



SOFTWARE END-USER LICENSE AGREEMENT

This License Agreement is entered into as of the _____, 2014 (the “**Effective Date**”) between **Vena Solutions USA Inc.**, a Delaware corporation, having a principal place of business at 1971 Western Avenue, #1125, Albany, New York, 12203 (“**Licensor**”) and _____, a _____ corporation, having its principal place of business at _____ (“**Licensee**”).

1. DEFINITIONS

As used in this Agreement:

- (a) “**Annual Maintenance Fees**” means the annual fees payable in advance by Licensee to Licensor for the Support Services in respect of a Maintenance Term.
- (b) “**Bugs**” has the meaning set out in Section 9.1.3.
- (c) “**Control**” when used to describe the relationship between two entities means that one entity holds a beneficial interest in the other entity, and “controls” and “controlled by” have corresponding meanings.
- (d) “**Delivery**” has the meaning set out in Section 3.
- (e) “**Documentation**” means the standard user manuals provided to Licensee along with the Licensed Software.
- (f) “**End-User Types**” means the different types of use for an end-user of the Licensed Software, as set out in Exhibit A or an applicable Exhibit.
- (g) “**Executable Code**” means the fully compiled version of a software program that can be executed by a computer and used by an end user without further compilation.
- (h) “**Fees**” means collectively, the License Fees and the Annual Maintenance Fees.
- (i) “**Initial Maintenance Term**” has the meaning set out in Section 9.2.
- (j) “**License Fees**” means the license fees set forth in Exhibit A or an applicable Exhibit.
- (k) “**Licensed Software**” means the software programs described in Exhibit A or an applicable Exhibit, and any modifications, enhancements, updates, releases and versions of such programs that Licensor provides to Licensee pursuant to this Agreement.
- (l) “**Maintenance Effective Date**” means the date the Support Services commence in respect of the applicable Licensed Software, as described in Exhibit A or an applicable Exhibit.
- (m) “**Maintenance Term**” has the meaning set out in Section 9.2.
- (n) “**Renewal Maintenance Term**” has the meaning set out in Section 9.2.
- (o) “**Software Warranty Period**” has the meaning set out in Section 6.1.
- (p) “**Source Code**” means the human-readable version of a software program that can be compiled into Executable Code.

- (q) “**Support Services**” has the meaning set forth in Section 9.
- (r) “**Territory**” means the United States of America and Canada.
- (s) “**Use**” means to directly or indirectly load, execute, access, employ, utilize, store or display the Licensed Software.

2. LICENSE RIGHTS

2.1 License Grant. Subject to the terms and conditions of this Agreement, Licensor hereby grants to Licensee a perpetual, non-exclusive, royalty-free license to Use the Licensed Software: (i) for Licensee’s internal business purposes; (ii) within the Territory; (iii) in accordance with the Documentation; and (iv) in accordance with, and subject to the number of, each of the End-User Types purchased by the Licensee hereunder, as set forth in Exhibit A. Licensee may make copies of the Licensed Software solely for backup or archival purposes. Licensee may use the Documentation solely in connection with its Use of the Licensed Software.

2.2 Restrictions on Use. Licensee acknowledges that the Licensed Software and its structure, organization and Source Code constitute valuable trade secrets of Licensor and/or its licensors. Accordingly, Licensee agrees not to: (a) modify, adapt, alter, or translate the Licensed Software (b) merge the Licensed Software with other software; (c) sublicense, lease, rent, loan, or otherwise transfer the Licensed Software to any third party; (d) reverse engineer, decompile, disassemble, or otherwise attempt to derive the Source Code for the Licensed Software; or (e) otherwise Use or copy the Licensed Software except as expressly allowed under Section 2.1.

2.3 Proprietary Rights. The Licensed Software and Documentation, and all worldwide intellectual property rights therein, are the exclusive property of Licensor and/or its licensors. All rights in and to the Licensed Software and Documentation not expressly granted to Licensee in Section 2.1 are reserved by Licensor. Licensee will not remove, alter, or obscure any proprietary notices (including copyright notices) of Licensor on the Licensed Software or the Documentation.

