

## Client-Software License Agreement

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### **Section 1**

#### **NCP engineering Client Software License Agreement (As of September 2010)**

*The terms of the License for use by you, the end user (referred to hereinafter as 'the Licensee') of NCP software are set out below. By reading and accepting this notice, you agree to these terms and conditions, so please read the text below carefully and completely. If you do not accept the terms of this agreement, you cannot use or install the software.*

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1.1 The subject of this agreement (hereinafter also referred to as this "Agreement") is the software supplied in file form (referred to hereinafter as the "Software", including the programme description and other related written materials (hereinafter the "Documentation")).

1.2 If and to the extent the Software uses Open Source Software components, such components shall be governed exclusively by the applicable Open Source Software license terms listed in Section 14 and Appendix 1.

#### **2. Scope of Rights of Use**

2.1 NCP grants the Licensee a simple, non-exclusive, non-sublicenseable, perpetual right to install and use the Software on one single computer at the Licensee (also referred to hereinafter as 'the Licensee'). The single computer may be used alternately by various users as a single user system. The single computer may serve various terminals as part of an internal multi user system of the Licensee and may be used concurrently by various users at such terminals. In case various operating systems are installed on the single computer (virtual machines), a separate License is required for every installed operating system. Any additional use requires NCP's prior written consent.

2.2 The Licensee may not:

- (i) copy the Software from one computer to another via a network or other data transmission channels (except within the frame of an internal multi user system within the meaning of Section 2.1);
- (ii) alter, translate, downgrade, decompile, reverse engineer, disassemble or otherwise modify the Software or attempt or allow a third party to do so, unless any such activity is permitted under applicable mandatory copy right laws (Section 69 e of the German Copyright Act);
- (iii) create derivative works of the Software or create copies of the Software beyond the limits permitted under mandatory copyright law, or reproduce the Documentation or other materials related to the Software.

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2.3 The License grant is subject to the following dissolutive conditions, provided that in case either of the following cases occurs the License shall automatically terminate without need for notice:

- (i) if the Licensee breaches any of the terms set forth in Sections 2.1, 2.2 or 3. of this Agreement, or
- (ii) in case the purchase agreement underlying the grant of the License is invalid or rescinded by either Party.

2.4 Furthermore, the Parties may contractually agree in the purchase contract that the License shall automatically terminate in the event of Licensee's default in payment.

2.5 NCP reserves all rights in the Software which NCP does not explicitly grant to the Licensee under this Agreement. In particular, but without limitation to the following, NCP reserves all rights of publication, copying and reproduction (to the extent this Agreement does not explicitly provide otherwise and to the extent the Licensee does not have a right to copy the Software under applicable mandatory copyright law provisions), as well as to make modifications to the Software.

2.6 Upon termination of the License, the Licensee must de-install the Software and destroy the Software as well as any copies thereof, including any amended versions of the Software and the Documentation, and confirm the same in writing upon NCP's request.

2.7 NCP is authorized to control the Licensee's observance of the license terms set forth in Sections 2.1 and 2.2 by way of an audit to be carried out by an independent auditor not more than once a year during regular business hours and with reasonable prior notice. In the event that the audit reveals an excess of numerical license restrictions by 5% or more, or in case that the Licensee is in breach of the license restrictions under Sections 2.1. or 2.2 in any other form, the Licensee shall bear the costs of the audit.

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### 4. Transfer of Rights of Use

The Licensee may not pass on or otherwise make available to any third party the license key provided by NCP for the installation of the Software.

Furthermore, any partial or temporary transfer of the Software to a third party against remuneration, in particular by way of any rental or leasing arrangement is expressly prohibited, unless with the specific, express prior written consent of NCP.

### 5. Duration of this Agreement

This Agreement applies for an unlimited period of time.

## 6. Damages in the event of breach of contract

NCP advises you that you as the Licensee are liable for any damages caused to NCP based on breach of copyright as a result of you breaching this Agreement.

## 7. Liability for defects and third party right infringements

7.1 NCP's liability for defects of the Software, including defects in title (collectively "Defects") shall be governed by this Section, unless otherwise provided in Section 8 (Third Party Rights).

7.2 The Licensee understands and accepts that in accordance with the present state of the art it is impossible to develop computer programmes, in particular those which are combined with other programmes or systems, in a manner so that they work entirely free of errors. Under the current state of the art it is not possible to warrant that the Software will operate free of interruptions or deficiencies, nor to warrant the complete removal of any Defects in the Software. The contractually agreed characteristics of the Software (i.e. the measurement criteria for the suitability, operability and dedicated usability) are therefore exclusively determined and set forth in the NCP data sheet as related to and delivered along with the Software. Only substantial deviations from the respective NCP data sheet which result in a limitation of the functionalities described therein shall qualify as a Defect. Individual requirements of the Licensee shall only be deemed as part of the contractually agreed characteristics of the Software, in case and to the extent the Parties have defined such characteristics expressly in writing in a jointly developed solutions design document.

