

## STANDARD TERMS & CONDITIONS

All sales of products and services provided by **viastore SYSTEMS Inc.** ("Seller" or "Licensor") are made and provided on the following terms and conditions. The products being sold or licensed by Seller are referred to below as the "Equipment", any Software provided with the Equipment as "Software", and any services being performed by Seller are referred to as the "Services." The purchaser or customer is referred to as "Buyer or Licensee."

### 1. Terms of payment

- (a) If Buyer is purchasing only Equipment and the purchase price is under \$50,000, payment is due from the Buyer within 10 days from the date of Seller's invoice.
- (b) If Buyer is purchasing Equipment, Services, and/or Software then the payment terms specified in Seller's proposal shall apply, unless otherwise agreed to in writing by Buyer and Seller.

A Milestone Schedule for the scope of work shall be developed by Seller which will be designed to facilitate the respective schedules of Seller and Buyer

If the completion of a Milestone is prevented as the result of the action or inaction of Buyer and is not resolved by Buyer within seven (7) days after written notification thereof from Seller all work hereunder shall be suspended. Seller will resume work when such matter has been resolved by Buyer. All future Milestones shall be delayed on a day for day basis from date of any such event until such event has been resolved.

Milestone delays are normally on a day for day basis from date of the event triggering such a delay, however, extended delays may occur if a day for day delay is disruptive to Seller's schedules or work commitments. Seller will advise Buyer, in writing, of any such extended delay of a Milestone.

Milestone delays may also affect pricing. Seller shall advise Buyer in writing of any such change(s) in pricing.

- (c) In the event Buyer does not satisfy the terms of payment outlined above, Seller reserves the right to charge a service charge of 1% per month on a pro-rata basis on the amount in arrears until actual payment, provided there is no conflict with local or state law.

### 2. Warranty

- (a) Seller warrants that, for a period of 12 months from date of delivery for Equipment, if Buyer is purchasing only Equipment, or within 12 months from date of acceptance or Beneficial Use of a system provided by Seller, whichever is earlier (the "Warranty Period"), (i) all Equipment manufactured by Seller and Services provided by Seller will be of good quality and free from defects and (ii) any Software developed and provided by Seller to Buyer will substantially conform to the functional specifications, if any, specified in Seller's proposal. "Beneficial Use" means the Buyer's use of the products for five (5) consecutive working days or forty (40) consecutive hours to handle facility operations. Notwithstanding the above, if the system or Equipment includes automated storage and retrieval machines, certain parts may be considered wear parts and excluded from warranty. Seller's proposal shall identify any such exclusion and shall control for purposes of these Standard Terms and Conditions. Any claim for breach of the above warranty must be made within the Warranty Period. Upon prompt and satisfactory proof of claim by Buyer of a breach of warranty, Seller will, in Seller's sole discretion and within a reasonable time, make any repairs, additions or corrections, or at the option of Seller provide replacement parts free of charge, F.O.B. Seller's plant. Seller will not pay for any of Buyer's labor costs or charges for correcting defects or making additions nor will Seller accept Equipment returned for credit unless the correction or return is authorized in advance by Seller in writing. The above warranty is Seller's sole obligation to Customer and the remedies specified are Buyer's exclusive remedy for breach of warranty.
- (b) If the nonconformity affects System parts or equipment and the nonconformity is not a major design failure, Seller shall instruct the Customer in the removal the affected part or equipment and replacing same with a part or equipment from the Spare Parts Inventory. If the affected System part or equipment is not available from the Spare Parts Inventory, Seller shall order said part or equipment and assist Customer in installing

same as promptly as possible after receipt by Seller. If Seller' assistance is needed to replace a part, Seller shall provide a written estimate of the cost for the Customer. The cost of labor to correct a major design failure is to be borne by Seller. For purposes of this provision, major failure is defined as, (a) unusual and repetitive failure of component parts, or (b) any repair requiring more than eight (8) man-hours of labor to complete. In the event of a "major defect", Seller shall also provide the labor to correct the nonconformity.

