

## VAST DATA – END USER SERVICES AND LICENSE AGREEMENT

THIS END USER SERVICES AND LICENSE AGREEMENT (THE “**TERMS**” or the “**AGREEMENT**”), EFFECTIVE AS OF THE DATE SIGNED BY BOTH PARTIES BELOW, APPLIES TO THE VAST DATA STORAGE SOLUTION SERVICES OR ANY VAST DATA SOFTWARE (AS DEFINED BELOW), PROVIDED TO *insert Ordering Activity* (COLLECTIVELY, “**USER**”, “**YOU**”) BY VAST DATA, INC. (“**VAST DATA**”) DIRECTLY, OR INDIRECTLY THROUGH A DISTRIBUTOR, RESELLER OR OTHER THIRD PARTY LICENSED AND AUTHORIZED BY VAST DATA (THE “**DISTRIBUTOR**”) PURSUANT TO AN ENGAGEMENT BETWEEN DISTRIBUTOR AND YOU (THE “**DISTRIBUTOR AGREEMENT**”).

### **1. DEFINITIONS**

1.1. “**AFFILIATE**” MEANS ANY ENTITY WHICH CONTROLS, IS CONTROLLED OR IS UNDER COMMON CONTROL WITH EITHER OF THE PARTIES. ANY ENTITY SHALL BE DEEMED TO “**CONTROL**” ANOTHER ENTITY IF IT OWNS DIRECTLY OR INDIRECTLY MORE THAN 50% OF THE OUTSTANDING VOTING SECURITIES OR CAPITAL OF THE OTHER ENTITY OR OTHER COMPARABLE EQUITY WITH RESPECT TO AN ENTITY OTHER THAN A COMPANY.

1.2. “**DOCUMENTATION**” MEANS THE STANDARD WRITTEN MATERIALS REGARDING THE SERVICES AND VAST SOFTWARE ISSUED AND GENERALLY PROVIDED BY VAST TO ITS CUSTOMERS.

1.3. “**THIRD PARTY COMPONENTS**” SHALL MEAN COLLECTIVELY ANY SOFTWARE COMPONENTS, WHICH ARE LICENSED BY 3RD PARTIES AND THAT ARE INTEGRATED INTO OR WITH THE VAST SOFTWARE.

1.4. “**VAST SOFTWARE**” SHALL MEAN THE SOFTWARE COMPONENTS USED BY VAST DATA DURING THE SERVICES TERM (INCLUDING ANY UPDATES THERETO PROVIDED DURING THE SERVICES TERM), FOR THE PURPOSE OF ENABLING YOU TO RECEIVE AND CONSUME THE SERVICES.

1.5. “**SERVICES**” SHALL MEAN STORAGE SOLUTION SERVICES (WHETHER HOSTED AT USER OR AT VAST DATA OR ITS AUTHORIZED DISTRIBUTOR), AS GENERALLY DESCRIBED IN THE DOCUMENTATION, THAT ARE PROVIDED HEREUNDER BY VAST.

1.6. “**SERVICES TERM**” SHALL MEAN THE PERIOD DURING WHICH YOU ARE PERMITTED TO OBTAIN, USE AND ACCESS THE SERVICES THROUGH USE OF AND ACCESS TO THE VAST SOFTWARE, PURSUANT TO THE DISTRIBUTOR ENGAGEMENT WITH A VAST DISTRIBUTOR OR OTHERWISE PURSUANT TO ANY WRITTEN INSTRUMENT TO WHICH YOU AND VAST DATA HAVE MUTUALLY ENTERED (“**ORDER**”).

1.7. “**COMPATIBLE HARDWARE**” SHALL MEAN HARDWARE AND HARDWARE CONFIGURATION THAT IS EXPRESSLY DESIGNATED AND APPROVED BY VAST DATA IN THE DOCUMENTATION TO RUN THE VAST SOFTWARE FOR THE

PURPOSE OF ENABLING AND MAKING THE SERVICES AVAILABLE BY VAST DATA.

## **2. STORAGE SERVICES LICENSE RIGHTS; RESTRICTIONS**

2.1. THE COMMERCIAL TERMS GOVERNING YOUR ACCESS TO THE SERVICES AND TO THE VAST SOFTWARE, ARE SET FORTH IN THE DISTRIBUTOR AGREEMENT, OR IN THE ORDER OR OTHERWISE IN A WRITTEN FORM BETWEEN YOU AND DISTRIBUTOR OR BETWEEN YOU AND VAST DATA (AS APPLICABLE), AND SUCH TERMS SHALL INCLUDE THE SERVICES TERM, THE FEES PAYABLE TO DISTRIBUTOR OR TO VAST DATA FOR THE SERVICES (THE "FEES") AND ANY LIMITATION ON THE PERMITTED SERVICES CAPACITY. IF THE SERVICES TERM ENDS YOU WILL BE RUNNING THE VAST SOFTWARE IN AN UNSUPPORTED STATE AND WITHOUT VAST WARRANTY OR LIABILITY. UNTIL SUCH TIME AS YOU RENEW THE SERVICES, YOU WILL NOT BE ENTITLED TO ANY SERVICES INCLUDING SUPPORT AND MAINTENANCE. RENEWAL OF AN EXPIRED SERVICES TERM MAY BE SUBJECT TO PAYMENT OF FEES FOR ANY PERIOD DURING WHICH THE APPLICABLE SERVICES WERE NOT PURCHASED BY YOU, IN ADDITION TO FEES FOR THE RENEWED SERVICE TERM.