7.3 Any liability of NCP for Defects under this provision requires that the Licensee has notified NCP of the Defect concerned without delay in writing and during the limitation period. In case of such written notification of a Defect, NCP shall have the right to make two attempts to remedy the Defect following reasonable remedy periods in each case, and for that purpose and at NCP's discretion to either repair the Defect or deliver a replacement solution. To the extent reasonably acceptable for the Licensee, NCP shall further have the right to remedy the Defect by providing a work around or alternative solution. The Licensee shall provide NCP with all reasonable assistance in remedying the Defect, including, in particular, that Licensee shall send in the Software (as in usage at the time the Defect occurred) upon NCP's request and to provide computing capacity as well as to install corrections or replacement solutions as provided by NCP. In case NCP's efforts to remedy the Defect should fail after a second attempt within a reasonable period of time, the Licensee shall have the right to rebate the remuneration paid or payable for the license key(s) of the Software concerned, or – following a final written warning – to rescind from the order of the license key(s) concerned. Any eventual claims for damages by the Licensee shall remain unaffected, provided that NCP's liability in this respect shall be exclusively governed by Section 9 (Liability). The Licensee agrees and acknowledges that NCP has successfully remedied a Defect within the meaning of this Section 7.3 in the event that NCP either (i) brings out and makes available to the Licensee within two (2) months following the Licensee's notification of the Defect a new version of the Software, in which the Defect concerned is remedied, or (ii) in case NCP does not make available such a new version, if NCP remedies the Defect in accordance with the modalities set forth in this Section 7.3 sentences 1-5 within three (3) months following the notification of the Defect by the Licensee or by providing a replacement or a work around solution.

7.4 Any claims for Defects are subject to a limitation period of 12 months from the beginning of the limitation period under statutory law. To the extent NCP intentionally conceals a Defect or has assumed an ex-

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9.1 Subject to the provisions in Section 9.2, NCP's statutory liability for damages shall be limited as follows:

- (i) NCP shall be liable only up to the amount of damages as typically foreseeable at the time of entering into the contract in respect of damages caused by a slightly negligent breach of a material contractual obligation (i.e. a contractual duty the fulfilment of which is essential for the proper execution of the contract, the breach of which endangers the purpose of the contract and on the fulfilment of which the Licensee regularly relies);
- (ii) NCP shall not be liable for damages caused by a slightly negligent breach of a non-material contractual obligation.

9.2 The aforesaid limitation of liability shall not apply to any mandatory statutory liability (in particular to liability under the German Product Liability Act), liability for assuming a specific guarantee or liability for damages caused by wilful misconduct or gross negligence, or any kind of wilfully or negligently caused personal injuries.

9.3 Licensee shall take all reasonable measures to mitigate and/or to avoid damages, including, in particular, an obligation for Licensee to make back-up copies of data on a regular basis and to carry out security checks (in particular for the purpose of defending or detecting viruses and other disruptive programmes within Licensee's IT System).

9.4 Regardless of the legal grounds giving rise to liability, NCP shall not be liable for indirect and/or consequential damages, including, in particular, loss of profit and loss of interest, unless any such damage has been caused by NCP's wilful misconduct or gross negligence.

9.5 To the extent NCP's liability is limited or excluded, the same shall apply in respect of any personal liability of NCP's legal representatives, employees and vicarious agents.

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13.2 Any amendments or additions to this Agreement shall be made in writing.

13.3 Any deviating general terms and conditions, including those which may be contained for instance in an order or delivery confirmation of the Licensee, shall not apply if not agreed upon otherwise by the Parties in written form.

13.4 In case any provision of this Agreement is or will be held invalid or unenforceable or if this Agreement is incomplete, the remainder of this Agreement shall continue in full force and effect.

### 14. Applicable Open Source Software Licenses

The NCP Secure Enterprise Clients and NCP Secure Entry Clients for Microsoft Windows- and Apple Mac OS X operating systems use the Open Source Software components OpenLDAP and OpenSSL, which are subject to the Open Source licenses listed in Sections 3 and 5 of **Appendix 1**.

The NCP Secure Enterprise Linux Clients use the Open Source Software components Libxml, OpenLDAP and OpenSSL, which are subject to the Open Source licenses listed in Sections 1, 3, and 5 of **Appendix 1**.