- (c) Licensor warrants that its Software will operate in substantial conformance with its then-current Documentation for a period of one year after the Software is installed by Licensor on any server. If a particular Software product is licensed for multiple Sites, the warranty period for the Software at the Sites shall be coterminous and shall expire one year after the Software product is first installed by Licensor on any server. Licensor agrees to correct or replace, at no charge, any nonconformity of which it receives notice during the warranty period. Notwithstanding the foregoing, the warranty set forth in this Section 2(b) shall not apply to Updates, Enhancements and Error corrections. Licensor's sole obligation to Licensee, and Licensee's exclusive remedy for breach of this warranty is the correction or replacement of any nonconformity. Licensee shall provide Licensor with written notice that nonconformity exists, and Licensor shall have a reasonable period of time, based on the severity of the nonconformity, to correct the Software. Licensor warrants that the Software does not contain any disabling devices that would allow Licensor to terminate operation of the Software. Licensor further warrants that to the best of its knowledge, the Software does not contain any viruses.
- (d) Licensor's warranty obligations and other obligations under this Section 2 (c) with respect to the Software are expressly conditioned upon Licensee's proper use of the Software and do not include:
  - (i) Support or correction of errors or increases in service time that result from (a) accident, neglect, misuse or use other than ordinary use; (b) failure of electrical power, air conditioning, or humidity controls that cause a computer failure; and (c) modifications made to the Software by other than a representative of Licensor;
  - (ii) Problems and errors that Licensor cannot reproduce;
  - (iii) Problems relating to or caused by any hardware, Third-Party Software, or software that was not supplied by Licensor; or
  - (iv) Problems relating to or caused by changes in, or modifications to, the operating characteristics of any computer hardware or operating system for which the Software is procured.
  - (v) Errors, defects, and malfunctions that are traceable to Licensee's errors or system changes shall be billed at Licensor's time-and-material charges, including out-of-pocket expenses.
- (e) Unless there are missing functions or significant deviations from the specifications that render the equipment or system inoperable or its use is significantly impaired, the Buyer shall not withhold acceptance. If there are any other defects at the time of acceptance, such defects shall be added to a punchlist, and Seller shall remedy such defects during a reasonable amount of time during the warranty period.
- (f) Services. Seller warrants that the services provided under this Agreement will be performed in a workmanlike manner. Buyer shall notify Seller in writing of any breach of this warranty within thirty (30) days after completion of the service. Seller's sole obligation to Buyer, and Seller's exclusive remedy for breach of this warranty is re-performance of the service.
- (g) With regard to any Equipment or Software not manufactured or developed by Seller, Seller makes no warranties for this Equipment or Software. Seller shall assign to Buyer any warranty for such Equipment or Software extended to Seller by the actual manufacturing of the Equipment or developer of the Software and Buyer shall look solely to such warranty in the event of a claim or action relating to such Equipment or Software.
- (h) Seller warrants to Buyer the Equipment will comply with OSHA or substantially comparable standards in effect at the time of contract award that relate solely to the physical characteristics of the Equipment. Seller specifically does not warrant the Equipment will comply with any standards or regulations regarding the circumstances of use of the Equipment including the noise of the Equipment.

- (i) Seller's warranty obligations and other obligations with respect to the Equipment Services, and/or Software provided are expressly conditioned upon Buyer's proper use and maintenance of the Equipment, Software and the system in general and do not include correction of any nonconformity or problem which arises from or out of, or as a result of:
  - i. accident, neglect, misuse or use other than ordinary use;
  - ii. failure of electrical power, air conditioning, heat or humidity controls that cause the Equipment to malfunction or fail;
  - iii. any equipment, parts or Software used with the Equipment (a) not supplied by Seller, (b) which have been modified in any way without Seller's approval, (c) subjected to any unusual physical or electrical stress, (d) where the original identification marks have been removed or altered, or (e) which have been used in connection with equipment electrically or mechanically incompatible with the Equipment;
  - iv. failure of Buyer to follow the recommended preventive maintenance program provided by Seller; or
  - v. delay or failure of Buyer to reasonably attempt to correct nonconformity prior to notification to Seller of such nonconformity.
  - vi. If specified in Seller's proposal, failure of Customer to maintain the spare parts inventory as reasonably recommended by Seller upon completion of Seller's engineering of the Equipment. Seller replenish the inventory, at Seller's expense, with any spare parts used for warranty work.
- (j) The warranty set forth in this section 2 is in lieu of all other warranties, express or implied, statutory or otherwise. Seller expressly disclaims all warranties, whether expressed or implied, including warranties of merchantability and fitness for a particular purpose. Seller does not warranty that the software will be error free or that all errors will be corrected.

