or of any later breach.
13. **SEVERABILITY**
- 13.1 If any provision of this Agreement is judged to be illegal or unenforceable, the continuation in full force and effect of the remainder of the provisions shall not be prejudiced.
14. **AMENDMENTS**
- 14.1 Any amendment, waiver or variation of this Agreement shall not be binding on the parties unless set out in writing, expressed to amend this Agreement and signed by or on behalf of each of the parties.
15. **THIRD PARTY RIGHTS**
- 15.1 No term of this Agreement is intended to confer a benefit on, or to be enforceable by, any person who is not a party to it.
16. **NON-ASSIGNMENT**
- 16.1 Licensee may not assign, sub-license or otherwise transfer any of its rights or obligations under this Agreement, and any attempt at such assignment or transfer will be void without the prior written consent of Becrypt.

17. **NOTICES**

17.1 All notices between the parties about this Agreement must be in writing and delivered by hand or sent by pre-paid first class post or sent by email transmission to the address set out at the beginning of this Agreement or such other address as shall be notified from time to time.

17.2 Notices shall be deemed to have been received:

17.2.1 if sent by pre-paid first class post, 2 days (excluding Saturdays, Sundays and bank and public holidays within the United Kingdom) after posting (exclusive of the day of posting);

17.2.2 if delivered by hand, on the day of delivery; and

17.2.3 if sent by email on a United Kingdom working day prior to 4.00 p.m. in London, at the time of transmission and otherwise on the next working day.

18. **ENTIRE AGREEMENT**

18.1 This Agreement contains the whole agreement between the parties relating to the subject matter hereof and supersede all prior agreements, arrangements and understandings between the parties relating to that subject matter.

19. **GOVERNING LAW AND JURISDICTION**

19.1 This Agreement shall be governed by and construed in accordance with English law and each party hereby submits to the exclusive jurisdiction of the English courts.

20. **ADDITIONAL CLAUSE APPLICABLE TO FIXED TERM LICENSES**

20.1 Subject to the terms and conditions of this EUSLA, in the instance of a fixed term license, the license to use the Software begins on the Effective Date and shall be for the duration identified in the applicable Order. Use of the software before or beyond the applicable fixed term is unauthorized usage and constitutes a material breach of this EUSLA and applicable law.

20.2 Renewal. At the end of the initial fixed term as stated in the Order, the License will automatically renew for consecutive one-year periods at Becrypt's then current list price unless one party hereto provides the other party with written notice of non-renewal at least 30 days prior to the expiration of a term or unless otherwise agreed to by the parties in writing.

20.3 Termination of this Licence Agreement shall not relieve the Licensee of its obligation to pay the term licensing fees as stated in the relevant Order.

20.4 Effect of Termination. In the event the fixed term license expires without renewal or this License is terminated for any reason, Licensee shall immediately discontinue use of the Software and Materials. Within 14 days, Licensee shall certify in writing to Becrypt that the relevant Software and Materials, including all copies thereof, have been destroyed and that the Licensee has ceased its usage of the Software and Materials. In addition, any and all Maintenance, Support and other Services provided by Becrypt shall also immediately terminate. Sections 3, 5, 8, 10 and 11 shall survive any termination of this License.