

VistaDB End User License Agreement

Last Updated: 1/24/2014

THIS END USER LICENSE AGREEMENT THIS IS A LEGAL BINDING AGREEMENT. PLEASE READ IT CAREFULLY.

By clicking "I agree," installing, copying, or otherwise using any part of the Software or any associated media, any printed materials, or any online or electronic documentation, you agree to be bound by the terms of this EULA. If you do not agree to the terms of this EULA, promptly return the Software prior to installation and within 45 days of purchase for a full refund.

License Grant

VistaDB (the "Software") and accompanying documentation is licensed and not sold. This Software is protected by copyright laws and treaties, as well as laws and treaties related to other forms of intellectual property. Gibraltar Software, Inc. (formerly eSymmetrix, Inc.), a Maryland corporation, or its suppliers, owns the title, copyright, and intellectual property rights in the Software. The Licensee's ("you" or "your") license to download, use, copy, or change the Software is subject to these rights and to all the terms and conditions of this End User License Agreement ("Agreement"). All rights not specifically granted in this EULA, including Federal and International Copyrights, are reserved by Gibraltar Software.

A VistaDB Site License entitles all developers working at a single business address (including telecommuters) to use VistaDB to build Developed Software. Binary copies of the VistaDB engine may be embedded within your Developed Software and redistributed royalty-free. VistaDB source code may not be redistributed. In addition to redistributing the VistaDB engine, VistaDB customers may also redistribute the Data Migration Wizard tool with their applications to assist their end-users with data migration. The Data Migration Wizard will not require activation by end-users.

Any LICENSE purchased by a corporation or entity other than an individual may only be assigned to individuals that are employed by or on contract to that entity or organization. Any LICENSE purchased under the [VistaDB MicroISV Program](#) is subject to additional restrictions which are incorporated herein by reference.

In addition, you may make archival copies of the Software Product. The archival copies may only be used for the reinstallation of the Software Product.

Mandatory Product Activation

The license rights granted under this Agreement may be limited to the first thirty (30) days after you first install the Software unless you supply information required to activate your licensed copy in the manner described during the setup sequence of the Software. You will need to activate the Software through the use of the Internet. There are technological measures in this Software that are designed to prevent unlicensed or illegal use of the Software. You agree that Gibraltar Software may use those measures and you agree to follow any requirements regarding such technological measures. You may also need to reactivate the Software if you modify your computer hardware, alter the Software, or install the Software on another computer. Product activation is based on the exchange of information between your computer and Gibraltar Software. The information gathered is used solely for the purposes of uniquely identifying the computer where the product is being run and to provide the license holder with tracking information. No data collected during this process will be shared by Gibraltar Software with any

third party except you.

Use of the Software Product

You may use the Software for your own personal or internal business purposes. Personal or internal business purposes includes the installation of the Software and activation on one or more personal computers, servers, or virtual servers.

You may reassign/migrate this Software to a different device owned, leased, or rented by you subject to Gibraltar Software' approval in its reasonable discretion, provided that you completely uninstall or delete the Software from any personal computer, server, virtual server, or other device on which the Software was previously installed. Gibraltar Software reserves the right to require, in its reasonable discretion, reauthorization, re-registration, or another form of authentication at no additional charge to enable reassignment of the Software, and may disable the related License Key and/or access to the Software Feature Selections if it determines, in its sole discretion, that such reassignment is prohibited by the terms of this EULA or constitutes fraud.

Restrictions on Transfer

Without first obtaining the express written consent of Gibraltar Software, you may not assign your rights and obligations under this Agreement, or redistribute, encumber, sell, rent, lease, sublicense, or otherwise transfer your rights to the Software Product.

Restrictions on Use

You may not decompile, "reverse-engineer", disassemble, or otherwise attempt to derive the source code for the Software Product.

Restrictions on Alteration

You may not modify the Software Product or create any derivative work of the Software Product or its accompanying documentation. Derivative works include but are not limited to translations. You may not alter any files or libraries in any portion of the Software Product other than configuration files and sample programs provided as part of the documentation included with the Software Product.

Non-Compete

Licensee may not use Software Product to create products, technologies, software applications, web services in whole or in part, that directly compete with this Software Product.

Competes is defined as creating or distributing software or services that provide similar or same functionality as this Software Product. This includes writing software that exposes all or part of the Software API. Gibraltar Software reserves the right to revoke all rights and license privileges of Licensee immediately upon any such infringement. Upon notice of infringement, Licensee agrees to immediately destroy all copies of Software and remove Software and references to Software from all products, technologies and software applications.

Limited Software Product Warranty

For a period of 45 days from the date you purchase this license to the Software Product, Gibraltar Software warrants that when properly installed and used under normal conditions, the Software Product will perform substantially as advertised.

