

END-USER LICENSE AGREEMENT (“EULA”)

(VERSION 11-APR-2016)

This EULA covers the software developed by and contained in hardware products or as stand-alone software you license or purchase (such software, “Software” and such hardware products, “Utimaco Products”) from Utimaco IS GmbH (“Utimaco”), unless and until we enter into a new agreement that expressly replaces this EULA. If you use the Software in Utimaco Products as an employee of or for the benefit of your company, you represent that you have the power and authority to accept this EULA on behalf of your company and your company will be the licensee under this agreement. By downloading, installing or using the Software in Utimaco Products, you consent to the terms and conditions of this EULA on behalf of yourself and the company on whose behalf you will use the Software in Utimaco Products provided under this agreement. The effective date of this agreement is the date that you first download, install or use the Software of Utimaco Products. If you do not agree to the terms and conditions of this agreement or if you do not have the power and authority to accept the terms and conditions of this agreement on behalf of your company, you may not use the Software in Utimaco Products and Utimaco is unwilling to provide you with the Software.

§ 1 Application

(1) This EULA set forth the terms and conditions according to which Utimaco grants to you the right to use the Software in Utimaco Products. Differing or contrary terms shall not apply.

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

§ 2 Grant of rights

(1) As between you and Utimaco, Utimaco Products are sold to you under the terms of this EULA. Utimaco retains all ownership and intellectual property rights in the Software in Utimaco Products, in particular all patent, rights, copyright, trademarks, trade names, trade secrets, technology, ideas, know-how, and other intellectual property rights pertaining thereto. Utimaco reserves all rights not expressly granted to you.

(2) Subject to the terms set forth in this Agreement, Utimaco grants you a non-exclusive, non-sublicensable, limited right to install and run the Software solely on the Utimaco Product with which it is included or which it is provided for use with. The foregoing license is limited to the right to use the Software on the number of computer systems or network servers indicated on applicable order confirmations, delivery notes and / or invoices. Any use going beyond these terms is expressly prohibited.

(3) You agree to use the Utimaco CryptoServer Simulator for test and evaluation purposes only and not for production/in production environment.

(4) Except as expressly provided herein or to the extent permitted under applicable law, you shall not, directly or indirectly, (i) copy, modify, translate, reverse compile, disassemble, reverse engineer or otherwise determine or attempt to determine the source code of the Software in Utimaco Products or to create any derivative works based on the Software in Utimaco Products or any documentation that may be provided with Software, (ii) create any modifications, enhancements, updates, revisions and / or new releases of the Software in Utimaco Products, (iii) remove or modify any program markings or any notice of Utimaco's proprietary rights, make the Software in Utimaco Products available in any manner to any third party, (iv) distribute, sell, transfer, lend or otherwise make available, or disclose to third parties, the Software (other than as incorporated within a Utimaco Product which is transferred to a third party as specified in the next paragraph) or (v) use any Utimaco name, trademark or logo.

(5) The initial user of the Utimaco Product may make a transfer of the Utimaco Product to another end user. The transfer has to include all component parts, media, printed material and, this EULA. The transfer may not be an indirect transfer, such as a consignment. Prior to the transfer, the end user receiving the transferred Product must agree to all the terms and conditions of this EULA.

You may not rent, lease, lend or provide commercial hosting services to third parties with the Product.

§ 3 Update, modification, release

(1) You agree that (i) 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, (ii) Utimaco may, but shall not be obligated to, provide any modifications, enhancements, updates, revisions, and/or new releases created by Utimaco for you.

(2) You may make a reasonable number of copies of the Software in Utimaco Products, 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) You further acknowledge and agree that you shall be solely responsible for proper back-up of all data stored in connection with the Software in Utimaco Products and that you shall take measures to ensure such.

§ 4 Confidentially

(1) You shall retain Software in Utimaco Products in strict confidence and not disclose it to any third party (except as authorized by this Agreement), without Utimaco's express written consent. Utimaco hereby consents to the disclosure of the Software in Utimaco Products to your employees and contractors provided that such employee or contractor has a need to know in relation to your authorized use of a Utimaco Product.

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

§ 5 Warranty

(1) Precondition for any warranty claim of you is the full compliance with all requirements regarding inspection and objection established by sec. 377 HGB (German Commercial Code). You must report any defects immediately upon discovery and provide Utimaco – as far as possible – with information as to the nature and occurrence of the defect.

(2) Warranty claims shall be time-barred after 12 months of the passage risk. The warranty does not cover Utimaco Products modified by you unless you can demonstrate that such changes are not responsible for the reported defect.

(3) Warranty claims will be honored only in case of defects that are amenable to reproduction or verification.

(4) In case of defects that are reports on the basis of section 5 (1) Utimaco will at its own discretion repair or provide a replacement.

In the event that Utimaco cannot eliminate the defect within an appropriate period of time, you may set a period of time for elimination of the defect and then reduce the price or withdraw from the contract if the appropriate legal requirements are fulfilled. You may bring claims for damages insofar as allowed by law only within the limits specified in section 6 below.