2.2. VAST GRANTS YOU, SUBJECT TO FULL COMPLIANCE WITH THE TERMS AND CONDITIONS SET FORTH HEREIN AND IN THE ORDER OR DISTRIBUTOR AGREEMENT (AS APPLICABLE), A NON-EXCLUSIVE, NON-TRANSFERABLE, NON-SUBLICENSABLE, RIGHT FOR THE DURATION OF THE SERVICES TERM AND IN ORDER TO ENABLE YOUR PERMITTED ACCESS AND USE OF THE SERVICES TO:

2.2.1. (I) INSTALL OR HAVE INSTALLED THE VAST SOFTWARE BY OR ON BEHALF OF VAST DATA OR A DISTRIBUTOR, FOR THE DURATION OF THE SERVICES TERM, ACCESS, AND RUN (IN MACHINE-READABLE, OBJECT CODE FORM ONLY) THE VAST SOFTWARE AS PROVIDED, INSTALLED AND CONFIGURED BY VAST DATA OR DISTRIBUTOR (AND ALLOW YOUR PERSONNEL OR PERSONNEL OF YOUR AFFILIATES TO DO THE SAME), SOLELY FOR YOUR AND YOUR AFFILIATES' INTERNAL USE OF THE SERVICES AND NOT FOR ANY FURTHER COMMERCIALIZATION OR PROVISION OF THE SERVICES (OR SERVICES SIMILAR TO THE SERVICES) TO ANY THIRD PARTY ("PURPOSE") ALL STRICTLY IN ACCORDANCE WITH THE TECHNICAL INSTRUCTIONS SET FORTH IN THE DOCUMENTATION; AND

2.2.2. ACCESS, USE AND MAKE VERBATIM COPIES OF THE DOCUMENTATION PROVIDED TO YOU BY VAST DATA OR DISTRIBUTOR, SOLELY IN CONNECTION WITH YOUR CONSUMPTION OF THE SERVICES E AS PERMITTED HEREUNDER FOR THE PURPOSE, AND PROVIDED THAT ALL COPYRIGHT NOTICES ARE INCLUDED AND MAINTAINED THEREIN.

2.3. USE RESTRICTIONS.

2.3.1. YOU AGREE THAT YOU WILL NOT, NOR WILL YOU PERMIT ANY THIRD PARTY TO: (A) DISTRIBUTE, LICENSE, SUBLICENSE, GRANT ACCESS, OR SELL THE SERVICES OR VAST SOFTWARE TO ANY THIRD PARTY (INCLUDING DISPOSING IN ANY MANNER OF, THE COMPATIBLE HARDWARE WHILE THE VAST

SOFTWARE IS STILL INSTALLED ON IT, OR ALLOWING A THIRD PARTY WHO PROVIDES SERVICES WHICH ARE SIMILAR TO THE SERVICES TO ACCESS THE VAST SOFTWARE OR COMPATIBLE HARDWARE), EXCEPT AS EXPRESSLY PERMITTED HEREUNDER; (B) MODIFY, ALTER, COPY, TRANSFER, EMULATE OR CREATE ANY DERIVATIVE WORKS OF THE VAST SOFTWARE AND/OR THE SERVICES OR OF ANY PART THEREOF; (C) REVERSE ENGINEER, DECOMPILE, DECODE, DECRYPT, DISASSEMBLE, OR IN ANY WAY ATTEMPT TO DERIVE SOURCE CODE OR DESIGNS FROM THE VAST SOFTWARE OR SERVICES OR ANY PART THEREOF; (D) REMOVE, ALTER OR OBSCURE ANY COPYRIGHT, TRADEMARK OR OTHER PROPRIETARY RIGHTS NOTICE, ON OR IN, THE SERVICES, THE VAST SOFTWARE AND/OR THE DOCUMENTATION; (E) BUNDLE, INTEGRATE, OR ATTEMPT TO INTEGRATE WITH THE SERVICES OR VAST SOFTWARE, ANY THIRD-PARTY SOFTWARE TECHNOLOGY OTHER THAN AS EXPRESSLY PERMITTED IN WRITING BY VAST DATA (INCLUDING THROUGH THE DOCUMENTATION); (F) USE THE SERVICES OR VAST SOFTWARE FOR ANY BENCHMARKING OR FOR COMPETING SERVICES, ACTIVITIES OR COMPETING PURPOSES OR USE THE VAST SOFTWARE OR SERVICES FOR ANY UNLAWFUL PURPOSE, (G) PUBLISH OR DISCLOSE TO ANY THIRD PARTY ANY TECHNICAL FEATURES, QUALITY, PERFORMANCE OR BENCHMARK TEST, OR COMPARATIVE ANALYSES RELATING TO THE SERVICES, THE VAST SOFTWARE AND/OR ANY PRE-RELEASE PRODUCTS (AS DEFINED BELOW), EXCEPT AS EXPRESSLY PERMITTED BY VAST DATA IN WRITING, OR (H) RUN OR USE THE VAST SOFTWARE IN ANY HARDWARE OTHER THAN COMPATIBLE HARDWARE AND IN ANY LOCATION OR SYSTEM OTHER THAN AS SET FORTH IN THE APPLICABLE ORDER, DISTRIBUTOR AGREEMENT (AS APPLICABLE) OR AS PRE-APPROVED BY VAST DATA IN WRITING, OR NOT IN ACCORDANCE WITH THE INSTRUCTIONS OF, VAST OR BY THE DISTRIBUTOR.

