



End User License Agreement Terms for Reseller Agreement

License. Subject to this End User License Agreement (hereafter "Agreement"), and provided that Customer has fully paid for the applicable software license, Panasas grants to Customer a non-exclusive, non-transferable, limited license to use the specified Panasas Product software ("Software") solely for its own internal business purposes on Panasas Product hardware owned or leased and operated exclusively by Customer. Such license is subject to Customer (A) having fully paid for the applicable software license, if Customer has purchased the Panasas Product hardware, or (B) continuing to pay the periodic license and other fees due under the lease, if Customer is leasing the Panasas Products. The term of this license is (A) perpetual, if Customer has purchased the Panasas Product hardware; and (ii) limited to the lease term covering the Panasas Products, if the Panasas Products are leased by Customer. All other rights are expressly reserved by Panasas. The Software is the copyrighted, proprietary, and confidential property of Panasas and/or its licensors and all right, title and interest in and to the Software, and the intellectual property rights thereof, including but not limited to all patent, copyright, trademark, trade secret and derivative rights are owned by, belong to and remain with Panasas and/or its licensors, and not Customer. Customer shall maintain the Software in strict confidence and shall not sell, resell, distribute, transfer, publish, disclose, rent, lend, lease, assign, or sublicense the Software or make the Software available through time sharing or managed services, in whole or in part. Customer shall not, and shall not permit any other person to, disassemble, decompile, reverse engineer, reverse compile, modify, translate or create derivative works based on the Software, or attempt any action to derive source code from the Software. Customer shall not copy the Software except for an archival or backup copy for the Software provided that such copies must be reproduced with all of Panasas's and its Licensor's/Supplier's protective notices. Customer agrees to insure compliance by its employees, agents, and authorized users with respect to its obligations under this Agreement. Customer agrees not to take any action, including without limitation the application, prosecution, registration or enforcement of a trademark, copyright or patent that shall in any way preclude Panasas and/or its licensors from continuing to develop, use or commercialize the Software or the functions, methods, routines or algorithms performed in such software, and/or any updates thereto, and nothing shall be construed in this agreement to impair, preclude or prohibit Panasas and/or its licensors from doing so, even if suggestions, specifications and the like, made by Customer, are incorporated into subsequent versions of the Software and/or Panasas Product hardware platforms. Customer agrees not to distribute the Software in any manner. The Software provided by Panasas is licensed to Customer and does not constitute a sale.

Term Of License. This license set forth above is effective until terminated. Customer may terminate this license at any time by destroying all copies of the Software and related documentation. The license will terminate automatically if Customer fails to comply with any term or condition of this Agreement, including any attempt to transfer a copy of the Software to another party except as provided in this Agreement. Customer agrees upon such termination that it will destroy all copies of the Software and related documentation.

Limited Warranty. Panasas warrants that the Software will substantially comply with Panasas's written descriptions of the functionality of such Software for a period of ninety (90) days from the date Customer receives it and provided Customer installs the Software and accepts the associated EULA terms, provided that Panasas is notified in writing of any material non-conformity within such 90-day period. Customer's sole and exclusive remedy for any breach of this warranty is for Panasas to undertake reasonable efforts to correct any material non-conformity, to provide replacement Software that has the described functionality, or to permit return of the Software and the associated Panasas Product(s) so that Customer may obtain a refund. Panasas does not warrant that the Software will meet Customer's requirements or that the operation of the Software will be uninterrupted or error-free. PANASAS EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES IN RELATION TO THE SOFTWARE, EITHER EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT. Some jurisdictions do not allow the limitation or exclusion of warranties, so the above limitation or exclusion may not apply.

Customer's Obligations. Customer shall provide to Panasas access to the Software, Hardware and Customer equipment and employees, and shall otherwise cooperate with Panasas as reasonably necessary for Panasas to verify compliance with and enforce this Agreement and for Panasas perform any warranty obligations it may have. Customer shall maintain e-mail and HTTP, SMTP and FTP access as specified by Panasas for remote access to the Software by Panasas to verify compliance with and enforce this Agreement and for Panasas perform any warranty obligations it may have.



