



Cyber Essentials Direct Ltd,
Greyfriars Court
Paradise Square
Oxford OX1 1BE
Company Number: 09588886

THE CYBER HIGHWAY™

End User Licence Agreement

Please read carefully before logging in and using The Cyber Highway:

This licence agreement (*Licence*) is a legal agreement between you (*Licensee or you*) and Cyber Essentials Direct Ltd (*CEDL*) of Greyfriars Court, Paradise Square Oxford OX1 1BE (*Licensor, us or we*) for:

- The Cyber Highway website *Software* and
- printed materials and electronic documents relating to the *Software (Documents)*.

We licence use of the *Software* and *Documents* to you on the basis of this Licence. We do not sell the *Software* or *Documents* to you. We remain the owners of the *Software* and *Documents* at all times.

Operating environment requirements:

This *Software* will only run on *Compatible Devices* (operating systems and internet browsers). By using the *Software* you acknowledge and agree that it is your responsibility to check that the hardware of all Users meets the *Compatible Devices* criteria.

Important notice to all Users:

By clicking on the ACCEPT button below, you agree to the Terms of this licence which will bind you and (where relevant) your employees to the Terms of this licence which include, in particular, limitations on liability.

If you do not agree to the Terms of this licence, we will not license the *Software* and documents to you and you must discontinue use of the *Software* and documents with immediate effect.

You should print a copy of this licence for future reference.

1. Definition of Terms

In this licence the following Terms have the meaning as set out below:

“Licence”	<i>The License agreement</i>
“Licensee”	<i>User /You</i>
“Licensor”	<i>Us / we</i>
“Fees”	The annual Fees payable for access to the <i>Software</i> and <i>Documentation</i> as notified by <i>Us</i> from time to time
“Licensee Data”	Data inputted by the <i>Licensee</i> or any <i>User</i> for the purpose of using the <i>Software</i> and <i>Documentation</i>
“Term”	Refers to the annual licence which commences on the date of receipt of payment of the <i>Fees</i> by CEDL and expires on the day before the anniversary of the date of receipt of payment
“User”	Employees, agents and contractors of the Licensee, authorised by the <i>Licensee</i> to use the <i>Software</i> and <i>Documentation</i>
“Software”	The Cyber Highway website and the content therein
“Documentation”	Printed materials and electronic documents relating to the Software
“CEDL”	Cyber Essentials Direct Ltd
“Compatible Devices”	Desk-top and Laptop PCs
“EEA”	The European Economic Area which includes EU countries and also Iceland, Liechtenstein and Norway. It allows them to be part of the EU’s single market.
“TPM”	Technical Protection Measures
“EULA”	End User Licence Agreement
“Event Outside Our Control”	any act or event beyond our reasonable control, including without limitation failure of public or private telecommunications networks
“Contracts (Rights of Third Parties) Act 1999”	An Act to make provision for the enforcement of contractual Terms by third parties.

2. Grant and scope of Licence

2.1 In consideration of the payment of the *Fees*, and you agreeing to abide by the Terms of this *Licence*, we hereby grant to a non-exclusive, non-transferable, right to permit *Users* to use the *Software* and the *Documents* on the Terms of this Licence for the Term.

2.2 You may:

- a. use the *Software* on one or more *Compatible Devices* owned or controlled by Licensee during the Term for which the Licence has been granted only; and
- b. use any *Documents* in support of the use permitted under condition 0 and make such a number copies of the *Documents* as are reasonably necessary for its lawful use.

The Fee shall be due and payable annually in advance by the Licensee, at the then current rate notified by Us prior to the expiry of the then current Term. If we have not received payment by the due date, without prejudice to any other rights or remedies we may have, we may disable the Licensee's password, account and access to the *Software* and/or *Documentation* until receipt of all outstanding sums in full, and/or charge interest at a rate of 4% above the then current Bank of England base rate from time to time from the due date until the date of payment in full of all outstanding sums. The Fees are exclusive of any value added tax which shall be payable in addition. The Licensee acknowledges that We shall be entitled to increase the Fees at the start of each new Term of use of the *Software*.