Appendix 1: Applicable Open Source Software licenses

## Section 2

### NCP engineering Software License Agreement for the Academic Edition

(As of September 2010)

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1.1 The subject of this agreement (hereinafter also referred to as this "Agreement") is the use of an "Academic Edition" of a software supplied in file form (referred to hereinafter as the "Software") for the purpose of research and education, including the programme description and other related written materials (hereinafter the "Documentation").

1.2 Any and all rights which Licensee obtains by virtue of this Agreement as well as the use of the term "Software" within this Agreement shall relate solely to the "Academic Edition" of the Software. As a precedent condition for Licensee to obtain a right to use the Software, Licensee must have evidenced to NCP that Licensee is a student/pupil of a public or private education establishment ("**Student Status**") or that he is employed as a research, teaching or administrative professional at such an education establishment ("**Professional Status**"). Any and all rights to the Software which are granted to Licensee by virtue of this Agreement shall be limited in time to the duration of his Student Status or Professional Status, i.e. they shall end automatically, without further notice, upon Licensee's breaking off, completion or any other termination of his studies or upon termination or expiry of his employment agreement.

1.3 NCP shall have the right to request the Licensee at any time – however no more than once per calendar year – to provide current evidence of the continuance of his Student Status or Professional Status (Section 1.2). Licensee shall correspond to such request without undue delay by providing the required evidence. In case Licensee does not provide the required evidence within eight (8) weeks as of receipt of NCP's request, NCP may claim (only up to once per calendar year) a penalty in the amount of one thousand EUR (EUR 1.000). Any claims for damages which NCP may have beyond this amount shall remain unaffected.

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- (iii) create derivative works of the Software or create copies of the Software beyond the limits permitted under mandatory copyright law, or reproduce the Documentation or other materials related to the Software.

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2.5 NCP expressly reserves the right to contractually agree with the Licensee that the License shall automatically terminate in the event of Licensee's default in payment.

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### 7. Liability for defects and third party right infringements

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7.2 The Licensee understands and accepts that in accordance with the present state of the art it is impossible to develop computer programmes, in particular those which are combined with other programmes or systems, in a manner so that they work entirely free of errors. Under the current state of the art it is not possible to warrant that the Software will operate free of interruptions or deficiencies, nor to warrant the complete removal of any Defects in the Software. The contractually agreed characteristics of the Software (i.e. the measurement criteria for the suitability, operability and dedicated usability) are therefore exclusively determined and set forth in the NCP data sheet as related to and delivered along with the Software. Only substantial deviations from the respective NCP data sheet which result in a limitation of the functionalities described therein shall qualify as a Defect. Individual requirements of the Licensee shall only be deemed as part of the contractually agreed characteristics of the Software, in case and to the extent the Parties have defined such characteristics expressly in writing in a jointly developed solutions design document.

7.3 Any liability of NCP for Defects under this provision requires that the Licensee has notified NCP of the Defect concerned without delay in writing and during the limitation period. In case of such written notification of a Defect, NCP shall have the right to make two attempts to remedy the Defect following reasonable remedy periods in each case, and for that purpose and at NCP's discretion to either repair the Defect or deliver a replacement solution. To the extent reasonably acceptable for the Licensee, NCP shall further have the right to remedy the Defect by providing a work around or alternative solution. The Licensee shall provide NCP with all reasonable assistance in remedying the Defect, including, in particular, that Licensee shall send in the Software (as in usage at the time the Defect occurred) upon NCP's request and to provide computing capacity as well as to install corrections or replacement solutions as provided by NCP. In case NCP's efforts to remedy the Defect should fail after a second attempt within a reasonable period of time, the Licensee shall have the right to rebate the remuneration paid or payable for the license key(s) of the Software concerned, or – following a final written warning – to terminate the order of the license key(s) concerned. Any eventual claims for damages by the Licensee shall remain unaffected, provided that NCP's liability in this respect shall be exclusively governed by Section 9 (Liability). The Parties agree that NCP has successfully remedied a Defect within the meaning of this Section 7.3 in the event that NCP either (i) brings out and makes available to the Licensee within two (2) months following the Licensee's notification of the Defect a new version of the Software, in which the Defect concerned is remedied, or (ii) in case NCP does not make available such a new version, if NCP remedies the Defect in accordance with the modalities set forth in this



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Section 7.3 sentences 1-5 within three (3) months following the notification of the Defect by the Licensee or by providing a replacement or a work around solution.

7.4 Any claims for Defects are subject to a limitation period of 12 months from the beginning of the limitation period under statutory law, unless statutory law provides for a shorter limitation period, which shall remain unaffected. To the extent NCP intentionally conceals a Defect or has assumed an express guarantee for the characteristics of the Software, the statutory provisions of statute of limitation shall apply without alteration.

