

Bitvise SSH Server End User License Agreement

Bitvise Limited, a Texas corporation with its principal office at 4105 Lombardy Ct, Colleyville, Texas 76034, USA, ("Bitvise"), develops a Windows SSH server program named Bitvise SSH Server ("BSS"), to which it owns all rights, title, and interest, and is willing to grant you, meaning any individual or entity who will use BSS, ("you"), the license to use BSS, upon the condition that you agree to and accept all of the terms of this License Agreement ("Agreement").

You must read this Agreement carefully.

BY INSTALLING, AND/OR USING BSS, YOU (A) ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND THIS AGREEMENT; (B) REPRESENT THAT YOU ARE OF LEGAL AGE TO ENTER INTO A BINDING AGREEMENT AND IF THIS AGREEMENT IS BEING ENTERED INTO ON BEHALF OF A CORPORATION, GOVERNMENTAL ORGANIZATION, OR OTHER LEGAL ENTITY, YOU HAVE THE RIGHT, POWER, AND AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF SUCH ORGANIZATION; AND (C) ACCEPT THIS AGREEMENT AND AGREE THAT YOU ARE LEGALLY BOUND BY ITS TERMS.

IF YOU DO NOT AGREE TO THESE TERMS, DO NOT DOWNLOAD, INSTALL OR USE BSS.

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT OR YOUR OR ACCEPTANCE OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, NO LICENSE IS GRANTED (WHETHER EXPRESSLY, BY IMPLICATION, OR OTHERWISE) UNDER THIS AGREEMENT, AND THIS AGREEMENT EXPRESSLY EXCLUDES ANY RIGHT, CONCERNING ANY SOFTWARE THAT YOU DID NOT ACQUIRE LAWFULLY OR THAT IS NOT A LEGITIMATE, AUTHORIZED COPY OF BITVISE'S SOFTWARE.

1. Definitions.

- An "**Activation Code**" is an alphanumeric string intended to convey to a BSS Installation the notion that you have obtained from Bitvise a right to continue using this Installation beyond the 30-day evaluation period. The process of applying the Activation Code to a BSS Installation is similarly termed "activating" the Installation, or "activation".
- An "**Installation**" is a potentially functional, although not necessarily running or properly configured, copy of BSS residing on a Machine. Multiple BSS copies residing on the same Machine count as a single Installation.
- A "**Machine**" is a single hardware computer unit, or a virtual machine (VM) running in a simulated environment. Each concurrently running VM instance counts as a separate Machine. Each node of a cluster, virtual or physical, counts as at least one Machine.
- "**Support**" includes answering questions arising from your use of the most current version of BSS via online medium, such as email, web-based forum, or a similar technology characterized by the ability to convey written information electronically.
- "**Upgrade Access**" refers to access to any upgrades and new versions of BSS released to the public by Bitvise.

2. License. Subject to the terms of this Agreement, Bitvise grants you a limited, non-exclusive license to download, install, and use BSS for lawful personal or commercial purposes.

You may install BSS on any number of Machines to use and evaluate it free-of-charge for an evaluation period of up to thirty (30) calendar days. When thirty (30) or more days have passed since your initial installation of BSS on any Machine, you may continue to use BSS only after purchasing from Bitvise an "Expanded License", normally associated with a certain number of "Purchased Installations," which you may use perpetually, so long as you do not breach the terms of this Agreement. You are permitted to move a Purchased Installation from one Machine to another not more than once in any thirty (30) calendar day period by removing BSS from the Machine on which it is installed and installing it on another Machine. Upon receiving full payment, Bitvise will send to you one or more Activation Codes that will enable use of BSS after the end of the evaluation period.

Purchase of an Expanded License entitles you to Support and Upgrade Access. The term of such Support and Upgrade Access shall be from the date of purchase until the expiration date communicated on Bitvise's website and/or updated between you and Bitvise from time to time (the "Upgrade Access Expiry Date").

2.1. Limitation on License Scope. You may not use BSS beyond the scope legally permitted where such use is taking place. You may not attempt to circumvent the BSS evaluation and activation process in any way without advance, specific and written approval from Bitvise. You may not reverse engineer or disassemble or modify BSS or any of its parts or installers in any way without advance, specific and written approval from Bitvise. You may not provide a copy of BSS or of any of its parts or installers to a third party, without advance, specific and written approval from Bitvise.

