

Terms of Use for Schleuniger Software Products

(VERSION AS OF 1ST AUGUST 2021)

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, the following capitalized terms shall have the meaning assigned to such terms in this Clause 0:

"Affiliate" means any entity, whether incorporated or not, that is Controlled by, Controls, or is under common Control with the Party referred to when using the term.

"Agreement" means the agreement incorporating these terms of use, as amended from time to time, and references to the "Agreement" shall also mean these terms of use.

"Confidential Information" has the meaning assigned to such term in Clause 14.

"Control" means, with respect to any entity, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such entity, whether through the ownership of voting securities (or other ownership interest), by contract or otherwise.

"Customer" has the meaning assigned to such term in Clause 2(a).

"Documentation" means the documentation for the Software delivered by the Licensor to the Customer.

"Economic Sanctions" means economic or trade sanctions as announced and adopted by a Sanctions Authority.

"Equipment" means any wire processing equipment used by the Customer that has been manufactured by or on behalf of the Licensor.

"Error" means a deviation of the output or the functioning of the Software from what it should output or from the way it should behave or perform according to the Documentation.

"Force Majeure Events" means force majeure events such as (without limitation) natural disasters (fire, storm, water, and earthquakes), viral outbreaks, epidemics, pandemics, nuclear disasters, war, revolution, civil unrest, DDoS attacks and other cyber-crime or cyber-security incidents, embargoes and other governmental acts and orders not specific to a Party (whether legal or not), breakdowns of the public electrical, communication, or transportation infrastructures, or strikes.

"Intellectual Property Rights" means copyrights and moral rights, economic rights, patents, trade secrets, know-how, and any and all other protectable intellectual property and proprietary rights, whether or not registered or perfected.

"License" has the meaning assigned to such term in Clause 2(a).

"Licensor" has the meaning assigned to such term in Clause 2(a).

"Materials" means any and all physical media and documents, including the Documentation and any physical copies of the Software, provided to the Customer by the Licensor.

"Party" means a party to this Agreement.

"Restricted Party" means (i) an entity or individual that is a target of Economic Sanctions; or (ii) an entity located in or incorporated under the laws of a country or territory that is the target of country-wide or territory-wide Economic Sanctions that prohibit doing business in that country or territory or with entities located or domiciled therein.

"Sanctions Authorities" means any governmental or intergovernmental body with the legal power to adopt Economic Sanctions in a legally binding way, including in particular such bodies of the UN, the USA, the EU, or Switzerland.

"Software" has the meaning assigned to such term in Clause 2(a).

"Warranty Period" has the meaning assigned to such term in Clause 11(c).

1.2 Interpretation

- (a) Any reference to a **"Clause"** shall be interpreted as a reference to a clause of this Agreement unless the context requires otherwise.
- (b) **"Including"** shall be interpreted to mean "including (without limitation)".
- (c) Definitions designating the singular shall be deemed to also designate the plural and vice versa.

2. CONCLUSION AND NATURE OF THE AGREEMENT

- (a) Schleuniger AG, Bierigutstrasse 9, 3608 Thun, Switzerland (the **"Licensor"**) offers to its customers who have purchased certain Equipment from the Licensor (each a **"Customer"**) the software:

- "S.ON"
- "CAYMAN"
- "CAYMAN Device Connector"
- "SMG Server"
- "S.AM"
- "Iguana"

(the **"Software"**) together with the Equipment or separately for download or on data carriers (at the discretion of the Licensor).

- (b) The Software is only made available to existing Customers having purchased Equipment for which (or for usage with which) the Software has been developed.
- (c) By purchasing the Equipment and/or the Software and using the Software, installing or downloading the Software or any updates thereto, the Customer accepts these terms of use, whereupon the Agreement is concluded between the Licensor and the Customer.

- (d) This Agreement shall be in addition to, and shall neither replace or amend, the agreements already in place between the Licensor and the Customer. Notwithstanding the foregoing, any updated version of these terms of use accepted by the Customer (e.g., by downloading an update to the Software) shall lead to the conclusion of a new Agreement incorporating such new version of these terms of use and such new Agreement shall replace any prior Agreement between the Parties relating to the Software.

