

**Virtual Instruments Corporation**  
**25 Metro Drive, Suite 400**  
**San Jose, CA 95110**

**Carahsoft Rider to Manufacturer End User License Agreements**  
**(for U.S. Government End Users)**

- 1. Scope.** This Carahsoft Rider and the Manufacturer End User License Agreement (EULA) establish the terms and conditions enabling Carahsoft to provide Software and Services to U.S. Government agencies (the "Client" or "Licensee").
  
- 2. Applicability.** The terms and conditions in the attached Manufacturer EULA are hereby incorporated by reference to the extent that they are consistent with Federal Law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341(a)(1)(B)), the Contracts Disputes Act of 1978 (41 U.S.C. § 601-613), the Prompt Payment Act, the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 § U.S.C. 15), 28 U.S.C. § 516 (Conduct of Litigation Reserved to Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent the terms and conditions in the Manufacturer's EULA are inconsistent with the Federal Law (*See FAR 12.212(a)*), they shall be deemed deleted and unenforceable under any resultant orders under Carahsoft's contract #GS-35F-0119Y, including, but not limited to the following:
  - (a) Contracting Parties.** The Government customer (Licensee) is the "Ordering Activity", "defined as an entity authorized to order under GSA contracts as set forth in GSA ORDER 4800.2G ADM, as may be revised from time to time. The Licensee cannot be an individual because any implication of individual licensing triggers the requirements for legal review by Federal Employee unions. Conversely, because of competition rules, the contractor must be defined as a single entity even if the contractor is part of a corporate group. The Government cannot contract with the group, or in the alternative with a set of contracting parties.
  
  - (b) Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 200 0) (Deviation I 2010) (AUG 1987), and 52.212 -4 (f) Excusable delays. (JUN 2010) regarding which the GSAR and the FAR provisions shall take precedence.
  
  - (c) Contract Formation.** Subject to FAR Sections 1.601(a) and 43.102, the Government Order must be signed by a duly warranted contracting officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.
  
  - (d) Audit.** During the term of this Agreement: (a) If Ordering Activity's security requirements included in the Order are met, Manufacturer or its designated agent may audit Ordering Activity's facilities and records to verify Ordering Activity's compliance with this Agreement. Any such audit will take place only during Ordering Activity's normal business hours contingent upon prior written notice and adherence to any security measures the Ordering Activity deems appropriate, including any requirements for personnel to be cleared prior to accessing sensitive facilities. Carahsoft on behalf of the Manufacturer will give Ordering Activity written notice of any non-compliance, including the

number of underreported Units of Software or Services ("Notice"); or (b) If Ordering Activity's security requirements are not met and upon Manufacturer's request, Ordering Activity will run a self-assessment with tools provided by and at the direction of Manufacturer ("Self-Assessment") to verify Ordering Activity's compliance with this Agreement.

- (e) **Termination.** Clauses in the Manufacturer EULA referencing termination or cancellation the Manufacturer's EULA are hereby deemed to be deleted. Termination shall be governed by the FAR 52.212-4 and the Contract Disputes Act, 41 U.S.C. §§ 601-613, subject to the following exceptions:

Carahsoft may request cancellation or termination of the License Agreement on behalf of the Manufacturer if such remedy is granted to it after conclusion of the Contracts Disputes Act dispute resolutions process referenced in Section Q below or if such remedy is otherwise ordered by a United States Federal Court..

- (f) **Consent to Government Law / Consent to Jurisdiction.** Subject to the Contracts Disputes Act of 1978 (41. U.S.C §§ 7101-7109) and Federal Tort Claims Act (28 U.S.C. §1346(b)). The validity, interpretation and enforcement of this Rider will be governed by and construed in accordance with the laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by law, it will not apply to this Agreement, and the governing law will remain as if such law or regulation had not been enacted. All clauses in the Manufacturer EULA referencing equitable remedies are deemed not applicable to the Government order and are therefore deemed to be deleted.

