END USER LICENSE AGREEMENT

This End User License Agreement (this "Agreement") between Vitria Technology, Inc., a Delaware corporation, with its principal place of business located at 101 Jefferson Drive, 1st Floor, Menlo Park, CA 94025 ("Vitria") and _____, a _____ corporation, with its principal place of business located at _____ ("End User") is effective as of _____ (the "Effective Date").

This Agreement shall be effective as of the date on which the last Party signs the Agreement ("Effective Date") below by their duly authorized representatives.

NOW THEREFORE, the Parties hereby agree as follows:

1.   DEFINITIONS

1.1 "Confidential Information" means all information identified by the disclosing Party as confidential, whether in oral, written, graphic or electronic form, and provided to the receiving Party hereto, conclusions of End User's evaluation, including the functionality and performance of the Products evaluated, and their quality of fit for any purpose – both as to specific use cases and to End User's industry at large, and any third party proprietary information rightfully held and disclosed by the disclosing Party, and any other information (whether or not identified as confidential) in any form generally understood to be confidential, proprietary or trade secret, or by its nature or circumstances surrounding its disclosure should be reasonably regarded as confidential.

1.2 "Daily Processed Data" is the daily volume of data measured after it has been inputted and re-formatted into the Product's standard data processing format.

1.3 "Documentation" means the user manuals and operator instructions delivered online by Vitria with the Products.

1.4 "End User" means legal entity identified above and the employees and contractors of that legal entity who are bound by contract with that legal entity to abide by the terms and conditions of this Agreement.

1.5 An **"Entity"** is a physical or logical element where a profile is maintained for the purpose of analytic analysis, such as subscribers of telecommunications providers, mobile phones, internet modems and routers, and Internet of Things (IoT) devices.

1.6 "Host" means a **Managed Device**.

1.7 "Instance" means any single version of a Product, whether actual or virtual, in execution.

1.8 "Intellectual Property Rights" means all copyrights, all rights of authorship, all patent rights, all rights of inventorship, all trademark and service mark rights, all rights in trade secret and proprietary information, all rights in data and compilations of data, all rights of attribution and integrity and other moral rights, and all other intellectual property rights of any type under state or federal law of the United States or any other nation or international treaty or law, as well as all rights in applications for registration of these rights and all licenses to these rights.

1.9 A **"Managed Device"** means any monitored component capable of producing a unique stream of telemetry messages and creating its own discrete event or log message feed such as servers, applications, network devices, routers and databases.

1.10 "Operating System" means the software system that operates a Processor.

1.11 A **"Processor"** consists of one or more cores running simultaneously, side by side at any given time.

1.12 "SaaS Product" means the hosted, software-as-a-service version of the Software Product.

1.13 "Server" means a hardware component, whether actual or virtual, owned or managed by End User having one or more Processors on which Instances of a Product are running.

1.14 "Server Environment," or simply "Environment," means a hardware/operating system combination (e.g. IBM/Linux) and, if applicable, virtual machine monitor, on which the Product, or any portion thereof, is run.

1.15 "Services" means collectively, the Standard Technical Support, and Vitria-provided Product training.

1.16 "Software Product" means the object code version of the computer software program(s) owned or distributed by Vitria and subsequent updates thereto for which End User is granted a license.

1.17 "Standard Technical Support" means the technical support services provided to End User pursuant to Vitria's Standard Technical Support Terms and Conditions.

1.18 "Support Fees" means the fees payable for Standard Technical Support.

1.19 "Supported License" means a Product license for which End User has paid the current Support Fees.

1.20 "Virtual" means a computer that is running in a virtual machine environment, which is the combination of virtual machine monitor and hardware platform.

