

SECURITIES AND EXCHANGE COMMISSION

FORM 10-Q/A

Quarterly report pursuant to sections 13 or 15(d) [amend]

Filing Date: **2006-07-05** | Period of Report: **2006-03-31**
SEC Accession No. **0001266454-06-000322**

([HTML Version](#) on secdatabase.com)

FILER

VITALSTREAM HOLDINGS INC

CIK: **789851** | IRS No.: **870429944** | State of Incorpor.: **NV** | Fiscal Year End: **1231**
Type: **10-Q/A** | Act: **34** | File No.: **001-10013** | Film No.: **06943475**
SIC: **7389** Business services, nec

Mailing Address
*ONE JENNER
SUITE 100
IRVINE CA 92618*

Business Address
*ONE JENNER
SUITE 100
IRVINE CA 92618
(949) 743-2000*

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-Q/A

(Amendment No. 1)

QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934 FOR THE QUARTERLY PERIOD ENDED **MARCH 31, 2006**

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934 FOR THE TRANSITION PERIOD FROM _____ TO _____

VITALSTREAM HOLDINGS, INC.

(Exact name of registrant as specified in its charter)

Nevada

(State or other jurisdiction
of incorporation)

000-17020

(Commission File No.)

87-0429944

(IRS Employer
Identification No.)

**One Jenner, Suite 100
Irvine, California 92618**

(Address of principal executive offices, including zip code)

Registrant's telephone number, including area code: (949) 743-2000

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. YES NO .

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, or a non-accelerated filer. See definition of "accelerated filer" and "large accelerated filer" in Rule 12b-2 of the Exchange Act (Check one):

Large accelerated filer []

Accelerated filer []

Non-accelerated filer [X]

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act): YES [] NO [X]

As of March 31, 2006 the registrant had 21,007,282 Common Shares outstanding.

Explanatory Note

This amendment to the Quarterly Report on Form 10-Q of VitalStream Holdings, Inc. for the quarterly period ended March 31, 2006 is being filed for purposes of using the correct Form 10-Q cover page, to amend Items 3 and 4 of Part I and Item 1A of Part II of the Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2006 of VitalStream Holdings, Inc., which was originally filed on May 15, 2006, and also to make corrections in the Table of Contents, Item headings and Exhibit Index.

TABLE OF CONTENTS

Part I Financial Statements

Item 1. Financial Statements (Unaudited)

Consolidated Balance Sheets as of March 31, 2006 and December 31, 2005

Consolidated Statements of Operations for the Three Month Periods Ended March 31, 2006 and 2005

Consolidated Statements of Cash Flows for the Three Month Periods Ended March 31, 2006 And 2005

Condensed Notes to Consolidated Financial Statements

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

Item 3. Quantitative and Qualitative Disclosures About Market Risk

Item 4. Controls and Procedures

Part II Other Information

Item 1. Legal Proceedings

Item 1A. Risk Factors

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds

Item 3. Defaults Upon Senior Securities

Item 4. Submission of Matters to a Vote of Security Holders

Item 5. Other Information

Item 6. Exhibits

Signatures

PART I - FINANCIAL STATEMENTS

VITALSTREAM HOLDINGS, INC. AND SUBSIDIARIES
CONSOLIDATED BALANCE SHEETS
MARCH 31, 2006 AND DECEMBER 31, 2005

ASSETS

	March 31, 2006 <u>(Unaudited)</u>	December 31, 2005 <u>(Audited)</u>
Current assets:		
Cash	\$20,145,887	\$4,118,308
Accounts receivable, net of allowance for doubtful accounts/credits of \$466,080 and \$454,182 at March 31, 2006 and December 31, 2005, respectively	2,636,899	3,123,006
Prepaid expenses	891,655	628,576
Other current assets	242,721	238,274
Total current assets	<u>23,917,162</u>	<u>8,108,164</u>
Fixed assets, net	8,149,865	7,802,278
Restricted cash	200,776	200,626
Goodwill	3,577,678	3,577,678
Customer list	140,000	167,500
Other assets	121,434	172,915
TOTAL ASSETS	<u>\$36,106,915</u>	<u>\$20,029,161</u>

LIABILITIES & SHAREHOLDERS' EQUITY

Current liabilities:		
Accounts payable	\$510,232	\$1,842,440
Accrued compensation	525,853	487,604
Current portion of capital lease obligations	559,471	642,136
Current portion of line of credit obligations	3,908,288	2,991,621
Accrued expenses	1,347,003	807,719
Total current liabilities	<u>6,850,847</u>	<u>6,771,520</u>
Capital lease obligations	62,509	208,767
Line of credit obligations	1,579,144	743,716
Deferred rent	84,345	86,549
Total long-term liabilities	<u>1,725,998</u>	<u>1,039,032</u>
Commitments and contingencies		
Shareholders' equity		
Common stock, par value \$0.001; authorized shares 290,000,000; issued and outstanding shares, 21,007,282 and 17,580,083 at March 31, 2006 and December 31, 2005 respectively	84,345	70,321

