

## **AVIRA OEM PORTAL**

### **Terms of Use and Test SOFTWARE LICENSE Agreement**

**IMPORTANT NOTICE:** CAREFULLY READ AND **BE SURE YOU UNDERSTAND** THESE TERMS OF USE AND TEST SOFTWARE LICENSE AGREEMENT (“**TSLA**”) BEFORE YOU ACCEPT THESE PROVISIONS. AVIRA IS WILLING TO PROVIDE ACCESS TO THE OEM PORTAL AND LICENSE THE SOFTWARE THAT YOU FIND FOR DOWNLOAD IN THIS PORTAL OR HAS BEEN SEND FROM AVIRA FOR TESTING PURPOSES OR GRANT ACCESS TO SOFTWARE SERVICES (SOFTWARE AND SOFTWARE SERVICES referred to hereinafter as “**SOFTWARE**”) TO YOU OR THE ENTITY THAT YOU REPRESENT (“**NDA PARTY**” or “**Licensee**”) ONLY IF YOU ACCEPT FOR YOURSELF AND THE ENTITY THAT YOU REPRESENT ALL OF THE PROVISIONS OF THIS TERMS AND USE AND THE TSLA (together “**GTC**”). BY SIGNING THIS GTCs OR CLICKING THE “I AGREE” OR “YES” BUTTON (if there are any), BY LOADING THE SOFTWARE OR BY OTHERWISE INDICATING ASSENT, YOU ACCEPT THE GTC’s FOR YOURSELF AND THE NDA PARTY AND THESE GTCs WILL BECOME A LEGAL AND ENFORCEABLE CONTRACT BETWEEN AVIRA AND YOU AND THE ENTITY THAT YOU REPRESENT. BY ACCEPTING THESE GTCs YOU ALSO DECLARE THAT YOU ARE LEGALLY ENTITLED TO ACCEPT AND SIGN CONTRACTS FOR THE ENTITY THAT YOU REPRESENT. IF YOU DO NOT AGREE TO THESE PROVISIONS, THEN CLICK “CANCEL”, “NO” OR “CLOSE WINDOW” – if there are any - AND DO NOT ACCESS OR USE ANY CONTENT OF THE OEM PORTAL AND/OR THE SOFTWARE

I) Access to this Avira OEM Portal is limited to Parties (“**NDA Party**”) which have signed a Confidentiality and Non-Disclosure Agreement (“**NDA**”) with Avira.

II) You acknowledge and agree to be bound by a respective enforceable NDA as a Representative (including without limitation a director, officer, employee, affiliate, financial advisor, broker, attorney and accountant) of NDA Party. Any reproduction, amendment or disclosure of content provided to you in the Avira OEM Portal in full or in parts to a Third Party is strictly prohibited unless expressly authorized by the Avira Legal Department in writing.

III) Conflict: In case that as of the time of your access to this OEM Portal there is already an NDA or OEM Agreement executed and enforceable between Avira and the NDA Party of the same matter of subject the terms of the NDA and/or OEM Agreement shall prevail in case of conflict between these and the these GTCs.

IV) The Avira EOM Portal and the content provided herein are developed and provided to You and/or the NDA Party for the sole purpose of provision of information relating to and access to the Avira technologies and documentation, as well as any additional details which might be useful to the NDA Party for the evaluation or integration of the Avira technologies. Under any circumstances they do not constitute and must not be construed as a proposal, offer, memorandum of understanding, contract negotiation base or any other binding or non-binding declaration of intent. The transfer or granting access to the content of the OEM Portal to any third party is explicitly forbidden unless this is authorized in writing by Avira and the third party accepts and agrees to the Terms of Use and the TSLA. The NDA Party represents and warrants that (i) it will not sublet, distribute or otherwise re-sell any of the capabilities and functionalities of this OEM

Portal without prior written agreement from Avira, (ii) it will prevent the usage of the OEM Portal by another user that has not consented to these, (iii) it will not abuse and prevent any third party to abuse or circumvent the infrastructure of the OEM Portal in any possible way.

V) Avira reserves the right, in its sole discretion, to amend or delete the content or cease providing access to the Avira OEM Portal at any time and for no reason – also for artefacts that have already been released/published before in the OEM Portal. Unless a written definitive agreement concerning a OEM product has been executed between the NDA Party and Avira or any of its Affiliates, neither Avira nor any of its Affiliates or Representatives will have any liability or obligation to the NDA Party with respect to any transaction, except as provided for in the NDA.

**VI) Gathering of activity data on the OEM Portal and Software use:** to improve and secure our services, Software and the functionality of the OEM Portal Avira might track user behavior on the portal and use of the Software. NDA Party agrees to that and accepts that personal data might be processed as part of this process although Avira will try to avoid processing as far as possible and treat the personal data according to applicable laws. If NDA Party revokes their consent, it will announce this to Avira and cease the access and use of the OEM Portal and the Software immediately unless authorized by a different agreement.

