

# END USER LICENSING AGREEMENT

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## TERMS AND CONDITIONS

By the purchase of a license for the use of the SOFTWARE, you, called in this Agreement the “CUSTOMER”, agree to be bound by the provisions of this Agreement. This Agreement shall be deemed to have been signed by Vital and CUSTOMER and to be binding on both upon receipt by Vital of the order for the SOFTWARE whether by facsimile, e-mail, regular mail, personal delivery, or otherwise (the “Order Agreement”), and the installation of the SOFTWARE by CUSTOMER.

### 1. DEFINITIONS:

- AGREEMENT means the terms and conditions of this license agreement and any subsequent agreements which are subject to this license agreement, together with the terms and conditions set out on the Order Agreement or other agreement through or by which the CUSTOMER has purchased the license for the SOFTWARE. This Agreement shall be deemed to be amended, modified, or varied, as the case may be, by terms and conditions on the Order Agreement by or through which the CUSTOMER has purchased this License.
- CUSTOMER means the person, partnership, corporation or any other entity purchasing a license hereunder;
- LICENSE TERM shall be perpetual, unless otherwise provided in the Order Agreement.

- SOFTWARE means the generally available commercial release version of the software set out in the Order Agreement, together with all upgrades and enhancements provided to CUSTOMER.
2. GRANT OF LICENSE: Subject to the terms and conditions of this Agreement Vital hereby grants CUSTOMER a non-exclusive, non-transferable license to use the SOFTWARE for the LICENSE TERM. CUSTOMER may install and use the number of copies of the SOFTWARE specified in the Order Agreement. CUSTOMER may make an additional copy of the SOFTWARE only for back-up or archival purposes. No other right to reproduce the SOFTWARE is granted. CUSTOMER covenants and agrees that the SOFTWARE will only be used in accordance with the provisions of this Agreement.
  3. RESTRICTIONS: Except as specifically permitted in this Agreement, CUSTOMER shall have no right to copy, change, alter, amend, reverse engineer, decompile, reverse translate, disassemble, publish, disclose, display or make available, or in any other manner decode the SOFTWARE, in whole or in part, or otherwise use the SOFTWARE in any manner whatsoever, and shall take all reasonable steps to ensure CUSTOMER'S employees, consultants and agents comply with this section. CUSTOMER shall not distribute, lease, rent, grant in a security interest in, assign or otherwise transfer the SOFTWARE. CUSTOMER shall not modify or create any derivatives of the SOFTWARE or merge all or any part of the SOFTWARE with another program. CUSTOMER shall have no right to sub-license the SOFTWARE or any copies thereof. In addition, the license granted herein shall not constitute a sale, lease, rental or any other transfer of the SOFTWARE or any copies or part thereof.
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  5. LIMITED WARRANTY: Vital warrants to CUSTOMER that the SOFTWARE will perform substantially in accordance with its accompanying documentation for a period of 30 days from the date of purchase. In the event that the SOFTWARE does not perform in substantial accordance with its accompanying documentation, Vital's entire liability upon receipt of proof of purchase and proof of defect in the SOFTWARE shall be, at Vital's sole option (i) to repair or replace the SOFTWARE provided to CUSTOMER, or (ii) to refund the license fee. Vital does not warrant, guarantee or represent that (i) the SOFTWARE will meet CUSTOMER's requirements, (ii) the installation and operation of the SOFTWARE will be uninterrupted or error free or run on all hardware, or (iii) defects will be corrected.
  6. DISCLAIMER OF WARRANTY: CUSTOMER HEREBY EXPRESSLY AGREES AND ACKNOWLEDGES THAT, EXCEPT AS PROVIDED IN SECTION 6, THE SOFTWARE IS PROVIDED "AS IS" WITHOUT ANY REPRESENTATIONS, CONDITIONS, WARRANTIES OR COVENANTS WHATSOEVER WITH RESPECT TO THE SOFTWARE OR ANY WORK OR SERVICES PERFORMED BY VITAL OR ITS EMPLOYEES, CONSULTANTS OR AGENTS, INCLUDING WITHOUT LIMITATION, ANY EXPRESS, STATUTORY OR IMPLIED REPRESENTATIONS, WARRANTIES OR CONDITIONS OF MERCHANTABILITY, MERCHANTABILITY QUALITY, SATISFACTORY QUALITY OR FITNESS FOR A PARTICULAR PURPOSE, OR ARISING OTHERWISE IN LAW OR