### 3. Patents

- (a) Seller agrees to hold Buyer harmless against claims of infringement of apparatus claim of any United States patent issued prior to Seller's acceptance of Buyer's order, provided such claims are based exclusively upon mechanical infringement by Equipment designed and manufactured by Seller. Before this responsibility shall arise, Buyer must promptly notify Seller in writing of any such claim and tender Seller the right to defend, settle, or make changes for the purpose of avoiding infringement.
- (b) Seller shall assign to Buyer the indemnification, warranties and representations received from or made by the third party suppliers of any Software or Equipment provided to Buyer that is not designed and manufactured by Seller. Regarding Equipment not designed and manufactured by Seller, Buyer's sole recourse for any claim of infringement and in the event of any other claim or action arising out of or as a result of the use by Buyer of any such item shall be the indemnification, warranties or representations provided by such third party.
- (c) Buyer shall give Seller prompt written notice of any threat, warning, or notice of any claim or action that could have an adverse impact on Seller's rights in and to the Equipment or Software.
- (d) In the event of a claim or action under this Section, Seller may, in its sole discretion, (i) procure for Buyer the right to continue using the apparatus, or any component thereof; (ii) provide a substitute, non-infringing apparatus, or any component thereof; or (iii) terminate the contract and refund any amounts paid by Buyer, less depreciation using a ten-year, straight-line method of calculation.
- (e) Seller shall have no obligation under this Section with respect to any claim or action that is based upon (i) Buyer's use of the Equipment in breach of any of these terms or conditions or other instructions or material provided to Buyer by Seller; (ii) use of the Equipment with any product, Software, system, other equipment or part not provided or approved by Seller; or (iii) modification of the Equipment other than by a representative of Seller.
- (f) This Section states Seller's sole responsibility and obligation and Buyer's sole and exclusive remedy for any infringement claim.

4. Performance

If a time for performance is stated, delivery will be made in approximately the stated number of working days from the date of Buyer's acceptance. Such performance may be delayed at the request of the Buyer. If as a result of the action or inaction of the Buyer, the Seller's performance is delayed, the time for performance will be extended accordingly. Seller will not be liable to Buyer for any damages caused by any the delay requested by Buyer or caused by the action or inaction of Buyer. Partial shipments may be made by Seller.

5. Change orders

- (a) Buyer shall have no right to require any change in the Equipment or Services after acceptance by Buyer. Any change to the Equipment or Services shall only be made in a written change order signed by both Buyer and Seller. Seller shall not be obligated to commence work on a change until such a written change order is signed. The change order shall include the effect on the price and the delivery schedule.
- (b) If Buyer and Seller agree on a change order or Buyer otherwise delays or interrupts the progress of work by Seller, Buyer will reimburse Seller for any additional expense of Seller regarding the change order or the delay, and Seller will credit Buyer for any reduced cost which can be established as resulting from any such change.
- (c) Additional charges may be made to cover any unforeseen or unusual cost elements that have not been contemplated by Seller or Buyer, including but not limited to, overtime work authorized by Buyer, or special packing, engineering or documentation.

6. Insurance and risk of loss

- (a) Seller will maintain the following insurance:
  - (i) Workmen's compensation as required by law.
  - (ii) Comprehensive general liability, including contractual and products liability, subject to a limit of \$1,000,000.00 each occurrence, personal and advertising injury liability \$1,000,000.00, general aggregate \$2,000,000.00 and products completed operations \$2,000,000.00 aggregate.
  - (iii) Automobile limited is subject to a combined single limit of \$1,000,000.00.
  - (iv) Umbrella liability, subject to a limit of at least \$5,000,000 each occurrence and aggregate applying excess over the coverages indicated above.
- (b) Except for loss or damage that is caused by the negligence of Seller or Seller's employees or agents, if Seller is performing Services on Buyer's premises, Seller shall not be liable for any injuries or damages to Buyer or damage to the Buyer's premises resulting from Seller entering Buyer's premises, the performance of the Services, or any other services provided by Seller.
- (c) Except for loss or damage that is caused by negligence of Buyer or Buyer's employees or agents, Seller will assume and bear the entire risk of loss and damage to the Equipment until title to the Equipment transfers to Buyer, at which time Buyer will assume and bear the risk of such loss for the Equipment.

7. Manufacturing devices and technical information

Unless otherwise agreed in writing, all drawings, specifications, manufacturing devices, designs, data or other technical information relating to an order shall remain the property of Seller.

8. Permits, site preparation and storage

- (a) Buyer will provide to Seller and pay for all licenses and permits required for the installation of the Equipment and the Services.
- (b) All necessary excavations, drainage, pilings, foundations, masonry, and concrete and any design drawings will be provided and set by the Buyer in accordance with Seller foundation drawings. Buyer will clear the installation site and remove all obstructions, and make all necessary building alterations, including, without limitation, cut and repair any floor, wall or roof opening, in accordance with drawings and information provided by Seller to Buyer before Seller enters Buyer's premises.

