

U.S. GENERAL TERMS AND CONDITIONS OF VIRICITI

1 Definitions

- 1.1 **Agreement:** shall mean the agreement between the Customer and ViriCiti for the delivery of Equipment, Software and/or Services.
- 1.2 **Customer(s):** shall mean any natural person or business entity with whom ViriCiti and its employees deal in the course of its business, including partner(s), representative(s), agent(s), successor(s) and including visitors of the ViriCiti website.
- 1.3 **Error:** shall mean any substantive failure of the Equipment, Software and/or Services to comply with functional or technical specifications specified in the applicable written offer to Customer by ViriCiti.
- 1.4 **ViriCiti:** shall mean ViriCiti LLC
- 1.5 **Party or Parties:** shall mean ViriCiti and Customer, individually or collectively.
- 1.6 **Equipment:** shall mean the ViriCiti products to be provided pursuant to the Agreement.
- 1.7 **Service(s):** shall mean the full assortment of ViriCiti's services, including but not limited to consulting, research, application service provision, software as a service and/or other computer services.
- 1.8 **Software:** shall mean computer software, with accompanying documentation and specifications, including embedded software, non-final and/or uncompleted software and materials.
- 1.9 **Terms and Conditions:** shall mean these U.S. General Terms and Conditions of ViriCiti LLC.

2 Applicability

- 2.1 These Terms and Conditions apply to all offers of ViriCiti and exclusively govern the relationship between ViriCiti and Customers, and any Agreement or other agreements between ViriCiti and Customers, and any subsequent amendment to any agreement or the Agreement. These Terms and Conditions shall be applicable even if ViriCiti uses third parties to deliver Equipment, Software, and Services.
- 2.2 No other terms and conditions shall be binding upon ViriCiti unless accepted by it in writing. ViriCiti expressly rejects any general terms and conditions used by Customer. Customer may issue a purchase order for administrative purposes only. Additional or different terms and conditions contained in any such purchase order will be null and void and do not bind ViriCiti.
- 2.3 ViriCiti reserves the right to amend these Terms and Conditions at any time. New or amended general terms and conditions shall be applicable upon thirty (30) days notice to Customer.
- 2.4 In case of inconsistencies between the terms of an Agreement and those contained in these Terms and Conditions, those in the Agreement shall control.

3 Offers and Acceptance, Change Orders

- 3.1 All offers of ViriCiti are non-binding and may be revoked at any time, unless ViriCiti stated otherwise in writing. Any amendments made by ViriCiti in writing shall entail a new offer, automatically revoking the previous offer. Any amendments by Customer of a ViriCiti offer will be deemed a new offer by Customer, which ViriCiti may accept or reject in its sole discretion. Offers will only be deemed accepted by ViriCiti if it does so in writing.
- 3.2 All information, data or undertakings provided verbally or in documentation, price lists or other material related to Equipment, Software, and/or Services, whether in electronic or any other form, are binding only to the extent that they are by reference expressly included and confirmed in writing in the Agreement with ViriCiti.

- 3.3 All offers are based on the information and documentation provided by Customer, and ViriCiti may rely on the accuracy and reliability of the information and documentation, even if it originates with or is acquired from third parties.
- 3.4 Customer hereby understands and accepts that all samples, drawings, models, figures, dimensions, weights or any other specifications for Equipment, Software, and/or Services are estimates only, although ViriCiti will use best efforts to ensure their accuracy.
- 3.5 In the event that Customer desires to change the Equipment, Service(s), and/or Software, agreed upon in an Agreement, Customer shall submit to ViriCiti a change order request describing the nature of the changes requested. Within five (5) business days thereafter, provided that the change order is deemed feasible by ViriCiti, ViriCiti will provide Customer with a change order proposal. This proposal shall include the amount of additional fees, if any, payable to ViriCiti as a result of the proposed change order, as well as the impact, if any, on the delivery schedule arising from the proposed change order. Within ten (10) business days after receiving Customer's change order proposal, Customer shall accept or reject it by written notice to the ViriCiti; otherwise, the change order proposal shall be deemed rejected. No change order shall be binding upon either party unless signed by both parties. The rejection of a change order by any of the parties, does not affect the Agreement in any way.
- 3.6 The procedure set forth in Section 3.5 also applies in case ViriCiti, unforeseen at the moment of execution of the Agreement, reasonably believes that additional Equipment, Services, and/or Software is required in order for both parties to fully perform under, and comply with, the Agreement. Should parties not be able to agree upon an adjusted price, ViriCiti may terminate the Agreement without incurring any liability.

