

Clearswift End User License Agreement (vNov2018)

THANK YOU for choosing Clearswift!

Please read the terms and conditions below carefully and especially Clause 5. This End User License Agreement (“EULA”) is a legally binding agreement with Clearswift that sets out the terms governing Your or Your company/organization’s use of the Clearswift software. When we refer to “You” we mean you personally or if you are representing a company or organization then the company or organization named as the legal licensee on the License Certificate issued by us. “We”, “us” or “Clearswift” means Clearswift Limited of 1310 Waterside, Arlington Business Park, Theale, RG7 4SA, UK.

By clicking the "I accept" button, and/or installing, copying or using the Clearswift software You are (1) representing that You are authorized to legally bind Your company/organization; (2) accepting the terms of this EULA and (3) agreeing to the transmission of certain information (see below) during installation and use of the software in accordance with our Privacy Policy at www.clearswift.com/privacy-policy If You do not agree to these terms press the “cancel” button and do not continue the installation process. You may then return the software licenses to Your reseller or to us if You purchased Your licenses directly from us. Any questions about this EULA can be sent to: legal@clearswift.com

1. Your Rights and Obligations when Using Clearswift Software.

- 1.1. **License:** The executable copy of the software is licensed, not sold. We grant You the personal right to install and use the software and use the accompanying documentation on a limited, revocable, non-exclusive, non-transferable, non-sublicenseable basis on the terms of this EULA and for so long as You continue to pay all fees associated with the use of the software. All updates, upgrades and other enhancements of the software and documentation that are licensed to You will also be governed by this EULA. You may make one copy of the software for back up and one copy for archival purposes.
- 1.2. **Restrictions:** We reserve all rights not specifically granted to You under this EULA. Furthermore, the software may contain third party or open source components which are licensed from third parties or under open source licenses and they are governed by their terms and conditions which You should also read carefully. This license does not allow You to: (i) rent, lease, loan, sub-license, benchmark or (except to the extent allowed by law) transfer the software; (ii) except as permitted by this EULA or by law, publish, copy, modify, adapt, merge, translate, reverse engineer, decompile, disassemble or create derivative works based on the whole or any part of the software or the accompanying documentation, integrate or merge it with any other software, or reduce it to a human-perceivable form, or otherwise attempt to derive the source-code; (iii) use the software as part of a managed service, hosted service, as an ISP, cloud service or other means for commercial exploitation unless otherwise agreed in writing by us; (iv) use the software for more users (or other applicable license quantification applicable to the software) than stated on the License Certificate issued to You; (v) use the software for any illegal, improper or immoral purpose and only use the software in accordance with all applicable laws; and (vi) use more than one version of the software where an upgrade has been issued which you have downloaded and installed.
- 1.3. **Authorised Use Quantity:** It is Your continuing responsibility to purchase sufficient licenses for the number of users You need at all times (or other applicable quantification method applicable to the software all of which are defined in our Licensing Guidelines available at <https://www.clearswift.com/terms-and-conditions> which are incorporated herein). If in doubt as to the number of licenses You need, You should ask us first – any schemes or arrangements in the way You configure your IT systems which are designed to reduce the number of licenses needed in an artificial or contrived manner will be a violation of the trust and honesty we expect from You when you state the number of licenses needed and will be a breach of this EULA. We require You to keep appropriate records detailing Your compliance with this obligation which You agree to allow us (or our appointed representative who agrees to respect Your confidentiality in respect of such records) to inspect at Your business premises during normal business hours if we give You at least 30 days’ prior written notice of the same. We will pay the costs of such inspections unless Your use of the software is found to be more than 10% in excess of the authorized licensed use in which case You agree to pay for the reasonable costs of such inspection Any usage in excess of the authorized license use will require You to purchase the necessary licenses and/or maintenance/technical support to regularize the license count dating back to when the overuse first commenced plus interest at the rate of LIBOR + 5% per annum.
- 1.4. **Sharing information with us:** Your privacy is important to us. Some of our software features allow the software to communicate with us remotely via the internet to (i) determine if there are any updates, enhancements or fixes available and if so to allow such updates etc. to be provided to You (if applicable) and (ii) for our technical support team to collect information which assists them in providing the support service to You. Some of these features can be turned off by You in the administrator user interface. The ability of our technical support services to support You efficiently and in the best way will be impaired if You turn off any of these features. We do not collect any personal data as part of this sharing of information and we will treat all information we receive in confidence. If You are using the software through a managed service environment or hosted service provided by us You accept that Your data,

including personal data, may be held on servers and/or in environments that are owned and controlled by either us or third parties we contract to provide the service. We recognize that Your data is sensitive and will treat all such data as confidential where held on our controlled servers or environments all of which operate in accordance with our Privacy Policy.