7.5 Any potential statutory fault-independent liability of NCP shall be excluded.

7.6 The Parties agree that any guarantee shall require an express written agreement in which the guarantee must be explicitly identified as a "Guarantee".

7.7 To the extent any actual occurrence of problems is the result of third party software products or of the hardware used by the Licensee, rather than of the Software made available by NCP, the Licensee shall have no warranty claims against NCP with view to such problems. Correspondingly, the same shall apply to the extent the Licensee has used the Software in breach of the provisions of this Agreement or to the extent the Licensee or a third party acting on his behalf has made changes or modifications to the Software, or in the event of insubstantial deviations from the contractually agreed characteristics of the Software.

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### 9. Liability

9.1 Subject to the provisions in Section 9.2, NCP's statutory liability for damages shall be limited as follows:

- (i) NCP shall be liable only up to the amount of damages as typically foreseeable at the time of entering into the contract in respect of damages caused by a slightly negligent breach of a material contractual obligation (i.e. a contractual duty the fulfilment of which is essential for the proper execution of the contract, the breach of which endangers the purpose of the contract and on the fulfilment of which the Licensee regularly relies);
- (ii) NCP shall not be liable for damages caused by a slightly negligent breach of a non-material contractual obligation.

9.2 The aforesaid limitation of liability shall not apply to any mandatory statutory liability (in particular to liability under the German Product Liability Act), liability for assuming a specific guarantee or liability for damages caused by wilful misconduct or gross negligence, or any kind of wilfully or negligently caused personal injuries.

9.3 Licensee shall take all reasonable measures to mitigate and/or to avoid damages, including, in particular, an obligation for Licensee to make back-up copies of data on a regular basis and to carry out security checks (in particular for the purpose of defending or detecting viruses and other disruptive programmes within Licensee's IT System).

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9.4 Regardless of the legal grounds giving rise to liability, NCP shall not be liable for indirect and/or consequential damages, including, in particular, loss of profit and loss of interest, unless any such damage has been caused by NCP's wilful misconduct or gross negligence.

9.5 To the extent NCP's liability is limited or excluded, the same shall apply in respect of any personal liability of NCP's legal representatives, employees and vicarious agents.

### **10. Update and new versions of the Software**

NCP's providing of updates or new versions of the Software is subject to NCP's entire discretion (in particular with view to the timing of the same).

### **11. Data protection**

By ordering the license key(s) the Licensee expressly acknowledges that any personal data made available in the context of the online-offline-activation shall be processed and used by NCP exclusively for internal purposes of NCP in respect of fulfilling the terms of this Agreement-

### **12. Export/Import control regulations**

The Software may be subject to certain export and/or import control laws and regulations of certain countries. In case any approval by any public authority or compliance with any other official requirements is required for the Licensee's acquisition, carriage, deployment or other contractually agreed use of the Software, the Licensee shall obtain any such approval and/or fulfil any such requirements at the Licensee's own expense and if necessary produce evidence to NCP on demand. The Licensee shall be solely responsible for compliance with any laws, regulations or other binding requirements that may apply to the Licensee's acquisition, carriage, deployment or other contractually agreed use of the Software.

### **13. Final clauses**

13.1 This Agreement shall be governed by the laws of Germany with the exception of the United Nations Convention on the International Sale of Goods (CISG). The courts of Nuremberg, Germany, shall have exclusive jurisdiction for any disputes arising from or in connection with this Agreement. However, NCP may institute legal proceedings against the Licensee also in any other court having proper jurisdiction over the Licensee.

13.2 Any amendments or additions to this Agreement shall be made in writing.

13.3 Any deviating general terms and conditions, including those which may be contained for instance in an order or delivery confirmation of the Licensee, shall not apply if not agreed upon otherwise by the Parties in written form.

13.4 In case any provision of this Agreement is or will be held invalid or unenforceable or if this Agreement is incomplete, the remainder of this Agreement shall continue in full force and effect.

#### **14. Applicable Open Source Software Licenses**

The NCP Secure Enterprise Clients and NCP Secure Entry Clients for Microsoft Windows- and Apple Mac OS X operating systems use the Open Source Software components OpenLDAP and OpenSSL, which are subject to the Open Source licenses listed in Sections 3 and 5 of **Appendix 1**.

The NCP Secure Enterprise Linux Clients use the Open Source Software components Libxml, OpenLDAP and OpenSSL, which are subject to the Open Source licenses listed in Sections 1, 3, and 5 of **Appendix 1**.

**Appendix 1 to NCP engineering Software License Agreement****1. MIT License (Libxml)**

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