2.3.2. WITHOUT DEROGATING FROM THE FOREGOING, YOU SHALL TAKE COMMERCIALY REASONABLE PRECAUTIONS TO PREVENT ANY UNAUTHORIZED ACCESS AND/OR UNAUTHORIZED USAGE OF THE SERVICES AND VAST SOFTWARE MADE AVAILABLE TO YOU HEREUNDER. YOU SHALL BE RESPONSIBLE AND LIABLE FOR ANY ACT OR OMISSION BY ANY OF YOUR AFFILIATES, YOUR PERSONNEL OR YOUR AFFILIATES' PERSONNEL, AS IF PERFORMED BY YOU.

2.4. PROVISION OF HOSTED SERVICES. A WRITTEN EXPRESS AUTHORIZATION BY VAST , UNDER A SEPARATE WRITTEN INSTRUMENT BETWEEN YOU AND VAST , SUCH AS AN APPLICABLE QUOTE OR ORDER, IS REQUIRED FOR YOUR USE OF THE SERVICES AND THE VAST SOFTWARE FOR THE PURPOSE OF OFFERING AND PROVIDING OTHERS WITH HOSTED SERVICES I.E. FOR ALLOWING YOUR CUSTOMERS TO ENJOY THE BENEFIT OF THE SERVICES THAT ARE PROVIDED BY VAST TO YOU HEREUNDER. IN THE EVENT SUCH AUTHORIZATION IS GRANTED BY VAST THE FOLLOWING SHALL APPLY:

2.4.1. YOU ARE AND SHALL REMAIN LIABLE TO VAST FOR ANY ACTS OR OMISSIONS OF SUCH PERSONS AND ENTITIES TO WHOM YOU PROVIDED OR MADE AVAILABLE THE SERVICES; AND

2.4.2. SUCH PERSONS AND ENTITIES ENTER INTO AN AGREEMENT WITH YOU THAT PROVIDES VAST DATA WITH NO LESS PROTECTION OF ITS RIGHTS AND INTEREST THAN THAT PROVIDED UNDER THIS AGREEMENT.

2.5. EXCEPT AS PERMITTED PURSUANT TO SECTION 2.4, VAST STRICTLY PROHIBITS YOU FROM MAKING THE SERVICES AVAILABLE TO ANY THIRD PARTY, WHETHER AS HOSTING SERVICE PROVIDER, OR ON A RENTAL, SERVICE BUREAU, CLOUD SERVICE, OR OTHER SIMILAR BASIS.

2.6. PRE-RELEASE PRODUCTS. IN ADDITION TO THE SERVICES, VAST DATA MAY MAKE AVAILABLE TO YOU A BETA OR PRE-RELEASE VERSIONS OF ITS OTHER PRODUCTS AND SERVICES (“PRE-RELEASE PRODUCTS”), BY NOTIFYING YOU OF THE SAME IN WRITING (INCLUDING IN ELECTRONIC FORM). YOU ACKNOWLEDGE THAT THE PRE-RELEASE PRODUCTS (I) ARE NOT AT THE LEVEL OF PERFORMANCE OR COMPATIBILITY OF FINAL, GENERALLY AVAILABLE PRODUCTS; (II) MAY NOT OPERATE CORRECTLY, (III) MAY BE MODIFIED PRIOR TO BEING MADE GENERALLY AVAILABLE; (IV) MAY NOT BE MADE FOR GENERAL RELEASE, AND (V) SHOULD NOT BE USED IN A PRODUCTION ENVIRONMENT.

2.7. FEEDBACK. YOU MAY PROVIDE VAST DATA WITH FEEDBACK REGARDING THE USE, OPERATION, PERFORMANCE, AND FUNCTIONALITY OF THE SERVICES, THE VAST SOFTWARE AND ANY PRE-RELEASE PRODUCTS, INCLUDING IDENTIFYING POTENTIAL ERRORS AND IMPROVEMENTS (“FEEDBACK”). YOU HEREBY GRANT VAST DATA A PERPETUAL, IRREVOCABLE, WORLDWIDE, UNLIMITED, SUBLICENSABLE, FULLY PAID-UP AND ROYALTY-FREE RIGHT TO USE THE FEEDBACK AND ANY DERIVATIVE, MODIFICATION AND ENHANCEMENT THEREOF IN ANY MANNER.

2.8. MARKS AND USE OF NAME. THESE TERMS DO NOT GRANT YOU ANY RIGHTS TO VAST DATA’S TRADEMARKS OR SERVICE MARKS.

2.9. THIRD PARTY SOFTWARE. IN ACCEPTING THESE TERMS, YOU CONFIRM AND ACKNOWLEDGE THE UTILIZATION OF THIRD PARTY SOFTWARE COMPONENTS IN THE VAST SOFTWARE AND ACKNOWLEDGE THAT SUCH THIRD PARTY COMPONENTS ARE BEING DELIVERED TOGETHER WITH THE VAST SOFTWARE, WITH YOUR CONSENT AND USE THEREOF IS SUBJECT TO THEIR RESPECTIVE LICENSES’ TERMS AS AND TO THE EXTENT MADE AVAILABLE TO YOU BY VAST DATA. WITHOUT DEROGATING FROM VAST’S LIMITED WARRANTY PROVIDED IN SECTION 3 BELOW, SUCH THIRD PARTY COMPONENTS ARE UTILIZED ON AN “AS IS” BASIS WITHOUT ANY WARRANTY WHATSOEVER AND VAST HEREBY EXPRESSLY DISCLAIMS WITH RESPECT TO ANY SUCH THIRD PARTY COMPONENTS, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW ALL WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

