

Vamp Software License and Services Agreement

THIS SOFTWARE LICENSE AND SERVICES AGREEMENT (“**AGREEMENT**”) IS BETWEEN VAMP.IO BV (“**VAMP**”), A DUTCH CORPORATION HAVING A PLACE OF BUSINESS AT RAAMGRACHT 8, 1011 KK AMSTERDAM AND THE PARTY AGREEING TO THE TERMS OF THIS AGREEMENT (“**CUSTOMER**”). THIS AGREEMENT CONTAINS THE TERMS FOR USE OF VAMP’S SOFTWARE BY CUSTOMER, AND THE TERMS FOR PROVIDING SUPPORT AND PROFESSIONAL SERVICES BY VAMP TO CUSTOMER. BY ISSUING AN ORDER THAT REFERENCES THIS AGREEMENT, CLICKING AN “ACCEPT” OR SIMILAR BUTTON ON THE VAMP WEBSITE (WWW.VAMP.IO), OR OTHERWISE DOWNLOADING OR USING THE SOFTWARE, CUSTOMER AGREES TO BE BOUND BY THE TERMS OF THIS AGREEMENT. CUSTOMER CANNOT USE THE SOFTWARE WITHOUT AGREEING TO THIS AGREEMENT FIRST. IF A WRITTEN AGREEMENT REGARDING CUSTOMER’S USE OF THE SOFTWARE EXISTS BETWEEN AND HAS BEEN EXECUTED BY BOTH VAMP AND CUSTOMER, THE TERMS OF THAT WRITTEN AGREEMENT SHALL TAKE PRECEDENCE OVER THIS AGREEMENT.

1. Definitions

“**Affiliate**” means, with respect to a party, any entity which directly or indirectly Controls, is Controlled by, or is under common Control with such party.

“**Confidential Information**” has the meaning set forth in Section 10.

“**Control**” means ownership or control, directly or indirectly, of more than 50% of the voting interests of the subject entity.

“**Customer**” means the Party entering into this Agreement.

“**Customer Product**” means the product that Vamp will create, develop and/or deliver as part of Professional Services to be rendered to Customer by Vamp.

“**Documentation**” means the description of the Software, Support Services and Professional Services purchased by Customer, as stated on <https://vamp.io/support/>.

“**Effective Date**” means the effective date referenced on the initial Order or if no effective date is referenced, the date of the initial Order.

“**Fees**” mean the fees payable by Customer for the License, Support and/or Professional Services, as specified in an Order and, if applicable, a SOW.

“**Free Software**” means any open source or free software components that may be part of the Software and Vamp Materials.

"Intellectual Property Rights" means all intellectual property rights, whether registrable or unregistrable, registered or unregistered, including any (right of) application for such rights. These Intellectual Property Rights include but are not limited to copyright and related rights, database rights, confidential information, trade secrets, know-how, business names, trade names, trade-marks, service marks, patents, models, semi-conductor topography rights and rights in designs;

"License" means a license, provided by Vamp as licensor to a Customer, for use of the Software under the terms of this Agreement.

"Order" means a written or online order for Licenses, Support Services or Professional Services, in a form acceptable to Vamp, specifically incorporating this Agreement by reference.

"Professional Services" means the specific work requested and identified in an Order and further specified in a SOW, not being Support Services.

"Software" means any Vamp software programs (in object code format) licensed by Vamp to Customer together with all Updates, as further described in the Documentation and an Order.

"Software Warranty" means Vamp's warranty to Customer that the Software performs substantially in accordance with all material aspects as described in the Documentation, as further specified in clause 9.

"SOW" means a statement of work, defining the scope, deliverables, timelines, fees and payment schedule for the agreed Professional Services.

"Support Services" means the installation, configuration, implementation, training and/or ongoing support as described in section 6, to be provided by Vamp to Customer, as requested and specified in an Order. Vamp may offer different plans for Support Services, available in combination with a specific License edition.