3. GRANT OF LICENSE

3.1 License to use the Software

The Licensor hereby grants the Customer a non-exclusive, perpetual right to use the Software (the "**License**") subject to the use restrictions set out in Clause 3.2 and the other terms and conditions of this Agreement.

3.2 Use restrictions

The License to the Software is subject to the following restrictions:

- (a) The Software may only be used on or in conjunction with (as applicable) the Equipment.
- (b) The Software may only be used:
 - (i) for its intended purpose;
 - (ii) by and for the purposes of the Licensor.
- (c) The Software shall not be used for any purpose that would be contrary to applicable law.
- (d) The Customer shall not use the Software for benchmarking purposes, and no benchmarks may be made or published using the Software.
- (e) Other than as expressly allowed by this Agreement, the Software may not be:
 - (i) disassembled, reverse engineered, or translated into any other software language, in particular any non-low-level or non-intermediate-level programming language;
 - (ii) edited, adapted, extended, modified, or amended;
 - (iii) copied (except for own internal purposes);
 - (iv) sold, leased, transferred, sublicensed, assigned or otherwise made available to any third party.

4. REQUIREMENTS

- (a) The Software requires the system software and other prerequisites set out in its Documentation.
- (b) The operation of the Software or interconnection thereof with any Equipment may be subject to the acquisition of a hardware dongle or similar hardware from the Licensor.

5. UPDATES AND DISCONTINUATION

- (a) The Licensor is entitled but not obliged to provide regular updates to the most recent versions of the Software, including by way of having the Software expire. The Customer shall be notified of any such updates. There are no forced updates, however, the Customer is strongly advised to install or allow installation of such updates immediately upon notification. In case the Customer does not or not immediately update the Software, the Licensor shall not be liable for any performance issues, damages, or other incidents in relation to non-updated Software or Equipment on which non-updated Software is operated. Any warranties of the Licensor as well as any obligations of the Licensor to support and maintain non-updated Software or the Equipment on which non-updated Software is operated shall be suspended.
- (b) Updates refer to bugfixes, security issues, or other corrections relating to the most recent version of the (not discontinued) Software and are provided free of charge. The Licensor may also provide additional features or functionalities of the Software which are considered upgrades and may be subject to additional fees. The aforementioned provisions do not apply to upgrades.
- (c) The Licensor may discontinue Software with prior public announcement (e.g., on the Licensor's website) of at least six (6) months. Discontinued Software will no longer be subject to support and maintenance or to updates.
- (d) The Licensor may at its own discretion offer supplementary support and maintenance for non-updated Software, or Equipment on which non-updated Software is operated, or discontinued Software on an individual basis and subject to an additional fee.

6. FURTHER OBLIGATIONS OF THE CUSTOMER

The Customer shall:

- (a) use the Software in accordance with the Documentation, in particular with the safety precautions and instructions set out therein;
- (b) take any and all actions necessary to ensure that the Software and the other Materials are not copied, edited, adapted, extended, modified or amended, or otherwise made available to or used by any third party or other unauthorized person;
- (c) immediately notify the Licensor if it becomes aware of any infringement or any unauthorized use of the Software or the other Materials by any person;
- (d) ensure that, prior to the use of the Materials by its authorized persons, all such persons are notified of the relevant terms of this Agreement;
- (e) not (i) take any action which results in a breach of this Agreement, in particular the use restrictions set out in Clause 3.2, or (ii) fail to take any action which would prevent such a breach, and instruct its authorized persons accordingly;
- (f) immediately notify the Licensor of any material breach of this Agreement by the Customer;
- (g) grant the Licensor access to its environment on a need-to-know basis in case of Errors, including, if reasonably necessary, access to the production implementation of the

Software including production data, and duly support the Licensor in any Error correction efforts made under this Agreement.

7. INTELLECTUAL PROPERTY RIGHTS

All Intellectual Property Rights (of whatever nature) to the Software and the other Materials shall remain the sole property of the Licensor or the respective third-party rights holders.

8. OPEN-SOURCE LICENSES

The Software may contain third-party software, which shall be subject to the licenses under which such third-party software is provided. The respective licenses and other respective notices are set out in the Documentation (see chapter "Appendix").