2.10. EXPORT RESTRICTIONS. YOU ACKNOWLEDGE THAT THE VAST SOFTWARE MAY BE SUBJECT TO UNITED STATES’ EXPORT JURISDICTION AND TO ANY OTHER APPLICABLE LAWS AND REGULATION CONCERNING THE TRANSFER OF

THE VAST SOFTWARE OR ANY PART THEREOF ACROSS INTERNATIONAL BORDERS. YOU WILL COMPLY WITH ALL APPLICABLE NATIONAL AND INTERNATIONAL LAWS THAT APPLY TO YOUR USE OF THE VAST SOFTWARE, INCLUDING UNITED STATES EXPORT ADMINISTRATION REGULATIONS, AS WELL AS END USER, END USE AND DESTINATION RESTRICTIONS WHICH MAY BE ISSUED BY THE UNITED STATES AND OTHER GOVERNMENTS FROM TIME TO TIME.

2.11. AT VAST WRITTEN REQUEST (BUT NOT MORE THAN ONCE ANNUALLY) AND SUBJECT TO GOVERNMENT SECURITY REQUIREMENTS YOU SHALL PROMPTLY PROVIDE VAST ANY MATERIALS, AND AS REQUESTED WITH ACCESS AND OPPORTUNITY TO AUDIT (USING A THIRD-PARTY AUDITOR WHO WILL BE ONE OF THE “BIG FOUR” INTERNATIONAL ACCOUNTING FIRMS OR OTHERWISE AS AGREED BETWEEN THE PARTIES, WHICH THIRD-PARTY WILL ALSO BE SUBJECT TO CUSTOMARY CONFIDENTIALITY OBLIGATIONS) YOUR COMPLIANCE WITH THE TERMS OF THIS AGREEMENT. AN AUDIT SHALL BE PERFORMED DURING NORMAL BUSINESS HOURS, AND TO THE EXTENT POSSIBLE COORDINATED IN ADVANCE WITH AT LEAST THIRTY (30) DAYS PRIOR WRITTEN NOTICE.

### **3. LIMITED WARRANTY; DISCLAIMERS**

3.1. UNLESS OTHERWISE REQUIRED BY APPLICABLE LAW, VAST DATA WARRANTS THAT SUBJECT TO YOUR COMPLIANCE WITH THESE TERMS, WITH THE DOCUMENTATION AND WITH THE DISTRIBUTOR AGREEMENT OR THE ORDER (AS APPLICABLE), THE SERVICES SHALL DURING THE SERVICES TERM, SUBSTANTIALLY COMPLY WITH THE SOFTWARE SPECIFICATIONS SET FORTH IN THE DOCUMENTATION.

3.2. VAST DATA’S SOLE OBLIGATION AND YOUR EXCLUSIVE REMEDY UNDER SECTION 3.1 ABOVE IS LIMITED TO VAST DATA’S RECTIFYING, AT ITS OWN EXPENSE, ANY SUCH DEFECT WHICH WAS NOTIFIED TO VAST DATA AT VASTSUPPORT@VASTDATA.COM DURING THE SERVICES TERM. UNLESS OTHERWISE AGREED BETWEEN YOU AND VAST DATA, SUCH RECTIFICATION OF THE DEFECT MAY BE PERFORMED, BY REPAIR, REPLACEMENT, OR CORRECTION OF THE SERVICES OR THE VAST SOFTWARE OR ANY PART THEREOF, WHICH MAY ALSO INCLUDE A FUTURE SOFTWARE RELEASE OF THE VAST SOFTWARE, ISSUED WITHIN 45 DAYS OF SUCH NOTICE OF DEFECT. IN THE EVENT THE SERVICES WERE ORDERED DIRECTLY FROM VAST DATA AND VAST DATA IS NOT ABLE TO RECTIFY THE DEFECT AS SPECIFIED ABOVE WITHIN 45 DAYS OF YOUR NOTICE TO VAST DATA OR OTHERWISE IF AND AS AGREED BETWEEN YOU AND VAST DATA, YOU ARE ENTITLED TO CANCEL THE SERVICES AND VAST DATA WILL REFUND ANY PRE-PAID UNUSED VAST SOFTWARE LICENSE FEES PAID BY YOU TO VAST FOR THE SERVICES TERM. IN ADDITION, DURING THE SERVICES TERM AND SUBJECT TO YOUR CONTINUED PAYMENT THEREFOR TO DISTRIBUTOR OR TO VAST DATA VAST DATA WILL PROVIDE YOU WITH SUPPORT AND MAINTENANCE SERVICES AS SET OUT IN THE SERVICE LEVEL AGREEMENT (“SLA”) REFERENCED IN THE RELEVANT ORDER. IT IS AGREED AND ACKNOWLEDGED THAT VAST DATA SHALL HAVE NO LIABILITY TO PROVIDE SUPPORT AND MAINTENANCE SERVICES WITH RESPECT TO, NOR WILL ANY VAST DATA PRODUCT WARRANTY APPLY TO, ANY VAST SOFTWARE AND SERVICES, THAT (I) HAVE BEEN USED IN CRYPTO-MINING ACTIVITIES (UNLESS

OTHERWISE AGREED BY VAST IN WRITING), (II) HAVE BEEN USED IN CONNECTION WITH ANY UNLAWFUL ACTIVITY OR OTHERWISE IN BREACH OF SECTION 2.3.1 AND/OR (III) THAT HAVE BEEN HANDLED OR TREATED NOT IN ACCORDANCE WITH THE DOCUMENTATION.