3. DELIVERY AND ACCEPTANCE

Licensor will deliver to Licensee the Licensed Software via electronic download (“**Delivery**”).

4. PAYMENT TERMS AND AUDIT RIGHTS

4.1 Payment Terms. Licensee will pay to Licensor the Fees as further described in the Exhibits to this Agreement, as and when described in such Exhibits. All payments shall be made in U.S. dollars.

5. CONFIDENTIALITY

Each party (the “Disclosing Party” for the purposes of this Section 0) may from time to time during the term of this Agreement disclose to the other party (the “Receiving Party” for the purposes of this Section 0) certain Confidential Information (as defined below). The Receiving Party shall hold in strict confidence the Confidential Information of the Disclosing Party using the same degree of care which the Receiving Party ordinarily uses with respect to its own Confidential Information, but in no event with less than reasonable care. The Receiving Party shall not use the Confidential Information of the Disclosing Party for any purpose not expressly permitted by this Agreement, and shall limit the disclosure of the Confidential Information of the Disclosing Party to the employees or agents of the Receiving Party who have a need to know such Confidential Information for purposes of this Agreement, and who are, with respect to the Confidential Information of the Disclosing Party, bound in writing by confidentiality terms no less restrictive than those contained herein. For the purposes of this Section 0, “Confidential Information” means any non-public or proprietary information of the Disclosing Party disclosed to the Receiving Party, either directly or indirectly, in writing, orally or by inspection of tangible objects, including product information, client lists, know-how, program concepts, trade secrets and the terms of this Agreement. For greater certainty, the following shall be considered Licensor’s Confidential Information: (a) any information, in whatever form, disclosed by Licensor that relates to the Licensed Software and is non-public; and (b) the Documentation. Confidential Information may also include the information of a third party disclosed to the Disclosing Party under an obligation of confidentiality. Confidential Information, however, shall not include any information which the Receiving Party can establish: (i) was in the public domain prior to the time of disclosure to the Receiving Party by the Disclosing Party; (ii) becomes publicly known after disclosure to the Receiving Party through no action or inaction of the Receiving Party; (iii) is in the possession of the Receiving Party, without confidentiality restrictions, at the time of disclosure to the Receiving Party by the Disclosing Party as shown by the Receiving Party’s files and records immediately prior to the time of disclosure; (iv) is independently developed by the Receiving Party without use of the Confidential Information. If Confidential Information is disclosed pursuant to an order or requirement of a court, administrative agency, or other governmental body, the Receiving Party shall provide prompt notice of its obligation to so disclose to the Disclosing Party prior to disclosing the information and shall use its commercially reasonable efforts to obtain a protective order or

otherwise prevent public disclosure of such information, at the Disclosing Party’s expense.

6. WARRANTIES

6.1 Performance. For a period of sixty (60) days after Delivery (the “**Software Warranty Period**”), Licensor warrants that the Licensed Software, when Used as permitted under this Agreement, will operate substantially as described in the Documentation. Licensor does not warrant the Licensee’s Use of the Licensed Software will be error-free or uninterrupted. Licensor will, at its own expense and as its sole obligation and Licensee’s exclusive remedy for any breach of this warranty, use commercially reasonable efforts to correct any reproducible error in the Licensed Software reported to Licensor by Licensee in writing during the Software Warranty Period or, if Licensor determines that the Licensed Software will not be able to perform as described in the documentation after receiving written notice of such non-performance from Licensee during the Software Warranty Period, Licensor will refund to Licensee all License Fees actually paid to Licensor in respect of the Licensed Software.

6.2 Authority. Licensor represents and warrants that it has the full power and authority to grant the rights granted by it to the Licensee under this Agreement.

6.3 No Malicious Code. Licensor represents and warrants that it does not use any viruses, Trojan horses, worms, and any other software routines or code designed to intentionally disable, erase, or otherwise harm the Software, data, other software or hardware (collectively, “Malicious Code”), when delivered to Licensee.

