

VMMAX CLOUD END USER LICENSE AGREEMENT

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THE TERMS OF THIS END USER LICENSE AGREEMENT (“EULA”) GOVERN YOUR USE OF THE SOFTWARE, REGARDLESS OF ANY TERMS THAT MAY APPEAR DURING THE INSTALLATION OF THE SOFTWARE.

BY DOWNLOADING, DEPLOYING, OR USING THE SOFTWARE, YOU AGREE TO BE BOUND BY THE TERMS OF THIS EULA. IF YOU DO NOT AGREE TO THE TERMS OF THIS EULA, YOU MUST NOT DOWNLOAD, DEPLOY, OR USE THE SOFTWARE, AND YOU MUST DELETE OR RETURN THE UNUSED SOFTWARE TO US OR THE VMMAX CLOUD PARTNER FROM WHICH YOU ACQUIRED IT WITHIN THIRTY (30) DAYS OF ITS ACQUISITION AND REQUEST A REFUND OF THE LICENSE FEE, IF ANY, THAT YOU PAID FOR THE SOFTWARE.

EVALUATION LICENSE. If you license the Software for evaluation purposes (an “Evaluation License”), your use of the Software is only permitted for a period of thirty (30) days (unless we specify otherwise), and you may not use the Software with production data. Notwithstanding any other provision in this EULA, an Evaluation License of the Software is provided “AS IS” without indemnification, support or warranty of any kind, express or implied.

1. LICENSE GRANT.

- 1.1. **General License Grant.** We grant you a non-exclusive, non-transferable (except as set forth in Section 12.1 (Transfers; Assignment)) license to deploy the Software within the Territory and to use the Software and the Documentation during the term of the license, solely for your internal business operations, and subject to the provisions of the Product Guide. Unless otherwise set forth in the Order, licenses granted to you will be for use of object code only and will commence on Delivery.
- 1.2. **Users and Third-Party Agents.** Under the License granted to you in Section 1.1 (General License Grant), you may permit your Users to use the Software, and you may permit Third-Party Agents to deploy and use the Software on your behalf for the sole purpose of delivering services to you. You will be responsible for your Users’ and Third-Party Agents’ compliance with this EULA, and any breach of this EULA by a User or Third-Party Agent will be deemed to be a breach by you.
- 1.3. **Copying Permitted.** You may copy the Software and Documentation as necessary to deploy and use the number of copies licensed, but otherwise for archival purposes only.
- 1.4. **Benchmarking.** You may use the Software to conduct internal performance testing and benchmarking studies. You may only publish or distribute the results of the studies to third parties if we have reviewed and approved of the methodology, assumptions, and other parameters of the study prior to publication and distribution.
- 1.5. **Services for Affiliates.** You may use the Software to deliver IT services to your Affiliates, provided that those Affiliates may not directly use the Software.

2. RESTRICTIONS; OWNERSHIP.

- 2.1. **License Restrictions.** Without our prior written consent, you must not, and must not allow any third party to: (a) use the Software in an application services provider, service bureau, hosted IT services, or similar capacity for third parties, except as specified in Section 1.5 (Services for Affiliates); (b) disclose to any third party the results of any benchmarking testing or comparative or competitive analyses of the Software done by you or on your behalf, except as specified in Section 1.4 (Benchmarking); (c) make available the Software in any form to any third parties, except as specified in Section 1.2 (Users and Third-Party Agents); (d) transfer or sublicense the Software or Documentation to an Affiliate or any third party, except as expressly permitted in Section 12.1 (Transfers; Assignment); (e) use the Software in conflict with the terms and restrictions of the Software’s licensing model and other requirements specified in the Product Guide and/or the applicable Order; (f) except to the extent permitted by applicable mandatory law, modify, translate, enhance, or create derivative works from the Software, or reverse engineer, decompile, or otherwise attempt to derive source code from the Software, except as specified in Section 2.2 (Decompilation); (g) remove any copyright or other proprietary notices on or in any copies of the Software; or (h) violate or circumvent any technological restrictions within the Software or specified in this EULA, such as via software or services.
- 2.2. **Decompilation.** Notwithstanding Section 2.1, you may decompile the Software to the extent the laws of the Territory give you the express right to do so to obtain information necessary to render the Software interoperable with other software; provided, however, (a) you must first request that information from us,

