

12-15-1999

FORM 1 TO-1618A  
Expires 06/30 99  
OMB 0651-0027



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U.S. Department of Commerce  
Patent and Trademark Office  
**TRADEMARK**

MIND  
11/26/99

### RECORDATION FORM COVER SHEET TRADEMARKS ONLY

TO: The Commissioner of Patents and Trademarks: Please record the attached original document(s) or copy(ies).

#### Submission Type

- New
- Resubmission (Non-Recordation)  
Document ID #
- Correction of PTO Error  
Reel #  Frame #
- Corrective Document  
Reel #  Frame #

#### Conveyance Type

- Assignment  License
- Security Agreement  Nunc Pro Tunc Assignment  
Effective Date  
Month Day Year
- Merger
- Change of Name
- Other

#### Conveying Party

- Mark if additional names of conveying parties attached
- Name  Execution Date  
Month Day Year
- Formerly

- Individual  General Partnership  Limited Partnership  Corporation  Association
- Other
- Citizenship/State of Incorporation/Organization

#### Receiving Party

- Mark if additional names of receiving parties attached
- Name
- DBA/AKA/FA
- Composed of
- Address (line 1)
- Address (line 2)
- Address (line 3)     
City State/Country Zip Code
- Individual  General Partnership  Limited Partnership  If document to be recorded is an assignment and the receiving party is not domiciled in the United States, an appointment of a domestic representative should be attached. (Designation must be a separate document from Assignment.)
- Corporation  Association
- Other
- Citizenship/State of Incorporation/Organization

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40.00 DP

Public burden reporting for this collection of information is estimated to average approximately 30 minutes per Cover Sheet to be recorded, including time for reviewing the document and gathering the data needed to complete the Cover Sheet. Send comments regarding this burden estimate to the U.S. Patent and Trademark Office, Chief Information Officer, Washington, D.C. 20231 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (0651-0027), Washington, D.C. 20503. See OMB Information Collection Budget Package 0651-0027, Patent and Trademark Assignment Practice. DO NOT SEND REQUESTS TO RECORD ASSIGNMENT DOCUMENTS TO THIS ADDRESS.

Mail documents to be recorded with required cover sheet(s) information to:  
Commissioner of Patents and Trademarks, Box Assignments, Washington, DC 20231

REEL: 001998 FRAME: 0623

**Domestic Representative Name and Address**

Enter for the first Receiving Party only.

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

**Correspondent Name and Address**

Area Code and Telephone Number

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

**Pages**

Enter the total number of pages of the attached conveyance document including any attachments.

#

**Trademark Application Number(s) or Registration Number(s)**

Mark if additional numbers attached

Enter either the Trademark Application Number or the Registration Number (DO NOT ENTER BOTH numbers for the same property).

**Trademark Application Number(s)**

**Registration Number(s)**

**Number of Properties**

Enter the total number of properties involved.

#

**Fee Amount**

Fee Amount for Properties Listed (37 CFR 3.41):

\$

Method of Payment:

Enclosed

Deposit Account

Deposit Account

(Enter for payment by deposit account or if additional fees can be charged to the account.)

Deposit Account Number:

#

Authorization to charge additional fees:

Yes

No

**Statement and Signature**

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document. Charges to deposit account are authorized, as indicated herein.

Susan Dechant Rayne



11/18/99

Name of Person Signing

Signature

Date Signed

## ASSIGNMENT

ASSIGNMENT made this 21st day of October, 1998 by VIREO SOFTWARE, INC., a Massachusetts corporation having a principal place of business at 30 Monument Square, Concord, Massachusetts 01742 ("Assignor") to COMPUWARE CORPORATION, a Michigan corporation having a principal place of business at 31440 Northwestern Highway, Farmington Hills, Michigan 48334-2564 ("Assignee");

WHEREAS, the Assignor wishes to assign such interest as it may have in the trademark "DRIVER:STUDIO" (the "Mark") pursuant to the Agreement for the Purchase of Software by and between Assignor and Assignee, dated as of October 21, 1998;

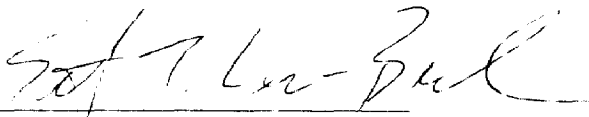
WHEREAS, the Assignee wishes to acquire the entire interest of Assignor, if any, in and to the Mark;

NOW, THEREFORE, the Assignor, for good and valuable consideration, receipt of which is hereby acknowledged, does hereby sell, assign and transfer unto the Assignee, its successors and assigns, the entire right, title and interest in and to said Mark, any and all registrations thereof, and any and all applications for the registration thereof, together with the goodwill associated with the use of the Mark, such interest to be held to the full end of the term for which any registration or any reissue, renewal, or extension thereof is or may be granted, the same to be held and enjoyed by Assignee for its own use and for its successors and assigns, as fully and entirely as the same would have been held by Assignor had this Assignment not been made.