4 Customer Obligations

- 4.1 Customer shall timely provide ViriCiti with all details, information, materials, or services required by ViriCiti for the development, manufacturing, and/or delivery of the Equipment or Software, and/or the delivery of Services,
- 4.2 Customer shall solely be responsible for instructions or training given to, and use by users of the Equipment, Software and/or Services.
- 4.3 If Customer does not adequately meet the requirements of this Article 4, then ViriCiti retains the right to suspend the Agreement, and charge Customer for any extra costs, expenses and damages caused by Customer's failure.

5 Prices and Taxes

- 5.1 Unless stated in writing by ViriCiti otherwise, all prices are based on Ex Works Amsterdam, the Netherlands, and do not include packaging, transport, insurance, U.S. import duties and administrative costs and expenses, if any.
- 5.2 Configurations and prices of Equipment, Software and/or Services are subject to change at any time, and ViriCiti shall at all times be entitled to modify price lists, brochures, printed matter, quotations and other documents.
- 5.3 ViriCiti may pass through and otherwise charge Customer for any cost increases for (raw) materials and/or labor, or as a result of changes in the specifications and/or applicable laws.
- 5.4 All prices are exclusive of, and Customer shall pay, all taxes, duties, levies or fees, or other similar charges imposed on ViriCiti or Customer by any taxing authority (other than taxes imposed on ViriCiti's income), related to Customer's order, unless Customer has provided ViriCiti with an appropriate resale or exemption certificate for the delivery location, which is the location where Equipment and/or Software are used or Services are performed. In case of changes in law such that a tax is levied that is or becomes irrecoverable with a consequent increase to the costs to ViriCiti of delivering the Equipment, Software and/or Services, whereby and to such an extent ViriCiti is entitled to increase its prices accordingly and retro-actively.
- 5.5 The prices or fees quoted are in U.S. dollars, or in another currency if stated by ViriCiti in writing. Customer shall bear any exchange rate risk, unless otherwise agreement in writing.

- 5.6 All Agreements for the delivery of Equipment, Software and/or Services to Customer shall be treated as separate agreements.

6 Payment

- 6.1 Customer agrees to pay, without the right to set-off any amount, all invoiced amounts within thirty (30) days of the invoice date, unless stated otherwise in the Agreement or on the invoice. However, all amounts will be due immediately, in case Customer terminates or suspends all or a substantial portion of its business activities, becomes insolvent, admits its inability to pay its debts, or in case of the voluntary or involuntary filing of a petition for or adjudication of bankruptcy of Customer under any federal, state or municipal bankruptcy or insolvency act, the appointment of a receiver, trustee, custodian, or liquidator, or any act or action constituting a general assignment by Customer of its properties and/or interest for the benefit of creditors.
- 6.2 Unless agreed upon otherwise in the Agreement, license fees will be invoiced directly after execution of the Agreement for the first year month of the applicable license. Thereafter, license fees will be invoiced annually.
- 6.3 Where payment is not made within the terms set forth in this article, contractual interest shall be owed at a rate of 1.0% a month, or the highest rate allowed by law, if lower, with effect from the first day following expiration of the payment term referred to in this article; part of a month shall be considered a full month.
- 6.4 Payments made by Customer shall always be used first to meet all the interest and costs owed and subsequently for the settlement of claims under the Agreement which have remained outstanding for the longest period of time, even when Customer specifies that the payment relates to another claim.
- 6.5 Customer shall not be entitled to refuse to discharge or to suspend the discharge of its payment obligations on account of alleged disturbance of, defect or Error in the Equipment, Software and/or Services or on any other account whatsoever.
- 6.6 If ViriCiti believes that Customer's financial position and/or payment performance justifies such action, ViriCiti has the right to demand that Customer immediately furnish security in a form to be determined by ViriCiti, including but not limited to an Article 9 UCC security right, and/or make an advance payment. If Customer fails to furnish the desired security, ViriCiti has the right without prejudice to its other rights, to immediately suspend the further execution of the Agreement, and that which Customer owes to ViriCiti for whatever reason will become immediately due and payable.
- 6.7 Customer shall be liable for amounts which ViriCiti incurs to collect payment, including without limitation, collection agency fees, reasonable attorneys' fees and arbitration or court costs.

