Software-Licence-Agreement Gibraltar

§1   Object of Agreement

1)   The software named Gibraltar firewall, which consists of

- Gibraltar – Firewall software

- Manual,

is proprietary.

2)   If the Licensor does not own protection rights for the software or parts of the software himself, he has the right to allow the passing on and the utilization to third parties.

3)   The software is not sold but it is licensed. Through buying the software the Licensee only obtains the ownership of the physical data medium, the packing and the manual as well as all the related written materials.

§2   Scope of the Licensing

1)   This License permits the utilization of a copy of the software on a single computer provided that the software is used only on a single computer at any time. The utilization of the software means that the software is loaded either into a temporary memory (e.g. RAM) of a computer or into a permanent memory (e.g. CD-Rom, hard disk). If you acquired Multiple Licenses for the software you are allowed to operate at most that number of copies that does correspond to the number of Licenses you acquired.

2)   The Licensee is entitled to do back-up's of the software, especially safety back-up's, if this does correspond to the habitual utilization.

3)   If the Licensee acquired a License Package from the Licensor he is entitled to produce copies of the software corresponding to the number of Licenses on his own. He has the right to use these copies regarding to this License Agreement.

§3   Restriction of the License

1)   All written material related to the software is proprietary. It is not allowed to duplicate and distribute any of it.

2)   The right for the utilization of the software can only be transferred to third parties if the Licensor agrees to this in a written form according to this Agreement.

3)   The Licensee is not entitled to forward or to provide access to the software or the related written material to third parties without having a written consent of the Licensor in advance.

4)   The utilization of the software on several computers despite the lack of Multiple Licenses is prosecuted by civil and penal law.

5)   The Licensee is not entitled to downgrade the software, to decompile it or to disassemble it.

6)   The software becomes licensed as a single product. The Licensee is not entitled to separate the components of the software for the purpose of utilization on more than one computer.

7)   The Licensee is not entitled to offer the software product on rent or leasing.

§4   Violation of the Agreement and abrogation

1)   The Licensor is entitled to cancel the Agreement immediately effective if the Licensee violates any of the prescriptions of this Agreement.

2)   The Licensor will hold the Licensee responsible for any damages that occur because of a violation of this Agreement through the Licensee.

§5   Changes and Updates

1)   The Licensor has the right to create updates of the software but he is not obliged to do so.

2) The Licensor is entitled to charge an update fee for those updates.

3) The Licensor is not obliged to distribute updates to Licensees who returned one or more of the former updates or who didn't pay the update fee.

§6 Warranty and legal obligation

1) The Licensor provides a warranty for the duration of 12 month starting at the time of handing over. This warranty guarantees that the software corresponds by and large to the program description, which is included in the related written material, as far as the manner of operation is concerned. If the Licensee is a consumer according to the civil code the duration of the warranty amounts to 2 years.

2) The Licensor alludes to the fact that according to the current state of technics it is not possible to produce a software without any defects.

3) In case of a defect this defect and it's manifestation have to be described in a written notice of defects in a way that is so much detailed, that a revision of the defect (e.g. presentation of the problem report) is possible and that any errors in handling (e.g. indication of the work steps) can be excluded.

4) In case the notice of defects turns out to be qualified, the Licensee sets a time limit to the Licensor for later fulfilment. The Licensee communicates to the Licensor what kind of later fulfilment – Correction of the delivered object or delivery of a new object without any defects – is desired. The Licensor is entitled though to refuse the later fulfilment if this could only be achieved by causing disproportional high costs and if the other possibility of later fulfilment would not cause any considerable disadvantages for the Licensee. Furthermore the Licensor is allowed to refuse the later fulfilment in general, if it can only be achieved by causing disproportional high costs for you.

5) For the execution of the later fulfilment the Licensor has 2 attempts for the same defect or a defect which is directly related within the time limit which was set by the Licensee. After the second attempt has failed the Licensee can abdicate from the Agreement or lower the License Fee. The right of abdication and lowering of the fee can be enforced after the first negative attempt if a second attempt is not reasonable to the Licensee within the time limit which was set. In case the later fulfilment was refused according to the terms above the right of abdication and lowering of the fee can be enforced. Abdication because of an irrelevant defect is excluded.

6) If the user makes a claim on the Licensor because of warranty and it turns out that there either is not a defect or the claimed defect does not oblige the Licensor to take actions, the user has to compensate all the Licensor's effort, if the user intended to harm the service provider on the one hand and on the other if he did so by culpable negligence.

7) Warranty for the software being suitable for the Licensee's purposes and for the software cooperating with already used software is excluded.

8) The delivery of manuals and documentations that deal with the software in addition to the related written material/program description, to the implemented user guidance and to the online-help or a briefing are only owed to the Licensee if this was agreed upon in written form. In case such an Agreement exists, there are no exigencies concerning content, language and extent of this manual/documentation. The delivery of a short guidance is sufficient unless the parties have agreed upon further specifications in a written   form. The delivery of an instruction manual in the english language is permissible, if the object of Agreement has not been completely located for the particular market yet. The same is valid, if the object of Agreement in general is only deliverable in the english language.

9) Transcending this warranty the company is liable during the time period of 1 year after delivery for the software only in case of culpable negligence or intention according to the legal prescriptions. In case of slight negligence the company is only liable if an essential contractual obligation (cardinal obligation) is violated or a case of delay or impossibility is at hand. In case of legal obligation out of slight negligence the obligation is limited to damages that are predictable resp. typical. Any obligation for the absence of the guaranteed appearance, because of fraudulent intent, for damages to persons, for flaws in title, according   to   the   product   liability   law   and   the   data   protection   law   is   not   included. In case of making a claim on the company out of obligation any contributory negligence from the user has to be considered in an appropriate way, especially in the case of insufficient problem reports or insufficient data backup. Insufficient data backup is available especially if the user neglected to take measures to prevent external impacts, in this case especially computer viruses and other phenomenons that state a menace for single data or the whole data stock, based on the current status of techics.

§7 Miscellaneous

1) Place of jurisdiction for all kind of controversies out of this Agreement is Attnang-Puchheim, if legally possible.

2) In the case that one or more of the above mentioned regulations are or become ineffective, all the others are not effected by this. The ineffective restriction has to be rather reinterpreted in order to reach the aboriginal objective if this is within the legal scope. Any changes of the Agreement have to be done in written form. The same applies to the nullification of the clause that deals with the written form.

1) For the rest, *eSYS´s* standard business conditions are effective. With his signature the *Partner* approves that he has been given this standard business conditions online or on request in written form.