

INDEPENDENT SOFTWARE VENDOR END USER LICENSE AGREEMENT (EULA)

PLEASE READ CAREFULLY: THE USE OF THE SOFTWARE IS SUBJECT TO THE TERMS AND CONDITIONS THAT FOLLOW (“EULA”). BY DOWNLOADING, INSTALLING, COPYING, ACCESSING, OR USING THE SOFTWARE, YOU AGREE TO THE TERMS OF THIS EULA, ANY APPLICABLE WARRANTY STATEMENT AND THE TERMS. IF YOU ARE ACCEPTING THESE TERMS ON BEHALF OF ANOTHER PERSON OR A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT AND WARRANT THAT YOU HAVE FULL AUTHORITY TO BIND THAT PERSON, COMPANY, OR LEGAL ENTITY TO THESE TERMS. IF YOU DO NOT AGREE TO THESE TERMS, DO NOT DOWNLOAD, INSTALL, COPY, ACCESS, OR USE THE SOFTWARE, AND PROMPTLY RETURN THE SOFTWARE. IF YOU DOWNLOADED THE SOFTWARE, DELETE THE SOFTWARE.

1. GENERAL TERMS

- a. *You* and *Your* refer either to an individual person or to a single legal entity who has received the Software, as defined hereafter, for development, test and support purposes only.
- b. *VSI* means VMS Software, Inc. of 800 district Ave Suite 530, Burlington MA 01803 USA, or one of its affiliates.
- c. *VSI Branded* means Software products bearing a trademark or service mark of VMS Software, Inc. or any VSI Affiliate, and embedded VSI selected third party Software that is not offered under a third party license agreement.
- d. *Software* means machine-readable instructions and data (and copies thereof) of VSI’s version of the OpenVMS Operating System and related Layered Products (together referred to as “OpenVMS”), as first released by VSI on June 1, 2015, and as updated by VSI thereafter. You may be separately authorized to receive, licensed materials, user documentation, user manuals, and operating procedures. “Ancillary Software” means all or any portion of Software provided under public, open source, or third party license terms.
- e. *Specification* means technical information about Software products published in VSI product manuals, user documentation, and technical data sheets in effect on the date VSI delivers Software products to You.
- f. *ISV Agreement* means the overall agreement between the Parties, to which this EULA may be attached as an Exhibit. Such ISV Agreement defines the overall terms and conditions governing Your right to develop Your ISV Products as part of VSI’s Developer Program. **IF NO OTHER OVERALL ISV AGREEMENT GOVERNS THE RELATIONSHIP BETWEEN THE PARTIES, THEN THIS EULA SHALL SUFFICE AS THE OVERALL ISV AGREEMENT.** The Parties acknowledge that the ISV Products require the Software, or hardware that is operated by the Software, to function or operate properly.
- g. *ISV Products* include any of Your products that are specifically defined in Exhibit A of this ISV Agreement. Any other of Your products, that are not expressly included on the ISV Agreement definition of ISV Products, is excluded.
- h. *Temporary License PAK* means license documentation provided to you by VSI, either in digital form or hard copy, that contains data to activate the Software on Your computer system for a limited period of time, coterminous with Term of this EULA, as set forth below. **YOU ACKNOWLEDGE AND UNDERSTAND THAT THE TEMPORARY LICENSE PAK CONTAINS CODE THAT DEACTIVES THE SOFTWARE AT THE END OF THE TEMPORARY LICENSE PAK’S LIMITED TERM.**
- i.

2. LICENSE TERMS AND RESTRICTIONS

- a. **License.** Subject to the terms and conditions of this EULA, VSI grants You a non-exclusive, non-transferable license to Use (as defined below), in object code form, copies of the Software on any of Your devices, so long as such devices are dedicated to the sole purpose of developing, testing and supporting your ISV Products. “Use” means to install, store, load, execute and display the Software as is, for purposes of developing, testing and supporting ISV Products only.
- b. **Restrictions on Use.** No intellectual property license, and no other license of any kind is granted to You except for the limited right to use the Software as provided above. You shall not reverse engineer, disassemble, or decompile the Software or any portion thereof. Except for internal development and testing of the ISV Products, You shall not use the Software in any other manner, including but not limited to:
 - i. Commercial or production use for products or services that are not specifically defined as an ISV Product in the ISV Agreement;
 - ii. Marketing;
 - iii. Or, supporting products of any third party.
 - iv. You may not copy the Software onto or otherwise use or make it available on, to, or through any public or external distributed network or copy the Software onto or otherwise make it available to or on any 3rd party or customer devices.
- c. **Term.** The term of this EULA commences upon the Effective Date of the ISV Agreement and shall end upon termination of the same agreement (the “Term”). Upon the expiration of the Term, or any earlier termination of this EULA, You shall promptly remove all copies of the Software, including but not limited to archival copies, from machines and return all tangible materials to VSI.
- d. **Copyright.** This EULA confers no title or copyright ownership, and is not a sale of any rights in the Software.
- e. **Precedence.** The terms and conditions set forth in this EULA shall govern the use of the Software, and shall take precedence over any other license terms found outside of this EULA, unless otherwise agreed to hereafter by the Parties in writing.