7 Lead Times, Implementation, Risk of Loss

- 7.1 ViriCiti shall deliver the Equipment, Software and/or Services in accordance with the Agreement. Delivery and/or development times, lead times, and any other deadlines and dates, are merely estimates, and ViriCiti cannot be held liable for any damages as a result of delay in delivery of the Equipment, Software and/or Services. Unless otherwise agreed in writing, failure to meet delivery times or delivery dates stated shall never be considered fatal, and if the time for delivery is exceeded, Customer shall not be entitled to cancel or terminate the Agreement, or to claim any damages.
- 7.2 If any delivery period or lead time may be exceeded, ViriCiti will inform Customer as soon as reasonably possible, and the Parties will enter into consultations in order to determine a new delivery period.
- 7.3 ViriCiti is entitled to engage the services of third parties for the execution of an Agreement. ViriCiti is entitled to make partial deliveries and/or perform its Services and other obligations in phases, and invoice these separately. ViriCiti may suspend its performance under the Agreement, if and when Customer has not yet agreed upon in writing any previously completed deliveries or previously completed phases.
- 7.4 Unless agreed in writing differently, delivery of Equipment shall be made Ex Works Amsterdam, the Netherlands, as forth in the

- Agreement, as this term is specified in the Incoterms 2010. Customer must accept delivery of Equipment during normal business hours, failing which all costs arising thereof (including storage charges and freight charges) shall be charged in conformity with ViriCiti's rates or local charges.
- 7.5 If Customer does not accept delivery within ten (10) days of the agreed delivery date, ViriCiti may at its sole discretion resell any Equipment, Software and/or Services ordered by Customer, at a public or private sale without notice to Customer and without affecting ViriCiti's rights to hold the Customer liable for any loss or damage caused by breach of contract by Customer.
- 7.6 Claims in connection to shortages or errors in shipping must be reported in writing to ViriCiti within three (3) business days of receipt of such shipment. If Customer fails to report timely, ViriCiti will have no obligation to correct such shipments, unless Customer bears all the expenses thereof.
- 7.7 Immediately upon receipt of the Equipment, Software, and Services, Customer shall inspect it for defects and non-conformance with the Agreement and will notify ViriCiti in writing within seven (7) days of receipt, of any defects or non-conformance. After such seven (7) day period, Customer shall be deemed to have irrevocably accepted the Equipment, Software, and Services, if not already previously accepted. After acceptance, Customer shall have no right to reject the Equipment, Software, or Services, for any reason or to revoke acceptance. Customer hereby agrees that a seven (7) day period is a reasonable amount of time for inspection and revocation.
- 7.8 In the case of any alleged shortage, errors, defects or non-conformance with the Agreement, Customer shall allow ViriCiti to inspect the Equipment, Software, and the results of Services, subject to the alleged defect.
- 7.9 Notwithstanding the above, ViriCiti will have no obligation to replace or repair any Equipment if the Equipment have been handled, processed or stored improperly by the Customer, or if the Customer has not fully met its obligations under the Agreement or these Terms and Conditions.
- 7.10 The risk of loss or damage of Equipment shall pass to Customer at the moment of delivery Ex Works, or when the Customer, or an agent or subcontractor acting on its behalf, has effectively assumed control of the Equipment, whichever is sooner, even if ViriCiti has not yet transferred ownership thereof. Any damage to the Equipment, or any loss related thereto, shall be for the account of the Customer.
- 7.11 THE SOLE AND EXCLUSIVE REMEDY FOR ALLEGEDLY DEFECTIVE EQUIPMENT OR SOFTWARE IS THE REPLACEMENT OR REPAIR OF SUCH EQUIPMENT AND SOFTWARE, OR PARTS THEREOF, AT NO COSTS FOR CUSTOMER.