2.   LICENSE GRANTS AND RESTRICTIONS

2.1   License Grant.
(a)   As used in this Agreement, "Product" means the Vitria Product identified in an order form or purchase order accepted by Vitria referencing this Agreement (an "Order"), consisting of either (i) the on premise version of the Software Product; or (ii) the SaaS Product. If Vitria waives the requirement that End User execute an Order, then Product licenses and Services may be made available to End User pursuant to an End User-generated purchase order provided to Vitria. Such purchase order shall include the Product licenses and Services ordered and shall reference this Agreement and be subject to the terms and conditions of this Agreement,
(b)   Vitria hereby grants to End User, during the License Term (as defined below), (i) to install, use, execute and display the Software Product (if the Product consists of the Software Product), as designated in the Order, (ii) a nonexclusive, non-transferable, non-sublicensable right and license to access, use, perform and digitally display the SaaS Product (if the Product consists of the SaaS Product), and (iii) to use the Product prescribed by the Documentation located at [http://help.vitria.com] (as it may be updated from time to time) for internal business purposes only. The Product must be used in accordance with any and all limitations specified in the Order (or, in the case of Evaluation Use, as indicated in Section 2.2), including limitations on users, Hosts, Entities, Daily Processed Data, and Managed Devices. For purposes hereof, and except as provided for under Section 2.2, the "License Term" begins on the date Vitria delivers to End User the Product or software license keys, as applicable (in the case of the Software Product), or access credentials for logging in to the hosted service (in the case of the SaaS Product) to End User (the "Commencement Date") and extends for the period specified in the applicable Order. The Product shall be deemed to be accepted upon such delivery. For the avoidance of doubt, End User's Affiliates (and

employees thereof) shall not use the Product without Vitria's prior written consent. This Agreement supersedes any other agreement (including any click-through or electronic agreements within the Product) between Vitria and End User with respect to the Product. Any references in the Order to an "Agreement" or "EULA" or other similar term shall be deemed to refer to this Agreement. For purposes of this Agreement, "Affiliates," with respect to a party, means any entity controlling, controlled by or under common control with such party.

2.2 Proof of Concept and Evaluation Use.
If End User downloads or accesses the Product pursuant to a proof of concept or evaluation ("Evaluation Use"), then the terms of this Section 2.2 shall apply. Evaluation Use shall include use of any beta or non-production Product. Vitria may provide a license for Evaluation Use for a fee or at no charge to End User, as mutually agreed between Vitria and End User. The License Term is for the period enabled by the license key for the Product provided by Vitria or as specified in writing in an Order Document. Vitria shall have the right to downgrade, limit or otherwise modify the Product provided for Evaluation Use at any time without notice, and no warranty, indemnity, Maintenance or Support obligations of Vitria will apply to Evaluation Use. End User's use of the Product shall be limited to the number and type of licenses indicated by Vitria in writing prior to End User downloading or accessing the Product. End User may use the Product solely for the internal purpose of evaluating and testing the Product for suitability with the End User's application and shall not make available the Product to any third party other than in accordance with this Agreement. Vitria has the right to immediately revoke and terminate End User's right to use the Product for Evaluation Use at any time. To the extent that End User invents or develops any intellectual property in connection with using, testing or evaluating the Product, those Intellectual Property Rights shall be owned by (and End User hereby assigns such rights to) Vitria. All findings and reports in connection with using, testing, or evaluating the Product shall be considered joint Confidential Information and all parties shall be bound by the confidentiality obligations herein with respect to such findings and reports. At the end of the evaluation period End User shall cease use of, de-install and delete the Product, destroy or return the Documentation and return the hardware, if applicable. End User shall provide Vitria with prompt, written notice certifying that the Product has been removed, returned and / or destroyed and Vitria may choose to verify this fact at its sole discretion. End User represents and warrants that: (a) End User has not previously evaluated the relevant Product, and (b) End User will not attempt to, by any means, evaluate the Product again without payment. End User agrees that violation of this provision or this Agreement may subject End User to monetary penalties, including payment of all applicable fees as though the Product were licensed for payment.

2.3 Product and Documentation Rights. Vitria hereby grants to the End User a nonexclusive, and except as may be specifically set forth in this Agreement, a nontransferable and non-assignable license to: (i) install and execute the Product set forth in an Order (ii) use the Products in accordance with the Documentation, in executable form only, and on the appropriate operating system for such Products as set forth in the Order, and (iii) reproduce a reasonable number of copies of the Documentation obtained pursuant to this Agreement as necessary to support the licensed use of the Products. License grants may specify the type of usage permitted of the Products (e.g. development, test, production):

(a) Products licensed for "development" purposes may be used by End User only to develop, support, and maintain End User's integration of Products with End User's applications and systems.

(b) Products licensed for "test" purposes may be used by End User only to test End User's integration of Products with End User's applications and systems and not for production systems of End User.

(c) Products licensed for "production" purposes are considered full-use licenses and may be used by End User in either production, development, test, or backup environments in the course of End User's normal business operations.

