VeraSMART Software License Agreement

IMPORTANT

PLEASE READ THE TERMS AND CONDITIONS OF THIS SOFTWARE LICENSE AGREEMENT CAREFULLY BEFORE AGREEING TO INSTALL THE SOFTWARE. THIS IS A LEGAL AGREEMENT BETWEEN CALERO SOFTWARE, LLC AND THE COMPANY ON WHOSE BEHALF YOU ARE AUTHORIZED TO ENTER INTO AGREEMENTS THAT BIND THE COMPANY.

CALERO SOFTWARE, LLC ("CALERO") IS WILLING TO LICENSE THE VeraSMART® SOFTWARE WITH WHICH THIS AGREEMENT IS PROVIDED ("THE SOFTWARE") TO THE COMPANY UTILIZING THE SOFTWARE ("CUSTOMER") ONLY ON THE CONDITION THAT THE CUSTOMER, ACTING THROUGH YOU, THE CUSTOMER'S AUTHORIZED AGENT, ACCEPT ALL OF THE TERMS OF THIS LICENSE AGREEMENT.

BY CLICKING ON THE "**Yes**" BUTTON BELOW, YOU, AS AN AUTHORIZED PERSON ON BEHALF OF CUSTOMER, AGREE TO, AND ARE LEGALLY BOUND BY, THE TERMS AND CONDITIONS OF THIS AGREEMENT. CUSTOMER MAY PRINT THIS AGREEMENT NOW BY CLICKING ON THE "View EULA for Printing" BUTTON. CUSTOMER MAY ALSO ACCESS AND PRINT THIS AGREEMENT AFTER INSTALLATION. AN ELECTRONIC FILE ("VeraSMART License.htm") CONTAINING THIS AGREEMENT CAN BE FOUND UNDER THE "..\Program Files\Veramark\VeraSMART\Licenses" FOLDER.

IF YOU DO NOT AGREE WITH, AND DO NOT WISH TO BE LEGALLY BOUND BY, THE TERMS AND CONDITIONS OF THIS AGREEMENT CLICK ON THE "**No**" BUTTON AND DISCONTINUE THE INSTALLATION/IMPLEMENTATION PROCESS.

1. **_LICENSE:_** CALERO hereby grants and CUSTOMER accepts, according to the terms and conditions defined herein, a nontransferable and nonexclusive license to operate the SOFTWARE at the prices agreed to between CUSTOMER and CALERO or CALERO'S RESELLER. CUSTOMER agrees to use the SOFTWARE only for its own use in processing its own data at the CUSTOMER's location(s).

2. **_INTELLECTUAL PROPERTY RIGHTS:_** CUSTOMER acknowledges that, with the exception of third-party products which are incorporated in the SOFTWARE ("Third Party Software"), the SOFTWARE including its programs, screens, database schema, concepts, and documentation has been designed by and remains the intellectual property of CALERO and is the confidential proprietary information of CALERO. The SOFTWARE and all permitted copies thereof are CALERO's exclusive property and may be used by CUSTOMER only in accordance with the terms of this Agreement. CALERO grants CUSTOMER no rights to the SOFTWARE other than specifically set forth herein, and CALERO retains on an exclusive basis all proprietary rights in and to the SOFTWARE and all intellectual property relating thereto. CUSTOMER may not disclose or make available to third parties the SOFTWARE or any portion thereof without CALERO's prior written consent. All work performed under or related to this Agreement is not a "work for hire" and CALERO shall own all intellectual property rights relating to the work performed under this Agreement including any modifications to the SOFTWARE or delivered materials. Customer shall not make, support or permit any claims adverse to CALERO's rights set forth herein.

   All Third Party Software is the intellectual property of their owners, as designated in their individual licenses. Electronic files containing these licenses can be found under the "..\Program Files\Veramark\VeraSMART\Licenses" folder.

3. **_SOFTWARE BACKUP DUPLICATION:_** CUSTOMER may make one (1) copy of the SOFTWARE for backup purposes only. That backup copy of the SOFTWARE shall contain all of CALERO's restrictive and proprietary notices as they appear on the SOFTWARE provided hereunder by CALERO.

4. **_LICENSE FEES AND PAYMENT:_** CUSTOMER shall pay the license fees set forth in a separate agreement and/or purchase order. License fees shall be due in full prior to installation unless otherwise agreed. All other fees shall be due net 30 days from invoice unless otherwise agreed.

