

End User License Agreement (EULA)

Utimaco IS GmbH

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1. Applicability

This end user license agreement ("EULA") governs the use of software in executable form (as object code) whether or not provided as stand-alone software or in combination with hardware products and any update or upgrade, if provided by Utimaco, (such software hereinafter referred to as "Software") and the documentation in accordance with the terms and conditions of this EULA, unless it is subject to a separate agreement between Customer and Utimaco IS GmbH and its subsidiaries ("Utimaco") that expressly replaces this EULA. By downloading, installing or using the Software, Customer agrees to the terms and conditions of this EULA. If Customer uses the Software as an employee of or for the benefit of Customer's company, Customer represents and warrants that Customer has the power and authority to accept this EULA. If Customer does not agree to the terms and conditions of this EULA or if Customer does not have the power and authority to accept the terms and conditions of this EULA on behalf of Customer's company, Customer may not use the Software. The effective date of this EULA is the date that Customer first downloads, installs or uses the Software.

This EULA includes supporting material accompanying the Software or referenced by Utimaco, which may include additional license authorizations ("ALA"), third-party licenses or open source resources, software specifications and similar documentation ("Supporting Material"). Supporting Material can be found at <https://hsm.utimaco.com/terms-conditions/>.

This EULA shall only apply vis á vis entrepreneurs, governmental entities, or special governmental estates within the meaning of § 310 para. 1 German Civil Code (Bürgerliches Gesetzbuch – BGB).

2. License Grant

(1) Utimaco grants Customer a non-exclusive, perpetual right to use the Software, including the documentation, to the agreed extent necessary for the proper execution of the contract, e.g. the number of licenses of the version or release of the Software on the number of computer systems or network servers indicated in the applicable contract documentation, subject to the terms set forth in this EULA and any specific software licensing information that is in the Software or its Supporting Material.

(2) Utimaco grants no further rights in respect of the Software, in particular it does not grant Customer the right to reproduce the Software or documentation beyond the scope of what is necessary for the use of same in accordance with the contract. Customer has no right to modify the Software or documentation except where modification is necessary to eliminate defects. Customer may only modify the Software or documentation if Utimaco has previously expressly refused to provide a cure or if no cure was provided in spite of the grace period allowed for this or if the attempted cure failed. Moreover, Customer is permitted to back up the Software and documentation and to reproduce the Software to the extent that is customary and recommended by Utimaco in order to ensure the proper operation of the Software and the customer's data processing system. The decompilation of the Software within the scope of § 69e of the Copyright Act (Urhebergesetz – UrhG) is also permitted. At the Customer's request, Utimaco will, at any time, provide it, at short notice, with the interface information necessary for this purpose. Unless Customer has, in addition, acquired the relevant rights of use under the Supporting Material, it may under no circumstances rent out or otherwise sublicense the acquired Software, reproduce it publicly or make it available to the public by wire or wireless means or make it available to third parties for payment or for free, e.g. through "application service providing" or as "software as a service". Customer may not transfer the Software and documentation other than by a transfer to a third party as specified in the next paragraph.

- (3) Customer may make a one-time transfer of the Software to another end user provided that
- a. the transfer has to include all component parts, media, printed material and, this EULA;
 - b. the Customer deletes all other copies in particular on data storage media or in read-only memories or main memories;
 - c. the Customer stops using the Software;
 - d. the transfer may not be an indirect transfer, such as a consignment;
 - e. prior to the transfer, the end user receiving the transferred Software must agree to all the terms and conditions of this EULA.

(4) The customer is prohibited from altering the copyright notices applied to the Software or documentation. Utimaco is entitled to take reasonable technical measures to protect the Software against any use that is not in conformity with the contract.

(5) Software may contain components that have been licensed from third parties under open source license agreements. These license terms and conditions must also be complied with in connection with the use of the Software. To the extent the Software includes open source software ("OSS") components, such OSS licenses shall control over this EULA with respect to the particular open source component to the extent that this EULA imposes greater restrictions on Customer than the applicable OSS license terms. To the extent the license terms for any OSS requires Utimaco to make available to Customer the corresponding source code and/or modifications (the "Source Files"), Customer may obtain a copy of the applicable Source Files from Utimaco upon request.

3. Crypto Server Simulator

(1) Customer agrees to use the Utimaco CryptoServer Simulator for test and evaluation purposes only and not for production/in production environment.

(2) The CryptoServer Simulator Software is provided according to the legal regulations for loan ("Leihe") "as is" and Utimaco disclaims all other warranties.

(3) Utimaco's liability for gross negligence shall be excluded. § 601 para. 2, sentence 1 of the Civil Code (Bürgerliches Gesetzbuch – BGB) shall not apply.

4. Ownership

(1) No transfer of ownership of any intellectual property will occur under this EULA. Utimaco retains all ownership and intellectual property rights in the Software, in particular all patent rights, copyrights, trademarks, trade names, trade secrets, technology, ideas, know how, and other intellectual property rights pertaining thereto. Utimaco reserves all rights in the Software not expressly granted to Customer.

(2) The Customer may not make or publish any public statement concerning the Software or Utimaco without the prior written consent of Utimaco.

5. Update, Modification, Release

(1) Customer agrees that any and all future modifications, enhancements, updates, revisions and/or new releases to the Software created by Utimaco shall be the sole property of Utimaco. Utimaco may, but shall not be obligated to, provide any modifications, enhancements, updates, revisions, and/or new releases created by Utimaco for the Customer.