(d) Products licensed for "backup" purposes may be used by End User only as set forth in Section 2.6 below.

Notwithstanding anything to the contrary in the Agreement, if End User obtains licenses for Products that are subject to a Server, core size, Processor or other volume limitation, any rights granted to End User to transfer Products to End User's compatible, upgraded, or successor computers, Operating Systems and/or Servers at no charge is, and shall continue to be, subject to such limitation.

Additionally, if End User has purchased licenses designated as "Partner Servers" on an Order and subject to any restrictions that may be on an Order, then End User may transfer that license to any third party partner selected by End User ("Trading Partner) solely to allow system-to-system interaction between End User and the Trading Partner.

2.4   Exceeding the Licensed Instances. End User may exceed the licensed Instances temporarily while replacing the version of the Product it is then using with an updated version, on the condition that the number of Instances in excess, and the time for which End User exceeds the licensed Instances, are strictly as necessary to make that replacement.

2.5   Systems Transfer. End User shall have the right to transfer Products to End User's compatible, upgraded, or successor computers, with identical Operating Systems and/or Servers as set forth on a ratified Order, at no additional cost to End User.

2.6   Fail-over or "Hot" Backup and "Archival" Licenses.
(a) A "Hot" Backup Instance means a redundant, backup Instance of the Product that is kept running so that, upon detected failure of the primary system, processing can be automatically shifted over to the backup, or an Instance which is already running.

(b) An "Archival" Backup is a copy of the product stored on archival media that is not in a production environment and whose usage requires its retrieval and loading into an appropriate production environment with the proper Product licenses.

(c) All such copies are subject to the provisions of this Agreement and Customer shall reproduce all titles, trademarks, and copyright and restricted rights notices in such copies.

2.7   Outsourcing Rights. End User may, at no extra charge, and on 30 days written notice to Vitria, allow a third party to which the End User outsources the computer processing for which the Product is being used (the "Outsourcer"), to use the Product, under the following terms: (i) the Outsourcer may use the Product solely to perform services only for the End User and not for its own business purposes or on behalf of any other entity; (ii) the Outsourcer agrees with the End User in writing to comply with reasonable terms about licenses, limitations on use, and the protection of confidential information, consistent with this Agreement; and (iii) a breach of that agreement by the Outsourcer will be considered to be a breach of this Agreement by the End User.

2.8   License Restrictions
(a)   Prohibited Uses. Other than as may be specifically licensed in this Agreement, neither End User nor any Outsourcer may use the Products for commercial time-sharing, application or business service hosting applications for third parties, rental, or service bureau use.

(b)   Affiliate Rights. Except as specifically allowed by this Agreement, End User shall not permit any parent, subsidiaries, affiliated entities or third parties to use the Products.

2.9   Audit Rights. End User shall maintain accurate records relating to the use, copying, modification, and if allowed pursuant to the terms of this Agreement, distribution, and Trading Partner Server licenses of the Products so as to identify the location of all copies of the Products, to identify all Trading Partner licenses, and to otherwise verify End User's compliance with the terms of this Agreement. Not more frequently than annually, Vitria or an independent, third party auditor selected by Vitria and paid for by Vitria, may inspect End User's premises, books and records upon Vitria's reasonable request, at their place of keeping for the purposes of determining whether End User has complied with the terms

of this Agreement. Any such audit shall be conducted during regular business hours at End User's facilities and shall not unreasonably interfere with End User's business activities. Vitria shall schedule any audit at least thirty (30) days in advance and shall provide End User with details regarding the specific requirements of the audit (including, but not limited to, the hardware and other systems to be audited) at least thirty (30) days before the audit is to commence. Vitria's auditor shall be escorted by an End User representative during such audit and any audit activities shall be conducted so as not to violate End User's internal audit, security policies and procedures. End User will provide requested information as to all installed licensed Product Instances, or any portion thereof, and permit Vitria scripts to run on Servers and machines where Vitria Products are or were installed to collect information about Product usage.

If such verification shows that End User is using a greater number of copies of the Products than that legitimately licensed, or are deploying or using the Products in any way not permitted under this Agreement, and which would require additional license fees, End User shall pay the applicable fees for such additional copies within thirty (30) days of invoice date, with such underpaid fees being the license fees as per Vitria's then-current, country specific, Price List. Should End User be out of compliance with the Agreement, End User shall pay such underpaid fees and Vitria's reasonable costs of conducting the verification audit.