3.3. VAST DATA'S WARRANTY UNDER SECTION 3.1 ABOVE WILL NOT APPLY IN THE EVENT THE VAST SOFTWARE OR ANY PART THEREOF IS (I) MODIFIED OR ADJUSTED IN ANY MANNER BY ANY PARTY OTHER THAN VAST DATA OR WITHOUT VAST DATA'S WRITTEN APPROVAL, (II) USED IN CONJUNCTION WITH YOUR OR ANY THIRD PARTY'S PRODUCTS, WHICH RESULTED IN THE DEFECT, OTHER THAN AS SPECIFIED IN THE DOCUMENTATION OR APPROVED IN WRITING BY VAST DATA, (III) ABUSED, MISHANDLED, MISUSED OR OTHERWISE USED NOT IN ACCORDANCE WITH THE DOCUMENTATION AND THESE TERMS, OR (IV) WAS NOT FULLY PAID FOR, OR (V) WAS NOT PROMPTLY UPDATED WITH VAST DATA'S MOST RECENT SOFTWARE RELEASE PROVIDED TO YOU BY VAST DATA. VAST'S WARRANTY HEREUNDER IS A ONE- TIME WARRANTY AND DOES NOT RESTART UPON THE PROVISION OF ANY UPDATES, UPGRADES OR NEW RELEASES OF THE VAST SOFTWARE OR ANY PART THEREOF.

3.4. ALL PRE-RELEASE PRODUCTS ARE PROVIDED BY VAST DATA FOR EVALUATION PURPOSES ONLY AND ON AN "AS IS" BASIS, WITHOUT WARRANTY OR LIABILITY OF ANY KIND, FOR USE AT YOUR OWN RISK. VAST DATA MAY, AT ITS SOLE DISCRETION, USE REASONABLE EFFORTS TO RESOLVE ISSUES IDENTIFIED IN PRE-RELEASE PRODUCTS.

3.5. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, THE SERVICES AND THE VAST SOFTWARE, ARE PROVIDED BY VAST "AS IS" AND VAST MAKES NO REPRESENTATIONS OR WARRANTIES, ORAL OR WRITTEN, EXPRESS OR IMPLIED, REGARDING THE SERVICES AND THE VAST SOFTWARE, INCLUDING REPRESENTATION ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, QUALITY OF INFORMATION, QUIET ENJOYMENT OR OTHERWISE, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NON-INTERFERENCE. YOU ACKNOWLEDGE THAT YOU HAVE NOT ENTERED INTO THIS AGREEMENT IN RELIANCE UPON ANY WARRANTY OR REPRESENTATION NOT EXPRESSLY CONTAINED IN THESE TERMS.

#### **4. PROPRIETARY RIGHTS**

4.1. YOU AGREE AND ACKNOWLEDGE THAT, AS BETWEEN YOU AND VAST DATA, VAST DATA IS AND SHALL REMAIN THE SOLE AND EXCLUSIVE OWNER OF ANY AND ALL INTELLECTUAL PROPERTY RIGHTS IN OR PERTAINING TO THE SERVICES, THE VAST SOFTWARE AND ANY PART THEREOF, INCLUDING ANY MODIFICATIONS, ENHANCEMENTS, IMPROVEMENTS, UPDATES AND UPGRADES, AND DERIVATIVE WORKS, THEREOF. "INTELLECTUAL PROPERTY" SHALL MEAN ALL INVENTIONS, IDEAS, CONCEPTS, ANALYSES, (WHETHER PATENTED, OR PATENTABLE, OR NOT), METHODS, METHODOLOGIES, DESIGNS, PROCESSES, PATENTS, PATENT APPLICATIONS, RIGHTS ASSOCIATED WITH WORKS OF AUTHORSHIP, INCLUDING COPYRIGHTS, COPYRIGHTS APPLICATIONS, COPYRIGHTS RESTRICTIONS, MORAL RIGHTS, ANY INFORMATION, ANCILLARY

MATERIALS, DEVICES, RESULTS, KNOW-HOW, AND ALL RIGHTS RELATING TO THE PROTECTION OF TRADE SECRETS AND CONFIDENTIAL INFORMATION; DESIGN RIGHTS AND INDUSTRIAL PROPERTY RIGHTS; MASK WORKS, SOFTWARE, ALL CODE INCLUDING SOURCE CODE, OBJECT CODE, FIRMWARE, USAGE DATA; AND ANY OTHER PROPRIETARY RIGHTS RELATING TO INTANGIBLE PROPERTY. OTHER THAN AS EXPLICITLY STATED HEREUNDER, NO LICENSE, EXPRESS OR IMPLIED, IN OR TO THE INTELLECTUAL PROPERTY OF VAST DATA, IS GRANTED TO YOU UNDER THESE TERMS.