5. **_SOFTWARE SYSTEM IMPLEMENTATION, INSTALLATION AND TRAINING:_** The parties agree to prepare a mutually acceptable schedule for the implementation and installation of the SOFTWARE and SOFTWARE training. CALERO shall provide CUSTOMER with implementation, installation and training services at the prices agreed to between CUSTOMER and CALERO or CALERO'S RESELLER.

6. **_WARRANTY:_** CALERO warrants, for the first sixty (60) days after installation, that the installed SOFTWARE will substantially conform to the functional description set forth in the VeraSMART Product Description published by CALERO as of the Effective Date. CUSTOMER's sole remedy for breach of such warranty is that CALERO, at no cost to CUSTOMER other than CALERO's expenses for travel and lodging for on-site service, shall either (1) use its reasonable commercial efforts to repair the SOFTWARE that is the subject of the breach so that it conforms to the published functional description of the SOFTWARE, (2) replace the

SOFTWARE to comply with such description, or (3) at CALERO's option, refund the fees paid by Customer for the non-conforming SOFTWARE.

THE WARRANTY SET FORTH IN THIS SECTION 6 IS THE ONLY WARRANTY MADE BY CALERO. CALERO EXPRESSLY DISCLAIMS, AND CUSTOMER HEREBY EXPRESSLY WAIVES, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. CALERO DOES NOT WARRANT AND SPECIFICALLY DISCLAIMS ANY REPRESENTATIONS THAT THE SOFTWARE WILL MEET CUSTOMER'S REQUIREMENTS OR THAT THE OPERATION OF THE SOFTWARE AND/OR ITS USE WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT DEFECTS IN THE SOFTWARE, IF ANY, WILL BE CORRECTED. CALERO'S WARRANTY SET FORTH IN THIS SECTION 6 AND THE INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 9, BELOW, ARE IN LIEU OF ALL LIABILITIES OR OBLIGATIONS OF CALERO FOR DAMAGES (WHETHER ARISING IN CONTRACT, TORT, WARRANTY OR OTHERWISE) ARISING OUT OF OR IN CONNECTION WITH THE DELIVERY OR USE OF THE SOFTWARE OR ANY RELATED SERVICES.

CUSTOMER AGREES THAT CALERO HAS NOT MADE AND CUSTOMER IS NOT RELYING UPON ANY WARRANTY OR REPRESENTATION EXCEPT AS SPECIFICALLY SET FORTH HEREIN.

7. **_RESPONSIBILITIES OF CUSTOMER_**: CUSTOMER shall be exclusively responsible for the operation, supervision, management and control of its copies of the SOFTWARE, including but not limited to:

   a. Providing the proper computer configuration, operating environment and operating methods.

   b. Establishing proper program and data backup procedures.

   c. Providing operating personnel who are trained and knowledgeable on all aspects of testing, evaluating, using and implementing the SOFTWARE.

   d. Adequately protecting the SOFTWARE programs, rate modules and documentation against unlawful duplication or loss.

   e. Ensuring that its use of the SOFTWARE conforms to the site and server restrictions specified by CALERO.

   Nothing above shall be interpreted to grant any right to CUSTOMER not specifically set forth herein. All obligations of CALERO are conditioned upon full and timely performance of all CUSTOMER obligations, including but not limited to payments of all amounts payable by CUSTOMER under this Agreement, reasonable access to CUSTOMER's facilities and CUSTOMER's cooperation in the implementation and installation of the SOFTWARE.

8. **_INTERNET BASED SERVICES_**: CALERO may provide Internet based services with the SOFTWARE. CALERO may change or cancel the services at any time.

   (a) **Consent for Internet-Based Services**. The SOFTWARE may connect to CALERO or service provider computer systems over the Internet. In some cases, CUSTOMER may not receive a separate notice when SOFTWARE connects over the Internet. By using these features, CUSTOMER consents to the transmission of this information.

   (b) **Use of Information**. CALERO may use the computer information to provide support to CUSTOMER and/or to improve CALERO's software and services. CALERO does not use the information to identify or contact CUSTOMER. CALERO will not share computer information with any third parties, without consent of CUSTOMER.

   (c) **Misuse of Internet-based Services**. CUSTOMER may not use these Internet-based services in any way that could harm them or impair anyone else's use of them. CUSTOMER may not use the services to try to gain unauthorized access to any service, data, account or network by any means.

9. **_CONFIDENTIALITY_**: (a) In the course of this Agreement, including during the term of the License a party may provide to the other materials, documents or information that the disclosing party considers to be confidential or proprietary ("Confidential Information"). The parties endeavor to avoid providing Confidential Information except to the extent required in the performance of this Agreement. Each party agrees to not disclose Confidential Information of the other party, and to use such Confidential Information only as necessary for performance of this Agreement, or the installation, operation, use, support and maintenance of the SOFTWARE.