2.10   Intellectual Property Rights. The Parties acknowledge and agree that the Products and Documentation, and all Intellectual Property Rights therein, are the exclusive property of Vitria. Vitria reserves all rights in and to the Products not expressly granted to End User in this Agreement. End User will not remove, alter, or obscure any proprietary notices (including copyright notices) of Vitria or its suppliers on the Products or the Documentation. End User acknowledges that the Product and its structure, organization and source code constitute valuable trade secrets of Vitria and its suppliers. Accordingly, except to the extent expressly authorized by this Agreement, End User agrees not to: (a) modify, adapt, alter, translate, or create derivative works from the Products; (b) merge the Products with other software unless specifically authorized in the Documentation; (c) sublicense, lease, rent, loan, or otherwise transfer the Products to any third party, (d) reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code for the Products; or (e) otherwise use or copy the Products.

3.   INVOICING, PAYMENT AND TAXES

3.1   Fees.
(a)   Payment Terms. Invoices for payment of license fees set forth in the Order(s) shall be payable within 30 days of the date of invoice. Support Fees shall be payable annually in advance, net 30 days from the renewal date. All other applicable fees shall be payable 30 days from the invoice date, and shall be deemed overdue if they remain unpaid thereafter. All fees shall be nonrefundable except as otherwise stated in this Agreement. Unless otherwise set forth in an Order, payments shall be made in United States dollars. If End User pays Vitria in a currency other than that specified in an Order, End User shall pay costs of currency conversion to the currency in the Order and any related bank charges.

(b)   Overdue Amounts. Any amounts payable by End User hereunder which remain unpaid 31 days after the due date shall be subject to late penalty fees equal to 1.5 % per month (or the maximum legal rate, if less) of the overdue amount from the due date until such amount is paid. End User shall pay all such interest and reasonable costs of collection, including but not limited to, reasonable attorneys' fees and court costs. Nothing herein shall limit Vitria's termination rights under this Agreement.

(c)   Taxes and Related Charges. The fees listed in this Agreement are exclusive of taxes and other similar charges; and End User is responsible for all taxes, customs duties, tariffs, and transportation costs, and like charges related to this Agreement other than taxes based on Vitria's net income. The End User shall pay or reimburse Vitria, as appropriate, for all sales, use, excise, personal property, value-added, goods and services, or other federal, state or local taxes, duties, or any similar assessments based on the licenses granted or the services provided under this Agreement or on the End User's use of the Products.

(d)   Withholding. The Parties agree that certain payments under this Agreement may be subject to a withholding tax at source. Without limiting the generality of Section 3(c) above, if End User is required by law to withhold or deduct any taxes or other charge from any payment to Vitria hereunder, End User will be required to "gross up" the payment by an amount such that the grossed up payment, minus the tax or charge, equals the amount due if no such tax or charge were imposed. End User shall be responsible for penalties, interest, or like charges resulting from End User's failure to withhold and remit such taxes in the time and manner prescribed by law. The Parties shall cooperate in good faith to minimize taxes to the extent legally permissible. Each Party shall provide and make available to the other Party any resale certificates, treaty certification and other exemption information reasonably requested by the other Party.

4.   SERVICES

4.1   Standard Technical Support Services. Provided that End User places an Order for Standard Technical Support and subject to payment by End User of the applicable Support Fees, Vitria will provide annual Standard Technical Support for Supported Licenses in accordance with the terms set forth at [www.vitria.com/standard technical support terms].

4.2   Training Services. End User or an Outsourcer may schedule and enroll in Vitria's standard training courses. Such training courses shall be rendered in accordance with Vitria's then-current fee schedule and terms of training.