Additional paid-in capital	40,879,511	24,810,514
Accumulated deficit	(13,433,786)	(12,662,226)
Total shareholders' equity	<u>27,530,070</u>	<u>12,218,609</u>
TOTAL LIABILITIES & SHAREHOLDERS' EQUITY	<u>\$36,106,915</u>	<u>\$20,029,161</u>

See condensed notes to consolidated financial statements

VITALSTREAM HOLDINGS, INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF OPERATIONS
FOR THE THREE MONTH PERIODS
ENDED MARCH 31, 2006 AND 2005
(Unaudited)

	Three Months Ended March 31,	
	2006	2005
Revenue	\$5,561,829	\$3,397,888
Cost of revenue	<u>2,750,885</u>	<u>1,653,945</u>
Gross Profit	2,810,944	1,743,943
Research & development	423,859	154,772
Sales & marketing	1,584,528	1,031,919
General & administrative	<u>1,522,196</u>	<u>888,599</u>
Operating Loss	(719,639)	(331,347)
Other income (expense):		
Interest expense, net	(48,147)	(60,744)
Income tax expense	(1,715)	(800)
Other income (expense)	<u>(2,059)</u>	<u>196,499</u>
Net other income (expense)	<u>(51,921)</u>	<u>134,955</u>
Net Loss	<u><u>\$(771,560)</u></u>	<u><u>\$(196,392)</u></u>
Basic and diluted net loss per common share	<u><u>\$(0.04)</u></u>	<u><u>\$(0.01)</u></u>
Shares used in computing basic and diluted net loss per common share	<u><u>19,851,394</u></u>	<u><u>15,091,804</u></u>

VITALSTREAM HOLDINGS, INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF CASH FLOWS
FOR THE THREE MONTH PERIODS ENDED MARCH 31, 2006 AND 2005
(Unaudited)

	Three Months Ended March 31,	
	2006	2005
OPERATING ACTIVITIES		
NET LOSS	\$(771,560)	\$(196,392)
Adjustments to net loss:		
Depreciation & amortization	896,887	421,327
Loss on disposal of fixed assets	-	5,730
Stock-based compensation charges	254,364	-
Changes in operating assets & liabilities		
Accounts receivable, net	440,676	(128,174)
Prepaid expenses	(243,616)	(653,857)
Other assets	34,526	(177,039)
Accounts payable	(1,300,759)	(187,168)
Accrued compensation	168,249	(190,022)
Accrued expenses	211,910	22,284
TOTAL CASH USED IN OPERATIONS	(309,323)	(1,083,311)
INVESTING ACTIVITIES		
Additions to property & equipment	(882,574)	(529,653)
Interest earned on restricted cash	(150)	-
Relief of restricted cash	-	35
NET CASH USED IN INVESTING ACTIVITIES	(882,724)	(529,618)
FINANCING ACTIVITIES		
Payments on capital leases	(228,922)	(210,907)
Issuance of common stock, net of offering expenses	14,000,000	-
Proceeds from equipment line of credit	2,000,000	366,751
Proceeds from exercise of warrants and stock options	1,698,657	312,552
Payments on equipment line of credit	(247,905)	-
Deferred rent	(2,204)	-
NET CASH PROVIDED BY FINANCING ACTIVITIES	17,219,626	468,396
NET INCREASE (DECREASE) IN CASH	16,027,579	(1,144,533)
Cash at the beginning of the period	4,118,308	10,276,322
Cash at the end of the period	\$20,145,887	\$9,131,789
Supplementary disclosure of cash paid during the period for:		
Interest	\$138,201	\$108,691
Income taxes	\$1,715	\$800

Equipment acquired under capital leases

\$-

\$-

See condensed notes to consolidated financial statements

VITALSTREAM HOLDINGS, INC. AND SUBSIDIARIES
CONDENSED NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
(Unaudited)

1. GENERAL

VitalStream Holdings, Inc. ("VHI") was incorporated in 1986 in the state of Nevada. Prior to 1999, VHI, (then known as Larsen-Davis Corporation) manufactured and marketed analytical scientific instruments. In 1999, the company sold substantially all the assets associated with the scientific instruments business. On April 23, 2002, VHI (then known as Sensor Corporation) consummated a merger by which VitalStream, Inc. became a wholly-owned subsidiary of VHI, and the business of VitalStream, Inc. became the business of VHI. In 2002, the name of Sensor Corporation was changed to VitalStream Holdings, Inc.