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7. INDEMNIFICATION: Vital will, at its sole option, defend, indemnify and hold harmless CUSTOMER from and against any and all liability, suits, claims, actions, proceedings, losses, damages, judgments and costs (each, a "Claim") to the extent that such Claim arises out of or is in relation to any allegation that the SOFTWARE infringes the patent, copyright or other proprietary right of any third party, provided that Vital has no liability for any Claim based upon (i) use of other than a current release of the SOFTWARE, (ii) CUSTOMER's use of the SOFTWARE in any manner for which it was not intended, or (iii) alterations, modifications or improvements made to the Software; provided that Vital has been given prompt written notice of each such Claim, and the right to control and direct the investigation, defense and settlement of each such Claim. If the SOFTWARE, or any part of it, is in Vital's opinion, likely to or does become the subject of a Claim for infringement of a third party's proprietary rights, Vital, at its sole option, may (i) obtain the right for CUSTOMER to continue to use the SOFTWARE, (ii) substitute equivalent SOFTWARE, or (iii) modify the SOFTWARE so as to make in non-infringing. The foregoing states Vital's entire liability to CUSTOMER with respect to infringement.
8. LIMITATION OF LIABILITY: NOTWITHSTANDING ANY OTHER TERM OF THIS AGREEMENT TO THE CONTRARY, IN NO EVENT SHALL VITAL BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY DIRECT, INDIRECT, SPECIAL, RELIANCE, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES OR LOSS OF ANY KIND (INCLUDING BUT NOT LIMITED TO LOSS OF PROFIT, LOSS OF REVENUES, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, INCREASED COSTS OF OPERATION OR OTHER COMMERCIAL OR ECONOMIC LOSS, LITIGATION COSTS AND THE LIKE) HOWSOEVER CAUSED, IN CONNECTION WITH THE SUPPLY, USE OR PERFORMANCE OF THE SOFTWARE, WHETHER ARISING OUT OF CONTRACT, TORT (INCLUDING WITHOUT LIMITATION NEGLIGENCE) OR OTHERWISE, EVEN IF VITAL HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR SUCH DAMAGES ARE FORESEEABLE, PROVIDED THAT, IN THOSE JURISDICTIONS WHERE LIMITATIONS ON LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES ARE NOT PERMITTED OR CURTAILED, IN SUCH JURISDICTIONS LIABILITY OF THE VITAL SHALL BE LIMITED TO THE EXTENT PERMITTED BY LAW. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE EXCLUSION OR LIMITATION MAY NOT APPLY TO YOU.
9. MISUSE: Any warranties given hereunder will not apply in the event that (i) the SOFTWARE is not used in accordance with Vital's instructions, (ii) the SOFTWARE has been altered, modified or converted by CUSTOMER without the prior written approval of Vital, (iii) the failure to perform relates to the malfunction of CUSTOMER's equipment on or with which the SOFTWARE operates or (iv) part or all of the SOFTWARE becomes inoperative as a result of any other cause beyond the reasonable control of Vital.

10. ASSIGNMENT: Vital may assign its rights hereunder without consent of or notice to CUSTOMER. CUSTOMER may not transfer, assign, sub-license or pledge its rights or obligations hereunder without the written consent of Vital, said consent not to be unreasonably withheld.
11. TERMINATION: Vital may terminate this Agreement immediately if CUSTOMER is in default of any of its obligations set forth in this Agreement which it fails to cure within fifteen (15) days after service of notice of the default. Either party may terminate this Agreement in the event that (i) the other party is in default of any of its material obligations hereunder and such default is not remedied within 30 days of receipt of written notice thereof or (ii) the other party is adjudicated bankrupt or becomes insolvent, makes any assignment for the benefit of creditors, proceedings are instituted by the other party seeking relief, reorganization or rearrangement under any laws relating to insolvency, bankruptcy or similar laws of any jurisdiction, a receiver, liquidator or trustee is appointed in respect of any property or assets of the other party or an order is made for the liquidation, dissolution or winding up of the other party. Upon termination or expiration of this Agreement, CUSTOMER shall cease all use of the SOFTWARE, shall return to Vital all copies of the SOFTWARE or destroy all copies of the SOFTWARE and all related documentation in CUSTOMER's possession, and shall so certify to Vital.
12. GENERAL: Neither party shall be responsible for any failure or delay in complying with the terms of this Agreement resulting from events of force majeure beyond the control of either party which could not be avoided by exercise of due care. This Agreement shall be governed in accordance with the laws of the Province of Ontario, and the laws of Canada as applicable in Ontario, other than rules governing conflict of laws. CUSTOMER hereby covenants and agrees that it shall initiate any and all legal actions arising from this Agreement in the courts of the Province of Ontario, Canada. Vital hereby covenants and agrees that it shall initiate any and all legal actions arising from this Agreement within the legal jurisdiction in which the CUSTOMER is located, with such location being deemed to be the CUSTOMER address set out in the Order Agreement. The Convention of Contracts for the International Sale of Goods shall not apply to this Agreement nor to any dispute arising therefrom. The parties are not agents or legal representatives of each other. The provisions in Sections 4, 6 to 10, 12 and 13 shall survive termination of this Agreement. Vital shall have the right to attend at the premises of CUSTOMER during business hours and upon reasonable prior notice in order to verify that the SOFTWARE is being used in compliance with this Agreement. This Agreement sets forth the entire agreement of the parties with respect to the subject matter contained herein, and no oral or written statement or representations not contained herein shall have any force or effect. The failure of a party to claim a breach of any term of this Agreement shall not constitute a waiver of such breach or the right of such party to enforce any subsequent breach of such term. If any provision of this Agreement is held to be unenforceable or illegal, such decision shall not affect the validity or enforceability of such provisions under other circumstances or the remaining provisions of this Agreement and such remaining provisions shall be reformed only to the extent necessary to make them enforceable under such circumstances.