(2) Customer may make a reasonable number of copies of the Software, solely for archival and back-up purposes, provided that all of Utimaco's copyright notices or other proprietary or restrictive legends or notices are reproduced on all such copies.

(3) Customer further acknowledges and agrees that Customer shall be solely responsible for proper back-up of all data stored in connection with the Software and that Customer shall take measures to ensure such.

6. Operating Systems

(1) Operating system software may only be used on approved hardware and configurations.

7. Confidentiality

(1) The Software, including its object code and source code, whether or not provided to the Customer, is confidential information.

(2) Customer shall retain Software in strict confidence and not disclose it to any third party (except as authorized by this EULA), without Utimaco's express written consent. Customer shall protect Software at least to the same extent it protects its own confidential information and to the same extent that a reasonable person would protect such confidential information.

(3) Utimaco hereby consents to the disclosure of the Software to the employees and contractors of Contractor provided that such employee or contractor has a need to know in relation to Customer's authorized use of the Software.

(4) Unless otherwise explicitly stated in a written agreement between Customer and Utimaco, any information or material provided to Utimaco will be deemed NOT to be confidential. By providing Utimaco any information or material, Customer grants Utimaco an unrestricted, irrevocable license to use, reproduce, display, perform, modify, transmit and distribute those materials or information, and Customer also agrees that Utimaco is free to use any ideas, concepts, suggestions, feedback, know how or techniques that Customer provides to Utimaco for any purpose.

8. Termination

(1) This EULA between Utimaco and Customer is terminated

- a. in case of a license with an expiration date, on expiration date;
- b. without prejudice to any other rights of Utimaco, if Customer fails to comply with the terms and conditions of this EULA.

Clauses 7, 8, and 10 shall survive termination for any reason of this EULA, for so long as necessary to accomplish their purpose.

(2) Immediately upon termination or expiration, Customer will destroy the Software and Supporting Material and any copies or return them to Utimaco. Customer may keep one copy of Software and Supporting Material for archival purposes. Utimaco may ask Customer to certify in writing Customer has complied with this section.

9. Global Trade Compliance

(1) The Customer is aware that the Software and documentation may be subject to export and import restrictions. In particular, authorization requirements may exist, or the use of the Software or related technologies may be subject to restrictions. Customer shall comply with all the applicable export and import control regulations of the Federal Republic of Germany, the European Union and the United States of America, as well as all other relevant regulations with respect to the use of the Software and documentation, in particular local import and export rules and Customer will not sell, resell, loan, disclose, re-export or otherwise transfer the Software and documentation to any destination subject to restrictive sanctions, measures or trade embargoes implemented at a national, regional or international level without the appropriate authorization and Customer is solely responsible for fulfilling any applicable governmental requirements in connection with Customer's use, disclosure and/or transport of the Software and documentation. Customer explicitly acknowledges that the Software is subject to dual use export classification which may impact their export to certain countries or use by Customer.

(2) Customer confirms that Customer is not a "Restricted Party", which shall be deemed to include any person or entity listed on all applicable trade and export regulation listings such as - without limitation - United Nations lists based/ followed on resolution 1267/1999, European Union lists based/ followed on resolution 2580/2001 or 881/2002, HM Treasury of United Kingdom's Consolidated list of financial sanctions targets, US Bureau of Industry and Security's lists for Denied Persons, Denied Entities or Specially Designated Nationals and Blocked Persons, World Bank's Listing of Ineligible Firms (Debarred Firms).

Utimaco may suspend its performance under this EULA to the extent required by laws applicable to either party. If Customer becomes a Restricted Party during the term of this EULA, this EULA shall automatically terminate, and Customer shall immediately cease all use of the Software.

(3) Customer recognizes that the use of a set of software development tools that allows the creation of applications for a certain software package, software framework, or similar development platform ("Software Development Kit" or "SDK") for implementation of new cryptographic algorithms or cryptographic libraries into the Software might change the Export Control Classification Number of the Software and requires in case of export a new filing process by Customer to determine/verify the Export Control Classification Number. The "Export Control Classification Number" or "ECCN" is a five-character alphanumeric key used in the Commerce Control List (CCL) to classify U.S. exports and determine whether an export license is needed from the Department of Commerce.

10. General

(1) Utimaco is entitled to have an examination carried out at the Customer's premises to confirm that the Software is actually used in conformity with the contract. The examination may only be carried out by an expert who is also under a duty of confidentiality in relation to Utimaco, who is an independent expert and not bound to follow instructions, and who may only disclose information to Utimaco if, and to the extent that, the license granted has been infringed and to the extent that such information is necessary to enforce a license infringement claim. In particular, the expert is not entitled to disclose any information at all if the license infringement has been admitted and the relevant damages claims have been satisfied. The Customer must be given 2 weeks' written notice of the examination.

(2) This EULA will be governed by the material laws of Germany. The provisions of the United Nations Convention on the International Sale of Goods (CISG) do not apply. Customer and Utimaco consent to the jurisdiction of the courts of Cologne, Germany.

(3) This EULA represents the entire understanding with respect to its subject matter and supersedes any previous communication or agreements that may exist. Modifications to this EULA will be made only through a written amendment signed by both parties. If Utimaco does not exercise its rights under this EULA, such delay is not a waiver of its rights.

(4) The invalidity of any provision of this EULA terms will not otherwise affect the validity of the EULA terms. In the case of any dispute, any invalid provision will be replaced, insofar as legally permissible, by a provision that most closely approximates and most likely represents the well-understood economic interest of the Parties in the invalid provision. The above provisions will apply accordingly in the case of any omissions in this EULA.