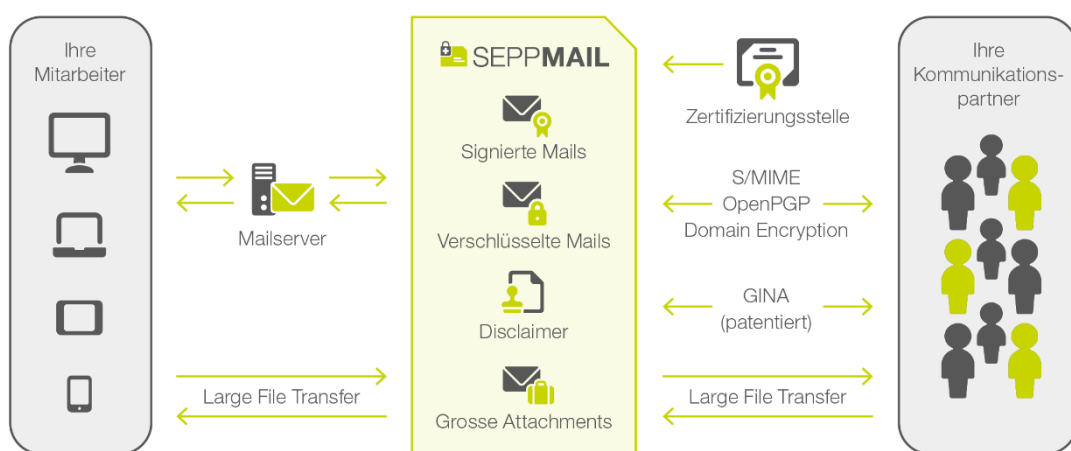




# SEPPMAIL



## END-USER-LICENSE-AGREEMENT

Version 1.1

CONFIDENTIAL-SEPPmail Distribution und Partner only

THIS SOFTWARE LICENSE AGREEMENT (THE "AGREEMENT") IS A LEGALLY BINDING AGREEMENT BETWEEN YOU ("CUSTOMER") AND THE SEPPMAIL AG ("SEPPmail"). PLEASE READ THIS AGREEMENT CAREFULLY. IF YOU HAVE BEEN INFORMED OF THE EXISTENCE OR VALIDITY OF THIS AGREEMENT BEFORE FINALLY PURCHASING THE SOFTWARE OR BY READING THIS AGREEMENT AND RECEIVING THE SOFTWARE AFTERWARDS AS A PART OF YOUR LEGAL CONTRACT YOU ACCEPT ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT. 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": SEPPmail 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 unit of the physical interconnections and devices required to store and execute (or run) the software, shall mean one single server or module of the SEPPmail security appliances.

(4) "VM": encompasses virtual environments like ESX (VM-Ware), Hyper-V, Hyper Visor, KVM or Azure required to store and execute (or run) the software of the SEPPmail security appliances.

#### § 2 Grant of License

(1) SEPPmail 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 Swiss Copyright Law.

(2) SEPPmail grants Customer a perpetual, non-exclusive license for the use of the SEPPmail Software and documentation according to the terms and conditions of this Agreement in accordance with the specifications of the Swiss 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 or VMs.

#### § 3 Limitations on Use

(1) Customer is authorized to use the software on SEPPmail hardware appliances or VM environments. He is prohibited to save, store or use the software on more than one hardware or VM simultaneously. For high availability purposes additional hardware or VM appliances has to be purchased.

(2) Changing or removing the so-called copyright note and/or copy protection and the like is prohibited.

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

#### § 4 Technical Protection Measures

(1) SEPPmail may use a compulsory registration of the Software for license control to protect the software against unlawful copying. Customer will have to make a product registration for the Software activation. The storage and use of personal data in this process will comply with the terms and conditions of the published SEPPmail privacy policy.

(2) Customer shall not remove or circumvent technical protection measures or other copyright protection.

#### § 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 SEPPmail. The request to obtain SEPPmail 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 the prior written consent of SEPPmail 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.

#### § 6 License Fee

(1) In consideration for the grant of the license and the use of the Software, Customer agrees to pay SEPPmail or his authorized distribution partners the sum of license fee.