8 Intellectual Property Ownership and Right of Use

- 8.1 Customer will have a personal non-exclusive, non-transferable and non-sub-licensable license to use the Equipment and the Software provided to Customer, solely for Customer's personal use, while the Customer complies with the terms of the Agreement and these Terms and Conditions. If Customer is a ViriCiti wholesale partner, Customer will be authorized to provide a similar limited sub-license as set forth in the Agreement and these Terms and Conditions, only to its customers who have purchased Equipment directly from Customer.
- 8.2 Only if explicitly authorized in the Agreement, Customer will be allowed to modify, or to make any additions to the Equipment and Software, to combine the Equipment and Software with other products, and/or to install the Equipment and Software. Customer is not allowed, and will not allow third parties, to lease Equipment to third parties, or allow third parties to commercialize the Equipment in any way, unless explicitly agreed upon in the Agreement.
- 8.3 Customer understands and hereby accepts that the source code related to the Software shall not be available to the Customer. Unless otherwise agreed in writing, ViriCiti shall not be required to provide Customer any program or data libraries, even if these

- are required for the use and/or maintenance of the Software and the Equipment.
- 8.4 ViriCiti shall have the right to change Software and/or to discontinue Software from time to time and shall not be liable for any loss or damage of whatever kind or nature suffered or incurred by Customer as a result thereof.
- 8.5 ViriCiti may implement upgrades and/or updates available from time to time with regard to the Software, but is under no obligation to do so. Customer is required to always use the latest upgrades and updates of the Software.
- 8.6 All hardware, software and items used by ViriCiti in providing the Services shall remain the property or the intellectual property of ViriCiti or its own suppliers, even if the Customer pays a fee in respect of the development or purchase of these by ViriCiti..
- 8.7 All intellectual property rights, e.g., patents, copyrights, trademarks, designs, models, know-how and all proprietary and/or commercial rights and trade secret rights, tools, documentations, etc., in relation to the Equipment, Software and/or Services, including modifications thereto, delivered and/or used by ViriCiti, are owned by ViriCiti or its licensor(s). No transfer or other grant of rights is given to Customer, unless explicitly stated in writing. This applies even if Equipment, Software and/or Services have been specifically designed, developed or compiled for Customer.
- 8.8 Unless otherwise agreed in writing, Customer may not make repairs or modifications to the Equipment, Software and/or Services, nor allow or enable any third parties to do so. Customer may not, nor may enable and/or allow third parties to copy, translate, or reverse engineer any Equipment, Software and/or Services.
- 8.9 ViriCiti, in its sole discretion, may implement technical measures aimed at protecting the Equipment, Software and/or Services, and Customer is prohibited from attempting to remove or circumvent such protections.
- 8.10 Unless agreed upon in writing in the Agreement, Customer shall not be permitted to affix any other trademark to the Equipment, Software and/or Equipment, or to remove any copyright, trademark or other proprietary rights notices on same, or to use the relevant mark in any other way, or to register it in Customer's own name, and specifically Customer shall not be permitted to register any patent involving, based upon, or for any of the Equipment, Software and/or Services.
- 8.11 If a third party threatens to infringe any of the intellectual property rights of ViriCiti and Customer has knowledge of it, Customer is obliged to alert ViriCiti immediately and to take all measures necessary to prevent the infringement. Customer shall lend its full cooperation to any investigation to be conducted by or on behalf of ViriCiti in relation to the Customer's compliance with the agreed restrictions of use and at first request of ViriCiti, Customer shall grant ViriCiti or its representatives access to Customer's buildings and systems.
- 9 Confidential Information**