Executed as of this 21st day of October, 1998.

VIREO SOFTWARE, INC.

By

  
\_\_\_\_\_  
Its President

**AGREEMENT  
FOR THE  
PURCHASE OF SOFTWARE**

**VIREO  
SOFTWARE,  
INC.**

**AGREEMENT**

For The

**PURCHASE OF SOFTWARE**

By And Between

**VIREO SOFTWARE, INC.**

A Massachusetts corporation

and

**COMPUWARE CORPORATION**

A Michigan corporation

October 21, 1998

## AGREEMENT

For The

### PURCHASE OF SOFTWARE

This Agreement is made on the 21st day of October 1998 by and between Vireo Software, Inc., a corporation formed pursuant to the laws of the Commonwealth of Massachusetts, with principal offices located at 30 Monument Square, Concord, Massachusetts 01742 ("Vireo"), and Compuware Corporation, a corporation formed pursuant to the laws of the State of Michigan, with its principal place of business located at 31440 Northwestern Highway, Farmington Hills, Michigan 48334 ("Compuware").

#### RECITALS

*WHEREAS*, Vireo owns certain computer software or rights therein, developed and under development, known as "Driver::Agent"; "Driver::Works"; "VtoolsD" and "ICE Cream" ("Software");

*WHEREAS*, Compuware wishes to purchase and acquire the Software, as well as certain specified assets and liabilities of Vireo (respectively, the "Assets" and the "Liabilities"), in order to commercially exploit the Software; and Vireo wishes to sell or transfer its interests in the Software, the Assets, and the Liabilities to Compuware all on the terms and conditions set forth in this Agreement (the "Transaction").

*WHEREAS*, the parties have reached certain understandings regarding the Transaction which they wish to reduce to writing.

*NOW THEREFORE*, in consideration of their mutual promises as well as other good and valuable consideration, the sufficiency of which is hereby acknowledged, Compuware and Vireo agree as follows:

#### TERMS AND CONDITIONS

1. Definitions.

As used in this Agreement, the following terms shall have the corresponding meaning:

- a) "*Conditions Precedent*" shall mean the conditions precedent set forth in Paragraph 19 herein.
- b) "*Confidential Information*" means confidential and proprietary information of a party, including but not limited to the contents of the source code for the Software, as well as any details or information concerning security techniques, control techniques and analysis techniques used in the Software, but does not include information that is now in or subsequently comes into the public domain without breach of this Agreement; is independently developed by the receiving party; is disclosed by the receiving party with the prior written approval of disclosing party; or, is disclosed by disclosing party to a third party without restrictions; or any information obtainable from operation of the Software when being executed as intended or observable through such operation.
- c) "*Documentation*" means installation manuals, reference manuals, technical information and other available technical materials relating to the Software, as well as all customer lists, marketing material, mailing lists and customer license agreements.
- d) "*Effective Date*" means that date following the Closing when all Conditions Precedent and all other obligations of the parties with respect to the Transaction as set forth herein this Agreement have been satisfied, including delivery of the appropriate certificates as provided herein.
- e) "*Assets*" shall mean those assets of Vireo listed on Schedule 1(e) and no others.
- f) "*Liabilities*" shall mean those liabilities of Vireo listed on Schedule 1(f) and no others.
- g) "*Software*" means the computer programs or concepts owned by or licensed to Vireo, including but not limited to "Driver::Agent"; "Driver::Works"; "VtoolsD" and "ICE Cream", each as described in Exhibit 1(g), in source code, object code, all enhancements which are planned or under development, and all other formats,

including any internal documentation and programmers' documentation, internal and external specifications, flow charts, and other design documentation, if any, relating to the Software which is in Vireo's possession or control, as of the Effective Date.

- h) "Year 2000 Compliant" shall mean that neither the performance nor the functionality of the Software is affected by dates prior to, during and after the Year 2000. Year 2000 Compliant shall include, but not be limited to, the following requirements: (a) no value for a current date will cause any interruption in operation of the Software; and (b) date-based functionality must perform consistently for dates prior to, during and after the Year 2000.