LIMITATION OF LIABILITY. PANASAS'S LIABILITY ARISING OUT OF THIS AGREEMENT OR SALE OF THE PANASAS PRODUCTS SHALL BE LIMITED TO THE AMOUNT PAID BY THE CUSTOMER FOR THE PANASAS PRODUCTS. IN NO EVENT SHALL PANASAS BE LIABLE TO CUSTOMER OR ANY OTHER PERSON OR ENTITY FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, PUNITIVE, UNFORESEEABLE OR INDIRECT DAMAGES OR LOSSES (INCLUDING, WITHOUT LIMITATION, LOSS OF ANTICIPATED PROFITS, LOSS OF BUSINESS OR REVENUE, LOSS OR INACCURACY OF INFORMATION OR DATA, COST OF RECOVERING SOFTWARE OR DATA, LOSS OF USE, COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES, OR TECHNOLOGY, LOST EMPLOYEE TIME, OR LOST OPERATIONAL SAVINGS OR COSTS), HOWEVER CAUSED OR ARISING, ON ANY THEORY OF LIABILITY (INCLUDING WITHOUT LIMITATION ANY ACTIONS OR CLAIMS ARISING IN CONTRACT, WARRANTY, TORT, NEGLIGENCE, PRODUCT LIABILITY, STRICT LIABILITY, OR OTHERWISE), AND WHETHER OR NOT PANASAS HAS BEEN ADVISED OF OR AWARE OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. PANASAS EXPRESSLY DISCLAIMS, AND CUSTOMER AGREES, THAT PANASAS SHALL HAVE NO LIABILITY OF ANY KIND FOR ANY THIRD PARTY PRODUCT OR SERVICE. The limitations of liability set forth in this Agreement reflect a deliberate and bargained for allocation of risks between Customer and Panasas and constitute the basis of the Parties' bargain, without which Customer and Panasas would not have agreed to the terms and conditions of this Agreement.

Indemnity. Panasas will indemnify and hold Customer harmless or settle any claim against Customer that the Software covered by these license terms infringe any U.S. copyright or U.S. registered trademark. If such a claim appears likely, Panasas may modify the Software, procure any necessary license, replace it, or terminate this Agreement and refund to Customer the amounts paid to Panasas by Customer for the Panasas Product(s) the use of which is impaired or enjoined, limited to actual money paid to Panasas by Customer for such Panasas Product(s), depreciated over a three- (3-) year period beginning on the date such amounts are paid, using a straight-line method. Panasas's obligation to indemnify, hold harmless and/or settle a claim pursuant to this section is subject to Customer (a) giving Panasas prompt written notice of any such claim; (b) giving Panasas sole control over the defense and settlement of any such claim; (c) Customer providing reasonable cooperation for the defense of any such claim, at Panasas's expense; and (d) Customer not entering into any settlement or compromise of any such claim without Panasas's prior written approval. Panasas's obligations under this section shall not apply to any claim resulting from or based on (aa) modification of any Panasas Product or deliverable by Customer or any third party, (bb) use of the particular Panasas Product and/or deliverable, or any part thereof, in combination with hardware, software or products not supplied by Panasas where but for such combination there would be no claim, (cc) use of an allegedly infringing version or release of the Software or related hardware Panasas Product, if the alleged infringement could have been avoided by the use of a different version or release made available to Customer by Panasas, (dd) Panasas's compliance with Customer's designs, specifications or instructions, (ee) Panasas's use of technical information or technology provided by Customer, or (ff) use of Panasas Product(s) not authorized by or in contravention of Panasas's specifications and/or recommendations. **THESE TERMS STATE PANASAS'S ENTIRE LIABILITY FOR ANY AND ALL CLAIMS OF INTELLECTUAL PROPERTY INFRINGEMENT.**

Intellectual Property. Customer hereby recognizes that, except as otherwise provided in this Agreement, Customer has no other Intellectual Property Rights in the Panasas Products. Except for rights specifically provided in this Agreement, Customer hereby assigns to Panasas all other Intellectual Property Rights it may now or hereafter possess in the Panasas Products, and all derivative works and improvements thereof, and agrees to execute all documents, and take all actions, that may be necessary to confirm such rights. Customer also agrees to retain all proprietary marks, legends and patent and copyright notices that appear on the Panasas Products as shipped to Customer and all whole or partial copies thereof. "Intellectual Property Rights" as used herein means all forms of legal rights and protections in any country of the world, including all right, title and interest arising under common and statutory law to all: (i) letters patents, provisional patents, design patents, utility patents, PCT filings and other rights to patents, inventions or designs; (ii) trade secret and equivalent rights in confidential or proprietary information and know-how; (iii) copyrights, mask works, moral rights or other literary property or authors rights; (iv) rights regarding trade names, logos, domain names, URLs, trademarks, service marks and other proprietary indicia or addresses and all goodwill associated therewith; (v) trade secrets; (vi) any similar, corresponding or equivalent rights relating to intellectual property; and (vii) all applications, registrations, issuances, divisions, continuations, renewals, reissues and extensions of the foregoing.

