

OPSWAT Server End User License Agreement

This Server End User License Agreement ("EULA"), version June 14, 2017, is a legal and enforceable agreement between you, a natural person or legal entity, acting by and through, its officers, employees, and third party consultants (?You?), and OPSWAT, Inc. (?OPSWAT?) for using OPSWAT server product ("Server") which may include, but is not limited to, computer software, software libraries, databases and associated data provided by OPSWAT and its suppliers, together with associated media, printed materials and "online" or electronic documentation which may expose one or more of the following functions (?Functions?):

- * Software Binary Vulnerability Assessment (?Vulnerability?)
- * Content Disarm & Reconstruction (?Data Sanitization?)
- * Signature and heuristic scanning by one or multiple embedded antimalware engines (?Multi-scanning?)
- * Secure File Storage (?SFS?)

The above Functions may be exposed through one or more of the following use cases (?Use Cases?):

- * Email Security.
- * Storage and Web Security.
- * Cross Domain Security.

By executing this EULA You agree to be bound by the EULA terms when You install, copy, or otherwise use the Server.

Software License

All rights, title, and interest in, and to, the Server are the exclusive property of OPSWAT or OPSWAT suppliers (excluding third party brand names the Server identifies), and is protected by copyright, trademark, patent, and other intellectual property laws and treaties. Nothing in this EULA should be construed as conferring to You, by implication or otherwise, any additional rights to the property of OPSWAT or OPSWAT suppliers beyond the express, limited rights specified in this EULA.

The Server is licensed, not sold. You have certain rights to use the Server after Your acceptance of this EULA. This EULA governs releases, revisions, or enhancements to the Server that OPSWAT makes available to You. Except as may be modified by the invoice, license key and product certificate (?Proof of Entitlement?) OPSWAT delivers to You together with this EULA, Your rights and obligations with respect to Server use are as follows:

You may:

1. During the license period (?License Period?), install and use the number of copies of the Server for the Functions and Use Cases licensed to You by OPSWAT as documented by Your Proof of Entitlement. Your Proof of Entitlement shall constitute proof of Your right to use the Server for specified Functions and Use Cases, and to make copies, and identify when the License Period ends. If no Proof of Entitlement accompanies, precedes, or follows this EULA or unless otherwise specified in marketing information accompanying the Server, You may make one (1) copy of the Server to use on a single computer for an evaluation period not to exceed fifteen (15) days.
2. Make one copy of the Server for archival purposes, or copy the Server onto the hard disk of Your computer and retain the original for archival purposes.
3. Use the Server for Your internal purposes, such as to secure Your entity and technology infrastructure from cybersecurity threats. If the Server You licensed is specifically marketed by OPSWAT as ?for ISVs,? You may have additional rights.

You may not:

1. Sublicense, rent, lease, or make generally available to multiple third parties any portion of the Server as a service or feature of a billable service, unless the Proof of Entitlement for the Server You licensed specifically states the Server is ?for ISVs.?

2. Publish, display or distribute for consumption outside Your entity, information derived from the Server, unless the Proof of Entitlement for the Server You licensed specifically states the Server is for ISVs.
3. Reverse-engineer, decompile, disassemble, modify, translate, or make any attempt to discover the Server source code.
4. Use the Server in a manner not authorized by this EULA.
5. Withhold, for any reason, any portion of any license fees due OPSWAT as a result of You purchasing a Proof of Entitlement, including but not limited to, taxes imposed upon You by any taxing authority or an obligation to calculate OPSWAT's income or other tax obligation to any taxing authority. OPSWAT reserves all rights not expressly granted to You. Without prejudice to any other rights, OPSWAT may terminate this EULA if You fail to comply with the EULA terms and conditions, or the terms and conditions of the license agreements of OPSWAT suppliers providing embedded antimalware engines as part of the Server. In such event, You must destroy all copies of the Server and all of its file parts.

Disclaimer of Warranties

To the maximum extent permitted by applicable law, OPSWAT and its suppliers expressly disclaim any warranty for the Server. The Server and any related documentation are provided "as is" without warranty of any kind, either express or implied, including, without limitation, the implied warranties of merchantability or fitness for a particular purpose. The entire risk arising out of use or performance of the Server remains with You.

Indemnification

Notwithstanding the above Disclaimer of Warranties, if You enter into a paid license subscription transaction as evidenced by Proof of Entitlement, OPSWAT will defend You against any claim, demand, suit or proceeding made or brought against You by a third party alleging the Server infringes or misappropriates such third party's patent, copyright, trade secret, or trademark right (a Claim?), and will indemnify You from damages, attorney fees, and litigation costs finally awarded against You by a court of competent jurisdiction as a result of, or for amounts paid by You under a Claim settlement approved by OPSWAT in writing, provided You (a) promptly give OPSWAT written notice of the Claim (b) give OPSWAT sole control of the defense and Claim settlement (except that OPSWAT may not settle a Claim unless it unconditionally releases You of all liability), and (c) give OPSWAT all reasonable assistance, at OPSWAT expense.