In January 2003, another VHI wholly-owned subsidiary, VitalStream Broadcasting Corporation, entered into an agreement with Epoch Networks, Inc. and Epoch Hosting, Inc. ("Epoch") pursuant to which VitalStream Broadcasting Corporation acquired Epoch's hosting and colocation contracts, related computer equipment, software and licenses, a leasehold interest in a Los Angeles data center, and a certificate of deposit for \$300,000, which serves as collateral on the leaseholder interest. As consideration for those assets, we paid to Epoch Hosting \$200,000 in cash and issued 962,190 shares of common stock to Epoch.

On April 27, 2005, VHI acquired the business of PlayStream, LLC, a provider of fully automated, self service small business streaming media services, headquartered in Seattle, Washington, effective as of April 1, 2005, for \$500,000 in cash, 937,500 shares of VitalStream Holdings, Inc. common stock valued at \$2,137,500 and 50,000 warrants to purchase common stock at an exercise price of \$5.40 valued at \$111,272 for a total purchase price of \$2,748,772. During the first quarter of 2006, we changed the name of our PlayStream product line to VitalStream Small Business Services.

Today, VitalStream Holdings Inc. and its subsidiaries offer global integrated content delivery services enabling businesses to broadcast their digital media and communications to worldwide audiences via the Internet. We provide complete solutions including audio and video streaming, live event broadcasting, media asset management, integrated web hosting and services that seamlessly integrate with today's leading streaming media technologies.

Basis of Presentation -- This report on Form 10-Q/A (Form "10-Q") for the quarter ended March 31, 2006 should be read in conjunction with the Company's Annual Report on Form 10-K for the year ended December 31, 2005. The accompanying unaudited condensed consolidated financial statements have been prepared in accordance with generally accepted accounting principles for interim financial information and with the instructions to Form 10-Q and Rule 10-01 of Regulation S-X. Accordingly, they do not include all of the information and footnotes required by generally accepted accounting principles for complete financial statements. In the opinion of management, all normal recurring adjustments considered necessary for a fair presentation have been included. Operating results for the quarter ended March 31, 2006 are not necessarily indicative of the results that may be expected for the fiscal year ending December 31, 2006.

Common Stock Reverse Split -- The Company effected a one-for-four reverse stock split to shareholders of record as of April 4, 2006. All share and per share information have been retroactively adjusted to reflect the reverse stock split.

2. SIGNIFICANT ACCOUNTING POLICIES

Interim Unaudited Financial Information -- The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the amounts reported in the financial statements. The amounts that the Company will ultimately incur or recover could differ materially from its current estimates. The underlying estimates and facts supporting these estimates could change in 2006 and thereafter.

The consolidated financial statements include the accounts of VitalStream Holdings, Inc. and its wholly-owned subsidiaries, VitalStream, Inc., VitalStream Broadcasting Corporation and PlayStream, Inc. All material intercompany accounts and transactions have been eliminated.

Revenue Recognition -- Revenue is derived primarily from fees for streaming media services, web hosting and managed services. Streaming media service fees, which are typically usage-based, are recognized as the service is provided. Web hosting and managed services fees, generally consisting of fixed monthly amounts, are also recognized as the service is provided. Our revenues primarily consist of monthly recurring revenues from contracts with terms of generally one year or more. These contracts usually have a fixed minimum commitment based on a certain level of usage with additional charges for any usage over the minimum commitment level.

Basic and Diluted Income (Loss) Per Share -- Basic earnings per share is computed using the weighted average number of common shares outstanding. Diluted earnings per share is computed using the weighted average number of common shares outstanding and potential common shares outstanding when their effect is dilutive. Potential common shares result from the shares that would be issued upon the exercise of all outstanding stock options and warrants. Potential common shares have not been included in the calculation of weighted average shares used for the calculation of the diluted earnings per share, as their inclusion would have an anti-dilutive effect.

Stock-Based Compensation -- Prior to January 1, 2006, the Company accounted for employee stock option grants in accordance with APB No. 25, and adopted the disclosure-only provisions of SFAS No.123, Accounting for Stock-Based Compensation, amended by SFAS No. 148 Accounting for Stock-Based Compensation - Transition and Disclosure.

In December 2004, the Financial Accounting Standards Board (FASB) issued SFAS No. 123 (revised 2004) Share-Based Payment (SFAS No. 123R), which replaces SFAS No. 123 and supersedes APB No. 25. SFAS No. 123R requires all share-based payments to employees, including grants of employee stock options, to be recognized in the financial statements based on their fair values beginning with the first annual period after June 15, 2005. Subsequent to the effective date, the pro forma disclosures previously permitted under SFAS No. 123 are no longer an alternative to financial statement recognition.