(b) you must provide all reasonably requested information to allow us to assess your claim, and (c) we may, in our discretion, provide that interoperability information to you, impose reasonable conditions (including a reasonable fee) on that use of the Software, or offer to provide alternatives to reduce any potential adverse impact on our proprietary rights in the Software.

2.3. Ownership. The Software and Documentation (including all copies and portions), all improvements, enhancements, modifications and derivative works of the Software or Documentation, and all Intellectual Property Rights in the Software and Documentation, are and will remain the sole and exclusive property of vmmax CLOUD and its licensors. Your rights to deploy and use the Software and Documentation are limited to those expressly granted in this EULA and any applicable Order. No other rights are implied with respect to the Software, Documentation, or any related Intellectual Property Rights. You are not authorized to use (and must not permit any third party to use) the Software or Documentation except as expressly authorized by this EULA or the applicable Order. We reserve all rights not expressly granted to you. We do not transfer any ownership rights in any Software or Documentation.

2.4. Guest Operating Systems. Some Software allows Guest Operating Systems and application programs to run on a computer system. You acknowledge that you are responsible for obtaining and complying with any licenses necessary to operate any third-party software.

3. ORDER. Your Order is subject to this EULA. No Orders are binding on us until we accept them. Orders for Software are deemed accepted upon Delivery of the Software included in the Order. Purchase orders issued to us do not have to be signed by you to be valid and enforceable. All Orders are non-refundable and non-cancellable except as expressly provided in this EULA. Any refunds to which you are entitled under this EULA will be remitted to you or to the vmmax CLOUD partner from which you purchased your Software license.

4. RECORDS AND AUDIT. You must maintain accurate records of your use of the Software sufficient to show compliance with the terms of this EULA. We have the right to audit those records and your use of the Software to confirm compliance with the terms of this EULA. That audit is subject to reasonable prior notice and will not unreasonably interfere with your business activities. We may conduct no more than one (1) audit in any twelve (12) month period, and only during normal business hours. You must reasonably cooperate with us, and any third-party auditor and you must, without prejudice to our other rights, address any non-compliance identified by the audit by paying additional fees. You must reimburse us for all reasonable costs of the audit if the audit reveals either underpayment of more than five (5%) percent of the Software fees payable by you for the period audited, or that you have materially failed to maintain accurate records of Software use.

5. SUPPORT SERVICES. Support and subscription services for the Software (“**Support Services**”) are provided pursuant to the Support Services Terms and are not subject to this EULA. You have no rights to any updates, upgrades or extensions or enhancements to the Software unless you separately purchase Support Services, or they are included with your purchase of a license to the Software as provided in the Product Guide.

6. WARRANTIES.

6.1. Software Warranty: Duration and Remedy. We warrant that the Software will, for a period of ninety (90) days following notice of availability for electronic download or delivery (“**Warranty Period**”), substantially conform to the applicable Documentation, provided that the Software: (a) has been properly installed and used at all times in accordance with the applicable Documentation; and (b) has not been modified or added to by persons other than us or our authorized representative. We will, at our own expense and as our sole obligation and your exclusive remedy for any breach of this warranty, either replace the Software or correct any reproducible error in the Software reported by you in writing during the Warranty Period. If we determine that we are unable to correct the error or replace the Software, we will refund the fees paid for that Software, and the License for that Software will terminate.