2. Acceptance.

Compuware shall be deemed to have accepted the Software, the Documentation, the Assets and the Liabilities as of the Effective Date. Compuware acknowledges and agrees that it has (i) conducted its own due diligence with regard to the Software, the Assets, the Liabilities and the Documentation and (ii) relied solely on its own due diligence in entering into the transactions contemplated by this Agreement, and not on any representations of Vireo, its officers, employees or agents, except as expressly provided in this Agreement.

3. Closing of the Transaction.

- a) The closing of the Transaction (the "Closing") will occur on (i) October 21, 1998 or (ii) a different date as is mutually agreeable to the parties. The date on which the Closing occurs will be referred to as the "Closing Date."
- b) As a condition precedent to Closing, Vireo shall have delivered to Compuware a Clerk's certificate, certifying that Vireo is in receipt of a sufficient number of affirmative shareholder votes to approve this Transaction, as such approval is required by law and the Articles of Organization, as amended, and Bylaws of



Vireo, as well as any Shareholder Agreement(s) by and among Vireo and its shareholders. Such certificate is attached hereto as Exhibit 3(b).

- c) On the Closing Date, Vireo shall sell, assign, transfer and/or deliver, as the case may be, to Compuware, and Compuware shall purchase, accept and/or assume, as the case may be: the Assets, the Liabilities, the Software; the Documentation; all patent rights, copyrights and any other intellectual property rights, in and to the Software including all rights and title in and to the Assets and the technology embedded in the Software; and all marketing rights relating to the Software (the "Related Rights"); and any goodwill relating to the trademarks thereto, which are listed on Exhibit 5(b). Contemporaneously therewith, Vireo also assigns to Compuware the right to recover, and Compuware, not Vireo, shall thenceforth be solely responsible for recovering, damages for any infringement or misappropriation of the Software, or any past, present or future patents, copyrights or any other intellectual property rights pertaining to the Software.
- d) *Grant of License.* On the Effective Date, as part of the Transaction, Vireo grants to Compuware a perpetual, fully-paid, and exclusive license to use the tradenames "Vireo" and "Vireo Software" with respect to exploitation of, and the sale of licenses to, the Software. Notwithstanding the exclusivity of the license grant above, Vireo retains the right to use "Vireo" and "Vireo Software" to identify the corporate entity, Vireo Software, Inc. as necessary pursuant to law or regulation but not for the marketing or sale of any software or other intellectual property.

4. Payment of Purchase Price.

On the Effective Date, Compuware shall pay to Vireo the purchase price of Four Million One Hundred Thousand Dollars (\$4,100,000.00) ("Purchase Price") as follows:

- a) Compuware shall pay to Vireo the sum of Three Million Nine Hundred Thousand Dollars (\$3,900,000.00) to Vireo on the Effective Date of this Agreement ("Closing Consideration Payment") by electronic transfer pursuant to instructions provided by Vireo and set forth in Schedule 4(a).

- b) Compuware shall pay to Vireo the sum of Two Hundred Thousand Dollars (US\$200,000.00), plus interest thereon, the date twelve (12) months after the Effective Date ("Final Consideration Payment"), pursuant to a Promissory Note, in the form attached hereto as Exhibit 4(b), duly authorized executed and delivered by Compuware in favor of Vireo on the Closing Date, less any set-off permitted pursuant to Paragraph 11.
- c) The allocation of the Purchase Price, including assumed Liabilities, for the Software, the Assets, the Documentation, the Related Rights, and the goodwill referred to above, shall be made in accordance with Section 1060 of the Internal Revenue Code and any comparable provisions of state or local law. The Purchase Price shall be allocated in accordance with Schedule 4(c), which Schedule shall be finalized and agreed upon by the parties as soon as practicable following the Effective Date.

5. Additional Documentation of Sale and Assignment.

- a) Vireo agrees to execute additional documents and instruments (e.g., assignment of copyright and trademarks) as Compuware may reasonably request from time to time to document and implement the conditions and terms of this Agreement.
- b) On or before the Effective Date, Vireo shall provide Compuware with copies of all documents relating to the ownership and title to the Software, if any. Such documents shall be incorporated by reference into this Agreement and marked as Exhibit 5(b).

6. Assumption of Certain Agreements.

On the Effective Date, Vireo agrees to assign and Compuware agrees to assume the payment and performance of any and all other distribution and/or marketing agreements with third-parties with respect to the licensing, distribution, or marketing of the Software, each of which shall be listed on Schedule 6, and that certain Agreement of Lease between Vireo and 30 Monument Square Realty Trust dated September 12, 1997, as amended. On

or before the Effective Date, Vireo shall have provided Compuware any and all such agreements Vireo may have with such third parties as well as such Agreement of Lease. All such agreements as assumed by Compuware (the "Assumed Agreements") are included within the assumed Liabilities hereunder.