If OPSWAT receives information about an infringement or misappropriation claim related to the Server, OPSWAT may in OPSWAT discretion and at no cost to You (i) modify the Server so it is no longer claimed to infringe or misappropriate, (ii) obtain a license for Your continued use of the Server in accordance with the EULA, or (iii) terminate Your subscriptions for Server upon 30 days' written notice and refund You prepaid fees covering the remainder of the term of the terminated subscriptions. The foregoing defense and indemnification obligations do not apply to the extent a Claim arises from Your use of the Server in violation of the EULA.

Disclaimer and Limitation of Damages

IN NO EVENT WILL A PARTY BE LIABLE TO THE OTHER FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, STATUTORY, PUNITIVE, INDIRECT OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS AND LOST SAVINGS, HOWEVER CAUSED, WHETHER BASED ON CONTRACT, TORT, OR OTHERWISE, EVEN IF A PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EACH PARTY'S TOTAL LIABILITY TO THE OTHER PARTY ARISING FROM OR IN RELATION TO THE EULA, WHETHER BASED ON CONTRACT, TORT, OR OTHERWISE SHALL BE LIMITED TO THE TOTAL AMOUNTS PAID BY YOU TO OPSWAT TO LICENSE THE SERVER, UPON WHICH THE DAMAGES WERE BASED, DURING THE TWELVE (12) MONTH PERIOD PRIOR TO ACCRUAL OF THE CAUSE OF ACTION. IN NO EVENT WILL A PARTY BE LIABLE FOR COSTS TO PROCURE SUBSTITUTE GOODS. THIS SECTION SURVIVES

TERMINATION. THE FOREGOING DISCLAIMERS AND LIMITATIONS APPLY REGARDLESS OF WHETHER YOU ACCEPT THE SERVER OR THIS EULA.

U.S. Government Restricted Rights

The Server, consistent with FAR 12.211 and 12.212 (and the successor to such Sections, if any), shall be deemed commercial computer software. Manufacturer is OPSWAT, Inc. 398 Kansas Street, San Francisco, CA 94103, United States of America.

This EULA shall not be construed by OPSWAT or any third party to assert any obligation upon the Government of the United States to indemnify the OPSWAT or any person or entity for damages, costs, fees, or any other loss or liability that would create an Anti-Deficiency Act violation (31 U.S.C. 1341).

Export Restrictions

In the event You export the Server from the country in which You first received it, You shall comply with all applicable import, export and re-export laws, including but not limited to, regulations of the Office of Export Administration of the U.S. Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, and other U.S. agencies and the export control regulations of the European Union. You agree the Server shall not be used, and none of the underlying information, software, or technology be transferred or otherwise exported or re-exported to countries as to which the United States and/or the European Union maintains an embargo (collectively, "Embargoed Countries"), or to or by a national or resident thereof, or any person or entity on the U.S. Department of Treasury's List of Specially Designated Nationals or the U.S. Department of Commerce's Table of Denial Orders (collectively, "Designated Nationals"). The lists of Embargoed Countries and Designated Nationals are subject to change without notice. By using the Server, You represent and warrant that You are not located in, or are under the control of, or a national or resident of, an Embargoed Country or Designated National. OPSWAT makes no representation the Server is appropriate or available for use in locations outside the United States.

You agree to indemnify and hold OPSWAT harmless from and against claims, losses, costs, or liability, arising in connection with Your breach of this Section.

Miscellaneous

This EULA and Proof of Entitlement, if any, OPSWAT delivers to You constitute the entire agreement between You and OPSWAT and (a) supersedes all prior or contemporaneous communications, both written and oral; and (b) prevails over conflicting or additional terms of any quote, order, acknowledgment, or similar communications between the parties.

This EULA terminates upon Your breach of any term contained in the EULA and You shall cease use of and destroy all copies of the Server. The disclaimers of warranties and damages and limitations on liability shall survive termination.

This EULA may only be modified by the Proof of Entitlement that accompanies this EULA or by a written document signed by You and OPSWAT.

The Server exposes an issue reporting feature which, if enabled by You, will send OPSWAT the number initialization errors and number of unexpected stops of the Server via HTTPS when You download updates. If enabled by You, this information is used by OPSWAT to detect Server quality issues. If You do not wish to share such data with OPSWAT do not turn on the issue reporting feature.

Should You have questions concerning this EULA, or if desire to contact OPSWAT, write to OPSWAT Customer Service, P.O. Box 77878, San Francisco, CA 94107-7878.

If any provision of this Agreement is found unlawful, void or unenforceable, then that provision shall be severed from this EULA and will not affect the validity and enforceability of any of the remaining provisions.

Failure to enforce a right or provision of the EULA will not be deemed a waiver of such right or provision.

The EULA is governed by and construed according to the laws of the State of California, excluding California's choice of law principles. In the event of a dispute or claim arising out of the EULA, the parties submit to exclusive venue in, and the exclusive jurisdiction of, the federal and state courts, as applicable, located in San Francisco, California (except that a party may enforce a judgment in any court of competent jurisdiction).

Attribution and Additional Rights

The Server You licensed may include files or data from OPSWAT's suppliers which grant You additional rights specific to the files suppliers provide OPSWAT, when used separately from the Server. Attribution of such suppliers and material terms of additional rights available to You may be found at https://onlinehelp.opswat.com/eula/3rd_Party_EULA.html.

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