3. Restrictions

3.1 Except as expressly set out in this Licence or as permitted by any local law you undertake:

- a. not to copy the *Software* or *Documents* except where such copying is incidental to normal use of the *Software*, or where it is necessary for the purpose of back-up or operational security;
- b. not to sell, rent, lease, sub-license, loan, translate, merge, adapt, vary or modify the *Software* or *Documents*;
- c. not to make alterations to, or modifications of, the whole or any part of the *Software* or *Documentation*, nor permit the *Software*, or *Documentation* or any part of it to be combined with, or become incorporated in, any other programs;
- d. not to disassemble, decompile, reverse-engineer or create derivative works based on the whole or any part of the *Software* nor attempt to do any such thing; or
- e. not to provide or otherwise make available the *Software* in whole or in part (including but not limited to program listings, object and source program listings, object code and source code), in any form to any person other than the Licensee.

3.2 The Licensee shall ensure, and procure, that each User keeps and maintains the security of any and all passwords or User logins to access the *Software* and *Documentation*, and will all passwords and User logins confidential.

3.3 The Licensee shall not access, store, distribute or transmit any viruses, malicious code, Trojan horse, worm or any other similar thing or device that is designed or has the effect of preventing, impairing or adversely affecting the operation of *Software*, hardware or networks.

3.4 The Licensee shall not, and shall procure that its Users shall not, store, distribute or transmit material that is unlawful, harmful, threatening, defamatory, obscene, infringing, discriminatory, offensive or is illegal or facilitates illegal activity, and We reserve the right to suspend access to the *Software* if the use of the *Software* or any *Documentation* is in breach of this provision.

- 3.5 The *Licensee* acknowledges that the use of the *Software* and *Documentation* is restricted to its internal business only, and that it may not use the *Software* or *Documentation* to provide services to third parties, or to any subsidiary or holding company of the *Licensee*.

4. Availability

- 4.1 We shall make commercially reasonable efforts to make the *Software* and *Documentation* available 24 hours a day, seven days a week except for planned maintenance which may be carried out between 8pm and 6am, and any unscheduled maintenance which may be carried out on giving reasonable notice to the *Licensee*.
- 4.2 If, you notify us in writing of any defect or fault in the *Software* as a result of which it fails to perform substantially in accordance with the *Documents*, and provided that you make available all the information that may be necessary to help us provide technical support, including sufficient information to enable us to recreate the defect or fault, we will make all commercially reasonable efforts to provide technical support of the *Software* to *Licensee*. Such technical support shall be available by email communication in the English language, and any other language that may be available from time to time, during *CEDL's* regular business hours, subject to further restrictions, which may be set forth at the Cyber Highway website or otherwise published by *CEDL* and provided or made available to *Licensee*.

5. Licensee Data

- 5.1 The *Licensee* shall own all right, title and interest in and to all of the *Licensee Data*, and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the *Licensee Data*.
- 5.2 We will archive and back up data accessed and stored via the *Software* in accordance with good practice. In the event of any loss or damage to the *Licensee Data*, our sole responsibility is to restore it to the latest clean backup that We are storing in accordance with our storage processes. The *Licensee* acknowledges that We are not responsible for any loss, destruction or alteration to any *Licensee Data* caused by any third party other than a third party We instruct to perform any services in connection with the *Software*.
- 5.3 If, and to the extent that We process any personal data on behalf of the *Licensee* when performing our obligations under this *Licence*, the *Licensee* shall be the data controller and We shall be a data processor and in any such case:
- a. the *Licensee* acknowledges and agrees that the personal data may be transferred or stored outside the *EEA* in order to provide the *Software* and deliver our obligations under this agreement;
 - b. the *Licensee* shall ensure that the *Licensee* is entitled to transfer the relevant personal data to Us so that We may lawfully use, process and transfer the personal data in accordance with this agreement on the *Licensee's* behalf;
 - c. the *Licensee* shall ensure that all relevant third parties, including the *Users*, have been informed of, and have given appropriate consent to such use, processing, and transfer as required by all applicable data protection legislation;
 - d. We shall process the personal data only in accordance with the Terms of this agreement and any lawful instructions reasonably given by the *Licensee* from time to time; and each party shall take appropriate technical and organisational measures against unauthorised or unlawful processing of the personal data or its accidental loss, destruction or damage

6. Intellectual Property Rights

- 6.1 The *Licensee* acknowledges and agrees that all intellectual property rights in the *Software* and the *Documents* anywhere in the world belong to *Us*, that rights in the *Software* are licensed (not sold) to you, and that you have no rights in, or to, the *Software* or the *Documents* other than the right to use them in accordance with the Terms of this *Licence*.
- 6.2 You acknowledge that you have no right to have access to the *Software* in source code form or in unlocked coding or with comments.
- 6.3 The integrity of this *Software* is protected by *Technical Protection Measures (TPM)* so that the intellectual property rights, including copyright, in the *Software* are not misappropriated. You must not attempt in any way to remove or circumvent any such *TPM*, nor apply or manufacture for sale or hire, import, distribute, sell or let for hire, offer or expose for sale or hire, advertise for sale or hire or have in your possession for private or commercial purposes any means the sole intended purpose of which is to facilitate the unauthorised removal or circumvention of such *TPM*.