Effective January 1, 2006, the Company adopted SFAS No. 123R using the modified prospective method. Under this method, compensation cost recognized during the three-month period ended March 31, 2006, includes: (a) compensation cost for all share-based payments granted prior to, but not yet vested as of January 1, 2006, based on the grant date fair value estimated in accordance with the original provisions of SFAS No. 123 amortized over the options' vesting period, and (b) compensation cost for all share-based payments granted subsequent to January 1, 2006, based on the grant-date fair value estimated in accordance with the provisions of SFAS No. 123R amortized on a straight-line basis over the options' vesting period.

As a result of adopting SFAS No. 123R on January 1, 2006, our net loss before taxes for the three month period ended March 31, 2006, was \$771,560, \$254,364 higher than had we continued with stock based compensation under APB No. 25, and adopted the disclosure-only provisions of SFAS No.123, Accounting for Stock-Based Compensation, amended by SFAS No. 148 Accounting for Stock-Based Compensation - Transition and Disclosure.

Basic and diluted net loss per share for the three month period ended March 31, 2006 would have been \$(0.03), had we not adopted SFAS 123R, compared to the reported basic and diluted net loss per share of \$(0.04). The adoption of SFAS No. 123R had no impact on cash flows from operations and financing.

The following table illustrates the effect on net income (loss) and net income (loss) per share had we applied the fair value recognition provisions of SFAS No. 123 to account for our employee stock options for the three-month period ended March 31, 2005. For purposes of pro forma disclosure, the estimated fair value of the stock awards, as prescribed by SFAS No. 123, is amortized to expense over the vesting period of such awards

	Three Months Ended March 31, 2005
Net loss, as reported	\$(196,392)
Add: Stock-based employee compensation expense included in reported net income, net of related tax effects	-
Deduct: Total stock-based employee compensation expense determined under fair value method, net of tax related effects	<u>\$(35,337)</u>
Proforma net loss	<u>\$(231,729)</u>
Basic net loss per share:	
As reported	<u>\$(0.01)</u>
Pro forma	<u>\$(0.01)</u>
Diluted net loss per share:	
As reported	<u>\$(0.01)</u>
Pro forma	<u>\$(0.01)</u>

Note that the above pro forma disclosure was not presented for the three-month period ended March 31, 2006 because stock-based employee compensation expense is included in the condensed consolidated statements of operations using the fair value recognition method under SFAS No. 123R for this period.

The fair value of the options granted during the three months ended March 31, 2006 and 2005 have been estimated at \$861,881 and \$99,906, at the date of grant, respectively, and are based on the following assumptions on the date of grant using the Black-Scholes valuation model. The weighted average grant date fair value of options granted during the three months ended March 31, 2006 was \$3.14 per option share.

The expected stock volatility rates are based on the historical stock volatility of our common stock. The risk free interest rates are based on the U.S. Treasury yield curve in effect at the time of the grant for periods corresponding to the expected life of the option. We have opted to use the simplified method as allowed by Staff Accounting Bulletin SAB 107 for estimating our expected term to arrive at a term in between the vesting period and the contractual term.

	Three Months ended March 31, 2006	Three Months ended March 31, 2005
Risk free interest rate	4.47% to 4.78%	3.71% to 4.18%
Stock volatility factor	53% - -59%	14% - -16%
Weighted average expected option life	5.88 years	5 years
Expected dividend yield	None	None

The following table shows total stock-based employee compensation expense included in the condensed consolidated statement of operations for the three-month period ended March 31, 2006. For comparative purposes only; three months ended March 31, 2005 are shown in the same table but are not included in the condensed consolidated statement of operations for the three months ended March 31, 2005.

	Three Months Ended March 31, 2006	Three Months Ended March 31, 2005
Costs and expenses:		
Cost of Sales	\$2,634	\$639
Research and development	8,486	1,474
Sales and marketing	58,117	8,830
General and administrative	185,127	24,394
Total stock-based compensation expense	<u>\$254,364</u>	<u>\$35,337</u>

There was no capitalized stock-based employee compensation cost as of March 31, 2006. There was no recognized tax benefits during the quarter ended March 31, 2006.

Stock Option Plan

The 2001 Stock Option Incentive Plan was adopted and approved by our Board of Directors and is intended to be an Incentive Stock Option as defined in Section 422 of the Internal Revenue Code of 1986. The Plan is administered by Compensation Committee of our Board of Directors. The Plan authorizes the issuance of shares of stock options to employees, directors and consultants. Stock options are granted at an exercise price of not less than the market value on the grant date. Options awarded typically expire 5 years from grant date unless expiration occurs earlier in connection with termination of employment and generally vest over a 36 month period with one-third vesting on the first anniversary date of the date of grant with the remaining options vesting at the rate of 1/12 (8.33%) at the end of each quarter thereafter, so that the option will be fully exercisable on the third anniversary of the grant date.