7. Items to be Delivered to Compuware.

In addition to those items otherwise required to be delivered to Compuware by this Agreement, on the Closing Date Vireo shall be required to deliver the Software, the Assets, and the Documentation including, without limitation, programs, listings, source, object and executable code, machine readable media, and program tapes related thereto. Vireo represents and warrants that it has not previously revealed any Confidential Information or provided copies thereof to any third parties, except those listed on Schedule 7.

8. Assignment.

Vireo may assign its rights to receive the Purchase Price to one or more successors in interest, including its creditors or stockholders, subject to the obligations contained in this Agreement. Vireo shall indemnify and hold Compuware harmless from any loss or claim which Compuware may suffer with respect to such assignment.

9. Vireo's Warranties, Representations and Covenants.

In addition to any other warranties, representations and covenants made herein, Vireo represents, warrants and covenants that:

- a) Vireo is a duly organized corporation pursuant to the laws of the Commonwealth of Massachusetts and is in good standing and has full authority to enter into this Agreement.
- b) As of the Effective Date, this Agreement has been duly authorized, executed and delivered by Vireo (on the Effective Date, Vireo shall have provided Compuware a Clerk's certification to such effect).

- c) This Agreement is enforceable against Vireo in accordance with its terms.
- d) The execution and delivery of this Agreement by Vireo does not and will not result in a breach of the terms or conditions of any agreement by which Vireo is obligated.
- e) Vireo owns, or has the right to use and, subject to its receipts of the consents referred to in subsection (n) below, assign and/or transfer in accordance with this Agreement the Software, the Documentation, the Liabilities and the Assets.
- f) On or before the Effective Date, Vireo has transferred and assigned to Compuware any and all copyrights, patents and/or trademarks related to the Software, which trademarks, copyrights, patents and/or trademarks are listed on Exhibit 5(b) hereto.
- g) Vireo has provided Compuware with all documentation or other material information with respect to the Liabilities.
- h) Vireo has complied in all material respects with all federal, state, county and city government rules and regulations relating to the Software, the Documentation, the Assets and the Liabilities ("Applicable Laws"), including but not limited to, the payment of any taxes associated with the Software which are due and payable.
- i) Other than with respect to the Software and to this Agreement, Vireo warrants, represents and covenants that it has not previously and will not directly or indirectly engage in the development, sale, licensing, marketing, consulting or other commercial exploitation of any computer software which fulfills the same or similar functions as the Software. The term "same or similar functions" shall mean functions that permit software developers to develop driver software. This duty extends to Vireo's officers, employees, and to parent, subsidiary or affiliate companies. Vireo agrees not to engage in any of the above activities which compete in any way with the Software. This warranty and agreement shall be in full force and effect for a period of five (5) years following the Effective Date.

- j) Vireo warrants and represents that, except as set forth in Exhibit 5(b), it owns all right, title and interest in and possesses good and clear title to the Software, the Documentation, and the Assets being purchased, and that the Assets and the Software being sold or granted to Compuware under Paragraph 3 are free of any third party liens or claims, including but not limited to liens filed with the U.S. Patent & Trademark Office. All documents pertaining to Vireo's rights and ownership in and to the Software are attached as Exhibit 5(b).
- k) Vireo also warrants and represents that there are no actions or claims pending or, to the knowledge of Vireo, threatened with respect to the Software, the Documentation, the Assets, or the Liabilities being sold or transferred herein which could be reasonably expected to adversely affect Compuware's rights under this Agreement or in the Software, the Documentation, the Assets.
- l) Vireo warrants and represents that those persons listed in Schedule 7 have executed, or will have executed prior to the Effective Date, Vireo's standard form of employee agreement or other document which substantially embodies the non-disclosure and non-compete provisions of this Agreement, copies of which have previously been provided to Compuware.
- m) Vireo warrants, represents and agrees that it has not previously, nor shall it at any time in the future, reveal to any party other than Compuware and the parties identified in Schedule 7 any Confidential Information relating to the Software being acquired by Compuware.
- n) As of the Effective Date, or as soon as practicable thereafter, Vireo shall obtain all necessary and required consents with respect to the sale, transfer and/or assignment of the Software, the Documentation, the Assets, and the Liabilities, including but not limited to any required consent of its customers and distributors of the Software to assign to Compuware the Assumed Agreements and the Assumed License Agreements. Vireo further represents, warrants and covenants

that it shall provide Compuware with copies or other evidence of such consents promptly upon its receipt thereof.