- 9.1 Confidential Information means (i) the existence and terms of any agreement between the Parties and (ii) any non-public, confidential or proprietary information relating to a disclosing Party, whether or not technical in nature, including any that is designated by the disclosing Party as Confidential Information at the time of its disclosure, either by a written or visual confidentiality designation, or otherwise if such information would, under the circumstances, appear to a reasonable person to be confidential or proprietary. Notwithstanding the foregoing, Confidential Information does not include information, technical data or know-how which: (i) is in the public domain at the time of disclosure or becomes available thereafter to the public without restriction, and in either case not as a result of the act or omission of the receiving Party; (ii) is rightfully obtained by the receiving Party from a third party without restriction as to disclosure; (iii) is lawfully in the possession of the receiving Party at the time of disclosure by the disclosing Party and not otherwise subject to restriction on disclosure; (iv) is approved for disclosure by prior written authorization of the disclosing Party; or (v) is developed independently and separately by either Party without use of the disclosing Party's Confidential Information.
- 9.2 Each Party agrees that it will safeguard the confidentiality of the Confidential Information supplied by the other Party and that it will observe the same due care with respect to such information as it would observe with respect to its own Confidential Information. The other Party shall not sell, copy and/or distribute in any way Confidential Information to third parties, without disclosing Party's prior written consent, which consent may be granted or withheld in such Party's sole and absolute discretion.
- 9.3 Each Party agrees that it will restrict the circle of employees or third parties it retains who have access to the other Party's Confidential Information as much as possible and provide such access only on a need to know basis and after binding such employees and third parties to the same level of confidentiality as set forth in these Terms and Conditions.
- 9.4 Immediately following the receipt of a written request to this effect by the disclosing Party the receiving Party will return any and all Confidential Information received from the disclosing Party or destroy such Confidential Information, if the disclosing Party so requests.
- 10 Duration, Termination and Suspension of Performance**
- 10.1 All Agreements are for an indefinite period of time, unless otherwise agreed upon in the Agreement, or unless the nature of the Agreement dictates otherwise. Any Agreement for a certain project will end after completion of such project.
- 10.2 Customer cannot terminate the Agreement for convenience, exception in accordance with the provisions in the Agreement or in these Terms and Conditions.
- 10.3 If Customer believes that ViriCiti has failed to perform under the Agreement, it must notify ViriCiti in writing and allow fourteen (14) days for ViriCiti to cure the alleged failed performance.
- 10.4 If Customer fails to make payment of any amount due on the due date or Customer otherwise fails to perform its obligations under the Agreement or these Terms and Conditions, or if ViriCiti reasonably expects that Customer will not fulfill its obligations, ViriCiti may in its sole and absolute discretion suspend performance under its Agreement with Customer and/or terminate the Agreement (in whole or part), with immediate effect, without being liable for any damages to Customer.
- 10.5 Notwithstanding the above and without any obligation to return any service fee or prepaid expenses, ViriCiti may terminate its relationship with Customer, or may terminate or suspend ViriCiti's delivery of Equipment, Software and/or Services at any time, or terminate or suspend Customer's use of the Software and/or Services at any time: (i) if Customer is in breach of these Terms and Conditions and/or the Agreement; (ii) if ViriCiti reasonably suspects that Customer is using Equipment, Software and/or Services to breach the law or infringe third party rights; (iii) if ViriCiti reasonably suspects that Customer is trying to unfairly exploit or misuse the complaint policy, or any of ViriCiti's policies; (iv) if ViriCiti reasonably suspects that Customer is using Equipment, Software and/or Services fraudulently, or that Equipment, Software and/or Services provided to Customer are being used by a third party fraudulently; (v) if Customer fails to pay any amounts due to ViriCiti; (vi) if required due to change in laws/regulation by a regulator or authority with a lawful mandate, or by any of ViriCiti's partners; (vii) in respect to a particular ViriCiti product, Software and/or Service, upon thirty (30) days' notice if ViriCiti decides to cease offering that Equipment, Software and/or Service; (viii) the bankruptcy of the Customer has been applied for; (ix) an attachment is levied on the goods of Customer; (x) Customer is liquidated or discontinued; and/or (xi) Customer is in violation of any applicable laws or regulations.
- 10.6 Upon suspension and/or termination, all invoiced sums will become immediately due and payable. In the event of suspension of performance by ViriCiti, ViriCiti may at its sole discretion resell any Equipment, Software and/or Services ordered by Customer, at a public or private sale without notice to Customer and without affecting ViriCiti's rights to hold the