In January of 2005, the Board of Directors changed the policy applicable to awards of options under the Plan such that awards typically are for Non-Qualified Stock Options instead of Incentive Stock Options and vest over a 48 month period instead of a 36 month period, with one quarter vesting on the first anniversary of the grant date and with the remaining options vesting at the rate of 1/16 (6.25%) at the end of each quarter thereafter, so that the option will be fully exercisable on the fourth anniversary on the grant date. As of March 31, 2006, the number of options issued and outstanding was 2,904,470 with 1,467,003 reserved for future awards.

Activity under our Stock Option Plan for the three months ended March 31, 2006 is summarized as follows:

	Number of Shares	Weighted Average Exercise Price
Outstanding at January 1, 2006	2,748,017	\$2.6472
Options Granted	274,375	\$6.7660
Options Canceled	24,375	\$3.5312
Options Exercised	93,547	\$2.0128
Outstanding at March 31, 2006	<u>2,904,470</u>	<u>\$3.0495</u>
Exercisable at March 31, 2006	<u>786,091</u>	<u>\$2.1356</u>

The details of the VHI options outstanding as of March 31, 2006 are as follows:

Range of Exercisable prices	Options Outstanding			Options Exercisable	
	Number Outstanding	Remaining Contractual Life (in years)	Weighted Average Exercise Price	Number Exercisable	Weighted Average Exercise Price
\$0.8000 - \$2.3280	1,824,560	6.84	\$2.0461	574,152	\$1.6969
\$2.3280 - \$3.8560	453,035	3.77	\$3.1495	175,482	\$2.9957
\$3.8560 - \$5.3840	88,750	3.48	\$4.7177	36,457	\$4.9040
\$5.3840 - \$6.9120	469,375	4.78	\$5.7742	-	-
\$6.9120 - \$8.4400	68,750	4.93	\$8.2647	-	-
Total	<u>2,904,470</u>	<u>5.88</u>	<u>\$3.0495</u>	<u>786,091</u>	<u>\$2.1356</u>

	Number Outstanding	Remaining Contractual Life (in years)	Weighted Average Exercise Price
Non Vested before 1/1/2006	1,971,775		\$2.8760
Granted	274,375		\$6.7660
Forfeited	20,907		\$3.4280
Vested	106,864		\$2.5908
Non Vested at 3/31/2006	<u>2,118,379</u>	<u>6.67</u>	<u>\$3.3888</u>

The weighted average grant-date fair value of options granted during the three months ended March 31, 2006 is \$3.14 per option share. At of March 31, 2006, the total unrecognized fair value compensation cost related to unvested stock options was \$3.4 million, which is to be recognized over the weighted average remaining vesting period of 3.1 years.

3. LEGAL MATTERS AND CONTINGENCIES

In the ordinary course of its business, the Company becomes involved in certain legal actions and claims, including lawsuits, administrative proceedings, regulatory and other matters. Substantial and sometimes unspecified damages or penalties may be sought from the Company in some matters, and some matters may remain unresolved for extended periods. While the Company may establish reserves from time to time based on its periodic assessment of the potential outcomes of pending matters, there can be no assurance that an adverse resolution of one or more such matters during any subsequent reporting period will not have a material adverse effect on the Company's results of operations for that period. However, on the basis of information furnished by counsel and others and taking into consideration the reserves, if any, established for pending matters, the Company does not believe that the resolution of currently pending matters, individually or in the aggregate, will have a material adverse effect on the Company's financial condition.

4. EQUITY

As of March 31, 2006, there were 21,007,282 shares of VitalStream common stock outstanding and 3,025,540 shares of VitalStream common stock reserved for issuance as follows:

Options issued and outstanding	2,904,470
Warrants issued and outstanding	<u>121,070</u>
	<u><u>3,025,540</u></u>

ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following discussion should be read in conjunction with our Consolidated Financial Statements and Notes thereto included elsewhere in this Report. This discussion contains forward-looking statements that involve risks and uncertainties. Any statements in this report about our expectations, beliefs, plans, objectives, assumptions, future events or performance are not historical facts and are forward-looking statements. You can identify these forward-looking statements by the use of words or phrases such as "believe," "could," "may," "anticipate," "intend," "expect," "will," "plan," "estimate," "continue," "should" or "would". Among the factors that could cause actual results to differ materially from those indicated in the forward-looking statements are risks and uncertainties inherent in our business including, without limitation, the discussions set forth below in "Risk Factors" in this Item 2 of this Report.

Although we believe that the expectations reflected in our forward-looking statements are reasonable, we cannot guarantee future results, events, levels of activity, performance or achievement. We undertake no obligation to publicly update or revise any forward-looking statements, whether as a result of new information, future events or otherwise, unless required by law.