6.4 Disclaimers. **EXCEPT FOR THE EXPRESS WARRANTIES IN THIS SECTION 6, LICENSOR MAKES NO OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, REGARDING THE LICENSED SOFTWARE, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE.** LICENSEE ACKNOWLEDGES THAT THE LICENSED SOFTWARE IS LICENSED WITH THE UNDERSTANDING THAT LICENSOR IS NOT ENGAGED IN THE BUSINESS OF RENDERING LEGAL, TAX, OR OTHER PROFESSIONAL SERVICES AND THAT THE LICENSED SOFTWARE IS NOT INTENDED TO PROVIDE LEGAL, TAX, OR OTHER EXPERT ADVICE, OR BE A SUBSTITUTE FOR A LAWYER, ACCOUNTANT, OR OTHER PROFESSIONAL. IF LEGAL OR TAX ADVICE OR OTHER EXPERT ASSISTANCE IS NEEDED, THE SERVICES OF A COMPETENT LAWYER, ACCOUNTANT, OR OTHER PROFESSIONAL LICENSED TO PRACTICE IN THE APPLICABLE JURISDICTION SHOULD BE SOUGHT. LICENSEE ACKNOWLEDGES AND AGREES THAT ALL DECISIONS MADE WITH THE ASSISTANCE OR USE OF THE LICENSED SOFTWARE WILL BE EXCLUSIVELY THE RESPONSIBILITY OF THE LICENSEE.

7. LIMITATION ON LIABILITY

IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, EXEMPLARY, SPECIAL OR INCIDENTAL DAMAGES, INCLUDING ANY LOST PROFITS, ARISING FROM OR RELATING TO THIS AGREEMENT. IN NO EVENT WILL EITHER PARTY'S TOTAL CUMULATIVE LIABILITY IN CONNECTION WITH THIS AGREEMENT OR THE LICENSED SOFTWARE, WHETHER IN CONTRACT OR TORT OR UNDER ANY OTHER LEGAL THEORY, EXCEED GREATER OF AMOUNT RECOVERABLE THROUGH AN INSURANCE CLAIM PAYMENT OR THE AMOUNT OF FEES PAID TO LICENSOR HEREUNDER AND LICENSEE ACKNOWLEDGES THAT THE FEES REFLECT THE ALLOCATION OF RISK SET FORTH IN THIS AGREEMENT AND THAT LICENSOR WOULD NOT ENTER INTO THIS AGREEMENT WITHOUT THESE LIMITATIONS ON ITS LIABILITY. NOTWITHSTANDING THE FOREGOING, THE LIMITATIONS ON LIABILITY CONTAINED IN THE PRECEDING SENTENCE SHALL NOT APPLY IN RESPECT OF EITHER PARTY'S NON-DISCLOSURE OBLIGATIONS.

8. TERM AND TERMINATION

8.1 Term. The term of this Agreement will commence on the Effective Date and will continue in full force and effect until terminated pursuant to Section 8.2.

8.2 Termination. Licensor may not terminate this Agreement for any reason (other than those specified below) prior to submitting a claim to a Licensee contracting officer, if Licensor believes that Licensee is in breach of this Agreement, and Licensor agrees to continue the performance of Services under this Agreement during the pendency of this claim: (a) Licensee breaches any material term of this Agreement and does not cure the breach within thirty (30) days after receiving written notice thereof from the non-breaching party; or (b) Licensee becomes insolvent, has a receiver appointed with respect to a material part of its assets, or is the subject of any bankruptcy proceeding that is not dismissed within thirty (30) days of its filing. Licensee may terminate this Agreement at any time upon providing not less than thirty (30) days prior written notice to Licensor, provided that all amounts due from Licensee to Licensor hereunder have been paid in full.