6.2. Disclaimer of Warranty. OTHER THAN THE LIMITED WARRANTY IN SECTION 6.1, TO THE MAXIMUM EXTENT PERMITTED BY LAW, WE, FOR OURSELVES AND ON BEHALF OF OUR SUPPLIERS, DISCLAIM ALL WARRANTIES WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ANY WARRANTY ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE, RELATING TO THE SOFTWARE AND DOCUMENTATION. NEITHER WE NOR OUR SUPPLIERS WARRANT THAT THE SOFTWARE WILL OPERATE UNINTERRUPTED, THAT IT WILL BE FREE FROM DEFECTS OR ERRORS, OR THAT IT WILL MEET (OR IS DESIGNED TO MEET) YOUR BUSINESS REQUIREMENTS.

7. INTELLECTUAL PROPERTY INDEMNIFICATION.

7.1. Defense and Indemnification. Subject to the remainder of this Section 7, we will: (a) defend you against any Infringement Claim; and (b) indemnify you from all fines, damages, and costs finally awarded against you by a court of competent jurisdiction or a government agency, or agreed to in a settlement, with regard to any Infringement Claim. These obligations are applicable only if you: (i) provide us with notice of the Infringement Claim within a reasonable period after learning of the claim (provided that any delay in providing the notice will relieve us of our indemnification obligations only to the extent that the delay prejudices us); (ii) allow us sole control over the defense and settlement of the Infringement Claim; and (iii) reasonably cooperate in response to our requests for assistance with regard to the Infringement Claim. We will not, without your prior written consent, which may not be unreasonably withheld, conditioned, or delayed, enter into any settlement of any Infringement Claim that obligates you to admit any liability or to pay any unreimbursed amounts to the claimant. You may not settle or compromise any Infringement Claim without our prior written consent.

7.2. Remedies. If the Software becomes, or in our opinion is likely to become, the subject of an Infringement Claim, we will, at our option and expense: (a) procure the rights necessary for you to keep using the Software; or (b) modify or replace the Software to make it non-infringing; or (c) terminate the License to the affected Software and discontinue the related Support Services, and, upon your certified

deletion of the affected Software, refund: (i) for a Perpetual License, the fees paid for the License to the affected Software, less straight-line depreciation over a three (3) year useful life beginning on the date of Delivery of the Software and any unused, prepaid fees for Support Services, or (ii) for Subscription Software, any prepaid fees, prorated for the remaining portion of the then-current Subscription Term.

7.3. Exclusions. We will have no obligation under this Section 7 or otherwise with respect to any Infringement Claim based on: (a) combination of the Software with non-vmmax products or content; (b) use for a purpose or in a manner for which the Software was not designed; (c) use of any older version of the Software when use of a newer version would have avoided the infringement; (d) any modification to the Software other than those made by us or with our express written approval; (e) any claim that relates to open source software or freeware technology or any derivative or other adaptations thereof that is not embedded by us into the Software; or (f) any Software provided on a no charge, beta, or evaluation basis.

7.4. TO THE EXTENT PERMITTED BY APPLICABLE LAW, THIS SECTION 7 STATES YOUR SOLE AND EXCLUSIVE REMEDY AND OUR ENTIRE LIABILITY FOR ANY INFRINGEMENT CLAIMS.

8. LIMITATION OF LIABILITY.

8.1. Disclaimer. TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT WILL WE BE LIABLE FOR ANY LOST PROFITS OR BUSINESS OPPORTUNITIES, LOSS OF USE, LOSS OF CONTENT OR DATA FOR ANY REASON (INCLUDING POWER OUTAGES, SYSTEM FAILURES, OR OTHER INTERRUPTIONS), LOSS OF REVENUE, LOSS OF GOODWILL, BUSINESS INTERRUPTION, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES UNDER ANY THEORY OF LIABILITY, WHETHER BASED IN CONTRACT, TORT, NEGLIGENCE, PRODUCT LIABILITY, OR OTHERWISE. THIS LIMITATION WILL APPLY REGARDLESS OF WHETHER A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF THOSE DAMAGES AND REGARDLESS OF WHETHER ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE. BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE FOREGOING LIMITATION MAY NOT APPLY.