- (g) **Force Majeure.** Subject to FAR 52.212 -4 (f) Excusable delays. (JUN 2010). Unilateral Termination by the Contractor does not apply to a Government order and all clauses in the Manufacturer EULA referencing unilateral termination rights of the Manufacturer are hereby deemed to be deleted.

- (h) **Assignment.** All clauses regarding Assignment are subject to FAR Clause 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements, and all clauses governing Assignment in the Manufacturer EULA are hereby deemed to be deleted.

- (i) **Waiver of Jury Trial.** All clauses referencing waiver of Jury Trial are subject to FAR Clause 52.233-1, Disputes (JUL. 2002), and all clauses governing waiver of jury trial in the Manufacturer EULA are hereby deemed to be deleted.

- (j) **Customer Indemnities.** All Manufacturer EULA clauses referencing Customer Indemnities are hereby deemed to be deleted.

- (k) **Contractor Indemnities.** All Manufacturer EULA clauses that (1) violate DOJ's right (28 U.S.C. 516) to represent the Government in any case and/or (2) require that the Government give sole control over the litigation and/or settlement, are hereby deemed to be deleted.

- (l) **Renewals.** All Manufacturer EULA clauses that violate the Anti-Deficiency Act (31 U.S.C. 1341, 41 U.S.C. 11) ban on automatic renewal are hereby deemed to be deleted.

**(m) Future Fees or Penalties.** All Manufacturer EULA clauses that violate the Anti-Deficiency Act (31 U.S.C. 1341, 41 U.S.C. 11), which prohibits the Government from paying any fees or penalties beyond the Contract amount, unless specifically authorized by existing statutes, such as the Prompt Payment Act, or Equal Access To Justice Act 31 U.S.C. 3901, 5 U.S.C. 504 are hereby deemed to be deleted.

**(n) Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all federal, state, local taxes and duties.

**(o) Third Party Terms.** Subject to the actual language agreed to in the Order by the Contracting Officer. Any third party manufacturer will be brought into the negotiation, or the components acquired separately under Federally-compatible agreements, if any. Contractor indemnities do not constitute effective migration.

**(p) Installation and Use of the Software.** Installation and use of the software shall be in accordance with the Rider and Manufacturer EULA, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid task order placed pursuant to the Government contract.

**(q) Dispute Resolution and Venue.** Any disputes relating to the Manufacturer EULA and to this Rider shall be resolved in accordance with the FAR, and the Contract Disputes Act, 41 U.S.C. §§ 7101-7109. The Ordering Activity expressly acknowledges that Carahsoft, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

**(r) Limitation of Liability: Subject to the following:**

Carahsoft, Manufacturer and Ordering Activity shall not be liable for any indirect, incidental, special, or consequential damages, or any loss of profits, revenue, data, or data use. Further, Carahsoft, Manufacturer and Ordering Activity shall not be liable for punitive damages except to the extent this limitation is prohibited by applicable law. This clause shall not impair the U.S. Government's right to recover for fraud or crimes arising out of or related to this Government Contract under any federal fraud statute, including the False Claims Act, 31 U.S.C. §§ 3729-3733.

**(s) Advertisements and Endorsements.** Unless specifically authorized by an Ordering Activity in writing, such use of the name or logo of any U.S. Government entity is prohibited.

**(t) Public Access to Information.** Manufacturer agrees that the EULA and this Rider contain no confidential or proprietary information and acknowledges the EULA and this Rider will be available to the public.

**(u) Confidentiality.** Any provisions that require the Licensee to keep certain information confidential are subject to the Freedom of Information Act, 5 U.S.C. §552, and any order by a United States Federal Court.