Customer liable for any loss or damage caused by breach of contract by Customer.

11 Warranty

- 11.1 ViriCiti warrants its Equipment and Software against Errors for twenty four (24) months from the date of delivery, during which time it will use its best efforts to repair any Errors, if any. However, any such problems encountered out of any causes that are not attributable to ViriCiti, for example but not limited to, weather or other environmental conditions, shall be for Customer's risk and account.
- 11.2 At its sole discretion, ViriCiti will repair or replace any Errors and/or defective Equipment during the warranty period. ViriCiti may conduct warranty services at any location, at its sole discretion, and ViriCiti may apply temporary patches, solutions, and or restrictions relating to the Equipment and Software as part of the warranty services.
- 11.3 The warranties hereunder do not cover faults or damages arising from arising from normal wear and tear, faulty, careless, or improper treatment, faulty and unauthorized commission, improper storage or unloading and unauthorized modifications, incorrect use, misuse, or use for other purposes than indicated by ViriCiti, of Equipment and Software, and improper or defective environmental circumstances, or a failure caused by a product for which ViriCiti is not responsible. ViriCiti does not warrant that Equipment and Software will operate without interruption or error. Any Errors or defects that should have been notified to ViriCiti under Section 7.7 are not covered by any warranties. Warranties hereunder do not cover travel and transportation costs, and any and all damages caused by assembly, disassembly, installation, or removal of Equipment.
- 11.4 Warranty claims are only allowed and ViriCiti will only be obligated to conduct warranty services, provided Customer is not breaching any of its obligations towards ViriCiti, and ViriCiti has been informed of the warranty claim in detail, within fourteen (14) days of date on which the defect first occurred or was first discovered. Any warranty claim must at least include a detailed description of the alleged Errors, as to enable ViriCiti to respond adequately.
- 11.5 Unless stated by ViriCiti in writing otherwise, discounted Equipment and Software are not covered by any warranty.
- 11.6 Unless agreed upon in the Agreement, the warranties hereunder only apply to Customer and not to any third parties.
- 11.7 TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, VIRICITI, ITS LICENSORS, THIRD PARTY SUPPLIERS, AND AFFILIATES HEREBY DISCLAIM ALL WARRANTIES, CONDITIONS, CLAIMS OR REPRESENTATIONS WITH RESPECT TO THE VIRICITI EQUIPMENT, SOFTWARE AND/OR SERVICES WHETHER EXPRESS, IMPLIED OR STATUTORY OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, QUALITY, NON-INFRINGEMENT, COMPATIBILITY OR OF FITNESS FOR A PARTICULAR PURPOSE. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED FROM VIRICITI OR ELSEWHERE WILL CREATE ANY WARRANTY OR CONDITION NOT EXPRESSLY STATED IN THESE TERMS AND CONDITIONS.
- 11.8 Customer warrants not to: (i) copy, modify, translate, or reverse engineer any portion of the Equipment, Software and/or Services; (ii) use any robot, spider, other automated device, or manual process to monitor or copy the Software or parts thereof; (iii) reformat or frame any portion of the Software; (iv) interfere with the access of any other users of the Software; (v) transmit any viruses, worms, defects, Trojan horses or other items of a destructive nature through the Software; (vi) use the Software to violate the security of any computer network, crack passwords or security encryption codes; or (vii) use any device, software or routine that interferes with the proper working of the Software.

12 Liability, Limitation of Damages and Indemnification

- 12.1 VIRICITI DISCLAIMS ANY AND ALL RESPONSIBILITY OR LIABILITY IN RELATION TO VIRICITI'S EQUIPMENT,

SOFTWARE AND/OR SERVICES. NEITHER VIRICITI NOR ITS OFFICERS OR AFFILIATES MAY BE HELD LIABLE WHETHER IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), OR ANY OTHER FORM OF LIABILITY FOR ANY CLAIM, DAMAGE, OR LOSS, (AND CUSTOMER HEREBY WAIVES ANY AND ALL SUCH CLAIMS OR CAUSES OF ACTION), ARISING FROM OR RELATING TO ALL SUCH EQUIPMENT, SOFTWARE AND/OR SERVICES.

