

## ThinPrint End User License Agreement (EULA)

".print Engine for VMware View"

### Important!

Please read the following ThinPrint End User License Agreement as well as the license conditions for MICROSOFT VISUAL C++ 2005 RUNTIME LIBRARIES attached as Appendix A (hereinafter jointly referred to as "**EULA**") carefully before installation and/or use of the Software ".print Engine for VMware View", its possibly integrated add-on programs and any media, material, online or electronic documentation (hereinafter jointly referred to as "**Software**").

Upon installation, copying or any other use of the Software you declare your consent with the conditions of the EULA and agree to comply with them.

If you install the Software as an administrator or other member of staff of a company entitled to installations and/or if you make the Software available to users after installation, you also declare your consent with the conditions of the EULA and agree to comply with them.

If you, however, do not agree with the conditions of the EULA, you are not entitled to install, make available and/or use the Software.

### 1. General terms

The EULA constitutes a valid contract between ThinPrint AG, Alt-Moabit 91a/b, 10559 Berlin, Germany (hereinafter referred to as "**ThinPrint**") and a legal or natural person who themselves or their staff install and use the Software (hereinafter referred to as "**End User**") exclusively defining all rights and duties of the End User and ThinPrint in regard to the Software.

### 2. Definitions

- (1) "**Device**" means any hardware operating system unit including both real and virtual units.
- (2) "**Server**" means any devices which primarily provide services and functions/applications for other devices.
- (3) "**End Device**" means any devices which primarily request services and functions/applications from a Server.
- (4) "**Cluster**" means a group of independent Servers which outwards appear as a single Server and work jointly to balance the workload for networked End Devices and Server applications onto several Servers and to increase the availability of applications and Services. Upon increase of the workload Clusters can be scaled by adding additional Servers. Cluster servers are referred to as hosts or nodes and are connected physically and by software. Upon failure of one node, the remaining nodes cover the function of the failed node.
- (5) "**Named User**" means a defined individual (physical Named User) using the Software. Processes which are initiated mechanical-automatically and not by an individual (logical Named User) are counted as Named User if such processes use or access the Software. If several physical Named Users access the Software via one logical Named User, the number of physical Name Users is decisive for the overall number of required Named User licenses. A single Named User licenses may not be deployed concurrently on several Devices. Sharing of a single Named User license between more than one physical and/or logical Named User is expressly prohibited. A single Named User license may only be transferred onto another Named User, if the original Named User does not and cannot use the Software anymore. The license key to a single Named User license may only be installed and activated on one Server. Clusters are an exception to this rule .

### 3. Rights of use

- 3.1 Within the framework of the EULA, ThinPrint grants End User the non-transferable, revocable, regionally limited and non-exclusive right to install and use the Software and its possibly integrated add-on programs according to the technical documentation provided with the Software. The Software may be used and installed on an End Device, Server or a Server farm in accordance with the number of licenses included with the Software. **The criteria described in this EULA for the correct licensing (number and type of required licenses) remain applicable and decisive, even if the technical license verification of the Software permits a different number and/or type of licenses. The stipulations of this EULA are exclusively relevant.** End User is entitled to make a copy of this Software in accordance with the EULA after the installation or – instead of the copy – to create an image of the End Device or Server on which the Software has been installed. Such copy or image may only be used and stored for archiving and reinstallation purposes of the Software on the same End Device, Server or Server farm without the requirement of additional licensing. Additional copies and/or images require additional licensing of the Software according to this EULA. All trademarks and copyrights and any other legal notes relating to the rights of ThinPrint must be included and remain in such copy or image.
- 3.2 End User is not entitled to make additional partial or complete copies or images of the Software and its add-on programs other than permitted under section 3.1, to copy in any way, to translate or to dismantle parts of the Software, to change the arrangement or to make any other changes and/or amendments or to make copies of such changes. End User is not allowed other than in the legally permitted boundaries to reverse engineer, to decompile or to disassemble the Software. End User is not entitled to distort the contents of the Software, to change its color, pattern and fonts or to split or in any other way alter the elements of the logo, copyright and trademark details.