- (c) All piping and wiring necessary for the operation of Equipment is to be provided, paid for and installed by Buyer.
- (d) Buyer will furnish, without charge, electric current, compressed air, water, light, heat and toilet facilities as required by Seller including, without limitation, compressed air at 80 lb. pressure, electricity at 110 volt for riveting and drilling, and 220 or 440 volt, 3 phase, 60 cycle current for welding operations, fuel, water, heat and light, as may be needed for installation work, and fire protection of the Equipment. Seller is to have the use of any elevator or crane service available on the Buyer's premises, without charge, for the handling of material during the installation.
- (e) Upon arrival of the Equipment, Buyer will provide safe, dry, inside storage for the Equipment. Equipment exposed to the weather or stored in the open under tarpaulin or plastic may require reconditioning and such reconditioning will be at the expense of the Buyer. In addition, Buyer will unload all Equipment and material from railroad cars or trucks and cart and store such Equipment and material within a reasonable distance of the site of installation of the Equipment. Buyer shall be responsible for safekeeping of such Equipment and material including, without limitation, providing watchmen service or other theft protection services.

#### 9. Basis of service price

Unless otherwise expressly stated, Seller's quotation for the Services is based on the following assumptions. If any of the following assumptions change, the price for the Services shall be subject to change. At the request of Buyer, Seller shall provide Buyer reasonable documentation supporting the change.

- (a) Use of non-union labor at the regular rates prevailing at the installation site as of the date of proposal. No Saturday, Sunday, or holiday work is included unless specifically otherwise provided in this proposal. If Buyer requests changes in working time, or it becomes necessary to work overtime to meet completion dates, premium rates for overtime pay are to be paid by Buyer as an extra expense. If other labor is required which will increase the cost of erection, Buyer agrees to reimburse Seller for this cost. Buyer also agrees to reimburse Seller for any subsequent increase in labor rates.
- (b) No employment of any special employees or craft for setting of motors or any other work other than the employees or craft installing the conveyors.
- (c) Installation being made only during regular working hours on regular work days, without premium or extra pay for overtime work or work during non-regular hours or non-regular work days.
- (d) Seller not being required to pay any premium or extra charge for non-local labor.

#### 10. First-operation test and acceptance

Upon completion of installation, Buyer will conduct a thorough first operation test based upon a written test plan reasonably prepared in advance of the test and mutually agreed to by Buyer and Seller. If Buyer's products are required for the test, Buyer will furnish the products and the manpower to load and unload the system at no cost to the Seller. Upon satisfactory completion of the operations test, and prior to the departure of the Seller's installation team, Buyer or its authorized representative shall sign Seller's Standard Equipment Acceptance Form. Buyer understands and agrees that the equipment is not to be placed into service until the form has been signed without the express written consent of the Seller.

#### 11. Liability limitations

- (a) Seller shall not, under any circumstances, be liable for incidental or consequential punitive, or special damages of any nature (whether based on tort or contract) including, but not limited to, loss of profits, production, sales opportunity, or business reputation, direct or indirect labor cost and overhead expense, and damage to equipment or property.

(b) In addition to the limitations set forth above, the liability of Seller shall not, whether for breach of contract, breach of warranty, or any other circumstances exceed (i) the purchase price of the equipment, (ii) the fee paid by the licensee for software installed at the applicable site and/or (iii) services furnished, even if Seller has, or should have had, any knowledge, actual or constructive, of the possibility of such damages.

(c) Unless otherwise stated in Seller's proposal, Seller shall not be liable for, and Buyer hereby assumes the risk of and shall indemnify and hold harmless Seller against, any claim, injury, loss, damage or expense (including attorneys' fees), either direct or indirect, incurred, made or suffered by Buyer in connection with or in any way arising out of the furnishing, performance or use of services provided by any third party contracted by Buyer to perform services in connection with the Equipment or Software.

## 12. Duty and taxes

In addition to the specified purchase price, Buyer will pay all taxes, duties, excises, license fees and other charges levied, assessed or imposed upon Seller by reason of or applicable to the manufacture, sale, purchase and delivery of the Equipment and/or Software furnished or any parts thereof, as well as the cost by which hereunder such manufacturer is increased by reason of any law, ordinance or regulation adopted or promulgated by any government or governmental subdivision, department or agency after the date hereof, but prior to the completion and delivery of the Equipment and/or Software hereunder. Such payment shall be made to Seller at or before the time when it is required to pay it. This is excluding taxes based on income.

## 13. Complete agreement

The complete agreement between Seller and Buyer is contained herein. No additional or different term or condition stated by Buyer shall be binding on Seller unless agreed to by an authorized executive of Seller in writing. If Buyer has not otherwise agreed to these terms and conditions, acceptance of delivery of, or payment for, the Equipment or Services shall constitute Buyer's agreement to these terms and conditions. Failure of Seller to insist upon strict performance of any of the terms and conditions stated herein shall not be considered a continuing waiver of any such term or condition or any right of seller.

## 14. Severability

In the event any term or condition contained herein is or becomes invalid, the validity of the remaining terms and conditions shall remain unaffected, and any such invalid term or provision shall be interpreted or amended in such a way as to reflect as far as possible the underlying business purpose of these terms and conditions.