- 1.5. **Maintaining the environment and hardware:** Unless You are using our software under the terms of a managed service or hosting agreement with us, You are responsible for the selection, purchase, installation, maintenance and operation of the environment including equipment, operating system, database, third-party software and network which our software operates and to make sure that the equipment complies with the operating requirements for our software as may be specified by us from time to time. You are also responsible for doing Your own evaluation and testing prior to purchasing the software to ensure that the software meets Your requirements and is of satisfactory quality for Your needs. You cannot rely on any representations made to You by us or any third parties such as Your reseller when selecting our software all of which are excluded. We do not manufacture any hardware. If we have provided any hardware to You, we will pass on to You any applicable warranty or guarantee for the hardware to You from the third party who manufactures it. Our support service does not cover faults of any hardware provided by us and You would need to call the manufacturer for assistance as part of their warranty or guarantee or (if that has expired) buy an appropriate service contract with the manufacturer or other third party to provide You with such support. We will comply with our obligations under the Waste Electrical and Electronic Equipment Directive 2012/19/EU on waste electrical and electronic equipment and the RoHS Directive 2002/95/EC in respect of any hardware we provide to You.

2. Support Services.

- 2.1. Our technical support services are provided to You in accordance with the Service Description and Support EULA found here: <https://www.clearswift.com/terms-and-conditions>
- 2.2. You are eligible for technical support for so long as Your subscription license for the software continues or if You are a perpetual license customer for so long as You pay for technical support. We make available technical support for a specific version of software until such time as we publish an “end of life” notification on our website. We aim to give at least 12 months’ notice of “end of life” unless we cannot do so for legal or other valid reason. Once a version has reached the “end of life” date that we have published, we will no longer support that version of the software even if You still have a valid technical support contract – You will need to upgrade to the newer version and our technical support will apply to that newer version only.

3. Duration of the License:

- 3.1. **Duration:** If You purchased a perpetual license of the software. Your license commences on the date You acquired the license and continues until You cease using the software or the license is terminated as stated below. If You purchased a subscription license of the software, or if You purchased maintenance/support separately (in the case of a perpetual license) the license and/or the maintenance/support commences on the date specified on the License Certificate issued to You and shall continue for the duration specified therein and shall automatically renew for further periods of 12 months unless You give us at least 60 days prior written notice that You do not wish to renew. If You do not give such notice and You do not contact us or Your reseller, such auto-renewal shall be in accordance with the commercial terms outlined in a quotation sent to You either directly by us or by a reseller. If Your contact details are up to date with us, we aim to remind you of the renewal date approximately 90 days in advance.
- 3.2. **Breach:** Either of us can terminate this EULA if one of us believes that the other party is in breach of a material term which has not been remedied after 30 days of receipt of a written notice specifying the breach and requiring its remedy. We also reserve the right to suspend maintenance and support services to You in these circumstances or if You have not paid license fees or maintenance and support fees.
- 3.3. **Insolvency:** Either of us can terminate this EULA immediately and without notice if one of us enters into a compulsory or voluntary liquidation (other than for the purpose of effecting a solvent reconstruction or amalgamation) or are deemed unable to pay our debts as they fall due or convene a meeting of or enter into any composition with creditors or have an administrative receiver, receiver, manager or administrator appointed over all or some of the undertaking or assets or anything analogous to the events described above occurs in any jurisdiction.
- 3.4. **Impact of Termination:** On termination or expiry of this EULA for any reason Your license to use the software shall end immediately, You must immediately cease to use the software and documentation and delete all copies of the software and documentation from Your systems and confirm this to us in writing. Termination of this EULA shall not impact any rights and/or liabilities either of us have already acquired at that time except that if we have terminated this EULA due to Your breach or upon any of the events specified above You will not be entitled to any refund of fees paid in advance.