Overview

VitalStream Holdings, Inc. provides products and services for storing and delivering audio and video digital media to large global audiences over the Internet. Our solutions enable companies to easily, securely and reliably create revenue streams from their media assets via subscription or ad-based business models. Streaming Service for Flash, Streaming Service for Windows Media and Content Delivery Service represent our core product lines and provide the foundation on which all of our other products and services are based. These other services include audio and video streaming, live event streaming, media asset management, integrated hosting services, advertising solutions, subscription services, content delivery, and professional services. We also provide a self service, automatic streaming product that is available for small or home business customers through our small business platform. Our mix of products and services enables our customers to concentrate on the creation and marketing of their content, while outsourcing the encoding, data storage, broadcasting, hosting and related functions to VitalStream and its partners. Our business model leverages our expertise, experience and resources in audio and video streaming as well as our integrated hosting technology to persuade customers to utilize our Internet content delivery services.

Our revenues primarily consist of monthly recurring revenues from contracts with terms of generally one year or more. These contracts usually have a fixed minimum commitment based on a certain level of usage with additional charges for any usage over the minimum commitment level. This monthly recurring revenue model allows us to build a base of consistent and predictable revenue streams. Our success depends on our ability to retain our current customers, and at the same time, growing this base by adding new customers with similar monthly recurring revenue arrangements, and by increasing sales of additional products and services to our customers.

In 2005, we continued to position our Company to increase revenue and market share, and to take advantage of the demand and growth opportunities within the streaming media market. In addition to increasing our sales and marketing efforts, we invested heavily in our content delivery network to increase scalability and capacity to allow us to handle greater revenue growth. We also continued to supplement and enhance our portfolio of products and services. In 2006, we will continue to focus on driving growth in our revenue base. But we expect that these investments in our content delivery network, our product portfolio, and our sales and marketing efforts, will be increasingly offset by increases in volume purchasing gains, greater operational efficiencies and tight cost controls as we strive to be free cash flow positive before strategic investments or acquisitions in 2006.

On February 3, 2006, we closed a financing transaction with institutional investors by issuing 2,692,307 shares of common stock at a price of \$5.20 per share generating gross proceeds to the Company of \$14 million. Net proceeds from this transaction will be used for general corporate purposes, including network and infrastructure expenditures, supporting domestic and international growth, and funding ongoing product development.

Effective as of April 4, 2006, the Company completed a one-for-four reverse stock split and subsequently submitted an application to NASDAQ® for listing on the NASDAQ Capital Market. NASDAQ is currently in the process of reviewing the application and their response is expected during the next one to two months. Concurrent with this process, the Company's ticker symbol on the OTC exchange has been changed from VSTH to VSHI. All share and per share information have been retroactively adjusted to reflect the reverse stock split.

While the opportunities for us are increasing, they are not without risk. Our business and our industry face numerous risks (see "Risk Factors" below in this Item 2), only some of which can be mitigated to varying degrees in advance, and others of which can only be dealt with reactively, if at all. As with any technology company, new technological advances within our industry could cause a paradigm shift in how we develop, market and deliver our products and services or how users perceive and use them. Some of these advances may be unavailable to us and we may not have a comparable or competitive technological offering.

The upward trend in our sales growth combined with operational efficiencies creates an opportunity for us to become profitable in the future. However, there can be no assurance that we will ever be profitable in the future or on a sustained basis.

Critical Accounting Policies and Estimates

Management is basing this discussion and analysis of our financial condition and results of operations on our consolidated financial statements. The preparation of these financial statements requires us to make estimates and judgments that affect the reported amounts of assets, liabilities, revenue and expenses, and related disclosure of contingent assets and liabilities. On an on-going basis, we evaluate our critical accounting policies and estimates, including those related to revenue recognition, valuation of accounts receivable, property, plant and equipment, long-lived assets, intangible assets, and contingencies. We base our estimates on historical experience and on various other assumptions that we believe to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities, and the amount of our revenues and expenses that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions.

We believe the following critical accounting policies affect the more significant judgments and estimates used in the preparation of our consolidated financial statements. These judgments and estimates affect the reported amounts of assets and liabilities and the reported amounts of revenues and expenses during the reporting periods. Changes to these judgments and estimates could materially affect the Company's future results of operations and cash flows.

Valuation of Accounts Receivable. A considerable amount of judgment is required when we assess the ultimate realization of receivables, including assessing the probability of collection and the current credit-worthiness of our customers.

Significant portions of customer payments are made by credit card and electronic debit. Each month, management reviews historical charge-back and cancellation patterns as well as historical data on other credits issued to customers and then records an allowance based on historical results as well as management judgment. Additionally, each month management reviews the aged receivables balance and records an allowance for doubtful accounts based on the age of the outstanding receivable balances, trends in outstanding balances and management's judgment. As a result of these analyses, we believe that the current allowance is adequate to cover any bad debts and credits that may be issued as of the date of the balance sheet. If our estimates prove to be wrong, however, and we have not accrued enough of a reserve to cover the bad debts and credits, we would have to accrue additional reserve in later periods to cover the shortfall. If the under-accrual were substantial, this could have a material adverse effect on our financial results. On the other hand, if we have reserved too much, we may be able to lower our accrual in later periods which would have a positive effect on our financial results.