5.   NONDISCLOSURE

5.1   Obligations. In the course of performance of this Agreement, either Party may find it necessary to disclose to the other Party, or either Party may obtain from the other Party, Confidential Information. The Parties agree that they shall not use, except as otherwise expressly permitted hereunder, or disclose to any third person, including to any employee of the receiving Party without a need to know, either during or after the term of this Agreement, any Confidential Information. Notwithstanding any terms to the contrary within this Agreement, the Parties shall have the right to disclose Confidential Information to independent contractors and consultants as necessary for Vitria's or End User's internal business purposes, provided such independent contractors and consultants agree to be bound by the confidentiality restrictions which are applicable to Vitria and End User hereunder. Confidential Information does not include information which can be shown by the receiving Party as (a) already in the possession of the receiving Party without an obligation of confidentiality, (b) hereafter rightfully furnished to the receiving Party by a third party without a breach of any legal or contractual obligation, (c) that is or becomes publicly available without breach of this Agreement, (d) furnished by the disclosing Party to a third party without restriction on subsequent disclosure, or (e) independently developed by the receiving Party without reliance on the Confidential Information.

5.2   Level of Care. The Parties and their respective employees, independent contractors and consultants shall use the same degree of care as used to protect their own confidential information of a similar nature, but in no event less than reasonable care, to avoid disclosure of Confidential Information.

5.3   Required Disclosure. Notwithstanding the foregoing, the Party to whom Confidential Information was disclosed (the "Recipient") shall not be in violation of this Section 5 with regard to a disclosure that was in response to a valid order by a court or other governmental body, provided that the Recipient provides the other Party with prior written notice of such disclosure in order to permit the other Party to seek confidential treatment of such information.

6.   INFRINGEMENT INDEMNIFICATION

6.1   Intellectual Property Right Indemnification. Vitria will defend, indemnify and hold harmless End User against any third party claim to the extent based upon a claim that the Product infringes a third party's patent, copyright, trademark, trade secret or any other third party

proprietary right. End User shall (i) notify Vitria promptly in writing of such action, (ii) give Vitria sole control of the defense thereof and any related settlement negotiations, and (iii) at Vitria's request and expense, provide reasonable assistance and information in such defense.

6.2 **Exclusions.** Notwithstanding the foregoing, Vitria will have no obligation under this Section 6 or otherwise with respect to any infringement claim to the extent caused by (i) any use of the Product not in accordance with this Agreement, (ii) any use of the Products in combination with other products, equipment, software, or data not supplied by Vitria, except as specified in the Documentation, (iii) End User's continued use of any non-current, unaltered version of the Product(s) following notification by Vitria that the non-current, unaltered version of the Product(s) may be infringing and of the need to use a more recent version of the Product(s); or (iv) any unauthorized modification of Product by any person other than Vitria.

6.3 **Mitigation**. In the event the Products are held or are believed by Vitria to infringe a third party's rights, Vitria shall have the option, and at its expense, to (i) replace or modify the Products so as to provide End User with Products which are non-infringing, compatible and functionally equivalent, (ii) obtain for the End User the right to continue using the Products, (iii) substitute the Products with other software acceptable to End User that are non-infringing and have substantially similar functionality and performance, or (iv) terminate this Agreement and provide End User with a pro-rata refund of all current-year Support Fees paid based on the then-remaining term for which such fees apply, and a pro rata refund of all License Fees paid based on a ten (10) year straight-line depreciation calculated from the Effective Date.

6.4 **EXCLUSIVE REMEDY. THIS SECTION 6 STATES VITRIA'S ENTIRE LIABILITY AND END USER'S SOLE AND EXCLUSIVE REMEDY FOR INTELLECTUAL PROPERTY INFRINGEMENT.**

7.0 **WARRANTIES AND REMEDIES**

7.1 **Corporate Rights.** Vitria represents and warrants to End User that during the term of this Agreement, it is the lawful owner of the Products or, to the extent it is not the lawful owner, that it has all rights necessary to license all Products to End User under the terms of this Agreement.

7.2 **Product**. For a period of ninety (90) days after shipment of a Product (the "Product Warranty Period"), Vitria warrants that such Product, when used as permitted under this Agreement and in accordance with the instructions in the Documentation (including use on computer hardware and operating system platform supported by Vitria), will conform and operate in all material respects to the features and functionality as set forth in the Documentation. Vitria will, at its own expense and as its sole obligation and End User's exclusive remedy for any breach of this warranty, use commercially reasonable efforts to correct any reproducible error in the Products reported to Vitria by End User in writing during the Software Warranty Period in accordance with the Standard Technical Support terms at [www.vitria.com/standard technical support terms], or, if Vitria determines that it is unable to correct the error, Vitria will refund to End User all License Fees actually paid, in which case this Agreement and End User's right to use the Products will be terminated. Any such error correction provided to End User will not extend the original Software Warranty Period except with respect to that particular error. Vitria shall have no obligation to undertake correction of errors caused by End User's modifications to the Product or End User's use of the Product on an unauthorized platform or in a manner contrary to instructions in the Documentation.