8.2. Cap on Monetary Liability. OUR LIABILITY FOR ANY CLAIM UNDER THIS EULA WILL NOT EXCEED THE GREATER OF THE LICENSE FEES YOU PAID FOR THE SOFTWARE GIVING RISE TO THE CLAIM OR \$5000.

8.3. Exclusions. THE LIMITATION OF LIABILITY IN SECTIONS 8.1 AND 8.2 WILL NOT APPLY TO (i) OUR INDEMNIFICATION OBLIGATIONS UNDER SECTION 7 OF THIS EULA OR (ii) ANY LIABILITY WHICH MAY NOT BE EXCLUDED BY LAW.

8.4. Further Limitations. Our suppliers have no liability of any kind under this EULA. You may not bring a claim directly against any of them under this EULA. Our liability with respect to any third-party software embedded in the Software is subject to this Section 8. You may not bring a claim under this EULA more than eighteen (18) months after the cause of action arises.

9. TERMINATION.

9.1. EULA Term. The term of this EULA begins on Delivery of the Software and continues until this EULA is terminated in accordance with this Section 9.

- 9.2. Termination for Cause.** We may terminate this EULA effective immediately upon written notice to you if: (a) any payment due under this EULA is not received within ten (10) days after receiving our written notice that payment is past due; (b) you materially breach any other provision of this EULA and fail to cure within thirty (30) days after receipt of our written notice of the breach; (c) you materially breach any provision of this EULA in a manner that cannot be cured; or (d) you terminate or suspend your business.
- 9.3. Termination for Insolvency.** We may terminate this EULA effective immediately upon written notice to you if you become insolvent, admit in writing your inability to pay your debts as they mature, make an assignment for the benefit of creditors, become subject to control of a trustee, receiver or similar authority, or become subject to any bankruptcy or insolvency proceeding.
- 9.4. Effect of Termination.** Upon termination of this EULA: (a) all Licenses to the Software granted to you under this EULA will immediately end; (b) you must stop all use of the Software and return to us or certify destruction of the Software and License Keys (including copies), and (c) you must return or, if we request, destroy, any of our or our suppliers' Confidential Information in your possession or under your control (other than information that must be retained pursuant to law). Any provision that, by its nature and context is intended to survive termination or expiration of the EULA, will survive, including Sections 1.6 (Open-Source Software), 2 (Restrictions; Ownership), 4 (Records and Audit), 6.2 (Software Disclaimer of Warranty), 8 (Limitation of Liability), 9 (Termination), 10 (Confidential Information), 12 (General), 13 (Definitions), and 14 (Terms Applicable to U.S. Federal End Users). Except as otherwise expressly provided in this EULA or as required by applicable law or regulation, termination of this EULA will not entitle you to any refunds, credits, or exchanges.

10. CONFIDENTIAL INFORMATION.

- 10.1. Protection.** Either party may use Confidential Information of the other party disclosed to it in connection with this EULA to exercise its rights and perform its obligations under this EULA or as otherwise permitted by this EULA. The Recipient will disclose the Discloser's Confidential Information only to the Recipient's employees or contractors who have a need to know the Confidential Information for purposes of this EULA and who are under a duty of confidentiality no less restrictive than as specified in this Section 10. Recipient will protect the Discloser's Confidential Information from unauthorized use, access, or disclosure in the same manner as the Recipient protects its own confidential or proprietary information of a similar nature but with no less than reasonable care.
- 10.2. Exceptions.** The Recipient's obligations under Section 10.1 with respect to any of the Discloser's Confidential Information will terminate if the Recipient can demonstrate that the information: (a) was already rightfully known to the Recipient at the time of disclosure by the Discloser without any obligation of confidentiality; (b) was disclosed to the Recipient by a third party who had the right to make that disclosure without any confidentiality restrictions; (c) is, or through no fault of the Recipient has become, generally available to the public; or (d) was independently developed by Recipient without access to or use of Discloser's Confidential Information. In addition, the Recipient will be allowed to disclose Confidential Information to the extent that disclosure is required by law or by order of a court or similar judicial or administrative body of competent jurisdiction, provided that the Recipient notifies the Discloser of the required disclosure promptly and in writing and cooperates with the Discloser, at the Discloser's request and expense, in any lawful action to contest or limit the scope of the required disclosure.
- 10.3. Injunctive Relief.** Nothing in this EULA limits either party's ability to seek equitable relief.