"Taxes" means any direct or indirect local, national or foreign taxes, levies, duties or similar governmental assessments of any nature, including value-added, sales, use or withholding taxes.

"Term" means, with respect to a License or Support Services plan, initially twelve (12) months, commencing on the Effective Date, which may be extended pursuant to Section 13. A License provided on trial or pilot basis may have a different Term, as specified in an Order.

"Updates" means all Software updates and enhancements that Vamp generally makes available at no additional charge to its customers of the Software licensed hereunder, provided that the customers have fulfilled their payment obligations towards Vamp.

"Users" means Customer's and its Affiliates' employees, agents, contractors, and consultants who are authorized by Customer to use the Software.

2. License

1. Subject to the terms of the Agreement, Vamp grants Customer and its Affiliates a non-exclusive, non-transferable (except to a successor in interest as permitted hereunder) License to use the Software listed in an Order during the Term. Vamp offers Licenses for different editions of the Software, as described in an Order and the Documentation.
2. Customer's rights to use the Software are further limited in accordance with the restrictions contained in an Order and the Documentation.
3. The License granted in clause 2.1 does not apply to Free Software that may be part of the Software. Upon Customer's request, Vamp shall provide a list of Free Software included in the Software, if any. Free Software is licensed to Customer directly by the Free Software's rights holders, under their applicable license terms. To the extent such terms prohibit any of the restrictions in this Agreement, such restrictions will not apply to the Free Software.

3. Updates

1. Updates may consist of:
 - a) Software edition updates, fixes, security alerts and critical patch updates.
 - b) Tax, legal and regulatory updates (availability may vary by country and/or edition of the Software).
 - c) Upgrade scripts (availability may vary by edition of the Software).
 - d) Certification with most new third-party products/versions (availability may vary by Software edition).
 - e) Major product and technology releases, if and when made available at Vamp's discretion, which may include general maintenance releases, selected functionality releases and documentation updates.

4. Customer responsibilities

1. Customer is responsible for all activities conducted under its User logins. In addition, Customer is responsible for obtaining and maintaining any customer premise equipment, ancillary software and/or services needed to connect to, access or otherwise use the Software.

2. Customer shall use the Software solely for its internal business purposes, in compliance with this Agreement and applicable law, and shall not:
 - a) Resell, sublicense, lease, time-share or otherwise make the Software available to any third party;
 - b) Process, send, or store infringing or unlawful material using the Software;
 - c) Attempt to gain unauthorised access to, or disrupt the integrity or performance of the Software or the data contained therein;
 - d) Modify, copy or create derivative works based on the Software
 - e) Reverse engineer, decompile, or otherwise attempt to derive source code from any portion of the Software; or
 - f) Use the Software, or permit them to be used, for purposes of product evaluation, benchmarking or other comparative analysis intended for publication without Vamp's prior written consent.
3. Customer is responsible for monitoring Customer's use of the Software. Customer acknowledges and agrees to proactively share information regarding Customer's use of the Software for License compliance and Support purposes. This information includes the report of Vamp usage statistics provided in the Vamp Enterprise Edition Usage Dashboard. Based on this reported usage report, Vamp will calculate monthly fees. Usage statistics are measured based on the amount of vCPU controlled by Vamp Gateway Agents.
4. Customer will send the information described in 4.3 monthly via email to vampusage@vamp.io, ultimately on the 28th day for the previous month. If no usage is received by the 28th of the month, Vamp will assume the usage to be equal to the previous month. When usage is received the highest reported amount is assumed for the whole of the previous missing period(s).

5. Professional Services

1. Vamp will provide Professional Services as specified in and at the rates set forth in an Order and the SOW. The SOW begins on the start date, and shall remain in effect for the term length stated in the SOW. Vamp will start with delivering the Professional Services on the start date mentioned in the SOW.
2. Customer acknowledges that Vamp's performance of the Professional Services is contingent on Customer's timely collaboration and delivery of required materials in connection with the Professional Services.