- 3.3 End User is not entitled to cede, sublicense, sell or in any other way assign the rights and duties granted to him under the EULA.
- 3.4 If End User receives the Software on more than one storage system, End User is only entitled to install and use the Software contained on one of the mediums only. It is generally prohibited to install and use the Software contained on the second medium on another End Device, Server or Server farm. The Restrictions in 3.2 and 3.3 remain applicable.
- 3.5 If the Software is an Update of a previous version and if End User has purchased the Update as part of an Update Service, End User is only entitled to install and use the Update, if he/she is in possession of a valid license for the previous version marked compatible for Update by ThinPrint. End User must be aware that the Update replaces the previous version and/or its supplements and may deactivate it.
- 3.6 If the Software has been marked "NFR" (Not For Resale), the use of the Software is limited to demo, test or evaluation purposes only. Any further use is prohibited. End User is especially not entitled to resell the Software or make it available for third parties in any other way.
- 3.7 Any other rights of ThinPrint not explicitly asserted above remain unaffected.

#### **4. Transmission of the Software onto 2<sup>nd</sup> Computer, Disclosure to Third Parties**

- 4.1 The Software itself may at no time be sold, loaned, rented or made available in any other way to Third Parties.
- 4.2 End User is only entitled to install the Software on a second computer, server or server farm, if the Software, after its transmission onto the second computer, server or server farm has been completely and permanently removed and/or cancelled from the first computer, server or server farm. Upon installation of the Software onto the second computer, server or server farm, all other parts of the Software, including but not limited to its add-on programs, descriptions, media and other printed materials, also must be transferred. All persons having access to the second computer, server or server farm and therefore to the Software must be sufficiently informed of the contents and the individual conditions of the EULA.

#### **5. Licensing**

- 5.1 Licenses for the Software, including demo licenses for the Software, are initially valid for 30 days. In general, all licenses for the Software are valid exceeding the 30-day-period only upon final activation by ThinPrint. ThinPrint may refuse activation, if the matching license key does not entitle to the use of the Software as installed. Notwithstanding the above to the contrary, demo licenses cannot be used or activated beyond the 30-day-period. Corporate Licenses constitute another exception to the general rule of activation as they require a duly executed separate Corporate License Agreement in which End User is the designated licensee prior to activation by ThinPrint.
- 5.2 Valid license keys entitle End User to use the Software in the current version at the time of purchase.
- 5.3 By accepting the EULA, End User agrees to complete all details necessary for the activation process truthfully and completely.

#### **6. Software Components**

The Software .print Engine for VMware View may be installed on any Server which serves as a printserver in conjunction with one or more End Devices. Only "VMware View" virtual machines (using VMware View Manager) may be used as End Devices. All VMware virtual machines which initiate .print-printjobs directly or indirectly via such Servers must each be equipped with an individual, valid license for the .print Engine for VMware View. If the .print Engine for VMware View is installed on several printservers, the purchased licenses must be separately divided onto the printservers. However, it is possible to split up individual license keys according to the licensing packages offered by ThinPrint. The deployment of the .print Engine for VMware View on Clusters requires an individual, valid license for the .print Server Engine per Cluster; .print-Access-licenses and licenses for the .print Engine for VMware View may be activated more than once (multiple activation).

#### **7. Intellectual Properties, Trademarks, and Copyrights of the Software**

The Software, its entire contents (including but not limited to pictures, photos, animations, video, audio, music, text and "Applets"), any contents accessible through the Software, and copies thereof are protected by any and all available national and international copyrights, commercial protection rights, especially patent rights, utility patent, design patent and trade rights and all other existing protection rights of the Software, its improvements, bug fixes and extensions or any other modifications to the Software, regardless of their origin. By accepting the EULA, End User is obliged to use and observe all of the aforementioned rights regarding the Software which ThinPrint or Third Parties are entitled to as stipulated and defined in the EULA and not to infringe or violate such rights including in particular that no content must be copied or in any other way multiplied, stored, sold or passed on in any way, nor – apart from the Software itself (compare section 3 above) – be used. End User is entitled to print a documentation of the Software, if the documentation is only provided in electronic format. End User may multiple copies of all printed materials accompanying the Software for internal use.