## 15. Painting

Prior to the shipment of any Equipment from the Seller, the Seller agrees to apply one coat of standard shop paint to all shop fabricated Equipment. Unless otherwise agreed in writing, no painting of the Equipment at Buyer's premises is included.

## 16. Safety devices

Buyer has the responsibility to provide its employees with a safe working environment and/or safety devices required by law or by its safety policies. If Buyer requests Seller to provide such devices, Buyer and Seller shall mutually agree on the requirements and Buyer shall pay Seller for the reasonable costs of the devices.

## 17. Building structure

Unless otherwise specified in Seller's proposal, Buyer represents and warrants to Seller that that the structure from which the Equipment is to be suspended or mounted, is of sufficient capacity to carry the loads imposed by the Equipment plus the live and impact loads. Any additional structure, or reinforcing of the existing structure, required by these imposed loads, will be the responsibility of the Buyer and is not a part of this contract or provided by Seller, unless otherwise agreed in writing by Seller.

18. Software installation

Buyer shall complete all work necessary to provide communication (interface or link) between Buyer's computer system and any Software provided by Seller as specified in Seller's proposal.

19. Equipment installation

If Seller is providing Services, Seller will proceed with the Service with promptness and dispatch and will maintain, as reasonably considered necessary in Seller's sole discretion, a competent employee at Buyer's premises to superintend and direct the work. If Seller determines, in its sole discretion that such an employee is necessary, such employee will observe Buyer's interests, and cooperatively, those of other contractors. Unless otherwise stated herein, Seller will supply tools, ladders, and necessary installing equipment. Buyer is responsible for the initial and subsequent fabrication of reducers, chain and trolleys, unless otherwise specifically agreed in writing by the Seller.

20. Force majeure

Seller shall not be liable for delays, damage or loss due to shortage of materials, strikes, lockouts, differences with employees, accidents, fires, explosions, delays in manufacture, transportation or delivery of materials, acts of God, embargoes, inability to ship, inability to insure against war risks, governmental action, or insurrection or any other causes beyond Seller's control, whether the same as or different from the matters and things herein before specifically enumerated. All future Milestones shall be delayed on a day for day basis from date of any such event until such event has been resolved.

21. Maintenance

The Equipment and system require reasonable and adequate maintenance by Buyer and a thorough understanding by Buyer of how the Equipment and system operates to attain the desired output. Therefore, Buyer must furnish, as part of Buyer's responsibility, a minimum of one electrical and one mechanical supervisor at Buyer's premises to become thoroughly acquainted with the detailed operation and maintenance of the Equipment and the system. These employees will be available a minimum of 15 working days prior to the first run of product for test or production from the first run to the subsequent completion and final check out. These employees will sufficiently orient themselves with the Equipment to insure proper operational understanding of the system and assume proper maintenance as it becomes operational. If this system is to operate more than one shift per day, qualified and trained employees of Buyer should be available for each shift, as specified above.

22. Other obligations of buyer

- (a) Buyer will deliver or make available to Seller in a timely manner at the Installation Site any other Customer Provided Items as specified in Seller's proposal and such items will be limited to the use necessary for the installation and performance of the Equipment and/or Software.
- (b) Buyer shall provide Seller with adequate unloading facilities, truck docks, rail docks, truck and rail dock boards capable of supporting lift truck equipment, and sufficient access to same to insure Seller's efficient unloading procedure at the Installation Site. Buyer shall provide Seller with adequate covered storage area for the Equipment at the Installation Site.
- (c) Buyer assumes and bears the entire risk of loss and damage to Buyer Provided Items and the Installation Site.
- (d) Buyer shall complete all work necessary to provide communication (interface or link) between Buyer's computer system and Software as specified in Seller's Proposal.
- (e) Buyer shall operate and maintain the Equipment and/or Software in a manner consistent with any instructions, manuals and documentation for the Equipment and/or Software provided to Buyer by Seller.  
**viastore SYSTEMS** shall prepare and deliver to Buyer, a Buyer Preventive Maintenance Schedule.
- (f) Unless otherwise agreed to by Buyer and Seller for and during the warranty period specified in Section 2. Buyer shall enter into a Support and Maintenance Agreement with Seller.