Notwithstanding the foregoing, you may provide a copy of BSS parts or installers to a third party to whom you are transferring an Expanded License in a way this Agreement permits.

2.2. Activation Code. Mere possession of an Activation Code does not imply an Expanded License. Activating one or more BSS Installations with an Activation Code does not imply that such Installations are fully or properly licensed. Any Activation Code in your possession must be made available only to persons who require it to administer your Purchased Installations, and must be protected securely against access by third parties and unauthorized personnel.

If you have purchased an Expanded License, and you lose your Activation Code or BSS installer, Bitvise will help you recover them, as long as you provide verification of your identity and sufficient information for Bitvise to identify your Expanded License. Bitvise does not guarantee to recover an installer for the version of BSS you are or were using, but will provide either the same version or a newer version that will work with your Expanded License.

2.3. Large-Scale Licenses. In addition to per-installation, per-user, or similar counted licenses, Bitvise may make available "Large-Scale Licenses." This is a type of Expanded License that permits an indefinite number of Installations, but is limited by other terms. Unless otherwise agreed in writing between you and Bitvise, any Large-Scale License is subject to the terms of this Agreement, as well as the specific Large-Scale License terms described on Bitvise's website at the time of purchase.

2.4. Effect of Separate Expanded Licenses. You may purchase separate Expanded Licenses, of same or different types, that may result in different BSS Installations covered by different Expanded Licenses with separate terms or Upgrade Access Expiry Dates. In this case, you can decide which Installations are covered by which Expanded License. For each Installation, you may change the Expanded License it is associated with no more than once in any thirty (30) calendar day period. Installations covered by an Expanded License only benefit from the Upgrade Access that applies to that Expanded License. For example, extending Upgrade Access for one Expanded License, but not others, only affects Upgrade Access rights for Installations covered by that specific Expanded License.

2.5. Personal Edition. BSS can be installed by choosing either the "Standard Edition" or the "Personal Edition" during the installation process. For all uses that either take place on behalf of an organization OR facilitate commercial activity, the Standard Edition must be chosen. Bitvise permits the Personal Edition to be used in connection with activities that are both personal AND non-commercial. The Personal Edition does not have an evaluation period. When used for permitted purposes, the Personal Edition can be used free of charge subject to the terms of this agreement.

2.6. Ownership. You acknowledge that Bitvise is the owner of BSS, that this Agreement does not convey to you any ownership interest in BSS, and that you are merely granted a license to download, install, and use it in accordance with the terms of this Agreement. Such license may be revoked in accordance with Section 8 of this Agreement if you breach your obligations arising hereunder.

2.7. Auditing Rights. Not more than once in a calendar year, Bitvise may request that you conduct a self-audit to confirm that your use of BSS complies with agreed license terms. If Bitvise presents evidence that your self-audit is incorrect, then at Bitvise's request, you shall cooperate with an at-premises audit by an independent expert. The expert's audit shall be conducted at Bitvise's cost, and the expert shall agree to confidentiality obligations toward you in writing. If the expert's audit reveals material deficiencies of your self-audit to Bitvise's detriment, you shall bear the costs of the expert's audit.

3. Software Use and Behavior. You acknowledge that BSS is available as a product, to be used and administered by you, on computers of your choice, without supervision from Bitvise. You accept responsibility to configure BSS securely in accordance with your goals. You acknowledge that mistakes in configuring BSS can lead to harm, including but not limited to loss of access, loss of data, or exposure of your systems and data to unauthorized parties. You accept responsibility for any damage or harm resulting from configuration issues. You acknowledge that Bitvise is under no obligation to know about, detect, inspect, or fix configuration issues, even when Bitvise has such opportunities.