## **5. CONFIDENTIALITY**

5.1. "CONFIDENTIAL INFORMATION" MEANS INFORMATION, IN ANY FORM OR FORMAT, MARKED CONFIDENTIAL, IDENTIFIED AS CONFIDENTIAL INFORMATION AT THE TIME OF DISCLOSURE OR THE NATURE OF THE INFORMATION AND THE MANNER OF DISCLOSURE ARE SUCH THAT A REASONABLE PERSON WOULD UNDERSTAND IT TO BE CONFIDENTIAL. CONFIDENTIAL INFORMATION INCLUDES, BUT IS NOT LIMITED TO, BENCHMARKS, PRICING AND ROADMAPS, AND NONPUBLIC INFORMATION ABOUT EITHER PARTY OR ITS PRODUCTS. THE RECIPIENT OF CONFIDENTIAL INFORMATION WILL USE AT LEAST COMMERCIALY REASONABLE EFFORTS TO MAINTAIN THE CONFIDENTIALITY OF THE DISCLOSER'S CONFIDENTIAL INFORMATION, AGREES TO USE CONFIDENTIAL INFORMATION ONLY FOR PURPOSE OF CARRYING OUT THIS AGREEMENT, AND WILL NOTIFY THE DISCLOSER PROMPTLY OF ANY UNAUTHORIZED USE OR DISCLOSURE OF CONFIDENTIAL INFORMATION. CONFIDENTIAL INFORMATION MAY BE DISCLOSED AND USED BY RECIPIENT'S EMPLOYEES, PARTNERS, CONTRACTORS, PROFESSIONAL ADVISORS AND THIRD PARTIES ("REPRESENTATIVES") HAVING A NEED TO KNOW AND WHO ARE UNDER A WRITTEN OBLIGATION OF CONFIDENTIALITY AND NON-USE WITH RECIPIENT, NO LESS PROTECTIVE AS THESE TERMS. RECIPIENT SHALL REMAIN RESPONSIBLE FOR THE ACT OR OMISSIONS OF ITS REPRESENTATIVES IN CONNECTION WITH ANY CONFIDENTIAL OR PROPRIETARY INFORMATION OF THE DISCLOSER AND SHALL FURTHER CAUSE SUCH REPRESENTATIVES TO STRICTLY ABIDE BY THE TERMS OF THOSE WRITTEN AGREEMENTS. WITHOUT DEROGATING FROM THE FOREGOING, USER MAY NOT DISPLAY OR ALLOW ANY THIRD PARTIES TO USE OR OTHERWISE HAVE ANY ACCESS TO THE VAST SOFTWARE OR TO ANY INFORMATION REGARDING THE SERVICES AND/OR PERFORMANCE THEREOF INCLUDING ANY BUSINESS, INSTALLATION, PERFORMANCE, RELIABILITY, OPTIMIZATION OR INTEGRATION INFORMATION, AND USER'S IMPRESSION OF THE SERVICES ALL OF WHICH ARE DEEMED VAST CONFIDENTIAL INFORMATION (THE "VAST INFORMATION"). CONFIDENTIAL INFORMATION SHALL: (A) BE TREATED AS HIGHLY CONFIDENTIAL BY RECIPIENT, KEPT BY RECIPIENT IN ABSOLUTE CONFIDENCE AND BE AFFORDED BY RECIPIENT ALL REASONABLE AND NECESSARY SAFEGUARDS (AND AT LEAST THE SAME LEVEL OF PROTECTION THAT RECIPIENT AFFORDS ITS OWN CONFIDENTIAL INFORMATION) TO PROTECT SUCH INFORMATION FROM ANY DISCLOSURE WHICH IS NOT EXPRESSLY PERMITTED HEREUNDER (B) NOT BE DIVULGED, DIRECTLY OR INDIRECTLY, BY RECIPIENT TO ANY THIRD PARTY FOR ANY PURPOSE WHATSOEVER, AND (C) NOT, WITHOUT THE PRIOR WRITTEN CONSENT OF DISCLOSER, BE USED BY RECIPIENT FOR ANY PURPOSE EXCEPT AS SET FORTH IN THIS SECTION. VAST RECOGNIZES THAT FEDERAL AGENCIES ARE SUBJECT

TO THE FREEDOM OF INFORMATION ACT, 5 U.S.C. 552, WHICH MAY REQUIRE THAT CERTAIN INFORMATION BE RELEASED, DESPITE BEING CHARACTERIZED AS "CONFIDENTIAL" BY VAST. SUCH RELEASE OF CONFIDENTIAL INFORMATION IS SUBJECT TO YOU (I) IMMEDIATELY AND IN ANY EVENT PRIOR TO DISCLOSURE OF ANY CONFIDENTIAL INFORMATION, SHALL NOTIFY VAST OF THE EXISTENCE, TERMS AND CIRCUMSTANCES SURROUNDING SUCH A REQUEST; (II) SHALL COOPERATE WITH VAST IN THE EVENT VAST ELECTS TO CONTEST SUCH DISCLOSURE OR SEEK A PROTECTIVE ORDER OR OTHER APPROPRIATE REMEDY, AT VAST 'S COST; AND (III) IN ANY EVENT, SHALL ONLY DISCLOSE THE EXACT CONFIDENTIAL INFORMATION OR PORTION THEREOF SPECIFICALLY REQUESTED BY SUCH ORDER OR PROCEEDING.