9. ACCESS TO EQUIPMENT AND DATA

- (a) The Licensor may access the Software and Equipment on which the Software is operated remotely for Error correction and service and maintenance purposes. For such purposes, the Licensor may access, modify, operate, and control any and all data saved in or by or accessible to the Software (including Equipment and peripheral devices). Such remote full access shall be limited in time and always confirmed by the Customer in the individual case. If the Licensor performs operations that may lead to movement of connected Equipment, the Customer shall ensure that duly trained personnel are physically present in front of the Equipment in order to confirm any movement and comply with applicable personal safety requirements. Both Parties are enabled, and the Customer is recommended, to log all operations and create a security log and safety protocol of such remote full access.
- (b) The Licensor may further at any time access and use telemetry data relating to Equipment connected to or operating the Software, and the Licensor may use such telemetry data to (i) offer preventive or predictive maintenance services or other services for such Equipment, (ii) optimize and further develop its product offerings, performance, or quality, (iii) design, develop, and offer products and services of any kind, or (iv) make any other commercial offers such as end-of-life offers. Telemetry data does not include personal data. The Customer may opt out of providing telemetry data to the Licensor.
- (c) The Licensor shall not make any Customer data available to any third party (other than Affiliates) or use any Customer data for any purpose other than the purposes set out hereinabove.

10. PROCESSING OF PERSONAL DATA

Any processing of personal data (which may include names of operators, batch numbers, active directory information, and other related personal data) by the Licensor for the Customer shall be governed by the following terms. The subject matter and duration of the processing, the nature and purpose of the processing, and the obligations and rights of the Parties are set forth in this Agreement. The Licensor undertakes to:

- (a) Process personal data for the performance of the Agreement, for the purposes of the Customer and upon instruction from the Customer, unless required to do so by law to

which the Licensor is subject to; in such a case, it shall inform the Customer of that legal requirement, unless that law prohibits such information.

- (b) Ensure that persons authorized to process the personal data adhere to confidentiality.
- (c) Have and Maintain technical and organizational means (e.g., pseudonymization and encryption of personal data, ability to restore the availability and access to personal data in a timely manner, etc.) required for proper protection of personal data so as to safeguard them against unintentional or illegal destruction or unintentional loss, modification, unauthorized disclosure, or unauthorized access, ensuring a level of security adequate in view of the risks associated with the processing and type of the data to be protected that least complies with the requirements as set forth in Article 32 EU General Data Protection Regulation ("GDPR"), the Swiss Data Protection Act, and other applicable data protection laws ("Data Protection Laws").
- (d) Assist the Customer by taking appropriate technical and organizational measures for the fulfillment of the Customer's obligation to inform the data subject as well as to respond to requests for the data subject's rights; namely in connection with the right of access by the data subject, the right to rectification, erasure, correction, restriction of the processing of personal data as well as the right to object to the processing of such data and the right to receive the personal data, under certain circumstances, as set forth in Chapter III of the GDPR or other Data Protection Laws.
- (e) Inform the Customer immediately if, in its opinion, an instruction infringes any applicable data protection or other law.
- (f) Assist the Customer in ensuring compliance with the obligations as per Articles 32 to 36 GDPR and other Data Protection Laws, taking into account the nature of processing and the information available to the Licensor; this shall include notifying the Customer without undue delay after becoming aware of a personal data breach and providing all information, as per Article 33 para. 3 GDPR and corresponding provisions of Data Protection Laws, available to the Licensor.
- (g) Make available to the Customer all information necessary to demonstrate the Licensor's compliance with this Clause 10.
- (h) Delete, anonymize, or return all personal data to the Customer after the end of the provision of the services relating to the processing if the Customer so chooses and to delete or anonymize existing copies unless applicable law requires storage of the personal data, in which case the Licensor continues to protect and keep confidential such personal data.
- (i) Inform the Customer of any engaging of another new party for carrying out specific processing activities in relation to personal data. Currently, personal data will be stored in a Microsoft Azure cloud within the EU or Switzerland.

