

cv act ECC-Package for Siemens CardOS

License Agreement

This Agreement describes the terms and conditions under which CRYPTOVISION authorizes LICENSEE to USE the Cryptovision Software.

1. **Definitions:** Each phrase or word used in this Agreement with capitalized letters shall have the meaning given below unless the context in which the word or phrase is used expressly provides otherwise.
 - 1.1 **CRYPTOVISION** means cv cryptovision GmbH (an Atos company) whose principal place of business is at Munscheidstr. 14, 45886 Gelsenkirchen, Germany.
 - 1.2 **CRYPTOVISION SOFTWARE** means the Cryptovision software identified in the header of the Agreement.
 - 1.3 **DEVICE** means any personal computer, PDA, server or hardware device unit that incorporates some or all of the following components: mother board, processor, memory board, graphics card or data storage (USB stick, hard drive, storage cards etc.) on which the Cryptovision Software or portions thereof is installed or copied.
 - 1.4 **INSTANCE** means any installation or copy of the Cryptovision Software on a device. Multiple installations of the Cryptovision Software on one device count each as an Instance.
 - 1.5 **LICENSEE** means any person, company or authority using the Cryptovision Software.
 - 1.6 **TOKEN** means a physical device that an authorized USER of computer services is given to aid in authentication.
 - 1.7 **USE** or "use" means to copy, access, run, install, display and access the Cryptovision Software or its services.
 - 1.8 **USER** means any physical person accessing the Software directly or utilizing services of the CRYPTOVISION SOFTWARE indirectly.
 - 1.9 **RUNTIME** means a component of a Development-Kit (DK) Software which will be build into the Software developed with this DK. Among others these can be:
 - Dynamic linked libraries (DLLs).
 - Code and data structure from static libraries, which are linked to the developed Software.
 - The result of a compilation process (binary code), in which the source code is part of the DK and the binary code is placed in to the developed Software. This is also imperative if the source code was changed and is not longer identical with the source code from the DK.
2. **Legal Agreement.** This Software License Agreement ("Agreement") is a legal agreement between the LICENSEE using the CRYPTOVISION SOFTWARE and CRYPTOVISION. By using the CRYPTOVISION SOFTWARE LICENSEE agrees to be bound the terms and conditions of the Agreement. If LICENSEE does not agree with the terms of this Agreement, it may not USE the CRYPTOVISION SOFTWARE and, if applicable, it must return the entire unused package to the reseller together with the receipt for a refund. The Software may include or be bundled with other software programs licensed under different terms and/or licensed by a licensor other than CRYPTOVISION. USE of any software programs accompanied by a separate license agreement is governed by that separate license agreement. CRYPTOVISION is not responsible for LICENSEE's USE of any third party software and shall have no liability for the USE of third party software.
3. **License Grant.** CRYPTOVISION grants to LICENSEE subject to the full payment of all applicable license fees, a personal, perpetual, non-transferable, limited license to USE the CRYPTOVISION SOFTWARE subject to the following license restriction:
 - 3.1 **USER License:** LICENSEE must purchase for each USER using the CRYPTOVISION SOFTWARE directly or indirectly one USER license. The CRYPTOVISION SOFTWARE may be copied and installed on as many DEVICES as necessary to supply services of the CRYPTOVISION SOFTWARE to USERS as long as it is only accessible for USERS for which a USER License has been acquired.
 - 3.2 **DEVICE License:** LICENSEE must purchase for each DEVICE using the CRYPTOVISION SOFTWARE one DEVICE License. For the avoidance of doubt, multiple installations of the CRYPTOVISION SOFTWARE on one DEVICE require only one DEVICE License.
 - 3.3 **BASIC License:** LICENSEE must purchase for each DEVICE or for each USER one BASIC License. The number of licenses required is determined by the greater of USERS using the CRYPTOVISION SOFTWARE

or DEVICES using the Cryptovision Software. If the ratio is changing during the term of the Agreement LICENSEE must acquire additional BASIC licenses.

The applicable license restriction is determined by LICENSEE's purchase of the CRYPTOVISION SOFTWARE from Cryptovision's price list and the part number used for the order. If such information is not available the BASIC License restriction shall exclusively apply to the USE of the CRYPTOVISION SOFTWARE. The above license restrictions are non-concurrent and LICENSEE may at no point in time USE more licenses than it has acquired.

Except as expressly set forth in this Agreement, LICENSEE may not modify, merge, embed, sell, lease, assign, distribute or transfer in any manner or form, in whole or in part, the CRYPTOVISION SOFTWARE except as otherwise required by law. Notwithstanding the foregoing, LICENSEE may make copies of the CRYPTOVISION SOFTWARE solely for archive or backup purposes or as otherwise required by law. If the CRYPTOVISION SOFTWARE was made available to LICENSEE for evaluation or testing purposes the license grant shall be non-perpetual and the license shall expire with the expiry date of the underlying evaluation agreement. LICENSEE must discontinue the USE of the CRYPTOVISION SOFTWARE, return it to CRYPTOVISION and delete all copies of it in LICENSEE's possession. Evaluation licenses may only be USED in non-productive environments.