Bitvise represents that, when you use BSS to handle data, this data will not be sent to outside destinations, except in ways which you perform, configure or allow using BSS features. BSS will not send data to Bitvise, except to support functions and features that involve contact with Bitvise. Such functions may include activation, checking for updates, installation of updates, and sending feedback to Bitvise. When you use such functions, information sent to Bitvise is described in Bitvise's Privacy Policy: <https://www.bitvise.com/privacy-policy>

Bitvise represents that installing BSS will not grant Bitvise the ability to access your systems. Bitvise will not remotely access your systems for any purpose, including software auditing, unless you contact Bitvise and provide access. If you do provide Bitvise with remote access, Bitvise is under no obligation to use it. Notwithstanding the foregoing, if you or a third party contact Bitvise and report an issue, Bitvise may perform superficial, non-invasive test connections which do not involve login, to a system that accepts connections over the internet.

You acknowledge that BSS may be configured by default to apply automatic updates. BSS provides a way to disable automatic updates. If automatic updates are disabled, BSS will not automatically update to a different version. You acknowledge that, when automatic updates are disabled, you take responsibility to inform yourself and decide if or when updates are needed. If you do not update, you may be exposed to known security or reliability issues.

When automatic updates are enabled, you acknowledge that this involves all risks implied in installing new or different versions of software. In this case, BSS may update to a version with unexpected issues. This includes but is not limited to issues which may render an existing installation unusable, or create other problems which require your significant work to resolve.

4. Support and Upgrades. If your use of BSS is covered by a valid Expanded License properly purchased directly or indirectly from Bitvise, and Upgrade Access for such Expanded License has not expired, Bitvise will provide (a) Support, and (b) Upgrade Access.

Bitvise will offer extension of your Upgrade Access at an annual rate not higher than 20 percent of the current price for a new Expanded License covering the usage permitted by your Expanded License. If you purchase an Upgrade Access extension for an Expanded License after its Upgrade Access expires, the extension will require payment for a term starting from the past Upgrade Access expiry, not the date of purchase of the extension. Additional Upgrade Access may also be purchased together with your initial Expanded License purchase.

While Bitvise endeavors to consistently improve its software, Bitvise is not obligated to create or release updates or new versions of BSS.

4.1. Effect of Co-terming. When you purchase new Expanded Licenses, you may choose to merge (co-term) them with previously existing Expanded Licenses you may hold. When licenses are merged (co-termed), their Upgrade Access Expiry Dates will be averaged out by a weighted formula. As a result of this process, new licenses may receive less than one year of Upgrade Access, or may receive an Upgrade Access Expiry Date in the past. Such effects are counterbalanced by improved Upgrade Access for the previously existing licenses.

4.2. Limitations of Support. Bitvise may attempt, but cannot guarantee, to answer questions pertaining to older versions of BSS. If you are eligible for Support, Bitvise will attempt, but not guarantee, to reply to inquiries within one business day. Bitvise does not guarantee, and is unlikely to provide, Support in languages other than English.

Bitvise intends BSS to be installed and configured by administrators who have competence in system and network administration. If you contact Bitvise for Support, your benefit from Bitvise's replies will be limited by your ability to understand and act on information provided by Bitvise. Bitvise is not obligated to provide, and is unlikely to provide, real-time support via telephone, voice, or video conferencing, or step-by-step assistance with configuration. If this means you cannot configure or use BSS to meet your goals, you will need to find a third party to assist you, or find a solution that does not involve Bitvise.

If you repeatedly contact Bitvise with expectations that exceed these limitations, Bitvise may ask that you use different software, and your inquiries may receive no response.

5. Disclaimer of Warranties. BSS IS PROVIDED TO YOU "AS IS" AND WITH ALL FAULTS AND DEFECTS WITHOUT WARRANTY OF ANY KIND. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, BITVISE EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, WITH RESPECT TO BSS, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND WARRANTIES THAT MAY ARISE OUT OF COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE, OR TRADE, AND MAKES NO REPRESENTATION OF ANY KIND THAT THE APPLICATION WILL MEET YOUR REQUIREMENTS, ACHIEVE ANY INTENDED RESULTS, BE COMPATIBLE, OR WORK WITH ANY OTHER SOFTWARE, APPLICATIONS, SYSTEMS, OR SERVICES, OPERATE WITHOUT INTERRUPTION, MEET ANY PERFORMANCE OR RELIABILITY STANDARDS OR BE ERROR-FREE, OR THAT ANY ERRORS OR DEFECTS CAN OR WILL BE CORRECTED.