11. REPRESENTATIONS AND WARRANTIES

- (a) The Licensor's representations and warranties expressly made in this Clause 11 are made under the exclusion of any further representations or warranties.

- (b) The Licensor represents and warrants that the most recent version of the Software performs as set out in the Documentation if operated in accordance with the Documentation. The Documentation for initial operation and personal safety will be provided in physical form; all other Documentation will be available in electronic form or otherwise. Any representations and warranties in relation to non-updated Software or Equipment on which non-updated Software is operated, is explicitly excluded.
- (c) The Customer shall have the following warranty rights:
 - (i) The Licensor shall remedy Errors that have been notified promptly after their discovery and within a notification period of twelve (12) months (the "**Warranty Period**") from the date the Software was downloaded, installed, or used for the first time. Such a remedy shall, at the discretion of the Licensor, be effected by (1) the delivery of a corrected version, patch, or similar corrective code (update) or (2) a workaround.
 - (ii) The recognition or repair of an Error shall not interrupt or restart the Warranty Period.
 - (iii) The Licensor shall not be obligated to repair any Error if such Error is rooted in factors outside of the Software, due to other circumstances which are beyond the Licensor's control, or if the Software or the Software's configuration has been amended by a third party not mandated by the Licensor. In this case, the Licensor—should it decide to act—shall charge the Customer for its efforts on a time and materials basis at the standard rates of the Licensor.
- (d) All further warranty rights (*Gewährleistungsrechte*) of the Customer shall be excluded.

12. LIABILITY

- (a) The following limitations shall apply (cumulatively):
 - (i) The Licensor shall be liable for direct damages which result from its negligent or intentional actions or inactions under this Agreement up to an amount of CHF 100'000. Liability for Documentation shall be limited to gross negligence and intention.
 - (ii) The Licensor shall not be liable for any lost profits, lost income, useless expenditures, loss of goodwill, other costs from production interruptions, or any indirect or consequential damages.
 - (iii) The Licensor shall not be liable for any damages (1) in relation to non-updated Software according to Clause 5 (a) or Equipment on which non-updated Software is operated, (2) in relation to discontinued Software according to Clause 5 (c) or Equipment on which discontinued Software is operated, (3) Equipment on which updated Software is operated but on which non-original Schleuniger parts, spare parts, or wear parts are used, and (4) if the Customer fails to duly support the Licensor in any Error correction efforts made under this Agreement.

- (iv) If the Software is operated on Equipment, then any liability of the Licensor incurred under this Agreement shall be subject to any stricter limitations on liability set out in the existing agreements relating to the Equipment, if any.
- (b) Any and all further liability of the Licensor shall be excluded.

13. **FORCE MAJEURE**

- (a) Neither Party shall be liable to the other for damages arising as a consequence of Force Majeure Events. If a Party is unable to perform its obligations under this Agreement due to a Force Majeure Event, the performance of such an obligation shall be postponed until the Force Majeure Event ceases to exist.
- (b) Should the Force Majeure Event continue for more than four weeks, then the Party in whose sphere of responsibility the Force Majeure Event has not occurred may terminate this Agreement without adhering to any notice period and without liability for any damages resulting therefrom.

14. **CONFIDENTIALITY**

- (a) Each Party shall keep strictly confidential (i) this Agreement and the terms set out in this Agreement, and (ii) any and all confidential information (including personal data) received from the other Party or otherwise made aware of in connection with this Agreement (collectively, "**Confidential Information**"). In particular, the following shall be considered Confidential Information: With respect to the Customer, any and all information relating to the Customer's clients/customers and their assets, its products and its concepts; with respect to the Licensor, the Software including the underlying concepts and knowhow, the other Materials, and the Licensor's methods and concepts.
- (b) Any information that is or has become publicly available without any breach of the foregoing confidentiality obligation by any of the Parties shall not constitute Confidential Information.
- (c) The confidentiality obligation set out in this Clause 14 extends to any parts of the Parties' businesses not connected to this Agreement, including any and all affiliated companies.
- (d) Each Party shall require any third party which is granted access to Confidential Information in accordance with this Agreement to execute a written non-disclosure agreement providing at least the level of confidentiality provided by this Clause 14.
- (e) Each Party shall have the right to disclose Confidential Information if so required by law. In the case of a disclosure required by law, the relevant Party shall notify the other Party as early as possible of a pending disclosure, so that the other Party may take any steps necessary to safeguard its Confidential Information, provided that the disclosing Party is not prohibited by law to make such a notification.
- (f) The obligations set out in this Clause 14 shall remain in force after the termination of this Agreement.

