

# End-User-License-Agreement

2008-12-10

THIS SOFTWARE LICENSE AGREEMENT (THE "AGREEMENT") IS A LEGALLY BINDING AGREEMENT BETWEEN YOU ("CUSTOMER") AND THE .VANTRONIX SECURE SYSTEMS GMBH (".VANTRONIX"). PLEASE READ THIS AGREEMENT CAREFULLY. IF YOU HAVE BEEN INFORMED OF THE EXISTENCE OR VALIDITY OF THIS AGREEMENT OR HAVE READ THIS AGREEMENT BEFORE FINALLY PURCHASING OR RECEIVING THE SOFTWARE YOU ACCEPT ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT THROUGH THE DELIVERY AND RECEIPT OF THE SOFTWARE. YOU ALSO AGREE WITH THE TERMS AND CONDITIONS OF THIS AGREEMENT BY ACTIVATING, INSTALLING, OR USING THE SOFTWARE. IF YOU DO NOT AGREE WITH THE TERMS AND CONDITIONS OF THIS AGREEMENT THEN YOU SHOULD NOT PURCHASE, INSTALL OR USE THE SOFTWARE AND DESTROY ALL COPIES OF IT.

## § 1 Definitions

(1) "Software": .vantronix operating system and programs in every form and without limitation to the supporting medium, including upgrades, modified versions, additions, and copies of it and written documentation belonging thereto, which are legally purchased and delivered under this agreement.

(2) "Transferee": someone to whom either permanently or temporarily non-exclusive intellectual property rights, the Software license or parts of it are transferred in any way.

(3) "Hardware": encompasses a single unit of the physical interconnections and devices required to store and execute (or run) the Software, shall mean one single server, main board, embedded system, system blade, or module of the .vantronix security appliances.

(4) "Product": The Software or bundle of Software and Hardware as sold or certified by .vantronix.

## § 2 Grant of License

(1) .vantronix reserves all intellectual property rights, particularly copyrights, patent rights, brand rights and further industrial and other property rights to the delivered Software, the documentation, web-sites, catalogues, brochures and handbooks. The Software is in particular legally protected by the German Copyright Law.

(2) .vantronix grants Customer a perpetual, non-exclusive license for the use of the .vantronix' Software and documentation according to the terms and conditions of this Agreement in accordance with the specifications of the German Copyright Law. Customer shall have no further right or interest to use the Software other than the limited rights as specified in this Agreement.

(3) Copies of the Software may be made if necessary for its use in a given case. Necessary copies include the installation of the Software on Customer's hard disk as well as loading it thereafter into the main memory on Customer's Hardware.

### **§ 3 Limitations on Use**

(1) Customer is authorized to use the Software on Hardware. Changing the Hardware Customer shall delete the Software on the hitherto used Hardware. He is prohibited to save, store or use the Software on more than one Hardware simultaneously.

(2) Installation of the Software on a Customer network or the like enabling more Customer users to simultaneously access the Software than the number of Hardware licenses acquired is not permitted.

(3) Customer is not entitled to change or in any other way edit the Software without the prior written consent of .vantronix. Reverse engineering, disassembling and de-compiling the Software is likewise not permitted outside the limits set by § 69e German Copyright Act. Furthermore, changing or removing the so-called copyright note and/or copy protection and the like is prohibited.

(4) Customer shall in no case remove or change serial numbers or other signs indicating the origin.

### **§ 4 Technical Protection Measures**

(1) .vantronix may use access control and copy protection measures to ensure authorized access and prevent unlawful copying. Before accessing the system for the first time Customer will have to activate the system entering an initial key, which will be supplied by .vantronix. The activation procedure allows for the Software to run on the provided Hardware and allows major release updates in a certain period of time. After the end of that period Customer will have to purchase a new activation key to carry on receiving release updates. .vantronix will handle personal data in the key transmission process in compliance with the German Data Protection Law.

(2) Customer shall not remove or circumvent technical protection measures or other copyright protection. If the technical protection measure disrupts the program flow Customer has to provide .vantronix with a detailed description of the malfunction. .vantronix shall solve the problem within an adequate period of time. If Customer proves the destruction or complete unserviceableness of the Software .vantronix will provide Customer with a Software backup for an adequate fee.

(3) Removal or circumvention of the technical protection measures or other copyright protection measures are subject to German law.

## **§ 5 Limitations on Transfer**

(1) Customer shall not loan, license or sub-license the Software, or transfer or convey the Software or any right in the Software to a Transferee without the prior written consent of .vantronix. The request to obtain .vantronix' written consent shall contain the name and address of the Transferee. Due to the transfer of Software rights Customer's rights to use the Software expire immediately.