- 11. ACCOUNT, OPERATIONS AND USAGE DATA.** We collect your contact information and information about your purchase to manage your account and fulfill your Orders. We also process (a) information necessary to facilitate the delivery of the Software, including verifying compliance with the terms of this EULA, invoicing, and providing Support Services, and (b) Software configuration, performance, and usage data for the purposes of improving vmmax CLOUD products and services and user experience, and other analytics purposes as set forth in the Product Guide. To the extent any of that data includes information which identifies an individual, we will process that information in accordance with vmmax's Privacy Notice available at <https://vmmax.cloud/privacy>

12. GENERAL.

- 12.1. Transfers; Assignment.** Except to the extent transfer may not legally be restricted you must not assign this EULA, any Order, or any right or obligation pursuant to this EULA, or delegate any performance under this EULA, without our prior written consent, which consent will not be unreasonably withheld, conditioned, or delayed. Any other attempted assignment or transfer by you will be void. We may use our Affiliates or other suppliers to provide services to you, provided that we remain responsible to you for the performance of the services.

- 12.2. Notices.** Any notice by us to you under this EULA will be given: (a) by email to the email address associated with your account, if you have subscribed to this method of receiving notices; or (b) by posting in the vmmx portal. You must direct legal notices or other correspondence to vmmx CLOUD, Ziegelstrasse 9, 72285 Pfalzgrafenweiler, Germany. Attention: Legal Department.
- 12.3. Waiver.** Waiver of a breach of any provision of this EULA will not constitute a waiver of any later breach of that provision, or waiver of a breach of any other provision.
- 12.4. Severability.** If any part of this EULA is held to be invalid or unenforceable, all remaining provisions will remain in force to the extent feasible to effectuate the intent of the parties.
- 12.5. Compliance with Laws.** Each party must comply with all laws applicable to the actions contemplated by this EULA.
- 12.6. Construction.** The headings of sections of this EULA are for convenience and are not to be used in interpreting this EULA. As used in this EULA, the word “including” means “including but not limited to”.
- 12.7. Language.** This EULA is in English, and the English language version governs any conflict with a translation into any other language.
- 12.8. Governing Law.** If your billing address is in the United States, this EULA is governed by the laws of the State of California and the federal laws of the United States. If your billing address is outside the United States, this EULA is governed by the laws of Ireland. Conflict of law rules are expressly disclaimed. The U.N. Convention on Contracts for the International Sale of Goods does not apply.
- 12.9. Third-Party Rights.** Other than as expressly provided in this EULA, this EULA does not create any rights for any person who is not a party to it, and only persons who are parties to this EULA may enforce any of its terms or rely on any exclusion or limitation contained in it.
- 12.10. Order of Precedence.** In the event of conflict or inconsistency among the Product Guide, this EULA and the Order, the following descending order of precedence applies unless otherwise set forth in an enterprise license agreement: (a) the Product Guide, (b) this

EULA and (c) the Order. This EULA supersedes any conflicting or additional terms and conditions of any purchase order, acknowledgement or confirmation, or other document issued by you for or regarding the Software.

- 12.11. Entire Agreement.** This EULA, together with all accepted Orders and the Product Guide, contains the entire agreement of the parties with respect to the subject matter of this EULA and supersedes all previous or contemporaneous communications, representations, proposals, commitments, understandings and agreements, whether written or oral, between the parties regarding its subject matter. This EULA may be amended only in a writing signed by authorized representatives of both parties.