#### **8. Warranty**

- 8.1 The Software only has to perform those functions mentioned and described in the manual without error.
- 8.2 The General Terms and Conditions of ThinPrint remain applicable.

## **9. Liability**

- 9.1 ThinPrint tests the Software and validates its general suitability. If damages occur to End User during the installation or use of the Software, ThinPrint is liable completely and to twice the value of the purchase price of said Software, but not exceeding in any case a total sum of EUR 50,000, if said damages are directly caused by improper and/or incomplete testing or improper or incomplete test of suitability. Liability for slight negligence of ThinPrint is limited to damages that have been foreseeable or should have been foreseeable. ThinPrint assumes no liability for indirect or atypical damages (consequential or otherwise) or for any financial losses such as loss of profits or savings caused by slight negligence. This limitation of liability does not apply in cases of bodily injury, impairment of health, death and infringement of cardinal contractual obligations.
- 9.2 If End User does not make any adequate (at least daily), reasonable and common to the current state-of-the-art backup of his data in the interest of data security, or – in case of suspected Software errors – fails to take reasonable and adequate security measures, End User has to accept contributory negligence regarding resulting damages.
- 9.3 ThinPrint is only liable for damages arising to End User within the context of or due to the Software download process from the ThinPrint website or during the installation process. ThinPrint specifically does not guarantee freedom from computer viruses, so that ThinPrint can not be held liable for any damage arising from computer viruses. In fact, End User is specifically obliged to use sufficient and always up-to-date protection against computer viruses and to actively prevent infiltration by computer viruses, in particular before End User starts downloading the Software.
- 9.4 ThinPrint assumes no liability for the information and the Software “.print Engine for VMware View” regarding defects of quality or title, particularly for the accuracy, correctness, freedom of third-party trademark rights and copyrights, completeness and/or usability, except for cases of gross negligence or malice traceable to ThinPrint.
- 9.5 The product liability of ThinPrint remains unaffected.

## **10. Forfeiture**

If End User or his employees and/or representatives violate any rights and/or obligations arising from the EULA, especially rights of use, ThinPrint is entitled to request End User to immediately abandon the use of the Software and its copies and to delete or return the Software and its copies to ThinPrint. ThinPrint reserves any rights to claim for damages.

## **11. Transfer of Rights**

End User may not assign or transfer the EULA and the rights and obligations arising hereof to a third party without previous written permission of ThinPrint, unless End User and the third party are in a state of dependence as defined in § 17 of the German Stock Companies Act (AktG) or the third party takes over all or almost all assets of the End User by written contract. The permission as defined in sentence 1 may be denied given significant causes. Significant cause is particularly given, if the fulfillment of rights and obligations under the EULA are endangered due to such transfer.

## **12. Scope of the EULA**

The EULA exclusively stipulates all rights of use of the Software as well as any other right and/or obligation of End User and ThinPrint, as long as deviant written agreements and conditions individually agreed between the Parties do not exist. The EULA supersedes any and all previous oral or written agreements, information or offers concerning the Software. The EULA is only binding in the official German and English language versions as provided by ThinPrint AG. End Users may not assert claims, regardless of their nature, against ThinPrint AG based on any other language version of the EULA.

## **13. Place of Jurisdiction/Applicable Law**

The EULA and its implementation shall be construed and interpreted in accordance with German Law. Any terms of the CISG (United Nations Convention on Contracts for the International Sale of Goods) are applicable, if and insofar as they include mandatory law. If End User is an entrepreneur as defined in § 14 BGB (German Civil Code), the courts at ThinPrint's headquarter in Berlin, Germany shall have the sole jurisdiction to hear any disputes arising from or in connection with this EULA. If End User is a consumer as defined in § 13 BGB, the courts at End User's residence shall have the sole jurisdiction according to § 13 ZPO (German Code of Civil Procedure).

## **14. Severability Clause**

If any one or more of the provisions contained in the EULA shall, for any reason, be, become or be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect the remaining provisions of the EULA, but the EULA shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein, unless the deletion of such provision or provisions would result in such a material change so as to cause completion of the transactions completed herein to be unreasonable. In lieu of such invalid, illegal or unenforceable provision shall be added a provision similar in terms to such provision as may be valid, legal and enforceable and suiting the Parties contractual interests best.