23. Use of specifications and drawings, reservation of copyrights and other confidential information
- (a) Seller reserves all copyright rights in this proposal and in all accompanying specifications and drawings. This proposal and all such specifications and drawings are submitted to Buyer solely for Buyer's consideration and in confidence, remain Seller's property subject to recall by Seller, and are not to be published, reproduced, copied in whole or in part, loaned or otherwise communicated to any third party without Seller's written permission. Drawings accompanying this proposal are not to be used for construction purposes.
  - (b) "Confidential Information" means and includes the, documentation for the Equipment, these terms, and any information regarding either party's business, operations or activities.
  - (c) Except as otherwise specifically agreed in writing by Seller, each party agrees that it shall not use or disclose to any third party any Confidential Information of the other party for any reason, except to its employees who require such knowledge in the ordinary course of their employment. Each party shall take all necessary action to ensure that its employees comply with the confidentiality provisions of this Section 23.
  - (d) The obligations set forth in this Section 23 shall not apply to any information that is: (i) publicly available; (ii) obtained by the receiving party from a third party as a matter of right; (iii) already known or independently developed by the receiving party; or (iv) required to be disclosed by law.
  - (e) The obligation of the parties hereto relating to this Section and the confidentiality provisions of Section 25 shall survive termination of the contract.

24. Title and security interest

Title to the Equipment and the risk of loss shall pass to Buyer upon Buyer's Beneficial Use of the Equipment or upon acceptance, whichever occurs first. Buyer may obtain possession of the Equipment before the final payment is due to Seller, and so to protect Seller against loss, it is hereby mutually agreed that:

- (a) Buyer grants to Seller a security interest in and the right of repossession of the Equipment until full and final payment therefore (including notes and collection costs) has been made in cash and in accordance with the terms thereon. The foregoing interest includes and Buyer grants to Seller a purchase money security interest in all of the Equipment until full and final payment (including any notes and collection costs) has been made. In the event of default in any payment herein provided for, the full amount unpaid shall be due and payable on demand, and Seller may at Seller's option either (i) recover the full amount unpaid or repossess the Equipment and all additions thereto, wherever found, free from all claims whatsoever; or (ii) treat this contract as void and retain all payments theretofore made hereunder as rent for the use of Equipment.
- (b) The Equipment or any part thereof, shall not be considered a fixture, or be incorporated into any real property by reason of its attachment thereto, and may be separated from any real property, as well as personal property, for the purpose of repossession. Seller shall not be liable to Buyer nor shall Seller be subject to any legal proceedings, criminal or civil, for Seller's acts in such repossession. Seller shall not be liable to Buyer for the repayment of any money paid as part payment for said Equipment.
- (c) Buyer agrees to execute any necessary instruments to perfect Seller's security interest in the Equipment and Seller shall have the benefit of the applicable Uniform Commercial Code and the remedies thereunder.
- (d) Seller shall have the right to elect to assert a claim of a mechanic's lien against the real property upon which the Equipment is erected.
- (e) Buyer shall not grant any right or security interest in or to the Equipment prior to payment in full to Seller for all Equipment and Services without the prior written consent of Seller.
- (f) Except as otherwise provided herein or required by law, pursuit of any right reserved herein or granted by law shall not preclude or waive the pursuit of any other such right.

25. License for software

(a) Grant. Seller grants to Licensee a nontransferable (except as otherwise provided in Section 14.1), nonexclusive, perpetual license to use the Software and Documentation solely on the terms and conditions set forth in these terms.

(b) Scope of Rights. Licensee may:

1. Install, use and execute the Software on the server on which it is initially installed only. Licensee may, upon prior written notice to **viastore**, move the Software to a different server, or, in the event of a disaster, run the Software on a back-up server.
2. If the Software is licensed on a Site basis, use and execute the Software only in connection with the operations of the Site(s).
3. If the Software is licensed on a Concurrent-User basis, use the Software only with the specified number of Concurrent Users or fewer, if applicable.
4. Make copies of the Software for backup and archival purposes only, provided that (a) no more than two (2) copies of the Software are in existence at any one time, and (b) Licensor's copyright and other proprietary legends are reproduced on each copy. Licensee shall keep appropriate records of the number and location of all copies and make such records available to **viastore** upon request. All copies that are made by Licensee shall be the property of Seller.
5. Make copies of the Documentation for Licensee's internal use only, provided that Licensor's copyright and other proprietary legends are reproduced on each copy.

(c) Restrictions. In addition to other restrictions set forth in this Agreement, Licensee may not:

1. Use, copy, modify or distribute the Software (electronically or otherwise) or any copy, adaptation, transcription or merged portion thereof except as expressly authorized under these terms;
2. Use the Software for the benefit of third parties in a commercial, retail, service bureau or similar enterprise; provided, however, that if Licensee is a third-party logistics provider, it may use the Software for the benefit of its customers;
3. Reverse assemble or decompile the Software or otherwise examine the Software for purposes of reverse engineering; or
4. Remove the labels or any proprietary legends from the Software or its Documentation.