VIRTUAL INSTRUMENTS CORPORATION PRODUCT AND SERVICES  
AGREEMENT PLEASE READ CAREFULLY

THIS VIRTUAL INSTRUMENTS PRODUCT AND SERVICES AGREEMENT ("AGREEMENT") IS ENTERED INTO BETWEEN VIRTUAL INSTRUMENTS CORPORATION ("VI") AND THE PARTY IDENTIFIED ON THE QUOTE WHICH REFERENCES THIS AGREEMENT ("CUSTOMER").

This Agreement was last updated on October 19, 2012.

1. **Purpose of Agreement.** This Agreement states the terms and conditions under which VI agrees to supply to Customer, (i) hardware and software products made generally-available by VI and its licensors ("Products"); (ii) maintenance and support services ("Support Services"); and (iii) training, consulting or other services ("Professional Services"), as each may be identified on a quote or other binding document referencing this Agreement.
2. **Quotes and Order Acceptance.** Customer agrees to be bound by the terms of this Agreement by either (i) accepting VI's quote offer in accordance with the acceptance terms outlined on such quote, or (ii) installing, using or retaining the Products. This Agreement shall apply except to the extent a Product, Support Service or Professional Service is the subject of a binding separate agreement, in which case the terms of such separate agreement shall govern over any conflict with the terms of this Agreement. Upon acceptance of VI's quote, Customer's obligation to purchase the quoted Products, Support Services or Professional Services is non-cancelable and payment is non-refundable except as otherwise expressly set forth herein. VI rejects any terms, conditions or provisions contained in any Customer's purchase order or any other communication issued to VI in connection with a quote that are additional to or inconsistent with the terms of this Agreement or the quote. The following Sections shall not apply if Customer is procuring Products, Support Services or Professional Services through a Channel Partner: this Section 2, Section 3 ("Delivery"), Section 4 ("Fees and Payment Terms"), Section 8 ("Warranties; Disclaimer"), and Section 9 ("Indemnification"). Any terms and conditions in a quote issued by Channel Partner or any purchase order or other ordering documentation issued by End User to Channel Partner shall not be binding against VI for any reason.
3. **Delivery.** VI may deliver software Products by electronic means. Except for Products delivered electronically, VI will ship all Products F.O.B. VI's shipping facility per UCC, or ExWorks VI's place of production or shipment per INCOTERMS 2010, for international shipments. Unless specifically agreed in writing all shipments shall be to the same ship to address on the quote. Title and risk of loss or damage in hardware Products and software media passes from VI to Customer upon the tender of shipment to Customer's carrier at VI's dock. Customer shall pay all shipping charges, insurance, forwarding and brokerage fees, import or export duties and taxes required. VI reserves the right to make deliveries in installments. This Agreement shall be severable as to any such installments. VI may allocate production and deliveries in its sole and reasonable discretion in the event of a shortage of Products. Delay in delivery of any installment shall not relieve Customer of its obligation to accept and pay for remaining deliveries. Shipping dates are approximate only. VI shall not be liable for any damage, loss, or expense incurred by Customer if VI fails to meet a specified shipping date.
4. **Fees and Payment Terms.**
  - 4.1. **Prices; Currency.** Customer shall pay VI the prices set forth on each accepted VI's quote as reflected in one or more invoices, and shall also pay or reimburse VI for all related taxes or withholdings, except for those taxes based on VI's net income. Payment shall be in the currency quoted and invoiced by VI without any adjustments.
  - 4.2. **Payment Terms.** All fees shall be due on Customer's acceptance of a quote and payable within thirty (30) days of the date of VI invoice.
  - 4.3. **Support Services Fees.** Fees for Support Services are annual and are due and payable in full in advance of the purchased Support Services period. First year Support Services fees are thereafter renewable at the Customer's discretion; provided, however, that back-payment of fees for the period of lapsed Support Services may be due in VI's discretion as a condition to reinstating discontinued Support Services. If Customer purchases multiple-year, pre-paid Support Services, Customer or VI may cancel the upcoming annual Support Services period at any time, with or without cause, by providing written notice to the other party. VI will in such case cease to provide Support Services as of the effective date of termination, and will refund to Customer any unused, prepaid Support Services fees.
  - 4.4. **Professional Services Fees.** Fees for Professional Services shall be invoiced either (i) upon placement of order for prepaid services, or (ii) upon completion of the Professional Services for Professional Services provided on a time and materials basis, or (iii) as otherwise stated in a statement of work or quote. Customer shall be responsible for reasonable actual and documented travel expenses incurred by VI in connection with performing Professional Services at Customer's site, unless otherwise agreed to by the parties or as set forth in a Service Brief Supplement (as defined in Section 5 below).
  - 4.5. **Payment Default.** If Customer fails to make any payment when due, VI reserves the right to suspend or cancel performance under any or all purchase orders or agreements under which VI has extended credit to Customer or pursue any other remedy available to VI. Customer will pay VI interest on any payments not received when due at the rate of 1.5% per month or the maximum rate allowed by law, whichever is greater.
  - 4.6. **Financing Arrangements.** Notwithstanding anything to the contrary herein, Customer may utilize the Software pursuant to a financing arrangement whereby the Customer finances the purchase of a Product from a third party. Customer's obligation to pay fees hereunder shall not be contingent upon any such financing arrangement which Customer may enter into with a third party; provided, however, that a failure on the part of any financing company to issue payment to VI on behalf of Customer shall constitute a material breach by Customer of the terms hereof entitling VI to assert all available remedies hereunder, including the right to suspend or terminate Customer's license to use such Software until VI receives payment in full. Customer shall ensure that any financing arrangement pertaining to Software shall not result in the