4. **Support.** LICENSEE acknowledges that CRYPTOVISION has no responsibility for providing LICENSEE with any support, product upgrades or other enhancements for the CRYPTOVISION SOFTWARE.
5. **Ownership.** Notwithstanding any provision of this Agreement to the contrary, CRYPTOVISION, or the licensor through which CRYPTOVISION obtained the rights to distribute CRYPTOVISION SOFTWARE, owns and retains all title and ownership of all intellectual property rights in the CRYPTOVISION SOFTWARE or Services, including all software, software CDs and DVDs, copies of software, master CDs or DVDs, documentation and related materials that are acquired, produced or shipped by CRYPTOVISION under the Agreement, and all modifications to and derivative works from software licenses acquired under the Agreement made by LICENSEE, CRYPTOVISION or any third party. CRYPTOVISION does not transfer any portion of such title and ownership, or any of the associated goodwill, to LICENSEE, and the Agreement should not be construed to grant LICENSEE any right or license, whether by implication, estoppel or otherwise, except as expressly provided.
6. **Protection.** LICENSEE shall not disclose any CRYPTOVISION SOFTWARE in any form to any third party without permission from CRYPTOVISION. LICENSEE agrees to protect the CRYPTOVISION SOFTWARE in a manner consistent with the protection afforded its own proprietary information.
7. **Product Tampering.** LICENSEE agrees not to de-compile, reverse engineer, reverse compile, modify or perform any similar type of operation on any CRYPTOVISION SOFTWARE or media, in any fashion or for any purpose whatsoever, without the prior written consent of CRYPTOVISION or save as permitted by law. LICENSEE also agrees that any such works are derivative works and as such are the sole and exclusive property of CRYPTOVISION or its licensors.
8. **Indemnification.** In respect of any Cryptovision Software that LICENSEE is authorized under this Agreement to USE, CRYPTOVISION agrees to indemnify, defend and hold LICENSEE harmless from any damages, liabilities, costs and expenses incurred by LICENSEE as a result of any claim, judgment or adjudication against LICENSEE that provides that the CRYPTOVISION SOFTWARE, trade names or Cryptovision Marks appropriately used by LICENSEE in connection with Distributing CRYPTOVISION SOFTWARE infringe any trademark or copyright of any third party in the European Union or the European Economic Zone. LICENSEE shall promptly notify CRYPTOVISION in writing of any claim and LICENSEE agrees that CRYPTOVISION will have the sole control of the defence of any action and all negotiations for settlement and compromise. Should the CRYPTOVISION SOFTWARE become, or in Cryptovision's opinion be likely to become, the subject of infringement of any trademark or copyright or patent within any country in the Territory, LICENSEE agrees to permit CRYPTOVISION, at its option and expense, either to procure for LICENSEE the right to continue using the Proprietary Software, to replace or modify the Proprietary Software so that the continued exercise of the license is non-infringing, or to grant LICENSEE full credit for the Proprietary Software and accept return of the license(s) and associated software or Media. Any indemnification claim according to this section is subject to the liability limitations stipulated in the section titled "Limitation of Liabilities" and shall lapse one year after the disputed CRYPTOVISION SOFTWARE was acquired by LICENSEE. The above states the entire liability of CRYPTOVISION with respect to defect of title claims (patents, trademarks, copyrights and any other form of intellectual property rights).
9. **Limited Warranty.** This section shall only apply if LICENSEE has acquired the CRYPTOVISION SOFTWARE directly from CRYPTOVISION by entering into a software purchase agreement with CRYPTOVISION and paying to CRYPTOVISION the applicable license fees. This section does not apply and none of the rights defined herein shall apply if LICENSEE has obtained the CRYPTOVISION SOFTWARE from a reseller, system integrator, distributor or any other third party.