## **VII) Terms of the TSLA.**

AVIRA GMBH & CO. KG, Kaplaneiweg 1, 88069 Tettnang (referred to hereinafter as "Avira") grants You or the entity that You represent (referred to hereinafter as "Licensee" or "NDA PARTY" ) the right to use SOFTWARE (referred to hereinafter as "SOFTWARE ") solely for test purposes, subject to the present TSLA. The Software is copyrighted and protected by laws included patents, and it is only licensed to Licensee under this TSLA, not sold to Licensee, which means that Licensee only has a limited right to use the SOFTWARE for testing purposes only and this right can be withdrawn by Avira at any time.

At the latest with the installation of the SOFTWARE by YOU or other representants/employees of the company you are signing on behalf, Avira You and the company you represent enter into a contract governing the use of the SOFTWARE pursuant to the TSLA.

### **1. Disclaimer and limitation of Warranty**

(1) The sole purpose of terms of this TSLA is to give Licensee the right to evaluate the SOFTWARE for a limited period of time (hereinafter referred to as "Testing") prior to entering into a Software Licensing Agreement. The SOFTWARE is made available to Licensee free of charge for this purpose only and no warranty in any kind shall be provided for the SOFTWARE .

(2) CONSEQUENTLY, THE SOFTWARE AND DOCUMENTATION ARE PROVIDED TO YOU "AS IS" AND YOU AND LICENSEE AGREE WITH AVIRA THAT ALL WARRANTY SHALL BE EXCLUDED AND YOU AND LICENSEE RENOUNCES EXPRESSIVELY ON ALL POSSIBLE CLAIMS THAT APPLICABLE LAW MIGHT GRANT. TO THE EXTENT AUTHORIZED BY APPLICABLE LAW AVIRA MAKES NO REPRESENTATIONS OR WARRANTIES, EITHER EXPRESS OR IMPLIED, REGARDING THE SOFTWARE OR DOCUMENTATION, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. AVIRA ALSO EXPRESSLY DISCLAIMS ANY AND ALL INCLUDING EXPRESS AND IMPLIED WARRANTIES RELATING TO NONINFRINGEMENT OF

THIRD PARTY RIGHTS, MERCHANTABILITY, SATISFACTORY QUALITY, OR ABILITY TO INTEGRATE THE SOFTWARE WITH ANY OTHER PRODUCTS.

## **2. Test license**

(1) In connection with this Agreement and subject to the restrictions set forth herein, Avira hereby grants to YOU and Licensee, a royalty-free, limited, non-exclusive, non-transferable license (i) to install the SOFTWARE solely and exclusively on a hard- and software environment owned or controlled by the Licensee and set-up by the Licensee for the sole purpose of testing the operability and functionality of the SOFTWARE (hereinafter referred to as the “Test System”), and (ii) to copy, use and reproduce the SOFTWARE solely and exclusively within the Test System, in each case solely and exclusively for the purpose of Testing; provided that, the Test System must not be used as productive system or for other than internal purposes than testing under any circumstances.

This licenses does not entitle to and it is expressly forbidden to process or transfer to Avira’s systems or let the SOFTWARE process any Personal Data (“PD”) after the definition of and that is subject to the European General Data Privacy Regulation (“GDPR”) or other applicable law unless a data privacy agreement has been signed between Licensee and Avira before the processing. YOU and NDA PARTY will indemnify, defend and hold harmless Avira, its parent entity(ies), affiliate(s), and any of their respective officers, directors, employees, (collectively, “Avira Indemnified Parties”) from and against any and all losses, expenses, damages, claims, suits, demands, actions, causes of action, proceedings, judgments, assessments, deficiencies, charges, and liabilities, arising in connection with YOU or NDA PARTY’s breach of the obligation described in these GTCs.

(2) Avira reserves the right in its sole discretion to edit, add to or delete any of the documentation, computer software program(s), data files or other components of the SOFTWARE from time to time. Furthermore, Avira shall have the right at any time to modify or provide Update(s) or Upgrade(s) to the SOFTWARE or components thereof as Avira may determine in its sole discretion. The parties agree and acknowledge that no product or service of Avira not specifically described in this TSLA shall be deemed to have been licensed hereby.

(3) YOU and Licensee shall have no right to (i) distribution of the Software or (ii) grant any licenses, sublicenses or any other right with respect to the SOFTWARE or any component(s) thereof. Additionally Licensee has no right to change the SOFTWARE or any other software received from or delivered by Avira.