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transfer of possession of or license rights in the Software granted to Customer under this Agreement to Customer's financing provider and any such transfer is null and void under this Agreement.

5. **Support Services and Professional Services.** Subject to Customer's compliance with the terms of this Agreement, including annual advance payment of all applicable Support Services fees, VI will provide Customer the then-current standard Support Services purchased by Customer, available at the URL [http://www.virtualinstruments.com/corporate\\_info](http://www.virtualinstruments.com/corporate_info) ("Support Services Supplement"), hereby incorporated to this Agreement by this reference. VI shall provide Professional Services either (i) as described in VI's standard service briefs ("Service Brief Supplement") available at the URL [http://www.virtualinstruments.com/corporate\\_info](http://www.virtualinstruments.com/corporate_info) hereby incorporated to this Agreement by this reference, as each may be referenced on a quote; or (ii) pursuant to a custom statement of work signed by each party that details the specific Professional Services and deliverables to be provided to Customer for the specific project. VI may subcontract its obligations under this Agreement, provided that VI shall remain responsible for its and its subcontractors' obligations to Customer hereunder.
6. **Intellectual Property.**
- 6.1. **Software License.** Subject to Customer's compliance with the terms in this Agreement, upon shipment to Customer, VI grants to Customer a nonexclusive, nontransferable, perpetual, license to use the object code version of the software delivered with the hardware Products or as a standalone Product, and any accompanying documentation ("Documentation"), for Customer's internal business use only. Customer shall use the software Products strictly in accordance with (i) the capacity and units of measure identified on a quote and defined in the product use rights supplement available at the URL: [http://www.virtualinstruments.com/corporate\\_info](http://www.virtualinstruments.com/corporate_info), which is hereby incorporated to this Agreement by this reference ("Product Use Rights Supplement"); (ii) any supplementary terms of use set forth on a quote or a separate written agreement signed by both parties; and (iii) the Documentation.
- 6.2. **Firmware License.** Hardware Products may include pre-installed or embedded software programming and/or microcode (collectively "Firmware"). VI licenses the use of Firmware at no separate charge, provided Customer may only use Firmware together with any hardware or device(s) Product with which the Firmware was licensed and provided. Customer may not extract or copy Firmware embedded in hardware devices or components for any reason. If Customer transfers title to, leases, or loans any hardware Product containing Firmware to any third party, Customer may not transfer the license rights to any Firmware installed on or used in connection with such hardware Product without first obtaining VI's express written consent.
- 6.3. **Evaluation Products.** Subject to Customer's compliance with the Product Use Rights Supplement, the Documentation, and any supplementary terms on a quote, upon shipment to Customer, VI grants to Customer a nonexclusive, revocable, limited term, and non-transferable license to use evaluation products or pre-release products identified on a quote ("Evaluation Product") for Customer's internal, non-production evaluation purposes only, for a period of thirty (30) days from shipment, unless otherwise agreed to by VI. If any hardware Evaluation Products are not timely returned to VI, Customer shall purchase such Evaluation Products at the then-current list prices to be payable within thirty (30) days of the VI invoice date. Customer shall be responsible for loss of or damage to hardware Evaluation Products while in Customer's possession, normal wear and tear excepted. Customer must destroy any copies of standalone software Evaluation Products provided at the end of the Evaluation Period, unless otherwise instructed in writing by VI. VI does not commit, guarantee, promise, or agree to finally release and/or offer for sale the Evaluation Product. EVALUATION PRODUCTS ARE PROVIDED EXCLUSIVELY ON AN "AS IS" BASIS WITHOUT WARRANTIES, SUPPORT SERVICES, PROFESSIONAL SERVICES OR INDEMNITIES OF ANY KIND.