Goodwill. Goodwill is no longer amortized, but instead is subject to impairment tests at least annually. Accordingly, we annually evaluate goodwill for potential impairment indicators. If impairment indicators exist we measure the impairment through the use of discounted cash flows. Our judgments regarding the existence of impairment indicators are based on legal factors, market conditions, and operational conditions. Future events could cause us to conclude that impairment indicators exist and that the goodwill associated with our acquired business is impaired. If we subsequently determine that an impairment was or is required, we may be required to write down all, or part, of our goodwill. This would both reduce the amount of our assets, which may affect our ability to qualify for listing or continued listing on a stock exchange, and would reduce the amount of our net income (or increase the amount of our net loss) for the quarter and year in which the impairment was recognized. Depending on the size of the write-down, the adverse impact on our financial results could be material.

Contingencies. We are subject to legal proceedings that arise in the ordinary course of business. We are required to assess the likelihood of any adverse judgments or outcomes to these matters as well as potential ranges of probable losses. A determination of the amount of loss accrual required, if any, for these contingencies are made after careful analysis of each individual issue. We consult with legal counsel and other experts where necessary to assess any contingencies. A required accrual may change at some point in the future due to new developments in a matter or changes in approach such as a change in settlement strategy in dealing with these matters. If our judgment proves to be wrong concerning a possible accrual or other contingency, the impact on our results of operations and cash flows could be material. If we have under-accrued for a material liability, we would have to increase our accrual for later period, which could materially decrease our net income (or increase or net loss) for such period. The payment of any material contingent liability would also adversely affect our cash flow and liquidity.

Results of Operations

The following table sets forth, for the periods indicated, items included in our consolidated statements of operations, stated as a percentage of revenues:

	Three Months Ended March 31,		
	2006	2005	
Revenue	100.0	% 100.0	%
Cost of revenue	<u>49.5</u>	<u>48.7</u>	
Gross Profit	50.5	51.3	
Research & development	7.6	4.5	
Sales & marketing	28.5	30.4	
General & administrative	<u>27.4</u>	<u>26.2</u>	
Operating Loss	(12.9)	(9.8)	
Other income (expense):			
Interest expense	(0.9)	(1.8)	
Income tax expense	0.0	0.0	
Other income (expense)	<u>(0.0)</u>	<u>5.8</u>	
Net other income (expense)	<u>(0.9)</u>	<u>4.0</u>	
Net Loss	<u>(13.9)</u>	<u>(5.8)</u>	%

Three Months Ended March 31, 2006 Compared to Three Months Ended March 31, 2005

Revenue Revenue consists primarily of fees for Internet broadcasting, including streaming media services, managed services, web hosting, consulting and sales of hardware and software. Revenues increased from \$3,397,888 for the quarter ended March 31, 2005, to \$5,561,829 for the quarter ended March 31, 2006, an increase of 64%. This increase in revenue is primarily attributable to the addition of new customers using VitalStream services and technology to deliver streaming media, and additional revenue from the acquisition of PlayStream (“VitalStream Small Business Services”). Revenue from VitalStream Small Business Services accounted for approximately 11.2% of revenue for the quarter ended March 31, 2006. We expect continued revenue growth from the addition of new customers and from increased services to existing customers as we continue to release new products and services, promote our new professional services value added offering, strengthen our sales force, build on our existing partnerships and add new channel and OEM partnerships, increase our marketing efforts and gain greater market recognition from potential customers.

Cost of Revenue Cost of revenue consists primarily of Internet backbone and transport costs, data center rent and power costs, depreciation of network and server equipment, network operations employee costs, hardware costs and software license fees. Cost of revenue increased from \$1,653,945 for the quarter ended March 31, 2005, to \$2,750,885 for the quarter ended March 31, 2006. The increased cost in absolute dollars primarily reflects the increase in bandwidth consumption, software license fees and depreciation from increased capital expenditures necessary to increase the capacity, reliability and security of our content delivery network, in addition to increases in other costs necessary to support the growth in revenue between the two quarters. The increase in the cost of revenue as a percentage of revenue between the two quarters, from 48.7% in the quarter ended March 31, 2005 to 49.5% for the quarter ended

March 31, 2006, is primarily attributable to increases in depreciation from additional capital investments to increase the capacity and scalability of our network. Cost of revenue excluding depreciation and amortization was 37.5% in the quarter ended March 31, 2005 compared to 34.6% for the quarter ended March 31, 2006. Overall, management expects the cost of revenue to decrease as a percentage of revenue during 2006 compared to the full year 2005 as increases in depreciation from the current higher level of investments in our network to increase scalability and capacity, are eventually leveraged against higher revenue, and offset by further cost savings in bandwidth purchasing and other variable costs. Included in the first quarter of 2006 is approximately \$2,634 of non-cash stock option expense.