3. Vamp will assign the personnel that performs the Professional Services. Vamp may use Vamp Affiliates or other sufficiently qualified contractors to provide the Professional Services to Customer, provided that Vamp shall remain responsible to Customer for the performance thereof. Customer may request Vamp, with specific reasons stated, to replace personnel or contractors assigned by Vamp, whereby Vamp's consent is not to unreasonably withheld.
4. Vamp is not obligated to provide Professional Services as long as Customer is not current on payment of all Fees due to Vamp under this Agreement.
5. Professional Services shall be performed by Vamp from 9:00 A.M. until 5:00 P.M. in the local time zone where the Professional Services are being performed by Vamp, Monday through Friday excluding local statutory holidays, and any additional holidays that Vamp grants to its employees.

6. Support Services

1. Vamp offers its Customers different Support Services plans, as described in the Documentation. The Support Services plan ordered by Customer, if any, is listed on the Order and delivered by Vamp in accordance with the terms of this Agreement and Vamp's Support Services Terms and Conditions as made available on: www.vamp.io/downloads/support-T&Cs.
2. Vamp is not obligated to provide the Support Services as long as Customer is not current on payment of all fees due to Vamp under this Agreement.
3. Customer will follow the appropriate process to place service requests for Support in accordance with the applicable Support Services plan. Details of the process for service requests can be found in the Vamp Service Support Terms & Conditions.

7. Ownership

1. Customer shall retain all ownership rights regarding Customer's data passing through, stored by or generated by the Software.
2. Vamp shall have and retain all Intellectual Property Rights regarding the Software.
3. Vamp can use any suggestions, enhancement requests, recommendations, or other feedback provided by Customer or its Users relating to the operation of the Software, without any obligations or restrictions, including intellectual property rights.

4. Vamp will remain the owner of any Intellectual Property Rights associated with the products developed and delivered by Vamp to Customer in the course of performing Professional Services, unless specifically agreed otherwise in the Order and SOW. Vamp hereby grants Customer a non-exclusive, worldwide, perpetual, royalty-free license to use these products in the course of its regular business, with no right to grant sub-licenses, subject to Customer's payment in full under the SOW.
5. Unless otherwise agreed in a SOW, Free Software may be included in, or necessary for Customer to use the Customer Products, but is excluded from Customer's ownership rights. Vamp may (a) obtain the necessary licenses for Free Software on Customer's behalf, (b) incorporate Free Software in the Customer Product, and (c) submit back to open source libraries any improvements made to the Free Software during the course of performing the Professional Services, to the extent such submissions do not violate the confidentiality obligations set forth in article 11.
6. Materials (including tools that are used to deliver the Professional Services) that are not owned or created by Vamp, other than Free Software, may be included in, or necessary for Customer to use the Customer Product, but are excluded from Customer's ownership rights. Customer is solely responsible for obtaining the necessary licenses to these third-party materials and liable for their use.
7. No license, right or interest in any Vamp or Customer trademark, copyright, trade name or service mark is granted hereunder.

8. Fees

1. The Fees for the License and Support Services are as stated in the Order. These Fees are due on monthly basis, and Vamp will charge these to Customer with a monthly invoice made available to Customer at the start of each month. The first invoice for Licenses and Support Services plans is sent on the Effective Date for (the remainder of) that month.
2. Upon the acceptance of an Order by Vamp, payment obligations are non-cancelable and upon payment, all payments made by Customer are non-refundable.
3. In the event Customer places additional Orders for Licenses and/or Support Services during the Term of an already ordered License, the Term of the additional Licenses and Support Services plans ordered will follow the Term of the earlier License ordered and the following anniversary of the Effective Date will be the same for all Licenses and Support Services plans ordered.
4. If Customer is late in providing the information on its use of the Software, as described in article 4, for the period that Customer is late in providing the information Vamp, Vamp can charge Customer the Fees based on the highest actual usage during that period, as specified in article 4.4.