- 6.4. **Restrictions.** All licenses granted under this Section 6 are subject to Customer's ongoing compliance with this Agreement. The licenses granted exclude the right of Customer to use, make, copy, perform, create derivative works of, display or distribute the Products for development purposes, for sublicensed use by third parties, or for any service bureau, time-share, subscription rental, or other use for which Customer receives compensation from third parties. Customer understands and agrees that VI and its licensors grant only those rights specifically set forth in this Agreement. VI and its licensors reserve any and all rights not expressly granted to the Customer under this Agreement. Any ambiguity concerning the scope of use of a Product shall be strictly construed in favor of VI and its licensors. Customer shall not reverse engineer, decompile, disassemble, or otherwise attempt to ascertain the source code or design for the Product. Unless agreed to by VI in writing, Customer may not transfer any licenses to software Products to any third party, but Customer may authorize its outsourcing service providers to use the Products on Customer's behalf provided: (i) Customer informs VI in writing of such outsourced use, and (ii) the outsourced service provider agrees in writing to use the Product solely on behalf of Customer and in compliance with all terms of this Agreement.
- 6.5. **Ownership.** VI and its licensors retain all right, title and interest in and to all software Products, Evaluation Products, Confidential Information, Documentation, and any improved, updated, modified, or additional versions of the foregoing. VI does not acquire any right, title or interest in any Confidential Information (as defined below) owned or supplied by Customer. VI retains all right, title and interest in and to any deliverable supplied by VI in the course of performing Professional Services that constitutes a modification, enhancement or new feature of a Product or Evaluation Product; provided, however, that upon payment of the applicable Professional Services fees, VI grants to Customer a non-exclusive, perpetual, worldwide license to use such deliverable within the scope of the license to the underlying Product to which the deliverable pertains for so long as this Agreement is in effect.
7. **Confidentiality.**
- 7.1. **Definition.** "Confidential Information" means and includes quotes, Products, Evaluation Products, including associated Documentation, Support Services information, and all confidential and proprietary information of VI or Customer, including without limitation all business plans, product plans, financial information, software, designs, and technical, business and financial data of any nature whatsoever, including, without limitation, marketing, pricing and other information regarding the Products, whether such information is marked or designated in writing as "confidential," "proprietary," or any other similar term or designation or should be reasonably understood to be such under the circumstances.
- 7.2. **Exclusions.** Confidential Information does not include information that is (i) rightfully in the receiving party's

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possession without obligation of confidentiality prior to receipt from the disclosing party, (ii) a matter of public knowledge through no fault of the receiving party, (iii) rightfully furnished to the receiving party by a third party without restriction on disclosure or use; or (iv) independently developed by the receiving party without use of or reference to the disclosing party's Confidential Information.