7.0 Limited Warranty

- 7.1 We warrant that services will be performed with reasonable skill and care, and providing that the *Software* is used on *Compatible Devices*:
 - a. the *Software* will, perform substantially in accordance with the functions described in the *Documents*; and
 - b. the *Documents* correctly describe the operation of the *Software* in all material respects.
- 7.2 The warranty does not apply if the defect or fault in the *Software* results from:
 - a. any modifications or customisation of the *Software* not made or authorised by *CEDL*;
 - b. incorrect or unauthorised use of the *Software* or use not in accordance with the *Documentation*;
 - c. any fault in the hardware upon which the *Software* is run;
 - d. any programs used in conjunction with the *Software*;
 - e. use of the *Software* on devices other than *Compatible Devices* specified in any response to a written email request as to compatibility from us; and
 - f. the environment where the *Software* is used which shall include, but is not limited to, a poor Wi-Fi network or internet connection used to run the *Software*.
- 7.3 Notwithstanding clause 7.1, the *Licensee* acknowledges that we do not warrant that the *Licensee's* use of the *Software* or *Documentation* will be uninterrupted or error-free or that any information obtained by the *Licensee* through the use of the *Software* or *Documentation* will meet any or all of the *Licensee's* requirements, and in particular we do not warrant that on completion of any processes outlined in the *Software* that the *Licensee* will secure any specific certification or level of compliance.

8.0 Indemnity

- 8.1 The *Licensee* shall defend indemnify and hold harmless the *Supplier* against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal Fees) arising out of or in connection with the *Licensee's* use of the *Software* and/or *Documentation*.

- 8.2 We shall defend the *Licensee* against any claim that the *Software* or *Documentation* infringes any United Kingdom copyright, trade mark, database right or right of confidentiality, and shall subject to clause 9 below, indemnify the *Licensee* for any amounts awarded against the *Licensee* in judgment or settlement of such claims, provided that we are given prompt notice of any claim and sole control of the defence and, the *Licensee* cooperates in the defence or settlement of the claim.
- 8.3 In the defence or settlement of any claim, *We* may procure the right for the *Licensee* to continue using the *Software*, replace or modify the *Software* or any *Documentation* so that they become non-infringing or, if such remedies are not reasonably available, Terminate this agreement on 2 Business Days' notice to the *Licensee*, and repay the unused portion of the *Licence Fees* but without additional liability or obligation to pay liquidated damages or other additional costs to the *Licensee*.
- 8.4 In no event shall *We*, our employees, agents and sub-contractors, be liable to the *Licensee* to the extent that any alleged infringement is based on:
- a. a modification of the *Software* or *Documentation* by anyone other than *Us*; or
 - b. any use of the *Software* or *Documentation* in a manner contrary to the instructions given by *Us*; or
 - c. any continued use of the *Software* or *Documentation* after notice of any alleged or actual infringement.

The foregoing states the *Licensee's* sole and exclusive rights and remedies, and *Our* entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

9. Limitation of Liability

- 9.1 *You* acknowledge that the *Software* has not been developed to meet any individual requirements, and that it is therefore your responsibility to ensure that the facilities and functions of the *Software* as described in the *Documents* meet your requirements.
- 9.2 *We* shall not under any circumstances be liable to you, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the *Licence* for:
- a. Loss of profits, sales, business, or revenue;
 - b. business interruption;
 - c. loss of anticipated savings;
 - d. loss or corruption of data or information;
 - e. loss of business opportunity, goodwill or reputation; or
 - f. any indirect or consequential loss or damage.
- 9.3 Subject to clause 9.2 and 9.4, our maximum aggregate liability under or in connection with this *Licence* whether in contract, tort (including negligence) or otherwise, shall in all circumstances be limited to a sum equal to the sums paid by you to us for the *Licence*.
- 9.4 Nothing in this *Licence* shall limit or exclude either party's liability for:
- a. death or personal injury resulting from our negligence;
 - b. fraud or fraudulent misrepresentation;
 - c. any other liability that cannot be excluded or limited by English law.

