

End User License Agreement for Starcounter Software

IMPORTANT. Please read through the following terms and conditions of the end user license agreement ("Agreement") below before Licensee installs and/or Uses the Software in any way. By installing, copying, downloading, or in any other way Using the Software, Licensee accepts the conditions below and this Agreement becomes a binding obligation on the Licensee.

Licensee has agreed that this Agreement is the complete and exclusive statement of the Agreement between the parties and supersedes all other proposals and prior agreement, oral or written, between the parties relating to the subject matters herein. If Licensee does not agree to these terms and conditions, do not install, copy, download, in any other way Use the Software, or otherwise indicate refusal, and make no further Use of the Software.

1. Definitions

"Agreement" means this End User License Agreement.

"Documentation" means related explanatory written material or files provided by Starcounter.

"Installation Date" means the date of the first time installation of the Software.

"Licensee" means the company, organization, educational institution or private person, using the Software in accordance with this Agreement.

"License Types" means the license variants provided by Starcounter from time to time.

"Non Commercial Licensee" means If and only if: (a) Licensee is a private person; (b) Licensee is a university, college or other higher educational institution; or (c) Licensee is a non-profit organization operating for charity, research and/or scientific purposes and whose members, shareholders, directors and officers do not benefit financially from the activities of such organization.

"Non-Commercial Purposes" means: (a) non-profitable personal purposes; (b) educational purposes; and (c) non-profitable charity purposes; (d) non-profitable research purposes; and (e) non-profitable scientific purposes. Starcounter reserves the right to further clarify the terms of Non Commercial Purposes at its sole determination.

"Starcounter" means Starcounter AB with company registration number 556588-3278, postal address Nybrokajen 5, 111 48 Stockholm, Sweden.

"Software" means (i) all of the contents of the data, files or other media in machine-readable form provided under this Agreement, including (a) all software provided by Starcounter, (b) Third party software included in Packages of software, (ii) all Documentation provided by Starcounter.

"Software Upgrades" means releases or new versions of the Software released by Starcounter. Software Upgrades are provided for download from Starcounters web site.

"Third Party Products" means third party products provided by a third party, which may be installed together with the Software.

"Unique Download key" means the license key provided by Starcounter together with the software and is effective as of the date of the first time installation, the Installation Date.

"Use" means to access, install, download and/or execute the Software in order to utilize the functionality of the Software.

2. Software License

2.1 The Software is delivered by Starcounter identified by the Unique Download Key, and is effective of the Installation Date. The condition for general Use of Software differs depending on the terms and conditions for the License Types acquired by the Licensee.

For so long as the Licensee complies with the terms of this Agreement and makes full and timely payment of all fees and charges, Starcounter grants Licensee a non-exclusive, non-transferable limited license to use the Software solely for Licensee's internal business purposes and in accordance with the following conditions:

- (i) Developer License. The Developer License is free of charge. The Developer License gives Licensee the right to use the Software for purely development and evaluation purposes. The Developer License does not give Licensee any right to use the Software in any type of production environment, or for any kind of commercial purposes. The use of the Software under the Developer License is completely at Licensee's own risk, and Starcounter shall have no liability to Licensee for any defects in the Software or for any action brought against the Licensee alleging that the Software infringes any third party right. In event of such an action Starcounter retains the right to terminate this Agreement forthwith.
- (ii) Non-Commercial License. The Non-Commercial License is free of charge. The Non-Commercial License gives Non-Commercial Licensee the right to use the Software for Non-Commercial Purposes only. The use of the Software under the Non-Commercial License is completely at Licensee's own risk, and Starcounter shall have no liability to Licensee for any defects in the Software or for any action brought against the Licensee alleging that the Software infringes any third party right. In event of such an action Starcounter retains the right to terminate this Agreement forthwith.
- (iii) Commercial License. The Commercial License gives the right to use the Software for any purposes. The Commercial License is provided with an annual fee. The Commercial license is limited by the number of computer processors, the number of computer processor cores and/or any other such limitations specified in the specification of the purchased License. Software Upgrades are included in the annual fee. Installation and implementation of the Product Upgrade are not included in the annual fee.

2.3 Backup copy. The Licensee may make one (1) backup machine-readable, object code copy of the Software for non-productive, archiving purposes.

2.4 Third Party Software. Starcounter may together with the Software deliver to Licensee certain software procured by Starcounter from third parties.

2.5 Licensee is responsible, at its own cost, for meeting the environmental site requirements set forth in the Documentation.

3 Restrictions

3.1 Transfer. Except as expressly authorized in this Agreement, Licensee shall not hire out, lease, lend, assign, sublicense, distribute (electronically or otherwise), resell, sell, create any derivative works of, or otherwise transfer all or any portion of the Software to a third party. Further restrictions are set forth in i.a Section 11.4 below.