## **6. INDEMNIFICATION**

VAST SHALL INDEMNIFY AND HOLD YOU AND YOUR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES AND SUCCESSORS AND PERMITTED ASSIGNS ("INDEMNIFIED PARTIES") HARMLESS FROM AND AGAINST ANY COSTS AND DAMAGES ACTUALLY AWARDED AGAINST THE INDEMNIFIED PARTIES BY A COMPETENT COURT IN A FINAL JUDGMENT OR IN A COURT APPROVED SETTLEMENT, AS A RESULT OF, AND DEFEND THE INDEMNIFIED PARTIES AGAINST, ANY THIRD PARTY CLAIM ALLEGING THAT THE SERVICES OR THE VAST SOFTWARE, OR ANY PORTION THEREOF, INFRINGES SUCH THIRD PARTY'S INTELLECTUAL PROPERTY RIGHTS. SUCH OBLIGATION IS SUBJECT TO: (I) THE INDEMNIFIED PARTIES PROMPTLY NOTIFYING VAST DATA IN WRITING OF ANY SUCH CLAIM; (II) VAST DATA HAVING THE ABILITY TO ASSUME SOLE CONTROL OF THE DEFENSE AND/OR SETTLEMENT OF SUCH CLAIM; (III) THE INDEMNIFIED PARTIES FURNISHING TO VAST DATA, ON REQUEST, ALL REASONABLE INFORMATION AVAILABLE TO THE INDEMNIFIED PARTIES FOR SUCH DEFENSE; AND (IV) THE INDEMNIFIED PARTIES NOT ADMITTING FAULT WITH RESPECT TO ANY SUCH CLAIM AND/OR MAKING ANY PAYMENTS OR CONCESSIONS WITH RESPECT TO SUCH CLAIM WITHOUT THE PRIOR WRITTEN CONSENT OF VAST DATA. VAST DATA SHALL (I) KEEP THE INDEMNIFIED PARTIES DULY INFORMED IN CONNECTION WITH THE LITIGATION AND/OR SETTLEMENT NEGOTIATIONS, AND (II) NOT EXECUTE ANY SETTLEMENT COVENANT THAT IMPOSES ANY LIABILITY OR OBLIGATIONS ON THE INDEMNIFIED PARTIES WITHOUT THE PRIOR WRITTEN CONSENT FROM THE RELEVANT INDEMNIFIED PARTIES.

6.1. SHOULD THE VAST SOFTWARE, OR ANY PART THEREOF, BECOME, OR IN VAST DATA'S OPINION BE LIKELY TO BECOME, THE SUBJECT OF ANY INFRINGEMENT CLAIM AS SPECIFIED ABOVE, THEN VAST DATA WILL, AT ITS OWN OPTION AND EXPENSE EITHER: (I) PROCURE THE RIGHT TO CONTINUE USING THE VAST SOFTWARE WITHOUT INFRINGEMENT; (II) REPLACE OR MODIFY THE VAST SOFTWARE WITHOUT NON-NEGLIGIBLY REDUCING ITS FUNCTIONALITY, SO THAT IT BECOMES NON-INFRINGEMENT; OR (III) IF (I) OR (II) CANNOT BE ACHIEVED WITH BY USING REASONABLE COMMERCIAL EFFORTS, VAST DATA SHALL BE ENTITLED TO TERMINATE THE SERVICES AND YOUR RIGHT TO USE THE VAST SOFTWARE IMMEDIATELY UPON WRITTEN NOTICE, IN WHICH EVENT VAST DATA SHALL PROVIDE A REFUND IN ACCORDANCE WITH SECTION 3.2.

6.2. NOTWITHSTANDING THE FOREGOING, VAST DATA SHALL HAVE NO LIABILITY FOR ANY CLAIM OF INFRINGEMENT WHICH RESULTS FROM (A) USE BY YOU OR ANYONE ON YOUR BEHALF OF THE SERVICES OR THE VAST



SOFTWARE IN VIOLATION OF ANY PROVISION OF THESE TERMS, (B) YOUR FAILURE TO INSTALL CHANGES, REVISIONS OR NEW RELEASES AS INSTRUCTED OR PROVIDED BY VAST DATA AT NO COST, (C) USE OF A COMBINATION OF THE VAST SOFTWARE OR ANY PART THEREOF WITH OTHER PRODUCTS, EQUIPMENT, OR SOFTWARE NOT PROVIDED OR APPROVED IN WRITING FOR SUCH USE UNDER THE DOCUMENTATION OR BY VAST DATA, OR (D) MODIFICATIONS OF THE VAST SOFTWARE OR THE COMPATIBLE HARDWARE NOT APPROVED BY VAST DATA.

6.3. THIS SECTION 7 STATES THE EXCLUSIVE REMEDY OF THE INDEMNIFIED PARTIES AND THE ENTIRE LIABILITY OF VAST DATA WITH RESPECT TO INFRINGEMENT CLAIMS INVOLVING THE VAST SOFTWARE OR ANY PART OR USE THEREOF, AND VAST DATA SHALL HAVE NO ADDITIONAL LIABILITY WITH RESPECT TO ANY ALLEGED OR PROVEN INFRINGEMENT.

## **7. LIMITATION OF LIABILITY**

IN NO EVENT WILL VAST DATA, NOR ITS AFFILIATES, OR THEIR RESPECTIVE DIRECTORS, OFFICERS, SHAREHOLDER, AND EMPLOYEES' ("VAST'S PARTIES") AGGREGATE LIABILITY TO YOU, EXCEED THE AMOUNTS PAID BY YOU TO VAST IN RESPECT OF THE VAST SOFTWARE AND SERVICES, DURING THE 12 MONTHS' PERIOD PRECEDING THE DATE OF THE APPLICABLE CLAIM. IN NO EVENT WILL VAST DATA OR VAST DATA PARTIES, HAVE ANY LIABILITY TO YOU FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, EXEMPLARY OR INCIDENTAL DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOST PROFITS OR REVENUES, BUSINESS INTERRUPTION, LOSS OF GOODWILL, COMPUTER FAILURE OR MALFUNCTION, LOSS OF DATA OR BUSINESS INFORMATION ARISING FROM THE INSTALLATION, OPERATION, USE OF OR INABILITY TO USE THE SERVICES OR THE VAST SOFTWARE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH POSSIBILITY WAS REASONABLY FORESEEABLE. NO ACTION, REGARDLESS OF FORM, ARISING OUT OF OR RELATING TO THESE TERMS MAY BE BROUGHT AGAINST VAST DATA MORE THAN TWELVE (12) MONTHS AFTER THE TERMINATION OR EXPIRATION OF THE RELEVANT SERVICES TERM. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO (1) PERSONAL INJURY OR DEATH RESULTING FROM VAST DATA'S NEGLIGENCE; (2) FOR FRAUD; OR (3) FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW.

## **8. TERM AND TERMINATION**

8.1 THIS AGREEMENT SHALL BE IN EFFECT FOR THE DURATION OF THE SERVICES TERM IF AND AS EXTENDED FROM TIME TO TIME IN ACCORDANCE WITH THE TERMS OF THE DISTRIBUTOR AGREEMENT OR AN ORDER (AS APPLICABLE), AND SO LONG AS YOU COMPLY WITH THESE TERMS AND THE ORDER OR ANY MATERIAL NON-CONFLICTING TERMS OF THE APPLICABLE DISTRIBUTOR AGREEMENT (AS APPLICABLE). UNLESS OTHERWISE SET FORTH IN A DISTRIBUTOR AGREEMENT OR AN ORDER (AS APPLICABLE), SERVICES TERM PURCHASED UNDER SUCH DISTRIBUTOR AGREEMENT OR AN ORDER, MAY BE AUTOMATICALLY RENEWED FOR ADDITIONAL CONSECUTIVE TWELVE (12) MONTHS' PERIODS BY EXECUTING A WRITTEN ORDER FOR THE RENEWAL TERM. YOU MAY TERMINATE ANY ORDER (AS APPLICABLE) AT YOUR CONVENIENCE

FOR ANY REASON WITH THIRTY (30) DAYS PRIOR WRITTEN NOTICE TO VAST DATA, REGARDLESS OF WHETHER YOU PURCHASED THE SERVICES FROM VAST DATA OR ONE ITS AUTHORIZED DISTRIBUTORS. WHEN THE USER IS AN INSTRUMENTALITY OF THE U.S., RECOURSE AGAINST THE UNITED STATES FOR ANY ALLEGED BREACH OF THIS AGREEMENT MUST BE BROUGHT AS A DISPUTE UNDER THE CONTRACT DISPUTES CLAUSE (CONTRACT DISPUTES ACT). DURING ANY DISPUTE UNDER THE DISPUTES CLAUSE, VAST SHALL PROCEED DILIGENTLY WITH PERFORMANCE OF THIS AGREEMENT, PENDING FINAL RESOLUTION OF ANY REQUEST FOR RELIEF, CLAIM, APPEAL, OR ACTION ARISING UNDER THE AGREEMENT, AND COMPLY WITH ANY DECISION OF THE CONTRACTING OFFICER.

THESE TERMS AND ALL RIGHTS AND LICENSES GRANTED HEREUNDER SHALL AUTOMATICALLY TERMINATE ONCE ALL ORDERS HAVE EXPIRED OR HAVE BEEN TERMINATED AND ALL SERVICES TERM(S) ARE NO LONGER IN EFFECT. SECTIONS 1, 2.2, 2.3, 2.4, 2.7, 3, 5, 6, 8, 9 AND 10, WILL SURVIVE ANY TERMINATION OR EXPIRATION OF THESE TERMS.

## **9. GENERAL**

9.1. SEVERABILITY. IN THE EVENT ANY PROVISION OR PART OF THESE TERMS IS HELD TO BE INVALID OR UNENFORCEABLE BY ANY COURT OF COMPETENT JURISDICTION, IT SHALL BE AMENDED TO THE EXTENT REQUIRED TO RENDER IT VALID, LEGAL AND ENFORCEABLE, OR DELETED IF NO SUCH AMENDMENT IS FEASIBLE, AND SUCH AMENDMENT OR DELETION SHALL NOT AFFECT THE ENFORCEABILITY OF THE OTHER PROVISIONS HEREOF.

9.2. WAIVER. NO WAIVER OF ANY BREACH OF THESE TERMS WILL BE A WAIVER OF ANY OTHER BREACH, AND NO WAIVER WILL BE EFFECTIVE UNLESS MADE IN WRITING AND SIGNED BY AN AUTHORIZED REPRESENTATIVE OF THE WAIVING PARTY. THE FAILURE OF EITHER PARTY TO ENFORCE ANY RIGHTS GRANTED HEREUNDER OR TO TAKE ACTION AGAINST THE OTHER PARTY IN THE EVENT OF ANY BREACH HEREUNDER SHALL NOT BE DEEMED A WAIVER BY THAT PARTY AS TO SUBSEQUENT ENFORCEMENT OF RIGHTS OR SUBSEQUENT ACTIONS IN THE EVENT OF FUTURE BREACHES.

9.3. ENTIRE TERMS. THESE TERMS SUPERSEDE ALL PREVIOUS AGREEMENTS OR REPRESENTATIONS, WRITTEN OR ORAL, WITH RESPECT TO THE SUBJECT MATTER HEREOF BETWEEN YOU AND VAST DATA. THESE TERMS MAY NOT BE MODIFIED OR AMENDED EXCEPT IN WRITING SIGNED BY A DULY AUTHORIZED REPRESENTATIVE OF EACH PARTY.

9.4. GOVERNING LAW. THE VALIDITY, INTERPRETATION, AND PERFORMANCE OF THESE TERMS SHALL BE CONTROLLED BY AND CONSTRUED UNDER THE FEDERAL LAWS OF THE STATE OF NEW YORK.