7.3. **Obligation to Maintain Confidence.** Each party shall use Confidential Information of the other party only for the purposes of exercising rights or performing obligations in connection with this Agreement, and use at least reasonable care to protect from disclosure to any third parties any Confidential Information disclosed by the other party for a period of three (3) years following the termination date of this Agreement, except with respect to the Products, which shall remain Confidential Information until one of the exceptions stated in this Section applies.

7.4. **Mandatory Disclosures.** Notwithstanding the foregoing, a receiving party may disclose Confidential Information pursuant to a valid order of a court or authorized government agency provided that the receiving party has given the disclosing party prompt notice so that the disclosing party will have an opportunity to defend, limit or protect against such disclosure.

7.5. **Non-Disclosure of Benchmarking Information.** Customer shall not disclose the results of any comparative or competitive analyses, benchmark testing, infringement testing, or analyses of VI's products to any third party.

7.6. **Suggestions.** VI shall have a royalty-free, worldwide, transferable, sublicenseable, irrevocable, perpetual license to use or incorporate into the Products and/or Services any suggestions, enhancement requests, recommendations or other feedback provided by Customers relating to the Products or the Services. Customer acknowledges and agrees that any Products or Services incorporating such suggestions, enhancement requests, recommendations or other feedback shall be the sole and exclusive property of VI and all such recommendations shall be free from any confidentiality restrictions that might otherwise be imposed upon VI pursuant to this Section 7.

8. **Warranties; Disclaimers.**

8.1. **Product Warranty.** VI warrants to Customer only that commencing on the date of shipment and for a period of (a) ninety (90) days with respect to software Products, and (b) one (1) year from with respect to hardware Products, the Products will substantially conform to the Documentation for such Products. The foregoing warranty does not apply to Evaluation Products, Products supplied as part of Support Services, or Products that have been damaged, mishandled, mistreated, used, maintained or stored other than in conformity with this Agreement or VI's Documentation and instructions. Customer's sole and exclusive remedy for any breach of the foregoing warranty shall be, at VI's sole option, to repair or replace the non-conforming Product with a conforming Product, or refund fees received by VI for a returned non-conforming Product. If VI elects to repair or replace a Product, VI shall have a reasonable time to make repairs or issue a replacement, and such repaired or replaced Products shall be warranted for the remainder of the original warranty period. The refund remedy shall be available only provided that (i) Customer reports the non-conformity during the warranty period; and (ii) VI issues a "Return Materials Authorization" ("RMA") for the non-conforming Product in accordance with the RMA procedures set forth in the Support Services Supplement, and (iii) Customer at its cost returns such Products during the

applicable warranty period to VI in accordance with VI's return instructions.

8.2. **Services Warranty.** VI warrants to Customer only that Support Services and Professional Services delivered by VI directly to Customer shall be performed in a professional and workmanlike manner. Customer's sole and exclusive remedy for any breach of the foregoing warranty shall be, at VI's sole option, to re-perform the non-conforming Services at no additional charge to Customer within a reasonable time, or refund fees received by VI for the non-conforming Services.

8.3. **Disclaimer.** Customer acknowledges and agrees that VI assumes no liability in connection with: (i) the performance of Customer's storage area network analyzed by use of the Products; (ii) incomplete, inaccurate, outdated or unavailable system performance data in third party components in the storage area network monitored by use of the Products; (iii) Product errors or malfunctions resulting from improper Product installation by any party other than VI; or (iv) the results of End User's selection and implementation of configurable Product features or settings. Customer acknowledges and agrees that Customer has not relied and will not rely on the availability of any future version of a Product or any future Product in executing this Agreement or making any purchases under this Agreement. EXCEPT AS EXPRESSLY WARRANTED IN THIS SECTION, VI MAKES NO OTHER WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, WARRANTIES CONCERNING THE PERFORMANCE OF CUSTOMER'S STORAGE AREA NETWORK, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS.