4. Warranties and Indemnities

- 4.1. **Warranty:** Due to the nature of all software, we cannot and do not warrant to You that the software will be error free, run uninterrupted, meets Your requirements or is of satisfactory quality for Your needs. Accordingly, it is Your responsibility to ensure proper back-up and recovery procedures are in place for Your data. However, in addition to any warranty provided to You by

applicable law, we do warrant to You that the properly licensed software will perform substantially in accordance with the documentation that accompanies the software (such as read-me files) and that such documentation correctly describes the operation of the software in all material respects. This warranty is valid for a period of 30 days from the date of purchase. If there is a significant defect or error in the operation of the software or the documentation (not caused by You or caused by events outside our reasonable control) during the period of the warranty then please notify us immediately and if we are unable to fix the defect to Your reasonable satisfaction within 30 days, You may then, as Your only remedy, return the software and the documentation to us (if You bought direct from us) or Your supplier for a refund.

- 4.2. The software we provide to You is designed to be configured by You which means that You are in control of the function, performance and data commands inputted and actions taken by You. Accordingly, we do not give You any warranty that the software will meet any specific function or performance criteria or identify, track, block, sanitise or redact any specific content or block any particular websites or emails nor can we warrant that the content, websites or emails that are blocked or redacted are correctly identified as “unwanted”.
- 4.3. The above are the only warranties we provide to You. All other warranties and guarantees whether express or implied are excluded to the maximum extent allowed by applicable law. If local law mandates certain warranties or guarantees they shall last only during the term of the limited warranty above and are limited as much as local law allows. If local law requires a longer limited warranty term then that longer term shall apply but You can only recover the remedies stated in this EULA. Any test or evaluation software provided to You is provided “as is” with no warranty, guarantee or indemnity whatever and Your use of the same is at Your sole risk and only for the duration stated by us.
- 4.4. **Ownership and Indemnity:** All rights, title and interest in the software are the exclusive property of Clearswift or our licensor(s) in the case of third-party software components in the software. Subject to the limitations on liability set out at clause 5 below, we agree to defend or settle at our own expense and in our absolute discretion any claim or legal action (an "Action") brought by a third party against You claiming that Your use of the Software in accordance with this EULA infringes any valid United Kingdom intellectual property rights owned by that third party provided that:
 - 4.4.1. You immediately notify us in writing of the Action or a threat of such Action by email to legal@clearswift.com
 - 4.4.2. You make no admission or otherwise prejudice our defense or settlement of such Action;
 - 4.4.3. You provide us on request with all reasonable assistance and Information for the defense of the Action;
 - 4.4.4. We have sole control of the conduct of the defense of the Action and all negotiations for settlement or compromise; and
 - 4.4.5. You immediately cease to use the software (at our request) pending resolution of the Action.
 - 4.4.5.1. If any Action is made, or in our reasonable opinion is likely to be made, against You, we may at our sole option and expense procure for You the right to continue using the software (or any part thereof) in accordance with the terms of this EULA; or modify the software so that it ceases to be infringing; or replace the software with non-infringing software; or terminate this EULA immediately by notice in writing to You and refund any of the license fee paid less a reasonable sum in respect of Your use of the Software to the date of termination on return of the software and all copies made.
 - 4.4.5.2. The indemnity at Clause 4.4 above shall not apply to any Action that arises out of any modification to the software which was not made or authorized by us, whether made by You or otherwise, and the use of the software other than in accordance with this EULA or the documentation including use or combination of the software with any hardware, software, products, data, services or other material not specified or provided by us.

5. Limited Liability:

- 5.1. **Standard Liability:** Except as stated below, our liability to You under this EULA in respect of any loss, damage, costs or expenses howsoever arising will be limited to the amount of license fees paid by You if You purchased a perpetual license or if You purchased a subscription license then the fees paid by You for the immediately preceding twelve months.
- 5.2. **Indirect Losses:** To the maximum extent permitted by applicable law, we exclude all liability for any loss of profit or revenue, loss of anticipated savings, wasted expenditure or management time, loss, erasure or corruption of data, cost of recovery of data or buying substitute software, loss of opportunity, loss of goodwill, business interruption, degradation of service, unavailability of service and any other special, consequential or indirect loss of whatever nature whether we could reasonably foresee it or not and whether or not such loss was contemplated by either of us at the time of entering into of this EULA.
- 5.3. **Statutory Rights:** Nothing in this EULA excludes Your statutory rights and neither do we exclude our liability for death or personal injury or any damage caused by our gross negligence, willful or intentional conduct, fraud or fraudulent misrepresentation or any other liability we are not permitted to exclude. However, if local law allows You to recover damages from us even though we exclude it under this EULA, You cannot recover more than the fees You paid for the license of the software or if that is not permitted then the amount we can validly claim under our insurance policy.
- 5.4. **Time Limit for claims:** Any claim under Clause 5.1 above must be brought by You within 12 months of the date that the cause of action arose failing which we shall not be liable to You. All class action lawsuits, private attorney general actions or similar and trial by jury are excluded to the maximum extent permitted by law.

