

SILVER PEAK NX, VX AND VRX SOFTWARE END USER LICENSE AGREEMENT

This End User License Agreement (“Agreement”) is a legal agreement between you (“Customer”) and Silver Peak Systems, Inc. (“Company”) regarding your license of Silver Peak’s NX, VX and/or VRX software (the “Software”). By using the Software, you agree to be bound by the terms of this Agreement. **If you do not agree to the terms of this Agreement, do not use the Software.**

1. Definitions.

1.1 “Documentation” means any user instructions, manuals or other materials, and on-line help files regarding the use of the Software that are generally provided by Company in connection with the Software.

1.2 “Orchestrator” means Company’s software which provides a user interface for Customer’s configuration of its installed instances of the Software. For the purposes of this Agreement, Orchestrator is part of the Software.

1.3 “Support” means Company’s maintenance and support of the Software as described in Company’s then-current product specifications applicable to the Software.

1.4 “Third Party Software” means third party components, libraries, or modules and relevant documentation delivered with the Software.

1.5 “Update” means a commercially available release of the Software identified by a change to the version number to the right of the first decimal point (e.g., a change from x.1 to x.2), including any error corrections, patches and bug fixes. For the purposes of this Agreement, each Update is part of the Software.

1.6 “Upgrade” means a commercially available release of the Software identified by a change to the version number to the left of the first decimal point (e.g., a change from 8.x to 9.x). For the purposes of this Agreement, each Upgrade is part of the Software.

2. Software.

2.1 Subject to the terms and conditions of this Agreement, Company grants to Customer a personal, non-exclusive, non-sublicenseable and non-transferable license for the Term to (a) use the Software solely in binary form for Customer’s own internal needs; and (b) use the Documentation in connection with the permitted use of the Software.

2.2 All right, title and interest in and to the Software (including all modifications) and Documentation, and all intellectual property rights therein, will remain the sole property of Company, subject to the express licenses granted to Customer under this Section. The Software is licensed hereby, not sold.

2.3 Customer will not itself, or through any parent, subsidiary, affiliate, agent or other third party: (a) sell, lease, license or sublicense the Software or the Documentation; (b) decompile, disassemble or reverse engineer the Software, in whole or in part, or otherwise attempt to derive source code, the underlying algorithms, ideas, structures or techniques from the Software (except that this limitation will not apply to the extent that such activities may not be prohibited under applicable law); (c) allow access to the Software by any entity or individual other than Customer’s employees or authorized contractors; (d) write or develop any derivative software or any other software program based upon the Software or any Confidential Information; (e) use the Software to provide processing services to third parties, or otherwise use the Software on a ‘service bureau’ or hosted basis; (f) redistribute, provide, disclose, divulge or make available to, or permit use of the Software by any third party without Company’s prior written consent; or (g) copy the Software.

2.4 Company shall own any and all rights, title and interest in and to any feedback, suggestions, information or materials conveyed to Company in connection with this Agreement ("Feedback"). Customer hereby assigns to Company its entire right, title and interest in such Feedback. Customer agrees that it will execute any documents and take any additional actions Company deems necessary to evidence, record and perfect the foregoing assignment.

3. Third Party Software.

3.1 Customer understands and agrees that, although provided to Customer by Company with the Software, Customer's use of the Third Party Software shall be and is governed by the relevant terms and conditions governing such use ("Third Party Licenses"). Such Third Party Licenses are bundled with the Software and may be viewed by Customer through Orchestrator and through Customer's installed instances of the Software. Customer acknowledges and agrees that Customer has reviewed the terms of Third Party Licenses and that Customer agrees to be bound by the terms of such Third Party Licenses. In this regard, such Third Party Licenses may grant Customer greater rights of use with respect to such Third Party Software than permitted under Section 2 of this Agreement with respect to the Software.