9. **Indemnification.** VI shall defend Customer against any third party claim that a Product or Service infringes a patent or copyright enforceable in a country signatory to the Berne Convention, and pay the resulting costs and damages finally awarded against Customer by a court of competent jurisdiction or the amounts in a written settlement signed by VI. The foregoing obligations are subject to Customer's obligation to (i) notify VI promptly in writing of such claim, (ii) grant VI sole control over the defense and settlement thereof, (iii) reasonably cooperate in response to a VI request for assistance, and (iv) comply with the terms of this Agreement. Should any such Product or Service become, or in VI's opinion be likely to become, the subject of such a claim, VI may, at its option and expense, (a) procure for Customer the right to make continued use thereof, (b) replace or modify such so that it becomes non-infringing, (c) request return of the Product and, upon receipt thereof, refund the price paid by Customer, less straight-line depreciation based on a five year useful life, or (d) discontinue the Service and refund the portion of any pre-paid Service fee that corresponds to the period of Service discontinuation. VI shall have no liability under this Section to the extent that the alleged infringement arises out of or relates to: (1) the use or combination of a Product with third party products or services not supplied by VI, (2) use for a purpose or in a manner for which the Product was not designed or licensed, (3) any modification made by anyone other than VI or its authorized representatives, (4) any modifications to a Product made by VI pursuant to Customer's specific instructions, (5) any Evaluation Products, or (6) ongoing use of the infringing version of a Product when use of a non-infringing version made available to Customer for purposes of avoiding such infringement would have avoided the infringement. THIS SECTION STATES CUSTOMER'S SOLE AND EXCLUSIVE

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REMEDY AND VI'S ENTIRE LIABILITY FOR THIRD PARTY INFRINGEMENT CLAIMS.

10. **LIMITATION OF LIABILITY.** EXCEPT FOR A VIOLATION OF VI'S INTELLECTUAL PROPERTY RIGHTS SUPPLIED UNDER THIS AGREEMENT, A VIOLATION BY EITHER PARTY OF THE CONFIDENTIALITY OBLIGATIONS UNDER SECTION 7, OR DEATH OR PERSONAL INJURY CAUSED BY A PARTY, TO THE MAXIMUM EXTENT PERMISSIBLE UNDER APPLICABLE LAW:

(A) EACH PARTY SHALL BE ONLY LIABLE FOR PROVEN DIRECT DAMAGES NOT TO EXCEED (i) FEES PAID OR OWING TO VI IN CONNECTION WITH THE PRODUCTS OR PROFESSIONAL SERVICES GIVING RISE TO SUCH DAMAGE, OR (ii) MONTHLY FEES FOR UP TO TWELVE (12) MONTHS, FOR DAMAGES ARISING IN CONNECTION WITH SUPPORT SERVICES; AND

(B) NEITHER PARTY SHALL BE LIABLE FOR ANY LOSS OF USE, INTERRUPTION OF BUSINESS, OR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING LOST PROFITS) REGARDLESS OF THE FORM OF ACTION WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) AND STRICT PRODUCT LIABILITY OR OTHERWISE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