- 12.2 THE VIRICITI SOFTWARE AND/OR VIRICITI'S WEBSITE, INCLUDING ALL CONTENT, SOFTWARE, FUNCTIONS, MATERIALS, SERVICES, AND INFORMATION AVAILABLE ON OR ACCESSED BY MEANS THEREOF, IS PROVIDED "AS IS." TO THE FULLEST EXTENT PERMISSIBLE BY LAW, VIRICITI MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER FOR (1) THE CURRENCY, ACCURACY, OR COMPLETENESS OF ANY INFORMATION AVAILABLE BY MEANS OF THE SOFTWARE AND/OR ITS WEBSITE (2) FOR ANY INFORMATION PROVIDED BY THIRD PARTIES AND ACCESSIBLE ON OR THROUGH THE SOFTWARE AND/OR SERVICES, (3) FOR ANY "VIRUSES" OR MALICIOUS COMPUTER CODE TRANSMITTED ON OR THROUGH THE SOFTWARE AND/OR ITS WEBSITE, (4) FOR ANY BREACH OF SECURITY OR UNAUTHORIZED ACCESS TO THE SOFTWARE AND/OR WEBSITE OR CUSTOMER INFORMATION. VIRICITI FURTHER DOES NOT REPRESENT OR WARRANT THAT THE VIRICITI SOFTWARE AND/OR WEBSITE WILL ALWAYS BE SECURE, UNINTERRUPTED, TIMELY, ACCURATE, COMPLETE, ERROR-FREE OR FREE FROM VIRUSES NOR DOES VIRICITI WARRANT ANY QUALITY OF THE SOFTWARE AND/OR ITS WEBSITE. VIRICITI IS NOT RESPONSIBLE FOR THE CONDUCT OF ANY USER OF THE SOFTWARE AND/OR ITS WEBSITE.
- 12.3 CUSTOMER IS SOLELY RESPONSIBLE AND LIABLE FOR ALL ACTIVITIES CONDUCTED THROUGH EQUIPMENT AND/OR SOFTWARE BY USERS, EVEN IF SUCH ACTIVITIES WERE TO OCCUR WITHOUT CUSTOMER'S PERMISSION. VIRICITI DISCLAIMS ANY AND ALL RESPONSIBILITY OR LIABILITY IN RELATION TO THE ACTS AND OMISSIONS OF USERS THROUGH VIRICITI'S EQUIPMENT AND/OR SOFTWARE. NEITHER VIRICITI NOR ITS OFFICERS OR EMPLOYEES OR AFFILIATES MAY BE HELD LIABLE WHETHER IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), OR ANY OTHER FORM OF LIABILITY FOR ANY CLAIM, DAMAGE, OR LOSS, (AND CUSTOMER HEREBY WAIVES ANY AND ALL SUCH CLAIMS OR CAUSES OF ACTION), ARISING OR RELATING TO ALL SUCH ACTS AND OMISSIONS.
- 12.4 IN NO EVENT SHALL VIRICITI, ITS AFFILIATES OR ITS LICENSORS BE LIABLE, HOWEVER CAUSED AND WHETHER ARISING UNDER CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR ANY OTHER FORM OF LIABILITY, FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, OR ANY LOSS OF INCOME, BUSINESS, SALES, PROFITS (WHETHER ACTUAL OR ANTICIPATED), LOSS OF OR CORRUPTION TO DATA, OR INTERRUPTION OF BUSINESS.
- 12.5 NOTWITHSTANDING ANYTHING ELSE IN THIS AGREEMENT TO THE CONTRARY, VIRICITI'S AGGREGATE LIABILITY FOR ALL CLAIMS OF ANY KIND SHALL NOT EXCEED THE TOTAL OF FEES PAID TO VIRICITI, OR TWENTY THOUSAND USD (\$20,000), WHICHEVER IS LESS.
- 12.6 THE LIMITATIONS ON VIRICITI'S LIABILITY ABOVE SHALL APPLY WHETHER OR NOT VIRICITI, ITS EMPLOYEES, LICENSORS OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES ARISING.
- 12.7 CUSTOMER MUST PROVIDE WRITTEN NOTICE NO LATER THAN TEN (10) DAYS AFTER DAMAGE/INJURY HAS OCCURRED, OR AFTER CUSTOMER RECEIVED KNOWLEDGE OF SUCH DAMAGE/INJURY. IF SUCH NOTICE HAS NOT BEEN RECEIVED, VIRICITI CANNOT BE HELD LIABLE FOR THE DAMAGE/INJURY.

13 Indemnification Customer

- 13.1 CUSTOMER AGREES TO INDEMNIFY, DEFEND AND HOLD VIRICITI, ITS PRESENT AND FUTURE OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, AGENTS AND ITS AFFILIATES HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, LOSSES, DAMAGES, PENALTIES, LIABILITY AND COSTS, INCLUDING REASONABLE ATTORNEYS' FEES, IN CONNECTION WITH OR ARISING OUT OF ANY BREACH OF THE AGREEMENT OR THESE TERMS AND CONDITIONS BY CUSTOMER.
- 13.2 CUSTOMER AGREES TO INDEMNIFY, DEFEND AND HOLD VIRICITI, ITS PRESENT AND FUTURE OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, AGENTS AND ITS AFFILIATES HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS AND THREATENED CLAIMS BY ANY THIRD PARTY, INCLUDING EMPLOYEES OF CUSTOMER ARISING OUT OF, UNDER OR IN CONNECTION WITH THE USE OF ANY EQUIPMENT, SOFTWARE, AND/OR SERVICES PROVIDED TO CUSTOMER, PROVIDED SUCH WAS NOT A RESULT OF GROSS NEGLIGENCE, WILFUL MISCONDUCT OR FRAUD BY VIRICITI OR ITS PERSONNEL.

