

EXPORT LICENCE

Open General Export Licence (Cryptographic Development)

dated 12th August 2009 granted by the Secretary of State.

The Secretary of State, in exercise of powers conferred by Articles 9(2) and (4) of Council Regulation (EC) No.428/2009 (“the Regulation”)^(a) and Article 26 of the Export Control Order 2008 (“the Order”)^(b), hereby grants the following Open General Export Licence:

Community Licence

1. This is a general export authorisation under the terms of Article 9(2) of Council Regulation (EC) No.428/2009. This authorisation, in accordance with Article 9(2) of that Regulation, is valid in all Member States of the European Community and is a Community Licence for the purposes of the Order.

2. Subject to the following provisions of this licence, any item specified in Schedule 1 may be exported from the United Kingdom, or from any other Member State by any person established in the United Kingdom, to any country specified in Schedule 2, provided the item is only for use:
 - (1) by the exporter, or by any subsidiary or parent undertaking of the exporter in their own commercial cryptographic product development activities, or

 - (2) by a business or academic collaborator of the exporter in his or their own commercial cryptographic product development activities and pursuant to the agreement establishing the collaboration.

(a) O.J. No.L134 29.5.09, p1

Exclusions

3. This licence does not authorise the export of items if:
- (1) the exporter has been informed by a competent authority of the Member State where he is established that the items in question are or may be intended, in their entirety or in part—
 - (a) for use in connection with the development, production, handling, operation, maintenance, storage, detection, identification or dissemination of chemical, biological or nuclear weapons or other nuclear explosive devices or the development, production, maintenance or storage of missiles capable of delivering such weapons; or
 - (b) for a military end-use and the purchasing country or country of destination is subject to an arms embargo decided by a Common Position or Joint Action adopted by the Council of the European Union or a decision of the OSCE or imposed by a binding resolution of the Security Council of the United Nations; or
 - (c) for use as parts or components of military items listed in the national military list that have been exported from the territory of the Member State concerned without authorisation or in violation of an authorisation prescribed by national legislation of that Member State;
 - (2) the exporter is aware that the items in question are intended, in their entirety or in part, for any of the uses referred to in sub-paragraph (1);
or

- (3) the exporter has grounds for suspecting that the items in question are or may be intended, in their entirety or in part, for any of the uses referred to in sub-paragraph (1)(a), unless the exporter has made all reasonable enquiries as to their proposed use and is satisfied that the items will not be so used; or
- (4) to a destination within a Customs Free Zone; or
- (5) their export is controlled by virtue of any entry in Annex I to the Regulation not specified in Schedule 1; or
- (6) the items in question are intended for the development of military products.
- (7) where the exporter has, at the time of export, been served with a notice which suspends or revokes his ability to use this Licence pursuant to article 32(1) of the Order, unless the period of suspension or revocation has expired.

Conditions and requirements

4. The authorisation in paragraph 1 is subject to the following conditions:
 - (1) Except in the case of an export of technology by telephone, fax or other electronic media, official and commercial export documentation accompanying the items shall include a note stating either:
 - (a) “the items are being exported under the OGEL (Cryptographic Development)”; or
 - (b) the SPIRE reference (in the form ‘GBOGE 200X/XXXXX’) of the exporter’s registration in respect of this licence,which shall be presented to an officer of HM Revenue and Customs if so requested;

- (2) Where the exporter has received a warning letter sent on behalf of the Secretary of State which identifies failure to comply with this Licence or a provision of applicable export control legislation, the exporter shall take such steps as are identified in that warning letter (within the timescale stated) in order to restore compliance with the Licence. Without prejudice to article 34 of the Order, failure to comply with this condition may result in this Licence being revoked or suspended until the exporter can show compliance to the satisfaction of the Export Control Organisation. The exporter will be notified in writing of any such suspension or revocation and the initial period of such suspension or revocation. Where at the end of this initial period, the exporter has not shown compliance to the satisfaction of the Export Control Organisation, the period of suspension or revocation may be extended. The exporter will be notified of such an extension in writing.

Registration

5. The requirements of Article 28 of the Order **shall** apply to this licence.

Prohibitions not affected by this licence

6. Nothing in this licence affects any prohibition or restriction on the export of any items other than under the Regulation or the Order, and this licence does not confer any licence or permission under, or for the purposes of, any enactment other than the Regulation and the Order.

Interpretation

7. For the purposes of this licence:
 - (1) “business or academic collaborator” means a person who is either working by way of business in research and development of cryptography or cryptographic products or is teaching, or undertaking research as a member of/at a university or institution of higher

education into, cryptography or cryptographic products and with whom an exporter has previously entered into an agreement for the carrying out of work comprising or related to research into or development of cryptography or cryptographic products;

- (2) “parent undertaking” and “subsidiary undertaking” have the same meanings assigned by sections 258 and 259 of the Companies Act 1985 (as substituted by sections 21 and 22 of the Companies Act 1989);
- (3) “Customs Free Zone” means a part of the territory of a country where any goods introduced are generally regarded, insofar as import duties and taxes are concerned, as being outside the customs territory of that country, and are not subject to the customs controls that would otherwise apply;
- (4) unless the context otherwise requires, any other expression used in this licence has the same meaning as in the Regulation or the Order as appropriate.