Disclaimer of Warranties and Limitation of Liability

UNLESS OTHERWISE EXPLICITLY AGREED TO IN WRITING BY GIBRALTAR SOFTWARE, GIBRALTAR SOFTWARE MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, IN FACT OR IN LAW, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OTHER THAN AS SET FORTH IN THIS AGREEMENT OR IN THE LIMITED WARRANTY DOCUMENTS PROVIDED WITH THE SOFTWARE PRODUCT.

Gibraltar Software makes no warranty that the Software Product will meet your requirements or operate under your specific conditions of use. Gibraltar Software makes no warranty that operation of the Software Product will be secure, error free, or free from interruption. YOU MUST DETERMINE WHETHER THE SOFTWARE PRODUCT SUFFICIENTLY MEETS YOUR REQUIREMENTS FOR SECURITY AND UNINTERRUPTABILITY. EXCEPT AS SET FORTH HEREIN, YOU BEAR SOLE RESPONSIBILITY AND ALL LIABILITY FOR ANY LOSS INCURRED DUE TO FAILURE OF THE SOFTWARE PRODUCT TO MEET YOUR REQUIREMENTS. ESYMMETRIX WILL NOT, UNDER ANY CIRCUMSTANCES, BE RESPONSIBLE OR LIABLE FOR THE LOSS OF DATA ON ANY COMPUTER OR INFORMATION STORAGE DEVICE.

UNDER NO CIRCUMSTANCES SHALL EITHER PARTY, ITS TRUSTEES, DIRECTORS, OFFICERS, EMPLOYEES OR AGENTS BE LIABLE TO THE OTHER PARTY FOR INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, PUNITIVE, OR EXEMPLARY DAMAGES OF ANY KIND (INCLUDING LOST REVENUES OR PROFITS OR LOSS OF BUSINESS) RESULTING FROM THIS AGREEMENT, OR FROM THE FURNISHING, PERFORMANCE, INSTALLATION, OR USE OF THE SOFTWARE PRODUCT, WHETHER DUE TO A BREACH OF CONTRACT, BREACH OF WARRANTY, OR THE NEGLIGENCE OF EITHER PARTY, EVEN IF SUCH PARTY IS ADVISED BEFOREHAND OF THE POSSIBILITY OF SUCH DAMAGES. TO THE EXTENT THAT THE APPLICABLE JURISDICTION LIMITS A PARTY'S ABILITY TO DISCLAIM ANY IMPLIED WARRANTIES, THIS DISCLAIMER SHALL BE EFFECTIVE TO THE MAXIMUM EXTENT PERMITTED.

Limitation of Remedies and Damages

If Gibraltar Software is unable to provide a replacement or substitute Software Product or corrections to the Software Product, your sole alternate remedy shall be a refund of the purchase price for the Software Product exclusive of any costs for shipping and handling. You may request a refund of the purchase price of the Software Product at any time and for any reason or no reason within the warranty period. Upon receiving a refund this license is revoked and all installed copies of the Software Product must be uninstalled and deleted.

Any claim must be made within the applicable warranty period. All warranties cover only defects arising under normal use and do not include malfunctions or failure resulting from misuse, abuse, neglect, alteration, problems with electrical power, acts of nature, unusual temperatures or humidity, improper installation, or damage determined by Gibraltar Software to have been caused by you. All limited warranties on the Software Product are granted only to you and are non-transferable. You agree to indemnify and hold Gibraltar Software harmless from all claims, judgments, liabilities, expenses, or costs arising from your breach of this Agreement and/or acts or omissions.

Governing Law, Jurisdiction and Costs

This Agreement is governed by the laws of Maryland, without regard to Maryland's conflict or choice of law provisions.

Severability

If any provision of this Agreement shall be held to be invalid or unenforceable, the remainder of this Agreement shall remain in full force and effect. To the extent any express or implied restrictions are not permitted by applicable laws, these express or implied restrictions shall remain in force and effect to the maximum extent permitted by such applicable laws.

Miscellaneous

All questions concerning this EULA shall be directed to: Gibraltar Software, Inc., One Corporate Center, 10451 Mill Run Circle, Suite 900, Owings Mills, MD 21117, Attention: General Counsel.

Gibraltar Software, VistaDB and other trademarks contained in the Software are trademarks or registered trademarks of Gibraltar Software, Inc. in the United States and/or other countries. Third party trademarks, trade names, product names and logos may be the trademarks or registered trademarks of their respective owners. You may not remove or alter any trademark, trade names, product names, logo, copyright or other proprietary notices, legends, symbols or labels in the Software. This EULA does not authorize you to use Gibraltar Software's or its licensors' names or any of their respective trademarks.