(2) Loaning, licensing, sub-licensing or transferring the Software with .vantronix' prior written consent Customer shall oblige the Transferee to comply with all conditions set forth in this Agreement as well as other regulations pursuant to which Customer acquired a valid Software license. Customer furthermore obliges to transfer all Software copies to the transferee and deletes all his remaining Software copies.

## **§ 6 License Fee**

In consideration for the grant of the license and the use of the Software, Customer agrees to pay the sum of the .vantronix license fee.

## **§ 7 Support**

Customer only receives support and customer care for Products that have been registered and activated with a valid license key.

## **§ 8 Confidentiality**

(1) Customers agrees to keep secret and not to communicate to third parties .vantronix' Know-how or any other information which is either marked confidential or which has to be deemed confidential from the circumstances it is provided under or comes to his attention. Customer shall take all appropriate steps to safeguard the Confidential Information and to protect the Confidential Information against disclosure, misuse, espionage, loss unauthorized use or theft.

(2) The secrecy obligation does not apply to any information of which can be proven by written documents that it:

- was known to Customer at the time of disclosure and was not disclosed to it by a third party breaching any secrecy obligation, or
- is generally available to the public through no fault of Customer.

## **§ 9 Warranties**

(1) The statutory warranty of the German Civil Code shall apply to defects of the Product. .vantronix makes no independent warranty as to the use of the Software or its performance.

(2) .vantronix does not cover defects in or damage to the Products which are due to improper installation or maintenance, misuse, neglect or any cause other than ordinary commercial application. Any modifications are at the sole risk of Customer and .vantronix does not warrant the performance of any part

which has been altered or modified. The warranty does not apply any more if Customer removes serial numbers or other signs indicating the origin. Software defects must be reproducible.

(3) .vantronix shall not be liable for the Software being fit for a particular purpose to which the Customer intends to put it and a warranty does not extend to parts, materials or equipment manufactured by or on behalf of the Customer unless such warranty is given in writing to the Customer by .vantronix.

## **§ 10 Limitation of Liability, Indemnification**

**(1) APART FROM THE PROVISIONS LISTED BELOW .VANTRONIX SHALL NOT BE LIABLE TO CUSTOMER (WHETHER IN CONTRACT, TORT, BREACH OF STATUTORY DUTY, RESTITUTION OR OTHERWISE) FOR ANY DAMAGES, CLAIMS OR COSTS WHATSOEVER OR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL DAMAGES, ANY LOST PROFITS, LOST SAVINGS OR COMPENSATION FOR DAMAGES DUE TO DEFECTS IN THE GOODS.**

- **.VANTRONIX' LIABILITY AS A WHOLE IN CONNECTION WITH THESE CONDITIONS SHALL BE LIMITED TO EURO 15.000 PER INCIDENT.**
- **THE LIABILITY FOR LOSS OF DATA SHALL BE LIMITED TO THE TYPICAL COST AND EFFORT OF RETRIEVING DATA WHICH WOULD HAVE OCCURRED, IF THE DATA HAD BEEN STORED PROPERLY AND IN A RISK-ADEQUATE MANNNER.**
- **ALL CLAIMS SUBJECT TO .VANTRONIX' LIABILITY BECOME TIME-BARRED WITHIN 1 YEAR AFTER DELIVERY, UNLESS .VANTRONIX HAS FRAUDULENTLY CONCEALED THE DEFECT.**
- **.VANTRONIX SHALL BE LIABLE FOR A BREACH OF ANY CARDINAL CONTRACTUAL OBLIGATION BY .VANTRONIX OR ITS EMPLOYEES, LEGAL REPRESENTATIVES AND VICARIOUS AGENTS, WHEREAS THE LIABILITY IS RESTRICTED TO THE TYPICAL AND PREDICTABLE DAMAGE OCCURRING UNDER SUCH AN AGREEMENT. A CARDINAL OBLIGATION SHALL MEAN A PRECISELY DELINEATED CONTRACTUAL OBLIGATION WHOSE FULFILMENT IS ESSENTIAL TO ACHIEVING THE PURPOSE OF THE CONTRACT HENCE WITHOUT ITS FULFILMENT THE ACHIEVEMENT OF THE CONTRACT'S PUPPOSE WOULD BE ENDANGERED OR A CONTRACTUAL OBLIGATION WHOSE FULFILMENT PERMITS FOR THE PROPER EXECUTION OF THE CONTRACT AND ON WHOSE FULFILMENT THE CUSTOMER COULD REGULARTLY RELY. OBLIGATIONS THAT ARE NOT COMPRISED BY THAT DEFINION**