Entry into Force

- 8. This licence comes into force on 27th August 2009.
- 9. The Open General Export Licence (Cryptographic Development) dated 18th March 2009 is revoked.

***An Official of the Department for Business,
Innovation and Skills authorised
to act on behalf of the Secretary of State***

SCHEDULE 1

ITEMS CONCERNED

This export authorisation covers the following items:

1. Any cryptography development software in entry 5D002 of Annex I to the Regulation, other than software in relation to entries 5A002.a.6., 5A002.a.7. and 5A002.a.9. or software having the characteristics, or performing or simulating the functions, of equipment designed or modified to perform cryptanalytic functions.

2. Any cryptography development technology in entry 5E002 of Annex I to the Regulation, other than technology in relation to entries 5A002.a.6., 5A002.a.7. and 5A002.a.9. or technology for the development, production or use of:
 - (a) equipment designed or modified to perform cryptanalytic functions, or

 - (b) software having the characteristics, or performing or simulating the functions, of equipment designed or modified to perform cryptanalytic functions.

SCHEDULE 2

DESTINATIONS CONCERNED

This export authorisation is valid for exports to the following destinations:

All destinations other than a destination in:

- Afghanistan, Angola, Armenia, Australia, Austria, Azerbaijan, Belgium, Bulgaria, Bosnia and Herzegovina, Burma (Myanmar), Burundi, Canada, Croatia, Cyprus, Czech Republic, Denmark, Democratic Republic of the Congo, Estonia, Ethiopia, Eritrea, Finland, France, Germany, Greece, Hungary, Iran, Iraq, Ireland, Italy, Japan, Latvia, Liberia, Libya, Lithuania, Luxembourg, Malta, Netherlands, New Zealand, Nigeria, North Korea, Norway, Peoples Republic of China (excluding Hong Kong Special Administrative Region), Poland, Portugal, Romania, Rwanda, Serbia and Montenegro, Sierra Leone, Slovakia, Slovenia, Somalia, Spain, Sudan, Sweden, Switzerland, Tanzania, Uganda, USA and Zimbabwe.

NOTE:

Exports of items covered by this licence may be made under the authority of the Community General Export Authorisation, subject to certain conditions and restrictions, to the following destinations:

Australia, Canada, Japan, New Zealand, Norway, Switzerland, and USA.

EXPLANATORY NOTE

(This note is not part of the Licence)

This Open General Export Licence has been amended following updates to Annex I and the adoption of a new Council Regulation.

2. This Open General Export Licence permits, without further authority but subject to certain conditions, the export of the items specified in Schedule 1 from the United Kingdom, or from any other Member State if the exporter is established in the United Kingdom, to any destination specified in Schedule 2.

3. The licence enables the exporter to collaborate through established relationships on commercial cryptographic product development.

4. The Export Control Order 2008 (“the Order”) contain certain registration and record keeping requirements which apply to persons using this Licence.

(a) Under Article 28 of the Order, an exporter who exports items under the authority of this Licence must, before or within 30 days after the first occasion he makes use of the licence, provide details to the Secretary of State of his name and the address where copies of the records referred to above may be inspected.

This notification must be made via the Export Control Organisation’s electronic licensing system, SPIRE, at www.spire.berr.gov.uk

(b) Under Article 29 of the Order, any person established in the United Kingdom who exports items from the United Kingdom or another Member State under the authority of this Licence must maintain and retain certain records relating to each such export for at least three years from the end of the calendar year in which the export takes place, and must permit such records to be inspected and copied by any person authorised by the Secretary of State.

5. The Secretary of State has the power to suspend or revoke licences at any time and in such circumstances and on such terms as he thinks fit. If an exporter receives written notice to this effect, he will be prevented from relying on this Licence. The power to suspend may be used in addition to criminal prosecution or as an

alternative. Suspension may occur for example where an exporter is being investigated or prosecuted in relation to a possible criminal offence, or has been found guilty of a criminal offence under the export control legislation. It may also be used in situations where an exporter has breached the conditions of the Licence and failed to take corrective action within a reasonable period (see condition 4(2)).

6. Where, the ECO identifies failures in compliance with licence conditions or the legislation during a compliance visit, the ECO may send a warning letter to the exporter listing the improvements that need to be made to ensure compliance. The letter will set out the timeframe within which these improvements must be completed. Failure to complete these improvements may lead to the exporter's ability to use the licence being suspended for a period of time.

7. The exporter may apply for Standard Individual Export Licences during the period of suspension. Suspension will not automatically prevent him from using another OGEL so long as he meets all its terms and conditions and that he has not received a letter suspending or revoking his ability to use that licence.