(d) Title. Licensor reserves all rights not expressly granted to Licensee hereunder. Licensee understands that the license granted herein transfers neither title nor proprietary rights to Licensee with respect to the Software. Licensee shall keep the Software free and clear of all liens, security interests and other encumbrances.

(e) Right to Audit. Licensor shall have the right, at any time, to audit Licensee's use of the Software to monitor compliance with these terms. If an audit reveals that Licensee has exceeded the restrictions on use, Licensee shall pay for the cost of the audit and any additional license fees and support fees charged by Licensor for such exceeded usage. If the audit is conducted on Licensee's premises, Licensor shall give Licensee at least ten (10) days prior written notice and such audit shall be conducted during Licensee's normal business hours. Upon request by **viastore**, an executive officer of Licensee shall certify in writing to **viastore** that Licensee is in full compliance with the terms of this Agreement.

- (f) Third-Party Software. Licensee acknowledges and agrees that each Third-Party Software product is the property of the respective third-party owner or licensor and that Licensee has no right or title, nor will it assert any right or title, in the same except as expressly granted in writing by the terms and conditions of such third-party license or purchase agreement. All Third-Party Software provided to Licensee under this Agreement shall be used only in accordance with the applicable license from the third party and only in conjunction with Software.
- (g) Source Code. Licensor will provide the source code for the Software. Licensee shall have the right to use the source code to support the Software as necessary to conduct Licensee's business. Licensee's use of the source code is subject to the terms and conditions set forth in this Agreement. Licensee shall notify Licensor in writing of its decision to use the source code under this Section 25.g. Any use of the source code by Licensee shall waive and render void all warranties associated with the Software during the period of use unless Licensee provides source code changes to **viastore**, and the changes are certification by Licensor. These certification services shall be billed to Licensee at Licensor's then-current charges.
- (h) Ownership of Customizations. Licensor shall own all right, title and interest (including all associated intellectual property rights) in and to any customizations, enhancements, modifications, improvements, derivations, extensions or other changes to the Software, including any that result from the joint efforts or collaboration of Licensor and Licensee. Licensee shall retain ownership of any hook, interface or other similar tool that it may develop for use with the Software, provided that the tool does not use any part of the Software or require any modification or alteration of the Software.
- (i) Services. The license fee specified in the proposal are without any associated services. Such services are identified in Seller's proposal and may be modified pursuant to section 5.

## 26. Software Support services

- (a) General. Licensor shall provide the support services set forth in this Section 26 as agreed upon by the parties in an applicable written agreement, provided that Licensee has paid the applicable support fees.
- (b) Telephone Support. Licensor shall provide Licensee with a telephone support hotline for the Software on a 24-hour, 7-days-per-week basis, excluding holidays observed by **viastore**. Support outside of Licensor's normal business hours (8 a.m. to 5 p.m. Eastern time, exclusive of holidays) may be provided by Licensor's parent company.
- (c) Web Site. Licensor shall maintain a Web site that contains information concerning the Software and related support services.
- (d) Updates; Enhancements. Licensor shall provide Client with Updates and Enhancements to the Software as Licensor may make them available for general release.
- (e) Error Correction. Licensee shall notify Licensor promptly of any Error. Licensor shall use commercially reasonable efforts to provide maintenance releases, patches, and other changes to the Software to correct Errors.
- (f) Licensee Obligations.
  - (i) Licensee shall designate in writing one or more persons through whom all requests by Licensee for support services shall be made. Licensee may change its designated contact person(s) at any time upon prior written notice to **viastore**.
  - (ii) Licensee shall implement and follow the reasonable written instructions of Licensor regarding operation of the Software.
- (g) Response Time. Unless otherwise specified in Seller's proposal, Licensor shall use all commercially reasonable efforts to respond to reported Errors within a fifteen (15) minute period during normal business hours (8 a.m. to 5 p.m. EST Monday-Friday) and within a two (2) hour period outside of normal business hours. Licensor does not guarantee that it will meet the response times set forth in this Section.
- (h) Hardware; Third-Party Software. Licensor may provide support services for the Hardware and Third-Party Software as set forth in an applicable agreement.

- (i) Services Outside Scope. The exclusions set forth in Section 5 shall apply to Licensor's obligations under this Section 26. Services provided by Licensor that are not within Licensor's obligations under these terms shall be billed at Licensor's then-current time-and-material charges, including out-of-pocket expenses. Licensor shall not be obligated to correct any Error that could have been avoided by Licensee's implementation of any prior Error correction as specified in Section 26.
- (j) Reinstatement of Support Services. If support services are discontinued by Licensee or terminated for any period, and Licensee desires to reinstate such services, Licensee shall pay all annual support fees in arrears, in addition to the then-current annual support fee.
- (k) VPN. Licensee shall maintain at each server on which the Software is installed, and at Licensee's sole expense, a VPN connection reserved for the use of Licensor on a 24-hour, 7-days-per-week basis for software support.