## **SHALL NOT BE CARDINAL OBLIGATIONS.**

- **NOTWITHSTANDING ANYTHING IN THE CONTRARY IN THIS AGREEMENT .VANTRONIX SHALL BE LIABLE WITHOUT LIMITATION FOR ALL DEFECTS RESULTING FROM WILFUL MISCONDUCT OR GROSS NEGLIGENT MISCONDUCT ON THE PART OF .VANTRONIX AND ITS EMPLOYEES, LEGAL REPRESENTATIVES AND VICARIOUS AGENTS AS WELL AS FOR CAUSING BODILY INJURY, DAMAGE TO HEALTH, THE DEATH OF A PERSON, FOR ANY DAMAGES THAT ARE SUBJECT TO THE GERMAN PRODUCT LIABILITY ACT AND FOR DAMAGES RESULTING FROM A BREACH OF AN INDEPENDENT GUARANTEE ACCORDING TO THE STIPULATION OF THE GUARANTEE.**

(2) Customer agrees to indemnify, keep indemnified and hold harmless .vantronix from and against all direct, indirect or consequential loss, costs, expenses, liabilities, injuries, damages, claims, demands, proceedings or legal costs and judgments which .vantronix incurs or suffers relating to any breach of any provision of this Agreement, unlawful use of the Software whether or not referenced herein, violation of any rights of any third party, or misuse of the .vantronix Software by Customer. Customer shall give notice to .vantronix immediately if he has knowledge about a respective incident.

### **§ 11 Export Rules.**

Customer agrees that the Software will not be shipped, transferred or exported into any country or used in any manner prohibited by the Canadian Controlled Goods Act, the United States Export Administration Act or any other applicable export laws, restrictions or regulations of Canada, the United States of America, Germany or other countries (collectively the "Export Laws"). In addition, if the Software is identified as export controlled items under the Export Laws, Customer represents and warrants that he is not a citizen, or otherwise located within, an embargoed nation (including without limitation Iran, Iraq, Syria, Sudan, Libya, Cuba, North Korea, and Serbia) and that he is not otherwise prohibited under the Export Laws from receiving the Software.

### **§ 12 Amendment of Agreement**

(1) .vantronix may review, change and amend the terms of this Agreement at any time. Customer will receive a written version of the new Agreement. If he does not contradict in writing within 14 days the new version will be applicable for the licensing of the Software to Customer instead of the previous Agreement.

(2) If Customer disagrees .vantronix may terminate the previous Agreement with Customer in writing 14 days after Customer would have had to meet the deadline for submitting his contradiction.

### **§ 13 Scope of Agreement**

(1) This Agreement comprises the terms and conditions that are material to the Licensing of Software rights between Customer and .vantronix, independent of the underlying contractual relations.

(2) If Customer purchases the Software directly from .vantronix or has a direct contractual relation with .vantronix additionally to this Agreement Customer agrees with .vantronix' general terms and conditions which are available online at <http://www.vantronix.com/go/terms-and-conditions/> or attached to this Agreement.

### **§ 14 Termination**

If Customer fails to comply with the terms of this Agreement his right to use the Software will terminate immediately and without notice. All rights of Customer on the use of the Software transferred end at the expiration or termination of this Agreement and Customer shall immediately stop using the Software. Upon termination for whatsoever reason Customer's right to use the Software will expire immediately and Customer must destroy all copies of the Product. Upon termination for whatsoever reason all provisions of this Agreement except the License Grant (Paragraph 2 (2)) will survive termination and continue in effect.

### **§ 15 Severability**

Should any provisions of this Agreement be held by court of law to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remaining provisions of this Agreement shall not be affected or impaired thereby. Instead of the invalid provision a valid provision is deemed to have been agreed upon which comes closest to what the parties intended commercially, the same applies in the case of omission.

### **§ 16 Final Agreement.**

This Agreement terminates and supersedes all prior understandings or agreements on the subject matter hereof. This Agreement may only be modified in writing.

### **§ 17 Headings.**

Headings used in this Agreement are provided for convenience only and shall not be used to construe meaning or intent.

### **§ 18 Jurisdiction and applicable law**

This Agreement shall be governed by the law of the Federal Republic of Germany. The CISG-rules shall not apply. Place of Jurisdiction shall be Hannover, Germany.