4. Maintenance and Support.

4.1 For a period of ninety (90) days from the date of Customer's order of the Software, Company will make Updates and maintenance releases of Software available for download. Customer is responsible for downloading and installing the Updates and maintenance releases of Software.

4.2 During the period for which Customer's Support plan is in effect, Company will make Updates and Upgrades available for download. Customer is responsible for downloading and installing the Updates and Upgrades.

4.3 During the period for which Customer's Support plan is in effect, Company will provide Customer with Support for the then-current Upgrade version of the Software and the then-immediately-preceding Upgrade version. By way of example only, if the current version of the Software is 8.4, Company will provide Customer with Support for all 8.x and 7.x versions.

5. Limited Warranty.

5.1 During the Term, Company warrants that the Software will perform in substantial compliance with the then-current specifications for the Software published by Company. The liability of Company for any non-compliance with such warranty shall be limited to the performance of Company's obligations pursuant to Section 4 above. EXCEPT AS PROVIDED ABOVE, COMPANY MAKES NO, AND HEREBY DISCLAIMS ALL OTHER, WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

5.2 EXCEPT AS SET FORTH ABOVE, COMPANY AND ITS LICENSORS AND SUPPLIERS MAKE NO WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY REGARDING OR RELATING TO THE SOFTWARE OR THE DOCUMENTATION, OR ANY MATERIALS OR SERVICES FURNISHED OR PROVIDED TO CUSTOMER UNDER THIS AGREEMENT. COMPANY AND ITS LICENSORS AND SUPPLIERS SPECIFICALLY DISCLAIM ALL IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO SUCH SOFTWARE, DOCUMENTATION, MATERIALS AND SERVICES, AND WITH RESPECT TO THE USE OF ANY OF THE FOREGOING.

6. **INDEMNIFICATION.** Company agrees that it will, at its own expense, defend all suits or proceedings instituted against Customer and pay any award or damages finally assessed against Customer in such suits or proceedings, insofar as the same are based on any claim that the Software licensed under this Agreement constitutes an infringement in the United States of any United States patent, copyright or trademark; provided, however, that Customer gives immediate written notice to Company of the institution of the suit or proceedings, permits Company through its counsel to defend the same and gives Company all needed information, assistance and authority to enable Company to do so. Notwithstanding the foregoing, Company will not be responsible for, and the foregoing indemnity obligation shall not apply to: (i) infringement of any patent covering the use of the Software in combination with any other products, process, equipment or materials not furnished by Company; (ii) a use of the Software that is not its intended use; or (iii) any device, part, good or product specified by Customer. In case the Software furnished by Company is in such suit held in and of itself to constitute infringement and its use is enjoined, Company, within a reasonable time, will, at its option, either: (A) secure for Customer the right to continue using the Software by suspension of the injunction, by procuring for the Customer a license, or by some other means; (B) at Company's own expense, replace the Software with non-infringing Software; or (C) terminate this Agreement and refund to Customer the pro-rata portion of the license fees pre-paid by Customer attributable to the period after termination. THE FOREGOING STATES COMPANY'S ENTIRE LIABILITY AND OBLIGATION (EXPRESS, STATUTORY, IMPLIED OR OTHERWISE) WITH RESPECT TO INTELLECTUAL PROPERTY INFRINGEMENT OR CLAIMS THEREFOR.