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF OR LIMITATIONS ON IMPLIED WARRANTIES OR THE LIMITATIONS ON THE APPLICABLE STATUTORY RIGHTS OF A CONSUMER, SO SOME OR ALL OF THE ABOVE EXCLUSIONS AND LIMITATIONS MAY NOT APPLY TO YOU.

Notwithstanding the foregoing, solely with respect to software used under a valid Expanded License, Bitvise warrants that (i) the Software will substantially contain the functionality described on Bitvise's website, and (ii) when properly installed on a computer meeting the specifications set forth on, and operated in accordance with, the documentation available on Bitvise's website, will operate in accordance with the documentation.

5.1. Compliance with Safety Standards. Where Bitvise promotes BSS as facilitating functional safety or as compliant with industry functional safety standards, BSS is intended to help customers set up usage scenarios that meet applicable functional safety standards and requirements. Using BSS in a usage scenario does not by itself establish any safety features in that scenario. You must ensure compliance with safety-related requirements and standards applicable to your usage.

6. Indemnification. As long as, and to the extent that, your use of BSS is covered by a valid Expanded License properly purchased directly or indirectly from Bitvise, Bitvise will indemnify you and your officers, directors, agents, and employees against all claims, actions, judgments, awards, expenses (including reasonable attorney's fees) and damages awarded or agreed by Bitvise to be paid in settlement arising from a claim asserting that an unaltered release of BSS including any modifications or enhancements, released by Bitvise to the public during the term of this Agreement and used in accordance with the terms of this Agreement (collectively the "Indemnified Software") infringes a third-party copyright, trade secret, a U.S. patent, or a European Patent Convention patent, so long as you give Bitvise (a) prompt written notice of such claim or action; (b) the right to control and direct the investigation, preparation, defense, and settlement of the action; and (c) reasonable assistance and information. If a final injunction is obtained against your right to continue using the Indemnified Software or, if in Bitvise's opinion the Indemnified Software is likely to become the subject of a claim, Bitvise shall have the option to (i) obtain the right for you to continue using the Indemnified Software; or (ii) replace or modify the Indemnified Software so that it no longer infringes but functions substantially equivalently, including with respect to form, fit or function (including interoperability) of the Indemnified Software. If Bitvise determines that neither of these alternatives is practicable after commercially reasonable efforts, Bitvise shall refund to you a prorated portion of either the purchase price paid for (a) the affected Expanded License based on straight line depreciation over a five-year useful life, or (b) your current, unexpired, Upgrade Access based on the percentage of time remaining until your Upgrade Access Expiry Date, whichever has the greater value.

You agree to assume your own liability for any and all claims arising from your use or misuse of BSS or your breach of this Agreement including all costs, expenses, and attorneys' fees, other than arising from a claim that your use of BSS in accordance with this Agreement infringes the copyright, trade secret, or patent rights of a third-party.

7. Assignment. This Agreement will bind and inure to the benefit of each party's permitted successors and assigns. However, you may not assign this Agreement in whole or in part, or transfer to a third party the license or any of the rights or obligations granted to you under this Agreement, unless explicitly permitted to do so by Bitvise in this Agreement or separately in writing. Any attempt to assign this Agreement or transfer such license, obligations or rights under this Agreement without Bitvise's explicit written permission will be void and null.

You may transfer or assign an Expanded License to a third party if each of the following is true:

- The transfer or assignment does not violate US export controls that may apply to BSS versions covered by the Expanded License you are transferring or assigning.
- The Expanded Licenses you are transferring or assigning represent any number or portion of per-installation or per-user licenses you hold; or you are transferring or assigning a Large-Scale License as a whole and indivisible unit.
- At the time of the transfer or assignment, the recipient fits the licensee requirements, if any, in Bitvise's description of the type of Expanded License you are transferring or assigning. If Bitvise's description of the license type was different when the license was obtained than it is at the time of transfer or assignment, this condition is fulfilled if the recipient fits the requirements of either version.
- The original purchaser of the Expanded License being transferred or assigned did not receive it free of charge, and did not benefit from a discount of any type except a trade-in of previously existing licenses at their then-present value.