5. The Fees for Professional Services as stated in the Order and SOW are an indication only and based on Vamp's best estimate at the time of the Order. Vamp will charge Customer the Fees for Professional Services against the applicable rates stated in the Order and SOW, through an invoice sent at the end of each calendar month, based on actual time and material spent during that month. Vamp will notify customer if it becomes clear that there will be a significant difference between the Fees as quoted in the Order and SOW, and the Fees already invoiced and still expected to be due based on actual time and material spent. If necessary, Parties will then discuss in good faith, and agree on, a revised scope and planning of the Professional Services.
6. As exception to article 8.5, Vamp will charge Customer for the Professional Services based on a fixed price and/or payment schedule if this is explicitly stated and agreed upon in the Order and SOW.
7. Vamp's standard payment term for its invoices is 30 days.
8. In the event Customer is late with payment of Fees, Vamp will inform Customer about late payment. Customer will then have 10 business days before failure and late payment can be claimed by Vamp and suspension or late charges can be executed.
9. Any payment of Fees not received from Customer by the due date may accrue (except for amounts then under reasonable and good faith dispute) late charges at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date of payment in full.
10. Failure to make payments in accordance with this Section may result in suspension of Customer's ability to access the Software and/or receive Support until payment is made in full.
11. Unless explicitly stated otherwise, the Fees stated in the Documentation, Order and/or SOW are excluding of any taxes. Customer is responsible for paying all applicable taxes, including VAT, associated with its purchases hereunder.
12. Vamp may increase or decrease the Fees annually as per January 1st of each new year. Then, the adjusted Fees will apply for all existing Licenses and Support Services as per January 1st, provided that Vamp notifies Customer about the change of the Fees ultimately on November 1st in the current year. In addition, Vamp may increase or decrease the Fees as per the anniversary of the Effective Date, provided that Vamp notifies Customer about the change of the Fees ultimately [60] days prior to the anniversary of the Effective Date.
13. Vamp will not increase the Fees for the enterprise edition of the License with more than 3% per year.

9. Warranties

1. Each Party represents and warrants that it:
 - a) Has the legal power to enter into and perform under this Agreement; and
 - b) Shall comply with all other applicable laws in its performance hereunder.
2. Vamp warrants that it will provide the Support Services and Professional Services in a professional and workmanlike manner consistent with good industry standards and practices. As Customer's sole and exclusive remedy and Vamp's entire liability for any breach of the foregoing warranties, Vamp will re-perform the Support Services and Professional Services, or, if Vamp is unable to do so, return the Fees paid to Vamp for such deficient Support Services and Professional Services.
3. The Software Warranty applies as of the Effective Date after delivery of the Software licensed hereunder. The Software Warranty does not apply to Software that: (a) has been (partially) installed or modified by another party than Vamp, without prior written authorization from Vamp to do so or (b) has been used in a manner other than as authorized under the Agreement. As Customer's sole and exclusive remedy and Vamp's entire liability for any breach of the foregoing warranty, Vamp will repair or replace any nonconforming Software so that it operates as warranted or, if Vamp is unable to do so, terminate the License for such Software and return the unused License Fees paid to Vamp for the nonconforming Software. Any claim submitted under this Section 9.3 must be submitted in writing to Vamp within the specified warranty period.
4. Customer represents and warrants to Vamp that (a) Customer owns or controls all rights in and to all Customer information and materials provided by or on behalf of Customer to Vamp pursuant to a SOW, including all rights to exploit all such Customer information and materials worldwide without encumbrance or restriction. Customer grants to Vamp a non-exclusive, non-transferable, worldwide license to make, use, modify, reproduce, and prepare derivative works of Customer information and materials, solely for the purpose of performing the Professional Services, with no right to grant sub-licenses.
5. Each Party represents and warrants that it will collect, maintain and handle all personal data received from the other Party in compliance with all applicable data privacy and protection laws. Vamp does not store personal data from Customer and its users of the Software on Vamp systems. As such, Vamp does not control nor process such personal data. The Software runs on Customer systems and Customer is responsible for managing the user personal data and complying with the relevant data protection regulation.