3.2 Decompilation. Licensee shall not copy, modify, reverse engineer, decompile, disassemble, translate, make works derivate of the Software or otherwise attempt to discover the source code of the Software. Any violation of this clause shall result in immediate revocation of this license.

3.3 High Risk Activities. Licensee shall not use or allow the use of the Software for high-risk activities in which the failure of the Software would lead directly to death, personal injury or severe physical or environmental damage. High Risk Activities include, but are not limited to, nuclear facility control systems, aircraft navigation systems, aircraft communication systems, air traffic control systems, direct life support systems or weapon systems.

4 Ownership and Intellectual Property Rights

4.1 Starcounter shall have sole and exclusive ownership of all right, title and interest in and to the Software, the Documentation, all copies and derivative works thereof (regardless of form or media in or on which the original and other copies may exist), including all copyright, trademark, patent, trade secret, know-how and other intellectual property rights pertaining thereto, subject solely to the limited right and license expressly granted to Licensee herein. Starcounter shall retain all rights to its name and trademarks. With regard to Third Party Software delivered to Licensees all the above mentioned rights shall be owned by the third party from whom Starcounter has acquired the right to use the Third Party software, subject solely to the limited right and license expressly granted to Licensee herein. The structure and code of the Software are valuable trade secrets of Starcounter and remain the sole property of Starcounter or, respectively the third party who owns the Third party software.

4.2 This license is not a sale of the Software or any updates or new releases, or any copy. Except for the limited license granted under this Agreement, the Licensee obtains no other rights in or to the Software. There are no implied licenses under this Agreement and Starcounter reserves any rights not expressly granted to Licensee under this Agreement.

5. Security

5.1 The Licensee shall pay special attention to security aspects related to the Software in connection with the use of the Internet. Gaps in security may exist or be discovered in the Software related to such use. The Licensee shall carefully follow up and monitor developments within the field, in order to ensure security in connection with the use of the Software. Additionally, small errors or mistakes in configuration and/or installation may cause or result in security problems. Starcounter hereby disclaims any and all liability for any security issues related to Licensee's use of the Software.

5.2 Licensee shall protect the Unique Download Key as to prevent any unauthorized registration. Licensee may not share its Unique Download Key with any third parties. For the avoidance of doubts, if an evaluation requires use of the Licensed Software by a third party, such third party must require its own evaluation license.

6. Support

6.1 No support is provided under this Agreement. Starcounter may provide technical support for the Software within a separate agreement.

7 Benchmark Testing

7.1 Licensee may conduct benchmark testing of the Software for internal use. Licensee are only allowed to disclose and publish the test result by accepting the terms in a separate benchmark test addendum to this Agreement.

8. Limited Warranty, Limitation of Liability and Indemnification

8.1 For a period of thirty (30) days following delivery of the Software, Starcounter warrants that the Software will perform substantially in accordance with the Documentation supplied by Starcounter with the Software. Starcounter's sole and exclusive obligation for breach of this limited warranty shall be to use its commercially reasonable efforts to remedy or supply a temporary fix, or make an emergency bypass. To the extent Starcounter cannot perform its obligations according to the forgoing sentence Starcounter shall refund to Licensee the fee paid for such Software. This limited warranty shall not be valid if the Software was subjected to abuse, misuse, accident, alteration or unauthorized modification or installation. Other than this limited warranty, the Software is provided AS IS.

8.2 Except as set forth in this agreement and to the extent allowed by law, Starcounter makes no warranties or representations, express or implied, whether by statute, common law, custom, usage or otherwise as to any matters, and specifically disclaim any warranty of merchantability, integration, satisfactory quality, or fitness for any practically purpose. Without limiting the generality of the foregoing, Starcounter disclaim any representations or warranties that the Software will operate uninterrupted or error free. No oral or written information or advice given by Starcounter, its, dealers, distributors, agents, or employees shall create a warranty or in any way increase the scope of this warranty, and Licensee may not rely on any such information or advice.

8.3 Under no circumstances shall Starcounter, nor anyone else who has been involved in creation, production or delivery of the Software, have any liability of any kind to Licensee, any authorized user or any other person for any special, incidental, consequential (including lost profits or revenues), punitive or other indirect losses or damages (even if Starcounter has been advised of the possibility of such potential loss or damage) resulting from or rising out of (whether directly or indirectly) any act or omission of any kind hereunder by Starcounter, any access to or use by Licensee or any other person of the software, whether based on breach of contract, warranty, tort, product liability, negligence, strict liability or otherwise. Under no circumstances shall Starcounter's aggregate liability to Licensee and any other person for losses or damages of any kind arising out of or pursuant to this Agreement exceed the aggregate of all fees paid Licensee for the Software at issue.