8. Term and Termination. This Agreement remains valid and in force as long as you continue to use BSS on any Machine or medium, or continue to have any copies of BSS, or any of its parts or installers stored on any Machine or media in your possession or under your control.

You may terminate this Agreement unilaterally at any time, and with immediate effect, by removing or making irreversibly inoperable all copies of BSS and any of its parts or installers residing on any Machines or media in your possession or control.

This Agreement is terminated automatically, and with immediate effect, if you breach any of your obligations under this Agreement, and fail to cure the breach within thirty (30) calendar days of discovering or being notified of such breach. If this Agreement terminates for this or any reason, you must cease your use of BSS immediately, and must immediately remove or make irreversibly inoperable all copies of BSS and any of its parts or installers residing on any Machines or media in your possession or control.

If you use BSS beyond the scope legally permitted where such use is taking place, this Agreement shall terminate automatically and with immediate effect.

9. Limitation of Liability. You agree that Bitvise shall not be responsible or liable:

- for any damage or harm (including direct, incidental, or consequential damages) caused or arising through anyone's use, misuse or attempted use of BSS, including but not limited to any failure of or within BSS, any programming error in, triggered by or related to BSS, or any incorrect or illegal use of BSS. You assume the entire risk of the results and performance of your BSS Installations;
- for any damage or harm caused by a technical or administrative problem on the recipient's or intermediary's behalf that cannot reasonably be cured by Bitvise, including but not limited to any DNS or mail server issue or a problem with a proxy, a firewall, email filtering or another network device.

The foregoing limitations apply to the full extent permitted by applicable law in your jurisdiction.

Furthermore, you agree that, except for indemnification obligations under Section 6, Bitvise's total liabilities, if any, arising from this Agreement or BSS shall not exceed the amount actually paid to Bitvise for your current, affected Expanded License, over a period not to exceed the past 5 years. Any use of BSS that requires greater assurance is at your own risk and responsibility.

10. Publicity and Marketing. Bitvise will not use your brand, logos or trademark, or refer to you as a licensor, in any way or form, including on Bitvise's website, marketing materials or press releases, without your prior written express consent.

11. Governing Law, Jurisdiction and Venue. Unless excepted otherwise under this heading, this Agreement shall be governed by the laws of the State of Texas. Any claim under this Agreement shall be brought in a court sitting in Texas, and venue is proper in Texas.

If you are entering this Agreement as a U.S. federal government entity, U.S. state government entity, or in connection with such an entity; and you are bound by laws of this entity, such that they permit this Agreement only if it is governed by a particular jurisdiction; then this Agreement shall be governed by the laws of the required jurisdiction, the claim shall be brought in a court sitting in that jurisdiction, and venue is proper there.

If you are entering this Agreement as a non-U.S. government or state entity, or in connection with such an entity; and you are bound by laws of this entity, such that they permit this Agreement only if it is governed by a particular jurisdiction; then if a claim is brought against you, this Agreement shall be governed by the laws of the required jurisdiction, the claim shall be brought in a court sitting in that jurisdiction, and venue is proper there. However, if a claim is brought against Bitvise, this Agreement shall be governed by the laws of the State of Texas, the claim shall be brought in a court sitting in Texas, and venue is proper in Texas.

Each party agrees not to dispute the personal jurisdiction of the courts described above.

12. Headings. Headings and captions are for convenience only and are not to be used in the interpretation of this Agreement.

13. Severability. If any provision of this Agreement is adjudged by any court of competent jurisdiction to be unenforceable or invalid, and that provision is capable of being limited or eliminated without destroying the material economic incentives of the parties embodied by this Agreement then such provision shall be so limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable.

14. Survival. The following provisions shall survive termination of this Agreement: Section 9 (Limitation of Liability) and Section 11 (Governing Law, Jurisdiction and Venue).

15. Waiver. No failure to exercise or delay in exercising any right under this Agreement will operate as a waiver of that right, nor will any single or partial exercise of any right or power preclude further exercise of that right or any other right.

16. Complete Agreement and Modification. This Agreement constitutes the complete and only agreement of the parties with respect to its subject matter, to be superseded or modified only by a written document that refers specifically to this Agreement and is signed by both parties.