

This **SOFTWARE LICENSE AGREEMENT** ("Agreement") is entered into by and between Vistrian, Inc., a California corporation having its principal place of business at the address listed below ("Vistrian"), and New Client, having its principal place of business at the address listed below ("Licensee") to permit Licensee to use Vistrian's software product in object code form ("Software") and related documentation ("Documentation") (the Software and Documentation are referred to collectively as the "Product"), identified in Exhibit A.

1. License

Subject to Licensee's payment of the License Fee (as defined in Section 4 below) and other terms and conditions of this Agreement, Vistrian grants Licensee a non-exclusive, non-transferable, license to install, execute, display and otherwise use the Product for Licensee's internal business purposes in Continuous Monitoring of Factory Floor Equipment. The license includes the right to use the Software only on the equipment ("Licensed Equipment") and at the location ("Licensed Site") specified below unless Vistrian otherwise agrees in writing. The license also includes the right of Licensee to make the number of copies of the Software reasonably required for authorized use under this Agreement, provided that Licensee maintain on all such copies all proprietary rights notices of the Software. Licensee may transfer its rights under this Agreement in its entirety only to a successor in interest of Licensee's business who assumes the obligations of this Agreement.

2. Proprietary Rights

Licensee acknowledges and agrees that the Product contains proprietary and trade secret information of Vistrian. Other than the limited license granted to Licensee under Section 1 of this Agreement, Vistrian and its suppliers, if any, retain all ownership and proprietary rights in and to the Product, including any and all copies made by Licensee and any and all Updates (as defined in the Support Agreement, if applicable). Licensee will have no right and will not, nor will it authorize or assist others to: (a) copy the Documentation, (b) disassemble, reverse engineer, modify, translate, alter or decompile all or any portion of the Software or otherwise discern the source code of the Software except and solely to the extent permitted under applicable law notwithstanding this restriction, or (c) use the Software on a service bureau or time sharing basis or to provide services to third parties, or (d) distribute, copy, rent, lease, sublicense, assign, transmit, sell or otherwise transfer the Product or any of Licensee's rights therein, except such copying and transfer as expressly permitted in Section 1 of this Agreement. Upon reasonable notice by Vistrian, Licensee authorizes Vistrian to enter, during regular business hours, Licensee's premises in order to verify Licensee's compliance with the terms of this Agreement.

3. Pricing and Payment

Licensee shall pay the license fee specified in Exhibit A ("License Fee") for the Product in U.S. dollars prior to delivery of the Product. The License Fee is exclusive of any and all taxes, and Licensee is responsible for payment of such taxes (excluding those based on Vistrian's net income). Licensee agrees to hold harmless Vistrian from all claims and liability arising from Licensee's failure to report or pay such taxes.

4. Support Services

The License Fee does not include support, or any configuration or customization of the Software to Licensee's system and specifications or any other services. If Licensee desires support and maintenance (including Software updates), such services shall be governed by Vistrian's Support Services Agreement ("Support Agreement"), which shall be attached as Exhibit B. If Licensee desires any additional services with respect to the Software, such services shall be governed by Vistrian's Service Agreement ("Services Agreement"), which shall be attached as Exhibit C.

5. Limited Warranties; Disclaimer of Warranties

5.1

Vistrian warrants that the Software will perform substantially in accordance with the Documentation for a period of 12 months from the date of delivery of the Software to Licensee (the "Warranty Period"). Licensee's sole and exclusive remedy for breach of this warranty shall be to notify Vistrian within the Warranty Period, detailing the nonconformance, and to provide Vistrian

with a reasonable opportunity to correct or replace the defective Software. If Vistrian fails to remedy such breach within a reasonable time period after receipt of Licensee's notice, Licensee shall be entitled to terminate this Agreement (including the license) and obtain a refund of the License Fee paid to Vistrian. This limited warranty shall be void if Vistrian determines that the Product has been used other than in accordance with the Documentation, abused, modified, altered or otherwise subjected to damage from accident or acts of nature. Licensee agrees to comply with Vistrian's reasonable instructions with respect to the alleged defective Product, which may include return of the defective Product at Vistrian's expense.