7.3 **Warranty Exclusion**. Vitria does not warrant End User's use of the Products will be error-free or uninterrupted or that all Product errors will be corrected. End User, and not Vitria, is responsible for determining whether the Products will meet End User's requirements, or that the Products will operate in combination with all non-Vitria software used by End User, except as may be set forth in the Documentation.

7.4 **DISCLAIMERS.**

THE EXPRESS WARRANTIES IN THIS AGREEMENT ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, AND VITRIA DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, REGARDING THE PRODUCTS, DOCUMENTATION AND SERVICES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. EXCEPT AS PROVIDED IN THIS AGREEMENT, ALL PRODUCTS AND SERVICES HEREUNDER ARE PROVIDED "AS IS" WITHOUT ANY WARRANTY WHATSOEVER. END USER RECOGNIZES THAT THE "AS IS" CLAUSE OF THIS AGREEMENT IS AN IMPORTANT PART OF THE BASIS OF THIS AGREEMENT, WITHOUT WHICH VITRIA WOULD NOT HAVE AGREED TO ENTER INTO THIS AGREEMENT. END USER ACKNOWLEDGES THAT IT HAS RELIED ON NO WARRANTIES OTHER THAN THE EXPRESS WARRANTIES IN THIS AGREEMENT.

8.0 **LIMITATION OF LIABILITY**

EXCEPT FOR LIABILITY ARISING FROM A BREACH OF SECTION 5 AND 7, IN NO EVENT WILL VITRIA BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, EXEMPLARY, SPECIAL, PUNITIVE, OR INCIDENTAL DAMAGES, INCLUDING ANY LOST DATA AND LOSS OF PROFITS, ARISING FROM OR RELATING TO THIS AGREEMENT, EVEN IF VITRIA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. VITRIA'S LIABILITY FOR DAMAGES SHALL BE LIMITED TO DIRECT DAMAGES ONLY AND VITRIA'S TOTAL CUMULATIVE LIABILITY IN CONNECTION WITH THE SERVICES AND PRODUCTS IT PROVIDES PURSUANT TO THIS AGREEMENT SHALL IN NO EVENT EXCEED THE AMOUNT OF FEES PAID TO VITRIA FOR THE RELEVANT PRODUCT OR SERVICE GIVING RISE TO THE LIABILITY. END USER ACKNOWLEDGES THAT THE FEES PAID BY IT REFLECT THE ALLOCATION OF RISK SET FORTH IN THIS AGREEMENT AND THAT VITRIA WOULD NOT ENTER INTO THIS AGREEMENT WITHOUT THESE LIMITATIONS ON ITS LIABILITY.

9.0 **TERM AND TERMINATION**

9.1 **Term**. This Agreement will begin on the Effective Date and will continue indefinitely unless terminated pursuant to the terms of this Agreement or otherwise agreed by the Parties in writing.

9.2 **Termination by End User**. End User may terminate this Agreement at any time, with or without cause, upon thirty (30) days prior written notice to Vitria. In no event shall any termination under this Section relieve End User of its obligations under Section 9.4 below.

9.3 **Termination by Vitria.** Vitria may terminate this Agreement or any Product license if End User breaches any provision of this Agreement and fails to cure the breach within thirty (30) days following written notice specifying the breach. Vitria may consider any of the following conditions as grounds for termination of this Agreement: If (i) End User files or has filed against it a petition under any applicable law relating to insolvency or the protection of its creditors, (ii) End User makes an assignment for the benefit of creditors, or (iii) a receiver or similar official is appointed for all or a substantial portion of End User's assets.

9.4 **Effect of Termination.**
(a) **Payments.** Upon termination of this Agreement, any amounts owed to Vitria under this Agreement before such termination will be immediately due and payable.