(4) Except for the license rights granted to YOU and Licensee hereunder, YOU and Licensee shall have no right, title or interest in and to the SOFTWARE or any component(s) thereof, including, without limitation, the Documentation, or to any of the patents, copyrights, trade secrets, trademarks, mask works, inventions, source code, object code, listings and documentation related thereto, together with all revisions, modifications, alterations, and derivative works thereof in all forms.

(5) The parties expressly agree and acknowledge that Avira shall provide to Licensee the SOFTWARE pursuant to the terms of this Agreement in object code only and that Licensee shall

have no rights to access the source code of the SOFTWARE or any component thereof or any Update(s) or Upgrade(s) (if any) thereto.

(6) You and Licensee are expressly prohibited from editing, revising, changing or otherwise modifying or seeking to decompile the SOFTWARE or to attempt to reverse engineer or otherwise generate source code versions therefrom (hereinafter referred to as “Decompiling”), unless with written approval from Avira. For German licensees the following provisions apply: Decompiling is allowed pursuant to and within the scope of mandatory legal provisions such as Sections 69 c No. 3, 69 d (2) and (3) and Section 69 e UrhG (German Copyright Act); provided however that, Licensee undertakes to contact Avira at [oemsupport@avira.com](mailto:oemsupport@avira.com) prior to decompiling the SOFTWARE and to obtain the information necessary for such interoperability. If Avira provides this information without an inappropriate delay, the German Licensee is not entitled to any decompiling of the SOFTWARE .

(7) You and Licensee are expressly prohibited from removing or modifying any references to copyright, the marking of other intellectual property rights or serial numbers and other features that serve to identify the SOFTWARE . The removal of copy protection or similar protective routines is not allowed.

### **3. Open Source**

Any combination or other use of the SOFTWARE or individual elements thereof with Open Source software or Open Source components of any kind (including but not limited to programs, libraries and tools), irrespective of the license terms to which such components are subject in the present or in the future (e.g. GPL, LGPL, MPL, BSD Copyright, Apache Software License and any others), shall be prohibited without exception. The Licensee’s rights granted under this Agreement in relation to the SOFTWARE shall automatically cease at the time at which the prohibited combination or use is first commenced.

### **4. Use of SOFTWARE in high-risk environments**

Use of the SOFTWARE or individual components thereof by YOU or Licensee in high-risk environments that require error-free permanent running of relevant systems shall be prohibited. This shall also include, in particular, high-risk activities and high-availability activities, such as the operation of nuclear energy facilities, weapon systems or any other systems in the military and defence sector, aviation navigation and communication systems, traffic systems and equipment and machinery in the clinical and healthcare sector and other applications that are relevant to the life and health of individuals.

### **5. Term**

(1) The term of this agreement shall commence upon the acceptance of the terms and conditions of this TSLA by You and the Licensee and shall terminate upon the earlier of (i) lapse of the license according the description of the product (ii) termination of this agreement by Avira for any reason at any time either by giving oral or written notice of termination (email is sufficient) or by just deactivation of the software (iii) the conclusion of a Software License Agreement between Licensee and Avira (iv) discontinuation of the SOFTWARE by Avira.

(2) Upon any expiration or termination of this Agreement, the rights and licenses granted to licensee under this agreement shall immediately cease, and You and Licensee shall immediately cease using the SOFTWARE .

## **6. Limitation of Liability**

IN NO EVENT WILL AVIRA BE LIABLE TO YOU OR NDA PARTY OR ANY THIRD PARTY WHETHER BASED ON CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, FOR ANY DAMAGES, INCLUDING ANY LOST PROFITS, LOST SAVINGS OR INCIDENTAL OR CONSEQUENTIAL DAMAGES, ARISING OUT OF THE USE OF THE SOFTWARE THAT IS NOT IN ACCORDANCE WITH THE PROVISIONS OF THIS AGREEMENT. TO THE EXTENT AUTHORIZED BY LAW, AVIRA WILL NOT BE LIABLE FOR THE LOSS OF DATA. REFERENCE IS MADE TO THE LICENSEES OBLIGATION NOT TO USE THE SOFTWARE FOR ANY OTHER PURPOSE THAN THE TESTING AND ON ANY OTHER SYSTEM THAN THE TEST SYSTEM ACCORDING TO CLAUSE 2 (1) ABOVE.

## **7. Governing Law and Venue**

You acknowledge and agree that Any and all disputes under and in conjunction with this Agreement as well as interpretation of the provisions of this Agreement shall be governed exclusively by the laws of Switzerland to the exclusion of all provisions referring to other jurisdictions. Exclusive venue for any and all disputes arising during performance and settlement of this Agreement shall be the courts of Munich.