5.2

EXCEPT AS EXPRESSLY PROVIDED IN SECTION 5.1, THE PRODUCT IS PROVIDED BY COMPANY TO LICENSEE "AS IS," AND COMPANY AND ITS SUPPLIERS, IF ANY, MAKE NO WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED, REGARDING THE PRODUCT AND SPECIFICALLY DISCLAIM THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND AGAINST INFRINGEMENT, TO THE MAXIMUM EXTENT POSSIBLE BY LAW. COMPANY DOES NOT WARRANT THAT THE PRODUCT WILL MEET LICENSEE'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION OR BE ERROR FREE. LICENSEE WILL BEAR ALL RISKS RELATING TO THE QUALITY AND PERFORMANCE OF THE PRODUCT, AND ASSUME THE ENTIRE COST OF ALL NECESSARY SERVICING, REPAIR OR CORRECTION.

5.3

Unless otherwise specified in the Services Agreement (Exhibit C) Licensee is solely responsible for proper configuration of all hardware and other equipment and all databases and other software used with the Software.

6. Intellectual Property Indemnity

6.1

Vistrian will defend Licensee from any claim or action ("Claim") brought or made by a third party against Licensee, and will pay any settlements agreed to by Vistrian or judgments finally awarded against Licensee in favor of the third party resulting from such Claim, to the extent based upon any claim that the Product infringes any valid United States patent, copyright or trade secret, provided that Licensee: (a) promptly notifies Vistrian in writing of any such claim; (b) gives Vistrian full authority and control of the settlement and defense of the claim; and (c) fully cooperates with Vistrian in the defense of such claims, including providing adequate assistance and information at Vistrian's expense.

6.2

Vistrian will have no obligation to Licensee for any Claim that arises from: (a) any modification to the Product by anyone other than Vistrian; (b) modifications made by Vistrian at Licensee's request; (c) use of the Product other than as specified in this Agreement or in the applicable Documentation; (d) use of prior versions of the Product after an Update has been provided by Vistrian to Licensee; or (e) use of the Product in combination with third-party software, hardware or data.

6.3

If a Claim arises, or in Vistrian's opinion is likely to arise, Vistrian may at its own expense obtain for Licensee the right to continue using the Product, modify the Product to make it non-infringing, or substitute other Product of similar capability and functionality. If none of these options are reasonably available to Vistrian, Vistrian may terminate this Agreement and refund to Licensee the License Fee paid for the infringing Product, less a reasonable charge for Licensee's use of the Product prior to such termination based on a 3-year life. THIS SECTION 6 STATES THE ENTIRE OBLIGATION OF COMPANY AND THE EXCLUSIVE REMEDIES OF LICENSEE WITH RESPECT TO ANY CLAIMS OF INFRINGEMENT OR PROPRIETARY RIGHTS VIOLATIONS.

7. Limitation of Liability

IN NO EVENT SHALL COMPANY, OR ITS SUPPLIERS, IF ANY, BE LIABLE TO LICENSEE FOR CONSEQUENTIAL, EXEMPLARY, INDIRECT, SPECIAL OR INCIDENTAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS), OR BE LIABLE TO ANY THIRD PARTY FOR ANY DAMAGES WHATSOEVER, EVEN IF COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. Vistrian's entire liability under this Agreement for any damages from any cause whatsoever, regardless of form or action, whether in contract, negligence or otherwise, shall in no event exceed an amount equal to the License Fee paid by Licensee.

8. Confidential Information

Each party agrees to keep confidential and to use only for purposes of performing or as otherwise permitted under this Agreement, any proprietary or confidential information of the other party disclosed pursuant to this Agreement which is marked as confidential or which would reasonably be considered of a confidential nature. The obligation of confidentiality shall not apply to information which is publicly available through authorized disclosure, is known by the receiving party at the time of disclosure as evidenced in writing, is rightfully obtained from a third party who has the right to disclose it, or which is required by law, government order or request to be disclosed. Notwithstanding any of the foregoing, Licensee acknowledges and agrees that the Product shall be deemed to constitute confidential information of Vistrian. Upon any termination of this Agreement, each party shall return to the other party all confidential information of the other party, and all copies thereof, in the possession, custody or control of the party unless otherwise expressly provided in this Agreement.