13. DEFINITIONS.

- 13.1. “Affiliate”** means, with respect to a party at a given time, an entity that is directly or indirectly controlled by, is under common control with, or controls that party, where “control” means an ownership, voting, or similar interest representing fifty percent (50%) or more of the total interests outstanding of that entity.
- 13.2. “Confidential Information”** means information or materials provided by one party (“**Discloser**”) to the other party (“**Recipient**”) which is in tangible form and labelled “confidential” or the like, or information which a reasonable person knew or should have known to be confidential. The following information is considered our Confidential Information whether or not marked or identified as such: (a) License Keys; (b) information regarding our pricing, product roadmaps or strategic marketing plans; and (c) non-public materials relating to the Software.
- 13.3. “Delivery”** means either delivery of the physical media (if applicable) or the date you are notified of availability for electronic download.
- 13.4. “Documentation”** means that documentation that we generally provide with the Software, as revised by us from time to time, and which may include end user manuals, operation instructions, installation guides, release notes, and on-line help files regarding the use of the Software.
- 13.5. “Guest Operating Systems”** means instances of third-party operating systems licensed by you, installed in a Virtual Machine, and run using the Software.
- 13.6. “Infringement Claim”** means any claim by a third party that the Software infringes any patent, trademark or copyright of that third party, or misappropriates a trade secret (but only to the extent that the

misappropriation is not a result of your actions) under the laws of: (a) the United States; (b) Canada; (c) the European Economic Area; (d) the United Kingdom; (e) Australia; (f) New Zealand; (g) Japan; or (h) the People's Republic of China, to the extent that those countries are part of the Territory for the License.

- 13.7. "Intellectual Property Rights"** means all worldwide intellectual property rights, including copyrights, trademarks, service marks, trade secrets, know how, inventions, patents, patent applications, moral rights, and all other proprietary rights, whether registered or unregistered.
- 13.8. "License"** means a license granted under Section 1.1 (General License Grant).
- 13.9. "License Key"** means a serial number that enables you to activate the Software.
- 13.10. "License Term"** means the duration of a License as specified in the Order.
- 13.11. "Open-Source Software" or "OSS"** means software components embedded in the Software and provided under separate license terms, which can be found either in the open_source_licenses.txt file.
- 13.12. "Order"** means a purchase order, enterprise license agreement, or other ordering document for Software governed by this EULA, issued by you to us or to your vmmax CLOUD partner and is accepted by us as set forth in Section 3 (Order).
- 13.13. "Perpetual License"** means a License to the Software with a perpetual term.
- 13.14. "Product Guide"** means the current version of the vmmax Product Guide at the time of your Order.
- 13.15. "Support Services Terms"** means our then-current support policies.
- 13.16. "Software"** means the vmmax computer programs listed on our commercial price list to which you acquire a license under an Order, together with any related software code we provide pursuant to a support and subscription service contract and that is not subject to a separate license agreement.
- 13.17. "Subscription Software"** means Software that is licensed for a specific term ("**Subscription Term**").
- 13.18. "Territory"** means the country or countries in which you have been invoiced, except as otherwise provided in the Product Guide. If the Territory for your Software includes any European Economic Area member states or the United Kingdom, you may deploy that Software throughout the European Economic Area and the United Kingdom.
- 13.19. "Third-Party Agent"** means a third-party delivering information technology services to you pursuant to a contract with you.
- 13.20. "User"** means an employee, contractor, or Third-Party Agent that you have authorized to use the Software as permitted under this EULA.
- 13.21. "Virtual Machine"** means a software container that can run its own operating system and execute applications like a physical machine.
- 13.22. "vmmax", "We", or "Us"** means vmmax CLOUD a registered company in Germany.
- 13.23. "You"** means you individually or the legal entity that you represent. If you are entering into the EULA for an entity, you represent that you have the authority to bind that entity.