- o) Vireo warrants and represents that as of the Effective Date, to its knowledge, it is not in default, or in a dispute, under any agreement or understanding, which could reasonably be expected to adversely affect Compuware's rights or obligations under this Agreement, or in the Software, the Documentation, the Assets or the Liabilities.
- p) Vireo warrants and represents that the Software is Year 2000 Compliant.
- q) Vireo warrants and represents that as of the Effective Date it, or its Board of Directors, has no present intention to file within six (6) months of the Effective Date a petition for bankruptcy protection under federal, state or other law. To the knowledge of Vireo, no creditor of Vireo has any present intention to file within six (6) months of the Effective Date a petition for involuntary bankruptcy proceedings against Vireo.
- r) Financial Statements.
  - i) Vireo has previously delivered to Compuware a true and complete copy of the balance sheet of Vireo as of December 31, 1997 as set forth in its 1997 Federal Tax Return (IRS Form 1120S). The income and expense report prepared by Vireo for its internal purposes for the eight (8) months ending August 31, 1998, and twelve (12) months ending December 31, 1997, have also been previously provided to Compuware. Vireo has attached hereto as Schedule 9(r)(i) an internal income and expense report, including the accounts payable, accounts receivable and cash balance schedules, as of October 14, 1998 (the "Close-Out Date"). Immediately prior to the Effective Date, Vireo shall provide an internal income and expense report, including the accounts payable, accounts receivable and cash balance schedules, current as of or about the Effective Date. As of their respective dates, such reports and statements did or do not contain any untrue

statement of a material fact or omit to state a material fact required to be stated therein. All of the foregoing are referred to herein this Agreement as the "Financial Statements". Vireo is on the cash basis of accounting for income tax purposes.

- ii) The Financial Statements are true and complete, are in accordance with the books and records of Vireo and have been prepared on a basis consistent with such statements for prior periods.
- iii) Other than as disclosed on the Financial Statements, Vireo has not written off, nor will it write off any account, note or other receivable or other asset set forth on any of the Financial Statements or accruing, arising or obtained after January 1, 1998.

10. Compuware's Warranties and Representations.

In addition to any other warranties, representations and covenants made herein, Compuware represents, warrants and covenants that:

- a) Compuware is a duly organized Michigan corporation in good standing and has full authority to enter into this Agreement.
- b) This Agreement has been duly authorized, executed and delivered by Compuware and is enforceable in accordance with its terms.
- c) The execution and delivery of this Agreement by Compuware does not and will not result in a breach of the terms or conditions of any agreement by which Compuware is obligated.

11. Vireo's Indemnification to Compuware.

- a) *Intellectual Property Infringement.* Until fully indemnified as provided herein, Vireo shall indemnify, defend and hold Compuware harmless from and against all claims, actions, demands, costs, and liabilities based upon and arising out of a third party claim made during the one (1) year period following the Effective Date

("Indemnification Period") that the Software infringes such third party's intellectual property rights. In the event that the Software or any portion of it is found to infringe a third-party proprietary right, and the use of the Software or any portion of it is enjoined, based on a claim made during the Indemnification Period, Vireo shall, at its sole option and expense: (i) procure for Compuware the right to continue licensing the Software to third parties; or (ii) use its best efforts to replace the Software with non-infringing software of equivalent functions and efficiency within ninety (90) days after the date of such injunction. In the event that Vireo fails to perform options (i) or (ii) above, Compuware shall be entitled to recover damages, up to an amount not in excess of the Purchase Price, which it may partially recover by set-off against any unpaid balance of the Promissory Note described in Paragraph 4(b).

- b) *Exceptions.* Notwithstanding the provisions of Subparagraph 11(a) above, Vireo assumes no liability for infringement claims arising from (i) the combining of the Software with other products, or (ii) the modification of the Software, unless the modification was made by Vireo, when such infringement would not have occurred but for such modifications.
- c) *Tax Indemnity.* Except for those tax liabilities specifically assumed by Compuware herein, until the expiration of the applicable statutes of limitations, Vireo will indemnify Compuware and its respective directors, officers, advisers, affiliates and agents (the "Indemnitees") and save and hold the Indemnitees harmless, up to an amount not in excess of the Purchase Price, from and against any and all tax liabilities, including interest and penalties, of Vireo due in respect of any taxable year or portion thereof ending on or before the Effective Date and related to or based upon the Software, the Documentation, the Assets, and the Liabilities and Vireo's ownership, use, purchase, development, or sale thereof at any time prior to the Effective Date.