It is your sole responsibility that your hardware, system or IT environment is suitable for installation of the products.

Utimaco warrants only to you that the Software in Utimaco Products, if properly installed and used by you, will function substantially in accordance with material specifications in the technical and user documentation in effect at the passage risk.

§ 6 Third-Party Proprietary Rights

(1) Utimaco shall defend or (at its option) settle any third party claim, action or proceeding brought against you alleging that the Software as delivered to you and used as authorized in this Agreement infringes any copyright or constitute misappropriation of a trade secret of a third party and Utimaco shall pay any final judgments awarded or settlement agreements agreed to by Utimaco with respect thereto; provided that you provide Utimaco with: (a) prompt written notice of such claim; (b) sole control over the defense and settlement of such claim; and (c) all necessary information and assistance (at Utimaco's expense) to defend and/or settle such claim. Utimaco shall not be liable for any costs or expenses incurred without its prior written authorization.

(2) Notwithstanding the foregoing, Utimaco will have no liability for claims arising from: (a) combination of the Software with other software or products not provided by Utimaco; (b) the modification of the Software, in whole or in part, by anyone other than Utimaco; (c) any use of the Software that is in breach of this EULA or any other agreement between you and Utimaco; or (d) continued use by you of any specified release of the Software after Utimaco notifies you that continued use may subject you to such claim of infringement and provides Utimaco provides you with a replacement version which mitigates the infringement.

(3) If any portion of the Software is held, or in Utimaco opinion is likely to be held, to infringe or misappropriate a third party's intellectual property rights, or use of the Software is otherwise enjoined, then Utimaco may at its sole option and expense, within a commercially reasonable period of time: (a) procure for you the right to continue using the Software; (b) replace the Software with non-infringing software; or (c) in the event that neither of the foregoing is reasonably practicable, terminate this Agreement.

(4) In the event that you should suspend the use of the Software to limit potential damage in connection with a third party claim brought against you, you agree to inform the third party that such suspension of use does not constitute admission to any allegation of infringement of any proprietary right.

(5) THIS SECTION 6 STATES THE ENTIRE LIABILITY AND OBLIGATION OF UTIMACO, AND YOUR SOLE AND EXCLUSIVE REMEDY, WITH RESPECT TO ANY ACTUAL OR ALLEGED INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHT BY THE SOFTWARE unless liability is mandatory by law.

§ 7 Liability

(1) Utimaco's liability for damages or reimbursement of expenses on the basis of legal obligations will be limited to liability arising from fault on the part of Utimaco, its employees or its agents. Utimaco's liability will be unlimited in the case of willful misconduct, gross negligence or loss of life, bodily injury or illness. The same will apply as regards liability under the Product Liability Act (*Produkthaftungsgesetz* – ProdHaftG) and liability for willful or negligent breach of material contractual obligations (i.e., obligations that must be fulfilled to permit proper performance of the contract and fulfillment of which may regularly be relied upon by the respective other contractual partner). Except in cases covered by the first and second sentences above, liability will be limited to foreseeable damages typical of those covered by agreements such as the present Agreement, not, however, to exceed the purchase price. All further liability is excluded.

(2) In the event that you modify the software products, the liability of Utimaco will be excluded unless you can demonstrate that such changes were not the cause of the damage incurred.

(3) The limitations to liability pursuant to this section will apply accordingly in respect of the liability of you towards Utimaco.

§ 8 Miscellaneous

(1) This Terms and Conditions contain the complete understanding between the Parties. No oral agreements have been made.

(2) These terms and conditions and all disputes arising out of or in connection with this Agreement, including the making thereof, will be governed by and construed exclusively in accordance with German law. The provisions of the United Nations Convention on the International Sale of Goods (CISG) of 11 April 1980 do not apply.

(3) The Parties consent to the jurisdiction of the courts of Aachen.

(4) You represent that you are 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). If you become a Restricted Party during the term of this Agreement, this Agreement shall automatically terminate and you shall immediately cease all use of the Software.

(5) You shall comply with all governmental and regulatory rules and regulations, whether federal, state, local or otherwise with respect to the use of the Software in Utimaco Products, in particular local import and export rules and you will not sell, resell, loan, disclose, re-export or otherwise transfer the Software or Utimaco Products to any destination subject to restrictive sanctions, measures or trade embargoes implemented at a national, regional or international level without the appropriate authorization and you are solely responsible for fulfilling any applicable governmental requirements in connection with your use, disclosure and/or transport of the Utimaco Products. You explicitly acknowledge that the Software and Utimaco Products are subject to dual use export classification which may impact their export to certain countries or use by you.

(6) You recognize that the Usage of the Software Development Kit (SDK) for Implementing new Cryptographic Algorithms or Cryptographic Libraries into Utimaco Solutions/Products might change the Export Classification of Utimaco Solutions/Products (AL-Number or ECCN) and requires in case of export a new filing process by you to determine/verify the Export Control Classification Number.

(7) 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.