Legal Compliance, Use And Export Requirements. The rights and obligations of Customer shall be subject to such United States laws and regulations as shall from time to time govern the license and delivery of technology abroad by persons subject to the jurisdiction of the United States, including the Export Administration Act of 1979, as amended, any successor legislation to the Export Administration Act of 1979, and the Export Administration regulations issued by the Department of Commerce, International Trade Administration, Office of Export Administration. Customer shall not, directly or indirectly, export, reexport or transship the Panasas Products or any parts or copies thereof in such manner as to violate such laws and regulations in effect from time to time. Customer shall indemnify and hold harmless Panasas from and against any and all losses, claims and expenses incurred by Panasas as a result of the breach of Customer's obligations under this section. Customer agrees, represents, warrants and guarantees that it shall follow strictly the export and use restrictions and requirements as set forth on www.panasas.com, and as may be revised from time to time by Panasas in accordance with applicable law including without limitation the laws of the United States of America and that it shall not allow access to or use of any technical assistance or technology related to the Panasas Products or resell the Products to any nationals from any of the following countries: Cuba, Iran, Iraq, Libya, North Korea, Sudan or Syria, without obtaining any legally required export approvals in accordance with United States laws and any other applicable laws. Customer shall not allow access to or use of the any technical assistance or technology related to the Panasas Products by, or reselling the Panasas Products to, the Taliban, or to any individuals or entities who benefit the Taliban, and/or any terrorists or terrorist supporting individuals and/or entities, wherever located.

U.S. Government Restricted Rights. The Software constitutes commercial technical data and/or computer data bases and/or commercial computer software and/or commercial computer software documentation as defined in the applicable provisions of the Federal Acquisition Regulations ("FAR") and supplements thereto, including but not limited to the Department of Defense ("DOD") FAR Supplement ("DFARS"). The Software was developed exclusively at private expense by Panasas, Inc. and no part of the Software was first produced in the performance of a Government contract. The Software is provided with and classified as "Commercial Computer Software" and acquired only with "Restricted Rights," and is "restricted computer software," and any use, duplication, or disclosure by the Government is subject to the applicable FAR provisions, including but not limited to those set forth in subsection (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 for DOD procurements, and/or subparagraphs (c)(1) and (2) of the Commercial Computer Software-Restricted Rights at FAR (48 CFR) 52.227-19, and any applicable agency FAR supplements for non-DOD procurements. Use, duplication or disclosure by the Government is subject to the restrictions set forth in such sections and any and Panasas's Software license(s). All other use is prohibited. Contractor/manufacturer is Panasas, Inc., 969 W. Maude Ave., Sunnyvale, California 94085. "Government" as used herein means the government of the United States of America and all its departments, agencies, and all other subdivisions and entities.

Applicable Law; Disputes. This Agreement may not be assigned by Customer or by operation of law without Panasas's express written approval. This Agreement shall be governed in all respects by the laws of the State of California, and where applicable the United States, (excluding principles of conflicts of law), as if this Agreement were executed in and to be wholly performed in California; any judicial action with respect to this Agreement shall be filed in the federal or state courts located in Santa Clara County, California, and each of the parties hereto irrevocably consent to the personal jurisdiction and venue of such courts. Panasas and Customer each hereby irrevocably waive any and all claims and defenses either might otherwise have in any action or proceeding in any of such courts based upon any alleged lack of personal jurisdiction, improper venue, *forum non conveniens* or any similar claim or defense. Notwithstanding the foregoing, Panasas may bring an action in any court of competent jurisdiction to enforce and/or to enjoin the infringement of its Intellectual Property Rights.

General. This Agreement may be executed in counterparts; signed copies of this Agreement sent via facsimile shall have the same legal effect as original documents. The prevailing party in any action arising from or related to this Agreement shall be entitled to its reasonable attorneys' fees and costs. Failure to require performance of any provision or waiver of a breach of a provision does not waive a party's right to subsequently require full and proper performance of that provision or this Agreement. If any provision of this Agreement is declared invalid, the remainder of this Agreement will continue in full force and effect. Each party is acting as an independent contractor and not as an agent, partner, or joint venturer with the other party for any purpose. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement. The parties agree that a material breach of this Agreement would cause irreparable injury to Panasas for which monetary damages would not be an adequate remedy and Panasas shall be entitled to equitable relief and remedies in addition to any legal remedies it may have without the requirement to establish the inadequacy of any legal remedy and without the requirement to post any bond. The United Nations Convention on Contracts for the International Sale of Goods is hereby excluded.