11. **Termination.** Either party may terminate this Agreement upon written notice to the other party for any material breach that is not cured within thirty (30) days following written notice to the breaching party. Customer may terminate this Agreement for any reason or no reason by providing written notice to VI, provided, however, that such termination shall not entitle Customer to any refund of fees paid or owing at the time of termination. Upon termination of this Agreement, all licenses to use software Products and any associated Professional Services deliverables shall terminate. The following Sections shall survive in accordance with their terms: Sections 4 ("Fees and Payment Terms") but only with respect to outstanding payments due VI, 6.4 ("Restrictions"), 6.5 ("Ownership"), 7 ("Confidentiality"), 8.3 ("Disclaimer"), 10 ("Limitation of Liability"), 11 ("Termination"), 12 ("Legal Compliance") and 13 ("General") shall survive the termination of this Agreement. Neither party shall incur any liability whatsoever for any damage, loss or expenses of any kind suffered or incurred by the other (or for any compensation to the other) arising from or incident to any termination of this Agreement by such party in accordance with this Section whether or not such party is aware of any such damage, loss or expenses.

12. **Legal Compliance.** Each party shall at all times comply with all applicable federal, state and local laws and regulations. The Products covered by this Agreement may fall within the group of "strategic" electronic products that are wholly or partly of U.S. origin or technology, the export of which is subject to export license control by the U.S. government. Therefore, prior to exportation, Customer agrees to obtain any licenses which may be required under the applicable export laws of all U.S. Government Agencies including but not limited to the Bureau of Industry & Security, (BIS), governed by the Export Administration Regulations (EAR) and Directorate of Defense

Trade Controls (DDTC) governed by the International Traffic & Arms Regulations (ITAR). Customer shall at its own expense obtain and arrange, and maintain in full force and effect all governmental approvals, consents, licenses, authorizations, declarations, filings, and registrations necessary or advisable for any and all uses of the Products by Customer.

13. **General.** Neither party shall be liable, either wholly or in part, for nonperformance or a delay in performance due to force majeure event or contingencies or causes beyond the reasonable control of such party, including, but not limited to, war, acts of God, civil unrest, pestilence, shortage of labor, fuel, raw material or machinery or technical, or yield failure. No waiver shall be deemed a waiver of any prior or subsequent default hereunder. The validity, performance, and construction of this Agreement shall be governed by the laws of the State of California, without regard to its conflicts of law provisions. The U.N. Convention on contracts for the International Sale of Products shall not apply to the Products or this Agreement. If a Product is provided to any unit or agency of the United States Government ("U.S. Government"), the following provisions shall apply: all software Products and accompanying Documentation are deemed commercial, including computer databases, related documentation, technical data, and manuals as defined in FAR 2.101. Pursuant to FAR 12.212 and DFARS 227.7202, any use, modification, reproduction, release, performance, display, or disclosure of the software and accompanying documentation by the U.S. Government shall be governed solely by the terms of this Agreement and shall be prohibited except to the extent expressly permitted by the terms herein. Customer may not assign (voluntarily, by operation of law or otherwise) this contract, or any of its rights or obligations thereunder, without the prior written approval of VI. This Agreement, including all quotes, invoices, and any terms incorporated by reference herein, constitute the sole, exclusive, and fully integrated agreement between the parties relating to the supply of Products, Support Services or Professional Services, and supersede all prior or contemporaneous communications, representations or agreements either oral or written, with respect to the subject matter hereof. No addition to or modification of any provisions of this Agreement shall be binding upon VI unless made in writing and signed by a duly authorized representative of VI; provided, however, that VI may from time to time update terms in the Product Use Rights Supplement, Service Brief Supplement or Support Services Supplement, which shall be binding against Customer solely on a go-forward basis provided Customer accepts a quote or consents to another VI's-issued document which references such modified terms. No course of dealing or usage of trade or course of performance shall be relevant to explain or supplement any term expressed in this Agreement. If any provision of this Agreement shall be determined to be illegal or unenforceable, all other provisions shall remain in full force and effect. All notices provided by Customer pursuant to this Agreement shall be in writing and shall be deemed delivered on the date of personal delivery if addressed to the recipient at the addresses set forth in any order or agreement in which this Agreement is invoked. The prevailing party in any litigation hereunder shall be entitled to recover attorney's fees.