c) *Additional Indemnity.* Until fully indemnified as provided herein, Vireo will indemnify Compuware and its respective directors, officers, advisers, affiliates and agents (the "Indemnitees") and save and hold the Indemnitees harmless, up to an amount not in excess of the Final Consideration Payment, from and against any damage, liability, loss, claim, cost, debt, expense, obligation, assessment, lawsuit or deficiency of any kind or nature, fixed, actual, accrued or contingent, liquidated or unliquidated, as well as attorneys' fees and other actual costs and expenses incident to proceedings or investigations or the defense of any of the foregoing, whether or not litigation has commenced (each, a "Loss") arising out of, resulting from or relating to:

- i) any breach of any representation or warranty of Vireo contained in this Agreement during the Indemnification Period, through and including and as of the Effective Date;
- ii) any failure of Vireo to duly perform or observe any term, provision, covenant or agreement to be performed or observed by Vireo; or
- iii) to the failure of Vireo to obtain a consent as required by Paragraph 9(n); provided however, that such failure to obtain such consent has had a materially adverse effect on Compuware's rights to be obtained herein.

which Compuware shall be entitled to recover, in part, by set-off against any unpaid balance of the Promissory Note described in Paragraph 4(b).

e) *Limitation of Liability.*

Vireo shall not be obligated to indemnify the Indemnitees under this Paragraph 11 unless and until the aggregate of all amounts for which indemnity is provided under this Paragraph 11 reaches \$25,000, in which event Vireo shall be obligated to indemnify the Indemnitees for all applicable Losses, including the initial \$25,000.

f) *Claim Procedure for Indemnitee Claims*

If any claim or liability shall be asserted against or by Compuware which would give rise to a claim by Compuware against Vireo for indemnification under this Paragraph 11 or Paragraph 9, Compuware shall promptly notify Vireo in writing of the same and Vireo may elect, by providing notice to Compuware within ten (10) days of receipt of notice of a claim for indemnification, at its own expense, settle or defend any such claim; provided, however, that if Vireo elects to settle or defend against such a claim, Compuware shall cooperate with Vireo in resolving such claims and Vireo shall have full and complete authority, information and assistance for the defense of same. Should Vireo not elect to settle or defend a claim, Compuware may, without the prior consent of Vireo, settle or compromise such claims. Compuware shall be entitled to withhold from the unpaid balance of the Promissory Note described in Paragraph 4(b) until the final resolution of such claims without penalty, the face amount of any claim which remains unresolved on the date one (1) year after the Effective Date.

g) *Reservation of Rights.* Subject only to the above-referenced limitations period and limitation on amount of recovery, nothing herein shall serve to limit Compuware's ability to pursue all legal and equitable remedies available to it in order to recover damages as a result of Vireo's breach of this Agreement or the representations and warranties contained herein.

12. Compuware's Indemnification to Vireo

a) Compuware will indemnify, defend and hold Vireo harmless from all claims or actions against Vireo resulting from (i) the breach of Compuware's covenants, warranties or representations as contained in this Agreement, (ii) the breach by Compuware of any agreements assigned pursuant to this Agreement (including the Assumed Agreements and the Assumed License Agreements) or (iii) the failure of Compuware to comply with Applicable Laws. Additionally, Compuware will pay all costs, damages or settlements arising out of such claims or actions.

b) Compuware will indemnify, defend and hold Vireo harmless from any and all claims or actions against Vireo which arise out of the Liabilities delegated to and assumed by Compuware pursuant to this Agreement provided, however, that Compuware shall be relieved of this indemnity to the extent any such claims arise out of a breach of Vireo's representations and warranties under Paragraph 9 or Vireo's obligations in Paragraph 11 herein. The obligations of Compuware hereunder shall survive the expiration of the Indemnification Period.

13. Survival of Warranties, Agreements and Representations.

It is the express intention and agreement of the parties to this Agreement that, except as specifically set forth herein or with respect to any claim based on fraud or intentional conduct, all agreements, representations and warranties made in this Agreement, or in any document or instrument delivered or to be delivered pursuant to this Agreement by the parties, shall survive this Agreement and the consummation of this transaction and the execution, delivery and receipt of the foregoing and the payment of all money pursuant to the provisions of this Agreement for a period not to exceed the Indemnification Period.

14. Accounts Receivable and Payable.

All accounts receivable with respect to licenses, upgrades of licenses, or maintenance of the Software generated in the ordinary course on or before the Effective Date shall be and remain the property of Vireo. All accounts receivable with respect to licenses, upgrades of licenses, or maintenance of the Software generated in the ordinary course after the Effective Date shall be the property of Compuware. At all times, Vireo shall maintain complete and accurate books and records of any such accounts receivable which come into its possession following the Effective Date, and shall promptly remit such to Compuware. At Compuware's reasonable request from time-to-time, Vireo shall make such books and records available to Compuware and its representatives for examination, reproduction and audit. Compuware will be responsible for the cost of such examination, reproduction and audits. Except for those assumed Liabilities listed on Schedule 1(f), all

accounts payable of Vireo arising on or before the Effective Date shall be and remain the property of Vireo.