(b) **License Termination.** Upon termination of this Agreement for any reason, all license rights granted to End User in this Agreement terminate automatically, and End User shall promptly discontinue all use of the Products and Documentation, erase all copies of the Products and Documentation from End User's computers, return to Vitria or destroy all copies of the Products and Documentation on tangible media in End User's possession or control, and certify in writing to Vitria that it has fully complied with these requirements. Notwithstanding the foregoing, in the event End User terminates this Agreement, End User shall be granted a period of time following termination, not to exceed ninety (90) days, within which to use the Products to support existing operations and to migrate to

an alternative software product. End User shall pay to Vitria all license fees, Support Fees (pro-rated from the termination date), or training fees that accrue during such ninety (90) days and End User shall use all reasonable efforts to transition to another software product as soon as practicable prior thereto.

(c) **General.** Termination of this Agreement or any license shall not limit either Party from pursuing any other remedies available to it, including injunctive relief, nor shall such termination relieve End User's obligation to pay all fees that have accrued or are otherwise owed by End User under this Agreement (or any amendment to this Agreement, Order, Statement of Work, or other similar document related hereto). In the event of End User's insolvency or bankruptcy, End User will cooperate to protect Vitria's interests in the Products, and will execute any documents that are reasonably required to protect Vitria's interests

9.5 **Survival**. Sections 1 ("Definitions"), 2.6 ("License Restrictions"), 2.7 ("Audit Rights"), 2.8 ("Intellectual Property Rights"), 3 ("Invoicing, Payment and Taxes"), 5 ("Nondisclosure"), 7 ("Warranties, Remedies"), 8 ("Limitation of Liability"), 9.0 ("Term and Termination"), and 10 ("General Terms") will survive termination of this Agreement for any reason.

10.0 GENERAL TERMS

10.1 **Assignment**. End User may not assign or transfer, by operation of law or otherwise, any of its rights under this Agreement (including its licenses with respect to the Product) to any third party without Vitria's prior written consent. Nothing in this Agreement shall constitute a consent by Vitria to End User's assumption, or assumption and assignment, of any license set forth herein pursuant to 11 U.S.C. §365 or otherwise, and specifically shall not constitute a consent pursuant to 11 U.S.C. §365(c)(1)(B). Vitria further expressly reserves all of its rights to object to any assumption or assumption and assignment of any license set forth herein.

10.2 **Attorneys' Fees**. In the event that either Party to this Agreement retains an attorney as a result of any dispute over, or to enforce any provisions of, this Agreement, the "prevailing party," as that term is defined in California Code of Civil Procedure Section 1032(a)(4), in any litigation, arbitration or other formal or informal resolution of any such dispute or enforcement of, this Agreement shall be entitled to all of its reasonable costs, and any reasonable attorneys' fees incurred as a result of said dispute or enforcement.

10.3 **Compliance with Laws**. End User will comply with all applicable laws and regulations in its use of the Products, including but not limited to export and import controls and the United States Foreign Corrupt Practices Act. The Products are covered and controlled by U.S. Export Control laws and may be subject to the export or import laws in other countries. Nuclear, missile, chemical, biological weapons or nuclear maritime end uses or end users, whether direct or indirect, are strictly prohibited. Export or re-export to countries subject to U.S. embargo, or to entities identified on U.S. export exclusion lists, including, but not limited to: the Commerce Control List (CCL); the United States Munitions List (USML); Nuclear Regulatory Commission Controls (NRCC); the denied persons' and specially designated nationals' lists is strictly prohibited. End User will defend, indemnify and hold harmless Vitria, its suppliers, agents, directors, officers and employees, from and against any violation of such laws or regulations by End User or any of its agents, officers, directors, or employees.

10.4 **Counterparts**. This Agreement may be executed in any number of counterparts or duplicate originals.

10.5 **End User Reference**. During the term of this Agreement, Vitria may place End User's name and logo on Vitria's website and in collateral marketing materials relating to Vitria's Products and Services. Subject to a review process before completion, the End User agrees to (a) act as a reference site for Vitria, whereupon Vitria will co-ordinate with End User with respect to the timing of any related calls or site visits by third parties with the End User and (b) provide a testimonial and quote to Vitria for use in its marketing materials, including Vitria's website and a press release.

End User agrees not to unreasonably withhold its consent to such press release.

10.6 **Entire Agreement**.

(a) This Agreement (including any and all Orders, Statements of Work, addenda, appendices and exhibits referencing this Agreement and incorporated herein by the Parties) constitutes the entire agreement between the Parties regarding the subject matter hereof and supersedes all prior or contemporaneous agreements, understandings, and communications between the Parties, whether written or oral.