8.3 Effects of Termination. Upon termination of this Agreement for any reason, any amounts other than unused services during the warranty period owed to Licensor or Licensee under this Agreement before such termination will be immediately due and payable, all licensed rights granted in this Agreement will immediately cease to exist, and Licensee must promptly discontinue all Use of the Licensed Software, erase all copies of the Licensed Software from any Licensee computers, and return to Licensor or destroy all copies of the Licensed Software and Documentation on tangible media in Licensee's possession or control and certify in writing to Licensor that it has fully complied with these requirements.

Survival. Sections 1 ("Definitions"), 2.2 ("Restrictions on Use"), 2.3 ("Proprietary Rights"), 0 ("Confidentiality"), 6.4 ("Disclaimers"), **Error! Reference source not found.** ("Indemnity"), 7 ("Liability Limitation"), 8.3 ("Effects of Termination"), and 11 ("General") will survive the termination of this Agreement for any reason.

9. MAINTENANCE AND SUPPORT

9.1 Maintenance and Support Services. Licensor shall provide the Licensee with the following maintenance and support services (the "**Support Services**") in connection with the Licensed Software, subject to the terms and conditions set forth in this Section 9 and so long as the Annual Maintenance Fees are paid by Licensee:

9.1.1 Standard Telephone Support. During normal business hours (9:00 a.m. to 6:00 p.m. U.S. Eastern Standard Time, Monday through Friday, U.S. holidays excepted), Licensor shall provide Licensee technical assistance by telephone with respect to the Use of the Licensed Software, the identification of Licensed Software problems and the reporting of Bugs. Licensee shall designate up to two (2) contacts to request and receive telephone support services from Licensor. Additional Licensee contacts may be designated for \$5,000 per year per additional contact. For greater certainty, standard telephone support does not include assistance with the creation of Licensee applications.

9.1.2 Licensed Software Updates. Licensor shall make available to Licensee each release of the Licensed Software that it makes generally available without additional charge to its maintenance customers for such Licensed Software and which is intended to replace a prior Licensed Software release.

9.1.3 Bug Fixes. Licensor shall exercise commercially reasonable efforts to correct any reproducible malfunction of the Licensed Software reported to Licensor by Licensee that prevents the Licensed Software from performing in accordance with the operating specifications described in the Documentation ("**Bugs**").

9.1.4 Retirement of Releases. The Support Services shall be provided in respect of the Licensed Software version from the date the version becomes generally available until such version is retired.

9.1.5 Exclusions. Licensor shall have no obligation to provide Support Services with respect to or in connection with: (i) Licensed Software which is modified without Licensor's written consent, (ii) Licensed Software which is used by the Licensee other than in accordance with this Agreement or the Documentation, (iii) Licensee's applications, or (iv) Licensed Software installed on any computer hardware or used with any software, not specified in the Documentation.

9.2 Maintenance Term. Licensor shall provide the Support Services to the Licensee for a period of one (1) year commencing on the Maintenance Effective Date (the “**Initial Maintenance Term**”), and may provide renewal terms of one (1) year thereafter (each a “**Renewal Maintenance Term**”), only in the event that the Licensee delivers a written notice of intent to renew the Support Services to the Licensor within than thirty (30) days prior to the end of the Initial Maintenance Term or any Renewal Maintenance Term. Each of the Initial Maintenance Term and each Renewal Maintenance Term shall be referred to herein as a “**Maintenance Term**”.

9.3 Annual Maintenance Fees. Annual Maintenance Fees in respect of the Initial Maintenance Term are set out in Exhibit A. The Annual Maintenance Fees in respect of each Renewal Maintenance Term shall be increased to the Annual Maintenance Fees in respect of the prior Maintenance Term, multiplied by one hundred (100%) percent plus two percent (2%) . Annual Maintenance Fees shall be due and payable as and when provided for in Exhibit A.

9.4 Cessation or Termination of Support Services. In the event this Agreement is terminated, Licensor shall have no further obligation to provide the Support Services.

9.5 Separate Agreement for Other Services. In the event the Licensee requests that the Licensor perform any services outside the scope of the Support Services, the parties agree that such services may be provided for an additional charge pursuant to a separate agreement.