9. Term and Termination

9.1

Term and Termination. This Agreement shall become effective on the last date executed below by either party (the "Effective Date") and shall continue in effect until terminated as provided herein. Either party may terminate this Agreement by giving the other party written notice of such termination upon the other party's breach of any material term (subject to the breaching party's right to cure within 30 days after receipt of such notice), the other party's insolvency, making an assignment for the benefit of creditor, receivership, or the institution of any similar proceedings by or against the other party.

9.2

Effect of Termination. Upon termination of this Agreement, the license granted to Licensee under this Agreement will revert to Vistrian and Licensee will cease all use of the Product. Within ten (10) business days of termination, Licensee will destroy or deliver to Vistrian all copies of the Product or any portion thereof in Licensee's possession or under its control, and an officer of Licensee will certify to Vistrian such destruction or delivery. Licensee's failure to comply with the obligations of this Section will constitute unauthorized use of the Product, entitling Vistrian to equitable relief as provided in this Agreement and other legal and equitable remedies. Sections 3, 6, 7, 8, 9.2 and 11 shall survive any expiration or termination of this Agreement.

10. United States Government Restricted Rights

If Licensee is the U.S. Government or if Licensee is a contractor or subcontractor (at any tier) of the U.S. Government and is licensing the Software for use by the U.S. Government or in connection with any contract or other transaction with the U.S. Government, Licensee acknowledges that by accepting delivery of the Software, the Government agrees that the Software qualifies as commercial computer software and that the Documentation qualifies as commercial computer software documentation within the meaning of the acquisition regulations and contract clauses applicable to this procurement. The terms and conditions of this Agreement are fully applicable to the Government's use and disclosure of the Product, and shall supersede any conflicting terms or conditions. No license of any kind is granted in the case of acquisitions which contain or are subject to the clauses FAR 52-227.19 COMMERCIAL COMPUTER SOFTWARE-RESTRICTED RIGHTS (JUNE 1987) or DFARS 252.227-7013 RIGHTS IN TECHNICAL DATA AND COMPUTER SOFTWARE (OCT 1988) or any other clause which purports to grant to the Government rights greater than, or additional to those, set forth in this Agreement, or which purports to impose additional requirements upon Vistrian to make this Agreement effective, unless Vistrian specifically so consents by separate

written agreement. Failing such agreement, and if this Agreement fails to meet the Government's stated needs or is inconsistent in any respect with federal law, the Government agrees to return the Software and Documentation, unused, to Vistrian. The Licensor/Manufacturer is Vistrian, 562 Valley Way, Milpitas, CA 95035.

11. Force Majeure

Neither party shall be liable to the other for any performance delay or failure to perform hereunder, exclusive of payment obligations, due to any act, omission or condition beyond the reasonable control of the affected party, provided the affected party gives prompt notice to the other and makes reasonable efforts to resume performance as soon as possible.

12. Miscellaneous

This Agreement, together with all Exhibits, constitutes the entire agreement of the parties, and supersedes any prior or contemporaneous agreements between the parties, with respect to the subject of this Agreement. Except as otherwise expressly provided herein, this Agreement may be modified only in writing signed by an authorized representative of each party. This Agreement shall be governed by and construed in accordance with the laws of the State of California exclusive of its conflict of laws principles. Any dispute arising under or relating to this Agreement will be resolved in the state or federal courts in [Santa Clara County], California, and the parties hereby expressly consent to jurisdiction therein. The prevailing party shall be awarded its reasonable attorneys' fees and costs in any suit or proceeding arising out of or related to this Agreement. Notices under this Agreement shall be in writing, addressed to the party at its address below, and shall be deemed given when delivered personally, or by facsimile (with confirmation of receipt) or conventional mail (registered or certified, postage prepaid with return receipt requested). Nothing contained in this Agreement is intended or is to be construed to create a partnership, joint venture or agency relationship. If any provision of this Agreement shall be declared invalid, illegal or unenforceable, all remaining provisions shall continue in full force and effect. Nothing in this Agreement shall be construed to limit or delay Vistrian's ability to seek immediate relief at law or in equity for any breach by Licensee of the license. No waiver of any rights hereunder shall be deemed to be a waiver of the same or other right on any other occasion.