## 27. Termination

Without prejudice to any right or remedy either party may have against the other party for breach or non-performance of the contract, each party shall have the right summarily to terminate the contract in the event that:

- (a) The other party has committed a material breach of the contract and the defaulting party has been advised by written notice of such breach and has not rectified such breach within thirty (30) days after receipt of such written notice.
- (b) Either party seeks relief under any provision of the bankruptcy or insolvency laws, or is adjudicated bankrupt or insolvent, or in the event that a receiver is appointed for all or substantially all of its property.
- (c) Effect of Termination. Upon termination affecting the license of Software, Licensee shall immediately cease using the Software and shall either destroy or return the original and all copies, in whole or in part, in any form, of the Software and related materials. Licensee shall certify such action in writing to Licensor within one (1) month after the termination date.

## 28. Survival of Certain Obligations

Obligations and rights in connection any of these terms t which by their nature would continue beyond the termination of the definitive agreement, including without limitation, Section 25, shall survive termination of this Agreement.

## 29. Applicable law

These terms and conditions between Seller and Buyer shall be considered to have been made in the State of Michigan and shall be governed and interpreted according to Michigan law without regard to its conflict of laws principles. It shall not be governed by the United Nations Convention on the International Sale of Goods. Seller and Buyer each hereby consents to the exclusive jurisdiction by the state and federal courts sitting in the state of the other party's domicile for any action that it brings against that party.

## 30. Independant contractor

Seller shall be an independent contractor of Buyer. Nothing in these terms and conditions shall be deemed to make Seller or its employees or agents an agent, an employee, partner or joint venturer of Buyer or Buyer or its employees or agents an agent, an employee, partner or joint venturer of Seller.

## 31. General

- (a) Assignment. Buyer may not assign, sublicense or otherwise transfer its rights, duties or obligations in connection with Software under these terms in whole or in part, without the prior written consent of Seller, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, Buyer may assign its Software rights without the consent of Seller to a purchaser of all or substantially all of the assets or outstanding capital stock of Buyer, whether by merger, consolidation or otherwise, provided that (i) such assignee does

not compete directly or indirectly with Seller ; (ii) Buyer and assignee are current in all license and support fee payments due to Seller ; (iii) any such assignee agrees in writing to be bound by and subject to all of the terms and provisions of the software license, (iv) Buyer gives Seller at least thirty (30) days' prior written notice of the assignment; and (v) the sale is not by a secured party or in connection with a bankruptcy or insolvency proceeding.

- (b) Customer List; Press Release. Buyer hereby authorizes **viastore** to use Buyer's name in its list of customers, which Seller may publish from time to time. Seller shall not use Buyer's name in any press release that is not approved in advance by Buyer.
- (c) Amendments. No provision of this Agreement may be amended or modified except by a written document signed by duly authorized representatives of both parties.
- (d) Notices. Any notice or other communication required or permitted under this Agreement in writing shall be deemed delivered when mailed, by certified mail, return receipt requested, postage prepaid to the address set forth above or such other address as either party by like notice designates to the other party.
- (e) Statute of Limitations. No party may commence an action under this Agreement more than one (1) year after the expiration of its term, or, in the event of a breach, more than one (1) year after the occurrence of the breach, or, in the event the breach is not discovered by the injured party when it has occurred, more than one (1) year after the breach could, in the exercise of due diligence, have been discovered by such party.
- (f) Nonsolicitation of Employees. Seller and Buyer recognize and acknowledge that employees who are engaged in computer-related activities possess special, unique and extraordinary technical talents that are in great demand in the present economy. Seller and Buyer also recognize and acknowledge that each party has incurred substantial expense in recruiting and training such employees and would incur even greater expense if required to replace any such employee. Accordingly, both parties agree not to recruit or employ, either directly or indirectly, an employee of the other party during the term of this Agreement and one (1) year thereafter without the other party's prior written consent.
- (g) Export Restrictions. Both parties agree to comply with all export and re-export restrictions and regulations imposed by the United States government, or corresponding or similar laws of other countries with respect to the Equipment and Software.
- (h) Executable by Facsimile. Any signature of an agreement through facsimile shall constitute execution of the agreement by such party.
- (i) Entire Terms and Conditions. These terms and conditions embodies the entire standard terms and conditions of Seller and any modification of these terms and conditions require a mutual written agreement between Seller and Buyer. Unless specifically agreed to in writing by the parties, the terms and conditions of any purchase order or other instrument issued by Buyer which are in addition to or inconsistent with these terms and conditions shall be of no effect and shall not be binding on Seller.