## **8. Confidentiality**

- a) **Confidential Information.** A party receiving Confidential Information (as defined below) (“Receiving Party”) from the other party (“Disclosing Party”) agrees to handle Confidential Information (as defined below) in the same manner that it handles its own confidential information of like importance, but with at least a commercially reasonable degree of care for a period of five (5) years.
  - b) A Receiving Party shall not, other than for the purposes permitted under this Agreement: (i) disclose, in whole or in part, such Confidential Information to any third party, other than to its contractors (whether individuals or companies), agents, directors, officers and Affiliates (collectively, “Representatives”) pursuant to the terms of this Section, without the prior written consent of the Disclosing Party; or (ii) reverse engineer, disassemble, or decompile any Confidential Information without the prior written consent of the Disclosing Party. The Receiving Party may disclose Confidential Information only to those Representatives who (i) require knowledge of such Confidential Information for the purposes contemplated by this Agreement; (ii) who have been informed of the confidential nature of such information; and (iii) have executed agreements imposing on them the duty to maintain proprietary information in confidence to the same extent as the Receiving Party hereunder. Each party shall be responsible for any breach of this Agreement by any of its Representatives.
- Confidential Information shall mean information or data, whether written or oral, stored electronically or by any other means, disclosed to and received by the Receiving Party or its Representatives that relates to the Disclosing Party, which (i) is not generally available to the public or known in the industry in which the other Party is or may become engaged; (ii) would

reasonably be considered confidential and/or proprietary; or (iii) is marked "Confidential" or "Proprietary" by the Party providing such information. Without limiting the generality of the foregoing, Confidential Information includes (a) any and all information relating to research, products, services, developments, inventions, discoveries, ideas, concepts, software, designs, drawings, engineering, specifications, documentation, processes, techniques, models, source code, object code, diagrams, flow charts, procedures, business and marketing plans or strategies, business opportunities, financial information, pricing information, sales information, know-how, and customer information; (b) potential sources of financing; (c) all analysis, compilations, forecasts or studies or other documents and (d) the existence and terms and conditions of this Agreement. In the event Confidential Information is the basis of, is incorporated into, or is reflected in other documents, such other documents shall be deemed Confidential Information subject to the terms of this Agreement.

- c) **Permitted Disclosures.** The restrictions set forth in this Section shall not apply with respect to Confidential Information which (i) is already available to the public; (ii) becomes available to the public through no fault of either party or its Representatives; (iii) is already known to the Receiving Party or which has been developed by or for the Receiving Party at any time independently of the information disclosed to it by the Disclosing Party on a non-confidential basis, as shown by written records in the Receiving Party's possession at the time that the Confidential Information was received; (iv) becomes available on a non-confidential basis from a source that is not under a non-disclosure obligation to either party; (v) is required by law to be disclosed; provided, however, in such a case, the party who receives an order, instruction or demand to disclose Confidential Information shall notify the other party in writing and the parties shall make reasonable efforts to avoid disclosure to the extent permitted by applicable laws and regulations or (vi) during the course of or in connection with any litigation, arbitration or other proceeding based upon or in connection with the subject matter of this Agreement. Additionally, either party may disclose the existence and the nature of the relationship between the parties established hereby provided it does not disclose any of the specific terms of such a relationship.
- d) **Disclosure of Confidential Information to Competitors.** Disclosure of Confidential Information to either Avira's direct or indirect competitors is prohibited in any and all circumstances and such disclosure shall constitute a material breach of this Agreement.

**9. Protection efforts.** Licensee will use commercially reasonable efforts to guard against the unauthorized access to, or alteration, distribution or destruction of, the Software . Licensee shall have no right to grant any sublicenses with respect to the Software es or any component(s) thereof.

## **10. Miscellaneous**

(1) This GTC's set forth all of Your rights to use the Software and makes up the entire agreement between You and Avira relating to the Software and supersedes any other communications, representations or advertising relating to the Software or the same matter . All rights not expressly set forth hereunder are reserved by Avira

(2) No provision hereof shall be deemed waived unless there is a written waiver signed by an authorized Avira representative.

- (3) If any provision of these GTCs is held invalid, the remainder of the GTCs shall remain in full force and effect. To the extent that an otherwise invalid provision can be construed so as to be valid, that provision shall be so construed.
- (4) The descriptive headings in this TSLA have been inserted for convenience and shall not limit or otherwise affect the construction or interpretation of these GTCs and the TSLA.
- (5) You may not assign any of Your rights under this TSLA neither in parts no in its entirety without the express prior written permission of Avira.
- (6) This Agreement has been written, and all discussions leading up to this Agreement have been conducted, in the English language which both parties thoroughly understand. Each Party represents that it has read and fully understands this Agreement, and further agrees that all amendments, notices and other correspondence or communications between the parties relating to or under this Agreement will be made solely in the English language.

**I understand and agree with the OEM Terms of Use and the Test Software License Agreement**