15. EXPORT CONTROL AND SANCTIONS

- (a) Sanctions
 - (i) The Customer represents and warrants that neither the Customer nor, to the best of its knowledge, its directors or officers are Restricted Parties.
 - (ii) The Customer has instituted and maintains and will continue to maintain policies and procedures designed to comply with Economic Sanctions.
- (b) Prohibited uses
 - (i) The Customer acknowledges that the Software and respective parts may be subject to domestic and/or foreign statutory export control regulations and may not be exported or used for a purpose other than that agreed upon without respective authorizations from the competent authorities. The Customer agrees to comply with all applicable export control regulations. It is understood that such regulations may change, and the foregoing provision shall apply to the export control regulations as amended and in force at the time at which they apply.
 - (ii) The Software and respective parts must not be directly or indirectly used in any way in connection with the design, production, usage, or storage of chemical, biological, or nuclear weapons of any kind or respective carrier systems. They must also not be used for any military or nuclear applications without the Licensor's prior written consent.

16. REVOCATION OF THE LICENSE

- (a) In the following cases, the Licensor shall have the right to revoke the License:
 - (i) The Customer is in default with a payment under any agreement between the Parties for more than 60 days, provided that prior to the revocation, the Licensor has delivered a default notice to the Customer, and the default has not been cured within the curing period of no less than 30 days set out in such notice.
 - (ii) The Customer has materially breached its obligations under this Agreement, and such breach (1) cannot be cured or (2) can be cured but has not been cured within the curing period of no less than 30 days set out in the respective notice of breach delivered to the Customer by the Licensor.
- (b) In case of revocation of the License, the Customer shall:
 - (i) Delete all copies of the Software and any digital copies of any and all Materials it has received from the Licensor;
 - (ii) Return any and all Materials it has received from the Licensor in physical form to the Licensor; and
 - (iii) Promptly deliver to the Licensor a duly signed certificate stating that the obligations set out in the preceding paragraphs (i) and (ii) have been fulfilled and no copies of any Materials remain with the Customer at the first request of the Licensor.

- (c) The Licensor shall have the right to claim further damages resulting from the reason for the revocation of the License.

17. VARIOUS PROVISIONS

17.1 Severability

Each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law. The invalidity or unenforceability of any provision of this Agreement shall in no way affect the validity or enforceability of any other provision hereof. If any provision of this Agreement is determined to be invalid, illegal, or unenforceable, the remaining provisions of this Agreement remain in full force and effect if both the economic and legal substance of the transactions that are contemplated in this Agreement are not affected in any manner adverse to any Party.

17.2 No waiver

The waiver of a breach of this Agreement or the failure of a Party to exercise any right under this Agreement shall in no event constitute a waiver as to any other breach, whether similar or dissimilar in nature, or prevent the exercising of any right under this Agreement. The failure of either Party to enforce any of the provisions of this Agreement at any time shall in no way be construed to be a present or future waiver of such provisions, nor in any way affect the ability of a Party to enforce each and every such provision thereafter.

17.3 Assignment

The Parties shall not assign this Agreement or any of the rights or obligations hereunder to any third party without the prior written consent of the other Party.

17.4 Amendments

No alteration, amendment, waiver, cancellation, or any other change in any term or condition of this Agreement shall be valid or binding for either Party unless agreed upon in writing.

18. APPLICABLE LAW AND VENUE

- (a) This Agreement shall be exclusively governed by substantial Swiss law under the exclusion of its conflict of laws rules and the United Nations Convention on Contracts for the International Sale of Goods.
- (b) The courts of Thun (Switzerland) shall have exclusive jurisdiction with respect to any and all disputes arising out of or in connection with this Agreement.