**ThinPrint AG, 10559 Berlin**

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## **Appendix A**

### MICROSOFT SOFTWARE LICENSE TERMS

#### MICROSOFT VISUAL C++ 2005 RUNTIME LIBRARIES

These license terms are an agreement between Microsoft Corporation (or based on where you live, one of its affiliates) and you. Please read them. They apply to the software named above, which includes the media on which you received it, if any. The terms also apply to any Microsoft

- \* updates,
- \* supplements,
- \* Internet-based services, and
- \* support services

for this software, unless other terms accompany those items. If so, those terms apply.

By using the software, you accept these terms. If you do not accept them, do not use the software.

If you comply with these license terms, you have the rights below.

1. **INSTALLATION AND USE RIGHTS.** You may install and use any number of copies of the software on your devices.

2. **SCOPE OF LICENSE.** The software is licensed, not sold. This agreement only gives you some rights to use the software. Microsoft reserves all other rights. Unless applicable law gives you more rights despite this limitation, you may use the software only as expressly permitted in this agreement. In doing so, you must comply with any technical limitations in the software that only allow you to use it in certain ways. You may not

- \* disclose the results of any benchmark tests of the software to any third party without Microsoft's prior written approval;
- \* work around any technical limitations in the software;
- \* reverse engineer, decompile or disassemble the software, except and only to the extent that applicable law expressly permits, despite this limitation;
- \* make more copies of the software than specified in this agreement or allowed by applicable law, despite this limitation;
- \* publish the software for others to copy;
- \* rent, lease or lend the software;
- \* transfer the software or this agreement to any third party; or
- \* use the software for commercial software hosting services.

3. **BACKUP COPY.** You may make one backup copy of the software. You may use it only to reinstall the software.

4. **DOCUMENTATION.** Any person that has valid access to your computer or internal network may copy and use the documentation for your internal, reference purposes.

5. **EXPORT RESTRICTIONS.** The software is subject to United States export laws and regulations. You must comply with all domestic and international export laws and regulations that apply to the software. These laws include restrictions on destinations, end users and end use. For additional information, see [www.microsoft.com/exporting](http://www.microsoft.com/exporting).

6. **SUPPORT SERVICES.** Because this software is "as is," we may not provide support services for it.

7. **ENTIRE AGREEMENT.** This agreement, and the terms for supplements, updates, Internet-based services and support services that you use, are the entire agreement for the software and support services.

8. **APPLICABLE LAW.**

a. **United States.** If you acquired the software in the United States, Washington state law governs the interpretation of this agreement and applies to claims for breach of it, regardless of conflict of laws principles. The laws of the state where you live govern all other claims, including claims under state consumer protection laws, unfair competition laws, and in tort.

b. **Outside the United States.** If you acquired the software in any other country, the laws of that country apply.

9. LEGAL EFFECT. This agreement describes certain legal rights. You may have other rights under the laws of your country. You may also have rights with respect to the party from whom you acquired the software. This agreement does not change your rights under the laws of your country if the laws of your country do not permit it to do so.

10. DISCLAIMER OF WARRANTY. The software is licensed "as-is." You bear the risk of using it. Microsoft gives no express warranties, guarantees or conditions. You may have additional consumer rights under your local laws which this agreement cannot change. To the extent permitted under your local laws, Microsoft excludes the implied warranties of merchantability, fitness for a particular purpose and non-infringement.

11. LIMITATION ON AND EXCLUSION OF REMEDIES AND DAMAGES. You can recover from Microsoft and its suppliers only direct damages up to U.S. \$5.00. You cannot recover any other damages, including consequential, lost profits, special, indirect or incidental damages.

This limitation applies to

\* anything related to the software, services, content (including code) on third party Internet sites, or third party programs; and

\* claims for breach of contract, breach of warranty, guarantee or condition, strict liability, negligence, or other tort to the extent permitted by applicable law.

It also applies even if Microsoft knew or should have known about the possibility of the damages. The above limitation or exclusion may not apply to you because your country may not allow the exclusion or limitation of incidental, consequential or other damages.