8.4 With respect to faults and errors in any Third Party Products, the relevant third-party terms and conditions shall apply. Starcounter shall not be liable for any faults or errors in any Third Party Products or related to use of the Software in conjunction with any such Third Party Products. The Licensee shall contact the relevant third-party supplier regarding all matters relating to such Third Party Products.

8.5 Except as otherwise set forth in this Agreement and except in the event Licensee is in material breach of this Agreement, Starcounter shall, for Licensee's use of the Software under Commercial License, indemnify, defend and hold Licensee harmless (including Licensee's officers, director, agents, representatives and employees) from: any direct claim, direct liability, direct loss, direct expense or demand, including legal fees and direct costs and including without limitation third-party claims based on infringement caused solely by the Software owned by Starcounter.

This indemnity requires that Starcounter receive notice immediately of any third-party claims and is in sole control of the defense of such claim, including but not limited to any settlement arrangement, that Licensee provides, at its own expense, all reasonable assistance in connection therewith.

8.6 Licensee agrees to indemnify, defend and hold Starcounter harmless (including Starcounter's officers, director, agents, representatives and employees) from: any claim, liability, loss, expense or demand, including legal fees and costs and including without limitation claims based on copyright infringement, related to Licensee's modifications of the Software or Licensee's merging or including the Software with other software or other violation of this Agreement by the Licensee.

9 Termination

9.1 This Agreement is effective from the Installation Date until terminated.

9.2 This agreement will be terminated if the Licensee fails to pay the annual license fees for the Commercial License. If the invoice not has been paid on the invoice due date, the Licensee will not longer have the right to Use the Software and the termination of this Agreement will be effective immediately.

9.2 In the case that Licensee is in breach of any of the provisions in this Agreement, Starcounter shall have the right to terminate this Agreement with thirty (30) days notice, and the Licensee shall have the possibility to correct such breach within the notice period.

9.3 Upon such termination, the Licensee shall delete all copies of the Software and will provide Starcounter certification of destruction of the Software, all copies thereof, and all materials and Documentation related thereto, at the request of Starcounter.

9.4 In the event of termination, Licensee shall continue to be obligated for any payments due. Termination of the license shall be in addition to and not in lieu of any equitable or other remedies available to Starcounter.

10. Disputes

10.1 This Agreement shall be construed in accordance with and be governed by the laws of Sweden.

10.2 Alternative Dispute Resolution. The Parties agree that any and all disputes, claims or controversies arising out of or related to this Agreement, including any claims under any statute or regulation ("Disputes"), shall be submitted first to non-binding mediation. If the Disputes are not resolved through mediation within sixty (60) days, then, upon the election of either party, the Disputes shall be submitted for binding arbitration.

10.3 Unresolved Disputes. Any unresolved controversy or claim arising out of or relating to the Agreement, or the breach, termination or invalidity thereof, shall be finally settled by arbitration in accordance with the Rules for Expedited Arbitrations of the Arbitration Institute of the Stockholm Chamber of Commerce. The place of arbitration shall be Stockholm.

10.4 Each party will bear its own costs with respect to any disputes arising under this Agreement.

11. General provision

11.1 This Agreement is valid for the version(s) of the Software released after November 1st 2015. Starcounter may amend the terms and conditions of this Agreement for any upcoming versions of the Software.

11.2 Amendments or supplements to this Agreement must be made in written form and executed by both parties hereto in order to be valid between the parties.

11.3 Licensee shall not assign or sublicense this Agreement without Starcounter's prior written consent, which consent may be withheld for any or no reason. Either party may assign all or part of its rights under this Agreement to an affiliate or to any entity that succeeds to or acquires all or substantially all of the business or assets of such party through merger, consolidation, or acquisition of stock or assets. This Agreement is binding on any permitted assignees or sub licensees.

11.4 Licensee acknowledges and accepts that information pertaining to the usage of the Licensed Software is sent to Starcounter.

11.5 The rights and obligations set forth in Sections 4 ("Ownership and Intellectual Property Rights"), 8 ("Disclaimer of Warranties, Limitation of Liability and Indemnification"), and 10("Disputes ") shall survive the completion or termination of this Agreement for any reason and enforcement thereof shall not be subject to any conditions precedent.

11.6 In the event any one or more of the provisions of this Agreement shall be held by a court of competent jurisdiction to be invalid, illegal or unenforceable, the remaining provisions of this Agreement shall remain in effect.