15. Performance of Assumed License Agreements.

On the Effective Date, except as provided otherwise herein, and, except to the extent not disclosed by Vireo prior to the Closing Date, Vireo hereby delegates and Compuware assumes any and all the obligations and liabilities of Vireo arising under or with respect to each of the end user license agreements for the use of the Software outstanding and in effect as of the Effective Date ("Assumed License Agreements"). A complete list of the customers who are parties to such Assumed License Agreements is referenced in Schedule 15. On the Effective Date, Compuware further agrees to be fully bound and to faithfully perform all of the terms and conditions of the Assumed License Agreements as if it had originally entered into each of them in the place of Vireo.

16. Employment Agreements.

a) *Transferred Employees.* As of the Effective Date, Vireo will release Lisa Budgell, James Alan Heck, Patricia Marotta, Stephen Lewin-Berlin, Frederick Hewett, and Stephen Smith ("Employees") from any restriction contained in their respective employment relationships with Vireo which would otherwise prevent them from becoming employed or contracted by Compuware. Prior to or on the Effective Date, Compuware will make employment or contract offers to all of the Employees to be effective on the Effective Date. Each such Employee who agrees to be employed by Compuware in consequence of this Transaction is hereinafter referred to as a "Transferred Employee." Other than Stephen Lewin-Berlin and Frederick Hewett, each such Transferred Employee shall execute a standard Compuware Employee Agreement prior to commencing employment with Compuware. Compuware will provide each Transferred Employee standard benefits afforded other Compuware employees. Compuware will give each Transferred Employee credit for such person's time of employment with Vireo for purposes of eligibility, vesting, and accrual of time-off, ESOP plan and other

standard benefits generally available to Compuware employees. Vireo will cooperate with, and use its best efforts on behalf of, Compuware to assist Compuware in negotiating employment or contract relationships with the Employees.

- b) *Key Employees.* On or prior to the Effective Date, Mr. Stephen Lewin-Berlin and Mr. Frederick Hewett will execute two (2) year employment agreements with Compuware in substantially the form attached hereto as Exhibit 16(b).

17. Governing Law.

This Agreement shall be construed and the rights of the parties shall be governed by the laws of the State of Michigan and the United States of America, without regard to principles of conflicts of laws. The prevailing party in any action or suit to construe or enforce the terms of this Agreement shall be entitled to recover its costs, including reasonable attorneys fees.

18. Default.

A party hereto shall be deemed in default under this Agreement with respect to any obligation of such party upon the failure to perform such obligations within thirty (30) days after the giving of notice of such default by the other party to this Agreement provided that the performance of such obligation is then required by the terms of this Agreement.

19. Conditions Precedent.

- a) *Conditions Precedent to Obligations of Compuware.* The obligations of Compuware under this Agreement are subject to the satisfaction of the following conditions at or prior to the Effective Date:

- i) Vireo shall have provided Compuware an officer's certification certifying that all actions, undertakings, covenants or agreements required pursuant to this Agreement to be performed by Vireo on or prior to the Effective Date have been so performed or complied with in all material respects.

- ii) Vireo shall have provided Compuware an officer's certification certifying that all representations and warranties made by Vireo in this Agreement are true and correct in all material respects at and as of the Effective Date, with the same force and effect as though such representations and warranties had been made at and as of the Effective Date.
  - iii) Compuware shall not have discovered any material error, misstatement or omission in any of representations or warranties of Vireo herein.
  - iv) Vireo shall have obtained a release, acceptable to Compuware, from its secured creditors of any and all security interests in the Software, and Vireo shall have provided Compuware a true copy of such release(s), if any.
- b) *Conditions Precedent to Obligations of Vireo.*
- i) The obligations of Vireo under this Agreement are subject to the satisfaction of the following conditions on or prior to the Effective Date:
  - ii) Compuware shall have provided Vireo an officer's certification certifying that all actions, undertakings, covenants or agreements required pursuant to this Agreement to be performed by Compuware on or prior to the Effective Date have been so performed or complied with in all material respects.
  - iii) Compuware shall have provided Vireo an officer's certification certifying that all representations and warranties made by Compuware in this Agreement are true and correct in all material respects at and as of the Effective Date, with the same force and effect as though such representations and warranties had been made at and as of the Effective Date.