14 Insurance

ViriCiti and Customer shall pay all necessary costs to maintain sufficient insurance policies to cover its personnel and premises for activities contemplated by or performed in connection with the Equipment, Software and/or Services.

15 Severability

If any provision of these Terms and Conditions, the Agreement or any other agreement between the Parties, is held to be null, void or otherwise ineffective or invalid by a court of competent jurisdiction, (i) such provision shall be deemed to be restated to reflect as nearly as possible the original meaning of the terms or agreement in accordance with applicable law, and (ii) the remaining terms, provisions, covenants and restrictions shall remain in full force and effect.

16 Force Majeure

ViriCiti will not be liable for any delay in performing or failure to perform any of its obligations under these Terms and Conditions or the Agreement caused by events beyond its reasonable control. ViriCiti will notify Customer promptly in writing of the reasons for the delay or stoppage (and the likely duration) and will take all reasonable steps to overcome the delay or stoppage. If the force majeure event continues for more than two (2) months, each of the Parties may terminate the Agreement, without incurring any liability in connection to such termination.

17 Assignment

Customer is not permitted to assign, delegate or otherwise transfer the Agreement or any rights hereunder. Any such attempted assignment, delegation or transfer will be null and void. ViriCiti is permitted at its sole discretion to assign the Agreement or any rights or obligations hereunder to any third party, without giving prior notice.

18 Entire Agreement

The Agreement and these Terms and Conditions contain the entire agreement between ViriCiti and Customer regarding Customer's purchase of the Equipment and/or Services, and supersedes and replaces any previous communications, representations or agreements, or Customer's additional or inconsistent terms, whether oral or written.

19 No Waiver

The failure to exercise, or delay in exercising, a right, power or remedy provided by the Agreement or these Terms and Conditions or by law shall not constitute a waiver of that right, power or remedy. If ViriCiti waives a breach of any provision of these Terms and Conditions or the Agreement, this shall not

operate as a waiver of a subsequent breach or that provision or as a waiver of a breach of any other provision.

20 No Beneficiaries

Any agreement between the Parties is for the sole benefit of the Parties thereto and, except as otherwise contemplated therein, nothing therein expressed or implied shall give or be construed to give any person, other than the Parties thereto, any legal or equitable rights thereunder.

21 No Partnership

Nothing contained in any agreement between the Parties shall be read or construed so as to constitute the relationship of principal and agent or of partnership between the Parties. Neither of the Parties may pledge or purport to pledge the credit of the other Party or make or purport to make any representations, warranties, or undertakings for the other Party.

22 Injunctive Relief

Customer acknowledges that ViriCiti shall suffer irreparable injury in case of breach of the obligations under Articles 8 and 9. Accordingly, in the event of such breach, Customer acknowledges that ViriCiti will be entitled to injunctive relief in any state or federal court of competent jurisdiction within the State of New York. Customer further submits to the personal jurisdiction of such courts for the purposes of any such action.

23 Governing Law and Arbitration

Unless stated otherwise in writing, any and all agreements between the Parties shall be governed by and construed in accordance with the laws of the State of California, notwithstanding conflict of law principles, and without giving effect to the United Nations Convention on the Contracts for the International Sale of Goods. All disputes and controversies arising out of or relating to these Terms and Conditions or the relationship of the Parties shall be finally and bindingly resolved under the International Arbitration Rules of the American Arbitration Association in front of a sole arbitrator. The place of arbitration shall be Los Angeles, California. The language of the arbitration shall be English. Any award, verdict or settlement issued under such arbitration may be entered by any party for order of enforcement by any court of competent jurisdiction. ANY CAUSE OF ACTION AGAINST VIRICITI, REGARDLESS WHETHER IN CONTRACT, TORT OR OTHERWISE, MUST COMMENCE WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES. OTHERWISE, SUCH CAUSE OF ACTION IS PERMANENTLY BARRED.