9.5 This *Licence* sets out the full extent of our obligations and liabilities in respect of the supply of the *Software* and *Documents*. Except as expressly stated in this *Licence*, there are no conditions, warranties, representations or other Terms, express or implied, that are binding on us. Any condition, warranty, representation or other Term concerning the supply of the *Software* and *Documents* which might otherwise be implied into, or incorporated in, this *Licence* whether by statute, common law or otherwise, is excluded to the fullest extent permitted by law.

10. Term and Termination

10.1 This *Licence* will commence with effect from payment of the *Fee* and continue for the *Term*, thereafter this agreement will renew for successive periods of 12 months with effect from payment of the appropriate *Fees* unless either party notifies the other party of Termination in writing at least 30 days before the end of the then current *Term*.

10.2 Notwithstanding clause 10.1, *We* may Terminate this *Licence* immediately by written notice to you if you commit a breach of this *Licence*, or fail to pay the relevant *Fees* in advance.

10.3 Notwithstanding clause 10.1, either party may Terminate this *Licence* if the other party suspends or threatens to suspend payment of its debts or is unable to pay its debts as they fall due, or otherwise ceases to trade or conduct its business.

10.4 Upon Termination of this *Licence* for any reason:

- a. all rights granted to you under this *Licence* shall immediately cease;
- b. you must immediately cease all activities authorised by this *Licence*;
- c. you must immediately delete or remove the *Software* from all computer equipment in your possession, and immediately destroy or return to us (at our option) all copies of the *Software* and *Documents* then in your possession, custody or control and, in the case of destruction, certify to us that you have done so.

11. Communications between Us

11.1 If you wish to contact us in writing, or if any condition in this *EULA* requires you to give us notice in writing, you can send this to us by e-mail or by post to **Cyber Essentials Direct Limited, Greyfriars Court, Paradise Square Oxford OX1 1BE**. We will confirm receipt of this by contacting you in writing, normally by e-mail.

12. Events Outside Our Control

12.1 The *Licensee* is responsible for procuring or carrying out onsite testing to check that the devices on which the *Software* is to be used are *Compatible Devices*. We accept no responsibility or liability in respect of any issues arising from the use of the *Software* which is directly or indirectly attributable to the location where it is attempted to be used.

12.2 We will not be liable or responsible for any failure to perform, or delay in performance of, any of our obligations under this *Licence* that is caused by an *Event Outside Our Control*. An *Event Outside Our Control* is defined below in condition 12.3.

12.3 An *Event Outside Our Control* means any act or event beyond our reasonable control, including without limitation failure of public or private telecommunications networks.

12.4 If an *Event Outside Our Control* takes place that affects the performance of our obligations under this *Licence*:

- a. our obligations under this Licence will be suspended and the time for performance of our obligations will be extended for the duration of the Event Outside Our Control; and
- b. We will use our reasonable endeavours to find a solution by which our obligations under this Licence may be performed despite the Event outside Our Control.

13. Other important Terms

- 13.1 We may transfer our rights and obligations under this Licence to another organisation, but this will not affect the Licensee's rights or our obligations under this Licence.
- 13.2 The Licensee may not transfer its rights or obligations under this Licence.
- 13.3 This *Licence* and all document expressly referred to in it constitutes the entire agreement between the *Licensee* and us. The *Licensee* acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of us which is not set out in this Licence.
- 13.4 If we fail to insist that the *Licensee* performs any of its obligations under this *Licence*, or if we do not enforce our rights against the *Licensee*, or if we delay in doing so, that will not mean that we have waived our rights against the *Licensee* and will not mean that the *Licensee* does not have to comply with those obligations. If we do waive a default by the *Licensee*, we will only do so in writing, and that will not mean that we will automatically waive any later default.
- 13.5 Each of the conditions of this *Licence* operates separately. If any court or competent authority decides that any of them are unlawful or unenforceable, the remaining conditions will remain in full force and effect.
- 13.6 Nothing in this *Licence* is intended to create any partnership or joint venture between the parties, nor authorise either party as agent with binding authority to act on behalf of the other.
- 13.7 This *Licence* does not confer any rights on any person or party other than the parties to this agreement and their permitted successors or assigns pursuant to the *Contracts (Rights of Third Parties) Act 1999*.
- 13.8 This *Licence*, its subject matter and its formation (and any non-contractual disputes or claims) are governed by English law. The parties agree to the exclusive jurisdiction of the courts of England and Wales.