3. DISCLAIMER OF WARRANTIES AND LIMITATION OF LIABILITIES:

- a. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, VSI AND ITS SUPPLIERS PROVIDE THE SOFTWARE “AS IS” AND WITH ALL FAULTS, AND HEREBY DISCLAIM ALL INDEMNITIES, WARRANTIES AND CONDITIONS, EITHER EXPRESS, IMPLIED, WHETHER BY STATUTE, COMMON LAW, CUSTOM OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF TITLE AND NON-INFRINGEMENT, ANY IMPLIED WARRANTIES, DUTIES OR CONDITIONS OF MERCHANTABILITY, OF FITNESS FOR A PARTICULAR PURPOSE, AND OF LACK OF VIRUSES.
- b. VSI shall not be responsible for any loss or damage to You, YOUR customers, or any third parties caused by the Software or by VSI’s performance of the EULA. VSI SHALL NOT BE LIABLE FOR ANY DAMAGES OF ANY KIND RELATING TO THIS EULA INCLUDING, BUT NOT LIMITED TO, DIRECT, INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, WHETHER BASED ON CONTRACT, TORT, OR ANY OTHER LEGAL THEORY, AND IRRESPECTIVE OF WHETHER VSI HAS ADVANCE NOTICE OF THE POSSIBILITY OF SUCH DAMAGES. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. ^[L]_[SEP]

4. FONT PROGRAMS

- a. The Software contains font software programs that generate human readable typeface designs (“Font Programs”). You may not install or use the Font Programs on any device except one on which you have installed a properly licensed copy of the Software.
- b. The Font Programs is supplied to you for Internal Use only. “Internal Use,” as used herein, means use (i) in the course of your customary and ordinary internal business, as restricted by Section 2 above, or (ii) for your personal use, as restricted by Section 2 above. If used in the course of your customary and ordinary internal business, Internal Use shall mean use solely by your authorized agents and employees. If used for personal use, Internal Use shall mean use solely by individuals who reside with you in your household. All such agents, employees and household residents must agree to the terms and conditions of this EULA as a condition of using the Font Programs. Internal Use shall occur when an individual is able to give commands (whether by keyboard or otherwise) that are followed by the Font Programs, regardless of the location in which the Font Programs resides.
- c. You may not convert the Font Programs into a different format. You may not alter or modify the Font Programs in any manner that results in the Font Programs having different or enhanced functionality than when it was delivered to you as part of the Software.
- d. You may use an application program to embed the Font Programs into an electronic document. You may send such an electronic document to a third party only for the purpose of permitting the third party to view and print the electronic document. Font Programs may not be embedded in any format that permits the recipient of an electronic document to install the Font Programs or to use the Font Programs for any purpose beyond merely viewing and printing the document. You may not embed Font Programs into a Commercial Product. A “Commercial Product” is an electronic document that is distributed in exchange for a fee or other consideration. For example, you cannot embed Font Programs into an electronic book or magazine that is offered to the public for a fee.
- e. Except for the print and view embedding permission granted in Section 4(d) above, you may not copy the Font Programs, provided, however, you may make one copy of the Font Programs for archival purposes only. The archival copy cannot be distributed and can be used only when you have permanently deleted the original or any copy of the Font Programs on your device. You may not reverse engineer, decompile, or take any action which results in or designed to result in gaining access to the source code of the Font Programs, except as permitted by law and then only for the purpose of achieving an interoperable program.
- f. The Software, and the Font Programs supplied with the Software, is proprietary and is protected by U.S. and international copyright and trademark law. All rights not expressly set forth herein are reserved. A breach of this EULA may subject you to damages and injunctive relief under this EULA as well as under applicable copyright and trademark law.
- g. This license shall remain in effect so long as you are in material compliance with all of its terms and conditions. If you breach any of the terms and conditions, this license is automatically terminated and you are obligated to destroy the original and all copies of the Font Programs. In such event, upon the request of the provider of the Software or the suppliers of the Font Programs, you shall provide written certification of such destruction.
- h. If you are evaluating the Software, and the included Font Programs, on behalf of any unit or agency of the United States Government, the following provisions shall apply. Use, duplication or disclosure by the United States Government is subject to restrictions as set forth in the Rights in Technical Data and computer Software clause at FAR 252.227-7013, subdivision (b)(3)(ii) or subparagraph (c)(1)(ii), as

appropriate. Further use, duplication or disclosure is subject to restrictions to restricted rights software as set forth in FAR 52.227-19(c)(2).

5. TERMINATION

Upon your breach of this EULA, VSI may immediately terminate this EULA by written notice to you. Furthermore, either party may terminate this EULA without cause, by written notice five calendar days prior to such termination. Sections 2(b), 2(e), 3, 4(f), 5, and 6 of this EULA will survive termination of this EULA.

6. GENERAL

- a. You may not assign, sublicense, delegate or otherwise transfer (“Assign”) all or any part of this EULA without prior written consent from VSI. Any such attempted Assignment will be null and void.
- b. This EULA is governed by the laws of the State of Delaware, U.S.A., excluding rules as to choice and conflict of law. You and VSI agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply to this EULA.
- c. All titles and captions in this EULA are for convenience only and shall not be interpreted as having any substantive meaning.
- d. Subject to the other terms and conditions of this EULA, this EULA is the entire agreement between VSI and You regarding Your Use of the Software, and supersedes and replaces any previous communications, representations, or agreements, or Your additional or inconsistent terms, whether oral or written. Any amendments to this EULA shall be in writing and signed by the authorized representatives of each party.
- e. In the event any provision of this EULA is held invalid or unenforceable such unenforceability or invalidity shall not render this EULA unenforceable or invalid as a whole, or in part, and in such event, such provision shall be changed and interpreted so as to best accomplish the objectives of such unenforceable or invalid provision within the limits of applicable law or judicial ruling.

EXHIBIT A

Partner ISV Product(s)

1. ISV Product List: List below all of your products that are developed, tested and supported on VSI OpenVMS. These products, only, qualify for inclusion in the VSI ISV Program. Additional products can be added by resubmitting this Exhibit A with the new product(s) listed.

Dated: _____

PARTNER (Print Name)

SIGNATURE OF PARTNER