6. Except as expressly provided herein, neither Party makes any warranties of any kind, whether implied, statutory or otherwise, including any warranties of fitness for a particular purpose. Vamp does not warrant the operation of the Software and results of the Support Services and Professional Services will be uninterrupted or error-free.

10. Indemnity

1. Vamp shall defend, indemnify and hold Customer harmless against any loss, damage or costs (including reasonable attorneys' fees) incurred in connection with claims or proceedings ("Claims") made or brought against Customer by a third party alleging that the use of the Software infringes intellectual property rights of such third party, provided that Customer (a) promptly gives written notice of the Claim to Vamp; (b) gives Vamp sole control of the defence and settlement of the Claim (provided that Vamp may not settle any Claim unless it unconditionally releases Customer of all liability); and (c) provides to Vamp, at Vamp's cost, all reasonable assistance.
2. Vamp may, at its sole option and expense: (i) procure for Customer the right to continue using the Software under the terms of this Agreement; (ii) replace or modify the Software to be non-infringing without material decrease in functionality; or (iii) if the foregoing options are not reasonably practicable, terminate the License for the infringing Software and refund Customer the prepaid fees for the remainder of the then-current Term after the date of termination.
3. Vamp shall have no liability for any Claim to the extent the Claim is based upon (i) the use of the Software in combination with any other product, service or device not furnished, recommended or approved by Vamp, if such Claim would have been avoided by the use of the Software, without such product, service or device; or (ii) Customer's use of the Software other than in accordance with this Agreement.
4. The provisions of this Section 10 set forth Vamp's sole and exclusive obligations, and Customer's sole and exclusive remedies, with respect to infringement or misappropriation of third party intellectual property rights of any kind.

11. Confidentiality

1. As used herein, "Confidential Information" means all confidential and proprietary information of a Party ("Disclosing Party") disclosed to the other party ("Receiving Party"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure, including the terms and conditions of this Agreement (including pricing and other terms reflected under this Agreement), the Software, Documentation, business and marketing plans, technology and technical information, product designs, and business processes. Confidential Information shall not include any information that:

- a) Is or becomes generally known to the public without breach of any obligation owed to Disclosing Party;
 - b) Was known to Receiving Party prior to its disclosure by Disclosing Party without breach of any obligation owed to Disclosing Party;
 - c) Was independently developed by Receiving Party without breach of any obligation owed to Disclosing Party; or
 - d) Is received from a third party without breach of any obligation owed to Disclosing Party.
2. Receiving Party shall not disclose any Confidential Information of Disclosing Party for any purpose outside the scope of this Agreement, except with Disclosing Party's prior written consent. Receiving Party shall protect the confidentiality of Disclosing Party's Confidential Information in the same manner that it protects the confidentiality of its own confidential information of like kind (but in no event using less than reasonable care). Notwithstanding the foregoing, Vamp may use, for its business purposes, usage data generated by the use of the Software in anonymized format.
3. Receiving Party shall promptly notify Disclosing Party if it becomes aware of any actual or reasonably suspected breach of confidentiality of Disclosing Party's Confidential Information.
4. If Receiving Party is compelled by law to disclose Confidential Information of Disclosing Party, Receiving Party shall provide Disclosing Party with prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at Disclosing Party's cost, if Disclosing Party wishes to contest the disclosure.
5. The confidentiality obligations as described in this Section 11 will survive the termination of this Agreement for a period of 3 years.