- iv) Vireo will not have discovered any material error, misstatement or omission in any of the representations or warranties of Compuware contained herein.
- c) *Conditions Precedent to Obligations of Each Party.*
  - i) The respective obligations of each party to effect the transactions herein are subject to the satisfaction of the following condition at or prior to the Effective Date: no final, non-appealable injunction or other order by any Governmental Entity which prevents the consummation of the Transaction will have been issued and remain in effect.
  - ii) The stockholders of Vireo shall have approved the transactions contemplated by this Agreement, and Vireo shall have provided Compuware a Clerk's certification to such effect.
  - iii) The Board of Directors of Compuware shall have approved the transactions contemplated by this Agreement, and Compuware shall have provided Vireo a Secretary's certification to such effect.

20. Notices.

All notices required or permitted hereunder shall be in writing and shall be deemed to be properly given when personally delivered to the party entitled to receive the notice, or when received by facsimile or overnight express mail, or when sent by certified or registered mail, postage prepaid, properly addressed to the party entitled to receive such notice at the address stated below, or at such other address as may be provided by a party hereto:

Compuware:           COMPUWARE CORPORATION  
31440 Northwestern Highway  
Farmington Hills, MI 48334  
Attention: General Counsel  
Facsimile: (248) 737-7690

Vireo:                 VIREO SOFTWARE, INC.  
30 Monument Square

Concord, Massachusetts 01742  
Attention: President  
Facsimile: (978) 318-6946

with a copy to: Bowditch & Dewey, LLP  
311 Main Street  
Worcester, Massachusetts 01608  
Attention: Susan Rayne, Esq.  
  
Facsimile: (508) 756-7636

21. Waiver.

A waiver of a breach or default under this Agreement shall not be a waiver of any subsequent breach or default. The failure of either party to enforce compliance with any condition of this Agreement shall not be a waiver of such condition.

22. Whole Agreement.

This Agreement, including without limitation, the Exhibits, Schedules, documents, certificates, and instruments referred to in this Agreement, constitutes the complete and exclusive statement of the understanding between the parties and it supersedes all previous negotiations, commitments and writings, oral or written. This Agreement may not be amended or modified in any manner except by a written instrument signed by or on behalf of each of the parties to this Agreement by their duly authorized officers or representatives.

23. Remedies Cumulative.

The rights and remedies provided by this Agreement are cumulative and in addition to any other rights and remedies which any party may have at law or in equity.

24. Counterparts.

This Agreement may be executed simultaneously in several counterparts each of which shall be deemed to be an original, but all of which together will constitute one and the same instrument.

25. Captions.



Captions of the provisions of this Agreement are for convenience only and will not control or affect the meaning or construction of any provisions of this Agreement.

26. Severability.


If any provision of this Agreement is held to be unenforceable or invalid, the remaining provisions of this Agreement will remain in effect.

[Signatures on following page]

IN WITNESS WHEREOF the parties have set their hands on the day and year first written

above.

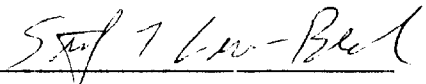
COMPUWARE CORPORATION

By: 

Name: Eliot Stark

Its: Executive Vice President

VIREO SOFTWARE, INC.

By: 

Name: STEPHEN LEVIN-BERLIN

Its: PRESIDENT

*Assets of Vireo Transferred to Compuware*

Software as described in Exhibit 1(g) including Driver::Works, VtoolsD, Driver::Agent, and ICE Cream

Customer lists and leads, in machine readable format as contained in a Paradox database.

All trademarks and logos as listed in 5(b)

Machine readable web sources in HTML, GIF, PDF, and/or JPG format for all

*Note: All machine-readable assets (software, documentation, customer and lead lists, and marketing materials) will be provided on the hard disk of the server known internally to Vireo as "DEL.SERVER200". Additional copies will be provided on backup tape as necessary and requested.*

Various computers, furniture, and supplies owned by Vireo and located at Vireo's office at 30 Monument Square, Suite 135, excluding the following:

- (1) Dell computer (pentium 300) and monitor used by Stephen Lewin-Berlin
- (1) Dell computer (pentium 233) and monitor previously used by Tom Guinther
- (1) Zeos computer (pentium 90) and attached peripherals used secondary server
- (1) Lexmark laser printer
- (1) Deltec backup power supply
- (2) desk chairs
- (7) Multi-line telephones

Rights under Xilinx purchase order for approximately \$20,000 [copy attached]

All rights to banner advertising with NTInternals per contract dated 15-Jan-97 and previously provided to Compuware.

Prepaid rent (exclusive of security deposit) for 30 Monument Square premises

Goodwill.