6. Export Requirements and US Government Contracts:

- 6.1. **US Government Contracts:** Our software qualifies as “commercial items” as that term is defined at 48 C.F.R. 2.101 consisting of “commercial computer software” and “commercial software documentation” as such terms as used in 48 C.F.R. 12.212. Consistent with C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, all US Government end users acquire our software and related documentation with only those rights set forth in this EULA that apply to non-governmental customers. Use of such software and related documentation is commercial and constitutes acceptance of the rights and restrictions set forth in this EULA.
- 6.2. **Export Laws:** Our software is subject to various import and export laws of the UK, EU, USA and elsewhere. You must comply with all such laws governing imports, exports and re-exports of the software as well as end user, end use, destination restrictions and embargoes issued by such countries and governments. This includes provision of upgrades. If You are licensing software that includes cryptography features from us then additional import and export restrictions and requirements may apply that require You to provide certain information and documentation to us as part of the export and import process and You agree to provide the same promptly failing which we will not be able to release the software, upgrade or license keys to You and/or renew Your license.

7. General Provisions:

- 7.1. **Assignment:** This EULA is personal to You, and You may not assign, transfer, encumber, novate or otherwise part with the rights granted to You under this EULA without our prior written consent. We retain the right to assign, transfer, sub-contract, encumber, novate or otherwise part with this EULA or any right or obligation under it in our discretion.
- 7.2. **Whole Agreement:** This EULA and any other documents referred to herein contain the whole agreement between us relating to the subject matter hereof and supersedes all prior EULAs, arrangements and understandings. When we release updates or upgrades of the software, those may be accompanied by revised terms and conditions or a new EULA which You agree will apply to such updates or upgrades. Apart from this, any other amendment, waiver or variation of this EULA shall not be binding on the parties unless set out in writing, expressed to amend this EULA and signed by or on behalf of each of the parties. The UN Convention on Contracts for the International Sale of Goods shall not apply to this EULA.
- 7.3. **Waiver of Rights:** The failure to exercise or delay in exercising a right or remedy provided by this EULA or by law does not constitute a waiver of the right or a waiver of other rights or remedies. No single or partial exercise of a right or remedy provided by this EULA or by law prevents further exercise of the right or remedy or the exercise of another right or remedy.
- 7.4. **Invalidity:** If any provision of this EULA is, or becomes, to any extent illegal, invalid or unenforceable, then it is our joint intention that we may amend that provision in a reasonable manner to the extent necessary to render it enforceable without losing its intent or at our discretion, such provision shall, to the extent of the unenforceability, be deemed not to form part of the EULA. In either case, such provision will not affect the legality, validity or enforceability of any other provision of this EULA which shall continue in force and effect.
- 7.5. **Translations:** If this EULA is translated into any language other than English then the English language version shall prevail in the event of any conflicts in the documents. Translations are provided for convenience only.
- 7.6. **Privacy:** Any personal data we collect or receive from You in performing our contractual obligations to You will be processed in accordance with our Privacy Policy mentioned above. We comply with GDPR and all applicable data protection laws in all jurisdictions where we operate. Please note that as part of our support services You may send us emails or attachments or other information which is either confidential and/or contains personal data which will be read by our employees to provide You with the support service – we will maintain the confidentiality of the information and handle the personal data in accordance with our Privacy Policy.
- 7.7. **Force Majeure:** Neither party shall be in breach of its obligations under this EULA if there is any total or partial failure of performance by it of its duties and obligations under this EULA resulting from a force majeure event which shall include, but not be limited to, events beyond its reasonable control, unusually severe weather, war (whether declared or not), fire, flood, act of terrorism, act of government or state, export or import delays, sanctions and embargo.
- 7.8. **Third Party Benefits:** Except as expressly stated, no term of this EULA is intended to confer a benefit on, or to be enforceable by, any person who is not a party to this EULA.
- 7.9. **Bribery and Corruption:** By entering into this EULA, the parties acknowledge adherence to the UK Bribery Act 2010 and the US Foreign Corrupt Practices Act 1977 or any worldwide equivalent or applicable amended legislation.
- 7.10. **Law and Jurisdiction:** This EULA shall be governed by and interpreted in accordance with the laws of England and Wales and the parties submit to the non-exclusive jurisdiction of the English courts in relation to all disputes.