   (b) If a party seeks protection of Confidential Information, it shall mark such information with an appropriate and conspicuous marking or legend. Despite such marking, information shall not be considered to be Proprietary Information to the extent it is in the public domain, is readily apparent or discernible, was

previously in the possession of the receiving party or later becomes legally available from another source, was developed by the receiving party independently of and without reference to any of the disclosing party's Confidential Information, or, after disclosure, the disclosing party no longer seeks protection.

(c) Each party will protect the confidentiality of all Confidential Information received from the other party with the same degree of care as it uses to protect its own Confidential Information, but in no event with less than a reasonable degree of care. The confidentiality obligations of each party under this Agreement will survive any expiration or termination of this Agreement for a period of 5 years. Upon termination of this Agreement, each party will cease all use of the other party's Confidential Information and will promptly return, or at the other party's request, destroy, all Confidential Information in tangible form and all copies of Confidential Information. Upon request, a party will certify in writing its compliance with this Section 8.

(d) All Confidential Information furnished to the receiving party by the disclosing party, with all copies made thereof, will remain the property of the disclosing party and will be returned to the disclosing party promptly at its request or at the termination of this Agreement.

10. ***LIMITATIONS OF USE/INDEMNITY***: CUSTOMER agrees it will not sell, rent, lease, operate, provide access, copy, duplicate or give away all or any portion of the SOFTWARE to or for any other party or entity or use the SOFTWARE in accordance with the terms of this Agreement at any location other than as set forth herein. CUSTOMER agrees that it is specifically prohibited from modifying, translating, reverse engineering, de-compiling, or disassembling the SOFTWARE , or from creating derivative works based on the SOFTWARE, and waives any right it may have perform such activities. In the event that the CUSTOMER breaches this Section 10 all of the CUSTOMER's rights to use the SOFTWARE will immediately terminate and all copies of the SOFTWARE and its documentation will be immediately returned to CALERO and any further operation or use by CUSTOMER of the SOFTWARE is then terminated. Further, it is understood and agreed that CUSTOMER'S use of any Third Party Software shall immediately cease if CUSTOMER discontinues its maintenance services provided by CALERO.

CUSTOMER will, at its own expense, indemnify and hold CALERO and its officers and employees harmless from and against any and all claims, actions, liabilities, losses, damages, judgments, grants, costs and expenses arising out of a breach of this Section 9.

11. ***RIGHT TO AUDIT***: Upon prior notice thereof, CUSTOMER agrees that CALERO may audit CUSTOMER's use of the SOFTWARE at such times as CUSTOMER and CALERO reasonably agree. Notwithstanding the foregoing, CALERO may conduct an audit at least once a year.

12. ***INFRINGEMENT***: In the event that the SOFTWARE infringes any U.S. copyright, patent, trademark or trade secret rights of a third party, CALERO shall defend CUSTOMER against any claims of such infringement and shall pay any monetary judgments, reasonable attorneys' fee, and costs awarded to the third party for such infringement, or any settlement of such claim to which CALERO has agreed, provided that (i) CUSTOMER promptly gives notice to CALERO of the claim against CUSTOMER alleging such infringement, (ii) CUSTOMER allows CALERO to control the defense and settlement of such claim, including any litigation, arbitration, mediation and settlement negotiations, (iii) CUSTOMER reasonably cooperates with CALERO in connection with the defense and settlement of such claim, and (iv) if requested by CALERO, CUSTOMER ceases all use of the infringing SOFTWARE and returns it to CALERO.

If CUSTOMER is enjoined from continued use of any infringing SOFTWARE or if CUSTOMER ceases use of any SOFTWARE at the request of CALERO under (iv) above, then CALERO shall, at its expense, use its best efforts to (a) obtain a license or right for CUSTOMER to continue use of the infringing SOFTWARE, (b) modify the infringing SOFTWARE to eliminate the infringement (while having the same or additional functionality and comparable or improved performance characteristics) and make such modified SOFTWARE available to CUSTOMER, or (c) make substitute non-infringing software available to CUSTOMER (such substitute software will for purposes of this Agreement replace and then constitute "SOFTWARE" under this Agreement). In lieu of the foregoing CALERO may, at its option, refund to CUSTOMER that portion of the license fees paid under this Agreement that can reasonably be allocated to the infringing SOFTWARE, reduced by 25% for each year that it has been used by CUSTOMER.