#### § 7 Support

Customer only receives support, upgrades and updates following the personal product registration if he possesses a valid license to a previous version. The acquisition of an upgrade or update does not in itself confer any right to use the software.

#### § 8 Confidentiality

(1) Customer agrees to keep secret and not to communicate to third parties SEPPmail 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 Swiss Civil Code shall apply to defects of the product. SEPPmail makes no independent warranty as to the use of the Software or its performance.

(2) SEPPmail 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 SEPPmail does not guarantee the performance of any package which has been altered or modified other than stated above.

(3) SEPPmail shall not be liable for the Software being fit for a particular purpose unless otherwise expressly agreed upon, to which the Customer intends to put them and a warranty does not extend to parts or materials unless such warranty is given to the Customer by SEPPmail.

#### § 10 Limitation of liability, Indemnification

(1) Apart from the exemptions listed below SEPPmail shall not be liable to customer for any damages, claims or costs whatsoever or any consequential, indirect, incidental damages, or any lost profits or lost savings:

- SEPPmail shall be liable for all defects resulting from intentional conduct on the part of SEPPmail and its employees, legal representatives and vicarious agents. SEPPmail shall further be liable for grossly negligent conduct or a breach of any further essential contractual obligation by SEPPmail or its employees, legal representatives and vicarious agents, whereas the liability is restricted to the typical and predictable damage occurring under such an agreement.
- 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 manner.
- SEPPmail may be unrestrictedly held responsible if a bodily injury, damage to health, the death of a person is caused, for any damages that are subject to the Swiss product liability act as well as for damages resulting from a breach of an independent warranty according to the stipulation of the warranty.
- SEPPmail liability as a whole in connection with this agreement shall be limited to euro 15,000. The liability for bodily injuries, damage to health, death of a person, damages that are subject to the Swiss product liability act and due to a warranty is not affected by this.

Except as provided in this paragraph (§10) SEPPmail shall be under no liability to the customer (whether in contract, tort, breach of statutory duty, restitution or otherwise) for any damage or for any direct, indirect or consequential loss.

(2) Customer agrees to indemnify, keep indemnified and hold harmless SEPPmail from and against all direct, indirect or consequential loss, costs, expenses, liabilities, injuries, damages, claims, demands, proceedings or legal costs and judgments which SEPPmail 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 SEPPmail Software by Customer. Customer shall give notice to SEPPmail 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 export laws, restrictions or regulations. 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 a embargoed nation and that he is not otherwise prohibited under the Export Laws from receiving the Software.

#### § 12 Amendment of Agreement

(1) SEPPmail 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 SEPPmail 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 SEPPmail, independent of the underlying contractual relations.

(2) If Customer purchases the Software directly from SEPPmail or has a direct contractual relation with SEPPmail additionally to this Agreement Customer agrees with the terms and conditions of the SEPPmail general business conditions.

#### § 13 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.

#### § 14 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.

#### § 15 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.

#### § 16 Headings.

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

#### § 17 Jurisdiction and applicable law

This Agreement shall be governed by the law of Switzerland. The CISG-rules shall not apply. Place of Jurisdiction shall be Zurich.

#### ECCN Classification

5D002 Letter a) Ziffer 1 (in Verbindung mit 5A002 Buchstabe a) Ziffer 1 gemäß der Güterliste Anhang 1 Kategorie 5 Teil 2 der Dual Use Verordnung. Diese ECCN entspricht auch der europäischen Klassifizierung, also auch 5D002.

#### Addendum A

A "Customer Affiliate" means any entity under the control of Customer where "control" means ownership of or the right to control greater than 50% of the voting rights of such entity, or which is controlled by or under common control with Customer, one of its owners or its Affiliates, even though there is equal or less than fifty percent (50%) ownership of the outstanding voting rights of the entity or which directly or indirectly through one or more intermediaries is controlled by or under common control with Customer, one of its owners or its Affiliates, even though there is equal

or less than fifty percent (50%) ownership of the outstanding voting rights of the entity. This also applies to any entity which fulfills these conditions during the contract term.