10. TRAINING SUPPORT

The Licensor and Licensee agree that in the event the Licensee wishes for the Licensor to provide training support to Licensee, the terms set out in a separately executed Statement of Work shall govern and the Licensee shall pay the costs and expenses to the Licensor set out therein.

11. GENERAL

11.1 Compliance with Laws. Licensee will comply with all applicable laws, including all export and import control laws and regulations, in its Use of the Licensed Software.

11.2 Assignment and Change in Control. Neither party may assign any of its rights or obligations under this Agreement without the other party’s prior written consent, which shall not be reasonably withheld. The parties acknowledge that if the license granted hereunder is converted from an “End-User type” model to an “Enterprise license” model (which, for greater certainty, is a license which is not limited to a specified number of End-Users), the Licensee must obtain the prior written consent of the Licensor which shall not be reasonably withheld. prior to any change in control of the Licensee or any Affiliate, and in the event of a change in control of the Licensee or any Affiliate without the prior written consent of the Licensor, the license granted hereunder shall be terminated immediately.

11.3 Notices. All notices, consents, and approvals under this Agreement must be delivered in writing by personal delivery, prepaid registered mail (return receipt requested) or facsimile to the other party at the address (or fax number) set forth below. Such a notice, consent or approval will be effective upon receipt, if personally delivered, three (3) business days after being mailed, if mailed by registered mail, or one (1) business day following transmission, if sent by fax (provided a transmission confirmation is obtained). Either party may change its address or fax number by giving notice of the new address or fax number to the other party in accordance with this Section.

11.4 Governing Law and Venue. This Agreement will be governed by applicable Federal law without reference to conflicts of law principles. Any action or proceeding arising from or relating to this Agreement may be brought in a federal district court, and each party irrevocably submits to the jurisdiction and venue of any such court in any such action or proceeding.

11.5 Remedies. Waiver. Any waiver of a provision of this Agreement must be in writing and signed by the party waiving such provision. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

11.6 Severability. If any provision of this Agreement is held to be unenforceable or invalid by any court of competent jurisdiction, the remaining provisions will not be affected and will continue in full force and effect.

11.7 Construction. The naming of Section headings in this Agreement is for convenience of reference only and is not to be used in interpreting this Agreement. As used in this Agreement the word “including” means “including but not limited to”.

11.8 Counterparts. This Agreement may be executed in counterparts, each of which will be considered an original, and all of which together will constitute the same instrument. If this Agreement is executed in counterparts, no signatory shall be bound until both parties have executed their counterparts. This Agreement may be executed by facsimile and facsimile signatures shall be treated as if they were original signatures.

11.9 Force Majeure. Except for Licensee’s obligations to pay Licensor hereunder, neither party shall be liable to the other party for any failure or delay in performance caused by reasons beyond its reasonable control.

11.10 Entire Agreement. This Agreement constitutes the final, complete and exclusive statement of the terms of the agreement between the parties regarding the subject matter hereof and supersedes all prior agreements, understandings, and communications between the parties, whether written or oral. This Agreement may be amended only by a written document signed by both parties.



IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

Vena Solutions USA Inc.	Licensee
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____
Address for Notice:	Address for Notice:
_____	_____
_____	_____

Exhibit A

1. LICENSED SOFTWARE

- Vena Software

DESCRIPTION	QTY	PER UNIT COST	TOTAL
Vena Software Includes XX Production server and XX named user licenses	1		
Sub-Total License Fees:			
Annual Software Support & Maintenance Fees (20% of Discounted Net Software):			
Total Software License & Support and Maintenance Fees:			

The Total License Fees and Annual Maintenance Fees specified above shall be due Net 15 days from the Effective Date. Annual Software Support & Maintenance Fees (see table above) in respect of each Renewal Maintenance Term will be invoiced at least 30 days in advance and shall be due on each anniversary of the Maintenance Effective Date.

2. MAINTENANCE EFFECTIVE DATE

The Maintenance Effective Date for the Licensed Software shall be the same as the Effective Date.