7. **LIMITATION OF LIABILITY.** COMPANY'S LIABILITY ARISING OUT OF THIS AGREEMENT WILL BE LIMITED TO REFUND OF THE LICENSE FEES ACTUALLY PAID BY CUSTOMER. IN NO EVENT WILL COMPANY BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL OR INDIRECT DAMAGES (INCLUDING WITHOUT LIMITATION LOSS OF PROFIT) WHETHER OR NOT COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY ARISING OUT OF THIS AGREEMENT. THIS EXCLUSION INCLUDES ANY LIABILITY THAT MAY ARISE OUT OF THIRD-PARTY CLAIMS AGAINST CUSTOMER AND ANY OF THE FOLLOWING LIABILITIES THAT MAY ARISE OUT OF CUSTOMER'S CONFIGURATION OR USE OF THE SOFTWARE: (i) LOSS OR CORRUPTION OF DATA, (ii) INABILITY TO ACCESS OR USE THE SOFTWARE, (iii) INABILITY TO ACCESS OR USE CUSTOMER'S NETWORKS AND COMMUNICATIONS SERVICES, (iv) PERFORMANCE RELATED LOSSES OR DELAYS, (v) LOSS OF BUSINESS DUE TO INOPERABILITY OR PERFORMANCE OF THE SOFTWARE, AND (vi) NON-DELIVERY, MIS-DELIVERY, LATE DELIVERY OR DEGRADATION OF QUALITY OF COMMUNICATIONS. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY

8. **Confidentiality.** Customer shall hold in the strictest confidence the Software and any related materials or information including, but not limited to, any technical data, research, product plans or know-how provided by Company to Customer, either directly or indirectly in writing, orally or by inspection of tangible objects ("Confidential Information"). Customer shall not disclose any Confidential Information to third parties, including any of its employees who do not have a need to know such information and Customer shall take reasonable measures to protect the secrecy of, and to avoid disclosure and unauthorized use of the Confidential Information. Customer shall immediately notify Company in the event of an unauthorized or suspected use or disclosure of the Confidential Information.

9. **Term and Termination.**

9.1 If Customer ordered a perpetual license of the Software, this Agreement will commence on the date of Customer's license of the Software and will remain in full force and effect (unless terminated earlier as provided below) until Customer gives Company written notice of termination (the "Term").

9.2 If Customer ordered a subscription license of the Software, this Agreement will commence on the date of Customer's license of the Software and will remain in full force and effect (unless terminated earlier as provided below) for the initial subscription term specified in the order applicable to such license (the "Initial Term") and will be automatically renewed for successive additional one (1) year terms (each a "Renewal Term"), unless terminated earlier as provided below or unless either party gives the other party written notice of non-renewal no later than thirty (30) days prior to the end of the then-current Term period. If Customer ordered a subscription license of the Software, any references to the "Term" in this Agreement will include the Initial Term and all Renewal Terms.

9.3 This Agreement may be terminated by Company at any time upon written notice to Customer in any of the following circumstances: (i) for Customer's material breach of the Agreement, which material breach has remained uncured for a period of thirty (30) days from the date of written notice of such breach, (ii) for Customer's breach of its confidentiality obligations hereunder, (iii) an adjudication of bankruptcy of Customer under any bankruptcy or insolvency law or (iv) the appointment of a receiver for business or property of Customer or the making of any general assignment for the benefit of its creditors.

9.4 Sections 2.2, 2.3, 2.4, 3, 5 through 8, inclusive, 9.4 and 10 of this Agreement will survive any expiration or termination of this Agreement.

10. Miscellaneous. This Agreement will be governed by and construed under the laws of the State of California without regard to its conflict of laws provisions. The federal and state courts in the Northern District of California will have exclusive jurisdiction and venue to adjudicate any dispute arising out of this Agreement. This Agreement sets forth the entire agreement and understanding of the parties relating to the subject matter hereof and supersedes all prior discussions, proposals and understandings between them. No modification of or amendment to this Agreement, nor any waiver of any rights under this Agreement, will be effective unless set forth in writing signed by officers of both parties hereto. Customer agrees not to export the Software in violation of the laws and regulations of the United States or any other nation. This Agreement will be binding upon and inure to the benefit of the parties hereto, their valid successors and assigns. If any provision of this Agreement is held to be illegal or unenforceable, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable. The failure of either party to enforce its rights under this Agreement at any time for any period will not be construed as a waiver of such rights.

11. Questions. Should you have any questions concerning the foregoing, please contact Company at the following address:

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