(b) This Agreement may be amended only by a written document signed by both Parties.

(c) In the event of any ambiguity or conflict between any of the terms and conditions contained in the Agreement and the terms and conditions contained in a Statement of Work (or any Change Order thereto), the terms and conditions of the Agreement shall control, unless the Parties have expressly provided in such Statement of Work that a specific provision in the Agreement is amended, in which case the Agreement shall be so amended, but only with respect to such Statement of Work.

(d) For purposes of this Agreement, "including" means "including without limitation."

(e) It is expressly agreed that the terms of this Agreement and any and all Orders shall supersede and nullify the terms in any End User purchase order or other ordering document. This Agreement shall also supersede the terms of any Vitria unsigned or click-wrap license provided the use limitations contained in such license agreement shall be effective for the specified license.

10.7 **Force Majeure**. Neither Party will be responsible for failure of performance, other than for an obligation to pay money, due to causes beyond its control, including, without limitation, acts of God or nature; labor disputes; sovereign acts of any federal, state or foreign government; or shortage of materials.

10.8 **Governing Law**. This Agreement will be governed by the laws of the State of California as such laws apply to contracts between California residents performed entirely within California, and shall be deemed to be executed in Menlo Park, California. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement.

10.9 **Independent Contractors; Nonexclusive**. Vitria and End User are independent contractors and will so represent and conduct themselves in all regards. Except as specifically provided for in this Agreement, neither Party may bind the other in any way. Nothing in this Agreement will be construed to make either Party the agent or legal representative of the other or to make the Parties partners or joint venturers.

10.10 **Jurisdiction**. Any legal action or proceeding relating to this Agreement may only be instituted in any state or federal court in San Francisco or San Mateo County, California. Vitria and End User agree to submit to the jurisdiction of, and agree that venue is proper in, the aforesaid courts in any such legal action or proceeding.

10.11 **Notices**. All notices, consents and approvals under this Agreement must be delivered in writing by courier, or by certified or registered mail (postage prepaid and return receipt requested), to the other Party at the address set forth beneath such Party's signature, and will be effective upon receipt or three (3) business days after being deposited in the mail as required above, whichever occurs sooner. Either Party may change its address by giving notice of the new address to the other Party.

10.12 **Remedies**. Except as provided in Sections 6 and 7, the Parties' rights and remedies under this Agreement are cumulative. End User acknowledges that the Product contains valuable trade secrets and

Confidential Information of Vitria and its suppliers, and that any actual or threatened breach of Sections 2 or 5 will constitute immediate, irreparable harm to Vitria for which monetary damages would be an inadequate remedy, and that injunctive relief is an appropriate remedy for such breach without necessity of posting bond or security, which necessity is expressly waived.

10.13 **Severability**. If any provision of this Agreement is unenforceable, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law, and the remaining provisions will continue in full force and effect. Without limiting the generality of the foregoing, End User agrees that Section 8 will remain in effect notwithstanding the unenforceability of any provision in Section 6.

10.14 **U.S. Government End Users.** The Software and Documentation are "commercial items" as that term is defined in FAR 2.101, consisting of "commercial computer software" and "commercial computer software documentation," respectively, as such terms are used in FAR 12.212 and DFARS 227.7202. If the Software and Documentation are being acquired by or on behalf of the U.S. Government, then, as provided in FAR 12.212 and DFARS 227.7202-1 through 227.7202-4, as applicable, the U.S. Government's rights in the Software and Documentation will be only those specified in this Agreement.

10.15 **Waiver**. All waivers must be in writing. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of such or any other provision on any other occasion. Pursuant to California Code of Civil Procedure Section 1542, a general release does not extend to claims that either the End User, Vitria or releasing party does not know or suspect to exist in their favor at the time of executing the release and that, if known by them, would have materially affected their settlement with the other or released party.

END USER: [LEGAL ENTITY]
[NAME]
[STREET ADDRESS]
[CITY, STATE, ZIP CODE]

_____
Signature

_____
Printed Name/Title

_____
Date

VITRIA:
Vitria Technology, Inc.
101 Jefferson Drive, FL 1
Menlo Park, CA 94025-1114
USA

_____
Signature

_____
Printed Name/Title

_____
Date

Vitria Legal Dept. Approval: