

PURCHASE TERMS AND CONDITIONS

This Purchase Agreement by and between Vitabyte and Customer consists of these Terms and Conditions, Sales Contract, all of which are incorporated herein by reference.

1. **Products.** Customer shall purchase and/or license from Vitabyte the Products, as indicated on Sales Contract Addendum. The Products shall consist of the hardware, software and all other items of equipment set forth on Addendum to this Agreement (such hardware, software and other equipment referred to collectively herein as, the "Products"), and, if applicable, shall include such installation and other services (the "Services") as are set forth on Addendum. The Products, the Services, the costs for each of such items are set forth in the attached to the sales contract Addendum to the Sales Contract and are hereby incorporated by reference. Vitabyte shall be entitled to sub-contract with one or more qualified parties to perform the Services.
2. **Order Price.** The aggregate price to be paid by Customer for the Equipment, and Services, to be provided by Vitabyte hereunder shall be set forth in Addendum (the "TOTAL PRICE" and/or "REOCCURRING TOTAL"). Customer agrees to pay the Order Price, including any indicated deposits and balances due, in the amounts and at the times specified in Addendum. No change order shall be effective under this Agreement unless such change order, and the costs associated therewith, is set forth in writing signed by both Customer and Vitabyte. All sales are final.
3. **Late Payments.** Amounts not paid within thirty (30) days of the date specified therefore in this Agreement shall bear interest in an amount equal to the lesser of one and one-half percent (1.5%) per month or the maximum amount legally allowable by law.
4. **Security Interest.**
 - a. As security for the prompt and complete payment and performance when due of all the Order Price Obligations (as defined below), Customer hereby grants to Vitabyte, a continuing security interest in all of Customer's right, title and interest in and to all Equipment and other property sold by Vitabyte to Customer from time to time pursuant to this Agreement, wherever located, whether now owned or hereafter acquired or arising, any and all cash proceeds and/or noncash proceeds from the sale of the Equipment and any insurance proceeds received by Customer for the damage or destruction of the Equipment (all of which being collectively referred to herein as the "Collateral"). **Customer and Vitabyte intend and hereby acknowledge that the Order Price Obligations are "purchase money obligations" as such term is defined in Section 9-611 of the NEW YORK Uniform Commercial Code (as amended and in effect from time to time, the "UCC") and the security interest granted to Vitabyte herein with respect to the Collateral shall, and is intended to be, a "purchase money security interest" as such term is defined by Section 9-615 of the UCC and will have such priority over other security interests as determined by Section 9-626 of the UCC.**
 - b. As used herein "Order Price Obligations" means all of Customer's obligations to Vitabyte incurred in connection with the sale of the Equipment and Services to Customer, and all other indebtedness, liabilities and obligations of Customer to Vitabyte, whether due or to become due, now existing or hereafter incurred or arising under, in respect of or in connection with the sale of the Equipment and Services to Customer or this Agreement.
 - c. Customer authorizes Vitabyte to file at any time financing statements, continuation statements, and amendments thereto that (i) specifically describe the Collateral, and (ii) contain any other information required by the UCC for the sufficiency of filing office acceptance of any financing statement, continuation statement, or amendment, including whether Customer is an organization, the type of organization and any organizational identification number issued to Customer, if applicable. Customer shall from time to time endorse and deliver to Vitabyte all documents that Vitabyte may reasonably request, in form reasonably satisfactory to Vitabyte, to perfect and continue perfected Vitabyte's security interests in the Collateral and in order to fully consummate all of the transactions contemplated hereunder.
 - d. Vitabyte shall release, upon payment in full of Order Price Obligations, all continuing security interest in all of the Collateral. Upon request, Vitabyte shall confirm in writing that the security interests in the Collateral have been released and that any financing statements have been terminated.
5. **Leasing.**
 - a. In the event Customer intends to use a leasing company ("Leasing Customer") in connection with the acquisition, purchase and financing of the Products, Customer shall have the right to assign its rights, duties and obligations under this Agreement to Leasing Customer and Leasing Customer shall become a party to this Agreement as if an original signatory hereto.
 - b. Customer shall indemnify and hold harmless Vitabyte from and against any and all damages, disbursements, suits, claims, liabilities, obligations, judgments, fines, penalties, charges, amounts paid in settlement, costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) (collectively, "Damages"), and any interest charged by third parties on any of the foregoing, including, without limitation, Damages incurred in investigating, preparing or defending any action, claim, suit, inquiry, proceeding, investigation or appeal taken from any of the foregoing by or before any court or governmental, administrative or other regulatory agency, body or commission, whether pending or threatened, which arises out of, relates to or is in any way in connection with Customer's use of a Leasing Customer, except for any such Damages that are found to have resulted from the gross negligence, bad faith or intentional misconduct of, or breach of this Agreement or knowing violation of law by, Vitabyte. The termination of any proceeding by settlement shall not be deemed to create a presumption that Vitabyte acted in a manner which constituted gross negligence, bad faith, intentional misconduct or a knowing violation of law.
 - c. Notwithstanding Customer's use of a Leasing Customer, this Agreement shall remain binding upon Customer and Customer shall be liable for all of its and Leasing Customer's obligations under this Agreement as if Customer were the purchaser of the Products that is the subject of this Agreement.
 - d. Vitabyte's continuing security interest in all Collateral, as set forth in Section 4, is not impaired or otherwise impacted by Customer's use of any Leasing Customer. To the extent a Leasing Customer is used, such Leasing Customer hereby agrees to provide Vitabyte with the same security interest in the Collateral as set forth in Section 4.
6. **Shipment and Delivery.** All shipments shall be F.O.B. to such location or locations as shall be specified on Sales Contract.
7. **Title.** Title to the Equipment (other than licensed software) shall pass to Customer upon delivery of such Equipment to the location or locations designated in Sales Contract.
8. **Customer Provided Equipment and/or Facilities.** Customer and Vitabyte acknowledge and agree that the functionality of the Products may depend upon equipment or facilities not provided by Vitabyte and/or its sub-contractors ("Customer Provided Equipment and Facilities"). Customer warrants that all Customer Provided Equipment and Facilities will be available and ready prior to the date scheduled for installment of the Products

(the "Installation Date"). At Vitabyte's option, failure of the Customer Provided Equipment and Facilities to be ready on the Installation Date may result in reasonable additional charges and rescheduling fees. Customer's decision to acquire or use products purchased from an entity other than Vitabyte is Customer's sole responsibility, even if Vitabyte helps Customer identify, evaluate or select such third party products. **VITABYTE IS NOT RESPONSIBLE FOR AND WILL NOT BE LIABLE FOR, THE QUALITY OF ANY CUSTOMER OR THIRD- PARTY PROVIDED EQUIPMENT AND FACILITIES, INCLUDING, WITHOUT LIMITATION, PRODUCTS PURCHASED, LEASED OR LICENSED FROM AN ENTITY OTHER THAN VITABYTE**

9. **Warranties/Limitation of Liability.**

- a. **Service Warranty** Vitabyte warrants that it will perform the Services in a prompt, professional and competent manner, in accordance with generally accepted industry standards for companies in a similar industry. Vitabyte represents that the furnishing of and use by Customer of the Services and the Equipment will not violate any patent, copyright, or other intellectual property right of any third party.
- b. **New Equipment Warranty.** Vitabyte will act as a single point of contact for all installation / warranty / maintenance issues related to all Equipment. Vitabyte shall pass on to Customer, any original equipment manufacturer warranty with respect to any Equipment purchased pursuant to this Agreement. All hardware equipment includes one-year manufacturer's warranty. Except as set forth in this Section 9.B., Vitabyte provides no other warranty, express or implied, with respect to any Equipment
- c. **Post-Warranty Maintenance and Support.** Vitabyte agrees to provide Customer up to 30 days (from the Installation Date) of 24/7 free remote call center support services for the Products (the "Initial Support Period"). Customer may purchase additional support from Vitabyte for periods after the Initial Support Period.
- d. **Disclaimer of Warranties.** EXCEPT AS PROVIDED IN THIS SECTION 9, VITABYTE MAKES NO WARRANTY WITH RESPECT TO THE EQUIPMENT, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE.
- e. **Limitation of Liability.** EXCEPT AS MAY BE SPECIFICALLY SET FORTH IN THIS AGREEMENT, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY LOSS OF PROFITS, REVENUE OR BUSINESS, OR FOR ANY SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES UNDER ANY CAUSE OF ACTION, WHETHER FOR BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, AND WHETHER OR NOT SUCH PARTY OR ITS AGENTS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL VITABYTE BE LIABLE TO CUSTOMER FOR ANY LOSSES, CLAIMS OR DAMAGES IN EXCESS OF THE AMOUNT ACTUALLY RECEIVED BY VITABYTE PURSUANT TO THIS AGREEMENT.

10. **Intellectual Property and Software Licenses.** Customer agrees to enter into and materially comply with the terms of any and all software license agreements (the "Software License Agreements") requested to be executed by Customer in connection with the installation of any software required or reasonably necessary to make the Products operational ("Software"). Notwithstanding the terms of any Software License Agreements, Customer shall not, directly or indirectly:

- (i) reverse engineer, decompile or modify the Equipment or Software, in whole or in part;
- (ii) prepare or create any derivative works or incorporation of the Equipment or Software in whole or in part, in any other work or system;
- (iii) copy, upload, resell access to, duplicate, redistribute, or retransmit the Software in whole or in part, where such acts are contrary to the permitted use;
- (iv) otherwise modify the Equipment to operate on systems or products other than the Products of Vitabyte or as permitted in the Software License Agreements. Except as expressly set forth in the Software License Agreements, no intellectual or proprietary rights are transferred to Customer in any Equipment, Products or Software under this Agreement. Any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by Customer or any other party relating to the Products ("Improvements") becomes Vitabyte's intellectual property upon receipt by Vitabyte, and Customer hereby irrevocably assigns its rights, if any, in such Improvements to Vitabyte.

11. **Failure to Pay For Any Reason.** Customer agrees to pay Vitabyte in full for all Products delivered and Services rendered. In the event Customer fails to pay Vitabyte in full for any past, current or future invoices, whether due to lack of payment, payment refusal (e.g. charge back/returned checks), or failure to authorize leasing company to fund total invoice due, for any reason, Customer agrees and authorizes Vitabyte to suspend the Customer's account with Vitabyte and understands that such suspension may result in the automatic de-activation and locking of all Software licensed (whether related to the outstanding invoices or not) and may render such Software inoperable at the Customer location of business. Customer also understands that such suspended account will prohibit any type of service requests including but not limited to Software registration and activations. Customer further understands that such suspended account will remain in suspended status until full payment and any related fees are reimbursed to Vitabyte. Customer agrees that such account suspension is reasonable for Vitabyte to execute in the event of Customer's failure to pay for any reason.

12. **Non-competition.** Customer agrees not to solicit any current, past or former employee of Vitabyte or to hire such person for a period of at least three (3) years from the date hereof or date of such employee or person leaves the employer, whichever is later. It is further agreed that any such employee or former employee establish his/her company, entity, enterprise, business or become employed in any way or associated with any other separate company which offers the same or similar products and services which will tend to compete, directly or indirectly with Vitabyte. Customer agrees not to engage such company for such purpose which is substantially similar to the purpose and intent of this agreement. Customer hereby agrees that in the event of a breach of this non-compete paragraph, it is impossible or impracticable to calculate damages incurred by Vitabyte because of difficulty in tracing the cause and effect and damages. Therefore, the legal remedy available to Vitabyte may be inadequate, irreparable injury may be suffered by Vitabyte. Accordingly, the parties agree that the remedy of specific performance of this Agreement may be available to Vitabyte and injunctive relief will be granted without opposition either, mandatory or prohibitive to prevent or prohibit such a breach and may be available in the New York State Supreme Court pursuant to Article 64 of the CPLR. The parties further agree to have an exclusivity agreement for Vitabyte, Vitabyte to be the POS Vendor for Customer for a period of two (2) years with no other POS vendor to be used by the Customer. In the event that the Customer breaches this provision, it will be deemed a default under this agreement, and the default provisions of this agreement shall apply.

13. **General.**

- a. **Attorneys' Fees.** If any action at law or in equity is necessary to enforce the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, costs and expenses in addition to any other relief to which the prevailing party is otherwise entitled.
- b. **Force Majeure.** Neither party shall be liable hereunder by reason of any failure or delay in the performance of its obligations hereunder on account of strikes, shortages, riots, insurrection, fires, flood, storm, explosion, acts of God, war, governmental action, labor conditions, earthquakes, or any other cause which is beyond the reasonable control of such party.
- c. **Waiver.** The failure of either party to require performance by the other party of any provision hereof shall not affect such

party's full right to require such performance at any time thereafter, nor shall the waiver by either party of a breach of any provision hereof be taken or held to be a waiver of the provision itself.

- d. **Severability**. In the event that any provision of this Agreement shall be unenforceable or invalid under any applicable law or be so held by applicable court decision, such unenforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole, and, in such event, such provision shall be changed and interpreted as to best accomplish the objectives of such provisions within the limits of applicable law or applicable court decisions.
- e. **Assignment**. Customer shall not assign its rights, responsibilities or obligations under this Agreement without the written consent of Vitabyte.
- f. **Controlling Law**. This Agreement shall be governed in all respects by the laws of the State of New York, exclusive of conflicts of law principles
- g. **Entire Agreement**. This PURCHASE TERM AGREEMENT, including all addendums and all incorporated by reference documents thereto and hereto constitute the entire agreement between the parties regarding its subject matter. This Purchase Terms Agreement shall not be modified unless done so in a writing signed by an authorized representative of each party.
- h. **Counterparts**. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all which shall constitute but one and the same document