Notwithstanding the foregoing, CALERO shall have no obligation or liability to CUSTOMER for infringement if the infringement is based upon (1) any altered, changed or modified form of the SOFTWARE not made by CALERO, or (2) the use of the SOFTWARE other than as described by CALERO in the Documentation, other written instructions or in any CALERO authorized training, or (3) the use of the SOFTWARE outside the scope if the licensed use, or (4) any specifications or requirements of CUSTOMER.

This Section 12 states the entire and exclusive obligation of CALERO to CUSTOMER regarding any claim of infringement or other violation of any third party intellectual property rights.

13. ***LIMITATION OF LIABILITIES***: CALERO will not be liable for any lost profits, special, incidental, consequential, indirect damages, or for any claim or demand against CUSTOMER by any other party, arising from the SOFTWARE, or accompanying documentation, however caused, on any theory of liability (including contract, tort or warranty). This limitation applies even if CALERO has been advised of the possibility of such damage. CUSTOMER acknowledges the license fee reflects this allocation of risk. CALERO's liability to CUSTOMER for damages, regardless of the form of action, shall not exceed the SOFTWARE fees and other charges paid by CUSTOMER under this agreement pro-rated over a five year period beginning on the date the SOFTWARE was installed.

14. ***LIMITATION ON AND EXCLUSION OF DAMAGES.*** EXCEPT FOR ANY REFUND THE THIRD PARTY MANUFACTURER OR INSTALLER MAY PROVIDE, CUSTOMER CANNOT RECOVER ANY OTHER DAMAGES, INCLUDING CONSEQUENTIAL, LOST PROFITS, SPECIAL, INDIRECT OR INCIDENTAL DAMAGES: This limitation applies to anything related to the software, services, content (including code) on third party Internet sites, third party hardware, third party networks, or third party programs; and claims for breach of contract, breach of warranty, guarantee or condition, strict liability, negligence, or other tort to the extent permitted by applicable law.

    It also applies even if repair, replacement or a refund for the software does not fully compensate CUSTOMER for any losses; or the third party manufacturer or installer, or CALERO knew or should have known about the possibility of the damages.

    Some states do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation or exclusion may not apply to CUSTOMER. They also may not apply because CUSTOMER'S country may not allow the exclusion or limitation of incidental, consequential or other damages.

15. ***TERMINATION OF THE AGREEMENT***: Either party may terminate this Agreement upon written notice to the other party if the other party materially breaches any provision of this Agreement and fails to cure such breach within thirty (30) days following non-breaching party's written notice of the breach. Within 30 days of termination of this Agreement for CUSTOMER's breach, CUSTOMER shall return the licensed SOFTWARE and documentation to CALERO and certify that it has returned all copies of the SOFTWARE. Notwithstanding anything contained in this Agreement, CALERO shall have the right to immediately terminate this Agreement if CUSTOMER misuses the SOFTWARE in contravention of this Agreement.

16. ***PUBLICITY***: CUSTOMER hereby grants CALERO the right to use CUSTOMER'S name in any sales literature, press release, or other documents or communications that list CUSTOMER as a customer of CALERO.

17. ***GENERAL***: This Agreement sets forth the entire agreement between the parties and supersedes all proposals and other communication between parties, oral or written, with respect to the subject matter hereof. This Agreement shall be governed by the laws of New York, without giving effect to conflict of law rules. The parties agree that any dispute arising out of this Agreement shall be determined by a court of competent jurisdiction located in Monroe County New York and the parties irrevocably consent to the exclusive jurisdiction of such court. This Agreement serves as the sole source for all Terms and Conditions regarding the SOFTWARE and the subject matter of this Agreement. This Agreement may be modified or amended only by a writing signed by the party to be charged. CUSTOMER may not assign or sublicense its rights and obligations under this Agreement without the prior written consent of CALERO, any attempted assignment is void. However, CUSTOMER may assign this Agreement, and all of its rights and duties hereunder, to any third party that purchases all or substantially all of CUSTOMER's assets, or to any third party that CUSTOMER legally merges into or consolidates with, so long as (i) prior to such assignment (a) CALERO is notified thereof in writing, and (b) CUSTOMER and such third party execute a written agreement to CALERO's benefit evidencing such assignment and its terms that is delivered to CALERO, and (ii) CUSTOMER remains liable to CALERO for any breach of this Agreement. If any portion of this Agreement is held invalid under any applicable statute or rule of law, then only such portion shall be deemed invalid, and the remainder of this Agreement will not be invalidated or affected thereby.