12. Limitation of liability

1. Except: (a) for Party's indemnification obligations as described in article 10; (b) for Customer's failure to pay any of the Fees due under this Agreement; (c) in the event of either Party's unauthorized use, violation of the other Party's Intellectual Property Rights; or (d) either Party's material breach of section 11 (Confidentiality), in no event shall either Party's aggregated liability arising out of this Agreement exceed the Fees paid to Vamp during 12 months prior to when the claim accrued.
2. Except with respect to claims regarding violation of Vamp's Intellectual Property Rights, in no event a Party will have any liability towards the other Party for any lost profits or for any indirect, special, incidental, punitive or consequential damages however caused and whether or not the Party has been advised of the possibility of such damages.

13. Term and termination

1. This Agreement commences on the Effective Date and continues until all Licenses granted and Support Services and Professional Service ordered under this Agreement have, as the case may be, expired, delivered or terminated.
2. The Term for Licenses and Support Services plans shall automatically renew, unless Customer terminates a License or Support Services plan against the end of the then-current Term, with at least 30 days prior notice.
3. The terms of this Agreement will apply to Software licensed during a trial or pilot period, as stated in the Order. This Agreement will terminate and Customer's License and right to use the Software will cease at the end of such trial or pilot period unless Parties agree to extend the trial or pilot period or Customer orders a License upon expiration of the trial or pilot period.
4. Customer can terminate the Licenses and Support Services per January 1st of the coming year in case Vamp has informed Customer of an increase of the Fees as per that date in accordance with article 8.11, provided that Vamp received notice from Customer specifying the License(s) and Support Services plan(s) to be terminated, ultimately on November 30th of the current year.
5. A Party may terminate this Agreement for cause: (a) upon 30 days written notice to the other Party of a material breach of this Agreement if such breach remains uncured at the expiration of such period; (b) immediately upon written notice if the other Party becomes the subject of a bankruptcy, insolvency, receivership, liquidation, assignment for the benefit of creditors or similar proceeding; and (iii) as otherwise provided herein.
6. The Parties' rights and obligations under Sections 7, 8, 9.4, 10, 11, 12 13.3, 13.4 and 14 shall survive termination of this Agreement.
7. Within 30 days after termination of this Agreement, Customer shall remove and destroy all copies of the Software, Updates, and Documentation in any form. Vamp and Customer can agree to extend this period upon agreement on License terms and Fees covering this extension period.

14. General

1. The Parties are independent parties, and no partnership, franchise, joint venture, agency, fiduciary or employment relationship between the Parties is created hereby. There are no third-party beneficiaries to this Agreement.
2. Notices shall be in writing with email permitted.

3. Each Party, with prior approval which shall not be unreasonably withheld, may include the other's name in its customer or vendor lists.
4. No amendment or waiver of any provision of this Agreement shall be effective unless in writing and signed by Customer and Vamp. To the extent of any conflict between this Agreement and any other schedule or attachment, this Agreement shall prevail unless expressly stated otherwise.
5. No failure or delay in exercising any right hereunder shall constitute a waiver of such right. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, such provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions shall remain in effect.
6. Neither Party shall be liable to the other for any delay or failure to perform hereunder (excluding payment obligations) due to a natural disaster, actions or decrees of governmental bodies or communications line failure which (a) hinders, delays or prevents a Party in performing any of its obligations, and (b) is beyond the control of, and without the fault or negligence of, such Party, and (c) by the exercise of reasonable diligence such Party is unable to prevent or provide against ("Force Majeure Event).
7. Neither Party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other (not to be unreasonably withheld). Notwithstanding the foregoing, either Party may assign this Agreement in its entirety, without consent of the other Party, to its successor in interest in connection with a merger, re-organization, or sale of all or substantially all assets or equity not involving a direct competitor of the other Party. Any attempted assignment in breach of this Section shall be void. This Agreement shall bind and inure to the benefit of the Parties, their respective successors and permitted assigns.
8. This Agreement shall be governed exclusively by the laws of the Netherlands. The United Nations Convention on Contracts for the International Sale of Goods shall not apply. The Parties hereby consent to the exclusive jurisdiction of the courts located in Amsterdam, The Netherlands, for resolution of any disputes arising out of this Agreement.