In the case of defects of the CRYPTOVISION SOFTWARE the following shall apply:

- 9.1 **Defects.** If LICENSEE submits to CRYPTOVISION proof of a defect, CRYPTOVISION will make commercially reasonable efforts to rectify such defect within a reasonable period of time. LICENSEE shall report any defects to CRYPTOVISION in writing without undue delay, and, if possible, LICENSEE shall submit a detailed description of the problem and any information available, which might be useful for rectification of the defect.
- 9.2 **Consequences.** If CRYPTOVISION fails to rectify a defect that is not immaterial, LICENSEE may return the defect software to CRYPTOVISION and CRYPTOVISION shall grant LICENSEE full credit for the CRYPTOVISION SOFTWARE and accept return of the license(s) and associated software or media. A refund shall only be applicable for failure to grant the contractual USE and shall only be possible if CRYPTOVISION fails to cure the defect within a reasonable grace period. CRYPTOVISION shall pay damages and reimburse expenditure due to a defect only within the limits as defined in the section titled "Limitation of Liabilities".
- 9.3 **Expenses.** Should CRYPTOVISION perform any services with respect to trouble shooting or defect rectification without being obliged to do so, CRYPTOVISION may invoice any expenditure incurred. This particularly applies if a reported defect cannot be proven, or if a defect is attributable to the fact that LICENSEE has not duly fulfilled co-operation obligations or that LICENSEE has used any service provided under the Agreement inappropriately, or that LICENSEE does not USE any free services offered by CRYPTOVISION even though LICENSEE has been advised to do so by CRYPTOVISION.
- 9.4 **Limitations.** Except for the rights stipulated in this section 9, other rights based on defects are excluded. Any warranty claim shall lapse within one year ("Warranty Period") after the Cryptovision SOFTWARE has been acquired by LICENSEE. Any defect rectification shall result in a suspension of the Warranty Period, which shall finish once the defect has been removed and shall under no circumstances initiate a new Warranty Period term.

10. Limitation of Liabilities. Cryptovision's liability in accordance with the provisions of statutory law is subject to the following limitations:

- 10.1 CRYPTOVISION neither excludes nor limits its liability for: (i) damages arising from any harm to life or physical injury, (ii) damages caused by CRYPTOVISION'S intentional misconduct or gross negligence, or (iii) damages caused by fraud. In all other cases, CRYPTOVISION'S damages shall be limited to the amount LICENSEE paid for the CRYPTOVISION SOFTWARE which gave rise to the damage in the preceding year finishing at the date the damage first occurred.
- 10.2 CRYPTOVISION'S liability shall be limited to compensation of those damages which, based on the specifics of the Agreement, are to be regarded as predictable and foreseeable to the extent that these shall have been caused by negligent infringement of material contractual obligations (i) that endangers the achievement of the objective of the Agreement; or (ii) the very discharge of which is an essential prerequisite for the proper performance of the Agreement.
- 10.3 For all other cases of slight negligence than those set forth in Section 10.2 the liability of CRYPTOVISION is excluded.
- 10.4 The above provisions apply accordingly to any liability with respect to compensation of wasted expenditure.
- 10.5 Liability pursuant to the German Product Liability Act (Produkthaftungsgesetz) remains unaffected.
- 10.6 The above provisions also apply to any claims against employees, subcontractors of, or any other persons authorized by CRYPTOVISION.

11. General Terms

- 11.1 **Term.** This Agreement becomes effective on the date LICENSEE legally acquires the CRYPTOVISION SOFTWARE and may be terminated by CRYPTOVISION if LICENSEE is in breach of any of its terms. Any violation by LICENSEE of the terms and conditions agreed in sections 3, 5 and 6 shall be deemed to be a severe breach of contract entitling CRYPTOVISION to immediately terminate the Agreement for cause. Upon termination of this Agreement, LICENSEE must destroy the original and all copies of the CRYPTOVISION SOFTWARE or return them to CRYPTOVISION and delete the CRYPTOVISION SOFTWARE from its systems.
- 11.2 **Law and Forum.** Exclusive place of jurisdiction for any disputes arising from or in connection with the Agreement shall be Essen, Germany. This Agreement shall be governed by and construed under the laws of Germany excluding the UN-Convention on the International Sale of Goods.

- 11.3 **Entire Agreement.** This Agreement sets forth the entire understanding and agreement between LICENSEE and CRYPTOVISION and may be amended only in a writing signed by duly authorized representatives of both parties.
- 11.4 **Assignment.** The Agreement is not assignable by LICENSEE, in whole or in part, without Cryptovision's prior written consent.
- 11.5 **Severability.** If any term, provision, covenant or condition of the Agreement is held invalid or unenforceable for any reason, the remainder of the provisions will continue in full force and effect as if this Agreement had been executed with the invalid portion eliminated. The parties further agree to substitute for the invalid provision a valid provision that most closely approximates the intent and economic effect of the invalid provision.
- 11.6 **Export Restrictions.** The CRYPTOVISION SOFTWARE may contain encryption technology, which is subject to German and international export laws as well as local laws in the country where the software is USED. LICENSEE is obliged to verify that it has obtained all government approvals to USE and import the CRYPTOVISION SOFTWARE and that the USE of the CRYPTOVISION SOFTWARE is not violating laws.

No Other Terms. This Agreement comprises the whole agreement between the parties. All prior oral or written agreements or representations other than as included in this Agreement are hereby excluded from this Agreement.