Research and Development Research and development expense consists primarily of personnel costs to develop new products, and maintain and enhance our current product portfolio. Research and development expense increased \$269,087 from \$154,772 for the quarter ended March 31, 2005, to \$423,859 for the quarter ended March 31, 2006. As a percentage of revenue, research and development increased from 4.5% for the quarter ended March 31, 2005 to 7.6% for the quarter ended March 31, 2006. This absolute dollar increase reflects higher payroll and other costs to enhance and build our portfolio of products and services. We expect research and development expense to increase in absolute dollars and to remain constant or increase as a percentage of revenue during 2006 compared to full year 2005, due to the effect of expensing employee stock options under SFAS 123R in 2006, and our continued investment in our product portfolio. Included in the first quarter of 2006 is approximately \$8,486 of non-cash stock option expense.

Sales and Marketing Sales and marketing expense consists primarily of sales and marketing-related personnel costs including commissions, technical and operations related customer support personnel, in addition to the costs of various marketing programs and events. Sales and marketing expense increased from \$1,031,919 for the quarter ended March 31, 2005 to \$1,584,528 for the quarter ended March 31, 2006. As a percentage of revenue, sales and marketing expense decreased from 30.4% for the quarter ended March 31, 2005 to 28.5% for the quarter ended March 31, 2006. This absolute dollar increase reflects increased payroll and related costs to expand the domestic and international sales force and sales support staff, higher commissions from increased sales, and increased marketing and advertising costs to increase market awareness and generate new customers. We expect sales and marketing expense to increase in absolute dollars during 2006 due to costs to support increased sales efforts and the effect of expensing employee stock options under SFAS 123R in the first quarter of 2006, but to decrease as a percentage of revenue during 2006 compared to full year 2005, as we expect revenue will grow at a faster rate than the increase in sales and marketing expenses. Included in the first quarter of 2006 is approximately \$58,117 of non-cash stock option expense.

General and Administrative General and administrative expense consists primarily of personnel expense, professional fees and costs to maintain and support our facilities. General and administrative expense increased from \$888,599 for the quarter ended March 31, 2005 to \$1,522,196 for the quarter ended March 31, 2006. The increase in the expense during the quarter ended March 31, 2006 reflects additional personnel and other costs related to supporting higher growth and the effect of expensing employee stock options under SFAS 123R in 2006. General and administrative expense as a percentage of revenue increased from 26.2% for the quarter ended March 31, 2005 to 27.4% for the quarter ended March 31, 2006 due primarily to the effect of expensing employee stock options under SFAS 123R in the first quarter of 2006. We expect general and administrative expense to increase in absolute dollars during 2006, but to decrease during 2006 compared to full year 2005, as the relatively fixed general and administrative costs are spread over an increasing revenue base. Included in the first quarter of 2006 is approximately \$185,000 of non-cash stock option expense.

Net Interest Expense Net interest expense decreased from \$60,744 for the quarter ended March 31, 2005 to \$48,147 for the quarter ended March 31, 2006, due to higher average invested cash balances..

Other Income (Expense) Other income (expense) including tax was \$134,955 for the quarter ended March 31, 2005 compared to an expense of (\$51,921) for the quarter ended March 31, 2006. The decrease in income was primarily due to a one-time gain of approximately \$200,000 from the sale of certain smaller non-core business hosting accounts to a third party during the first quarter of 2005.

Non-GAAP Measures

Earnings before Interest, Taxes, Depreciation and Amortization (EBITDA)

The Company's EBITDA was \$175,189 for the quarter ended March 31, 2006 compared with \$286,478 for the quarter ended March 31, 2005. The decrease in EBITDA for the three month period ended March 31, 2006 compared to the similar period in 2005 was primarily due to increased investments in our corporate infrastructure to enable us to implement our business strategies to achieve and maintain sustainable growth going forward, the inclusion of \$254,364 in stock compensation expense in 2006, partially offset by a decrease in our cost of service excluding depreciation as a percentage of revenue.

The Company defines EBITDA as net income (loss) before interest, income taxes, and depreciation and amortization. EBITDA is not a measure used in financial statements reported in accordance with generally accepted accounting principles, does not represent funds available for discretionary use and is not intended to represent cash flow from operations as measured under generally accepted accounting principles. EBITDA should not be considered as an alternative to net loss or net cash used in operating activities. The Company's calculation of EBITDA may not be comparable to the computation of similarly titled measures of other companies.

We use EBITDA as a measure of our operating performance. In addition, we believe that EBITDA may be useful to existing and potential creditors, and to analysts and investors that follow our performance, because it is one measure of income generated that is available to service any outstanding bank or lease obligations.

Reconciliation of the net loss for the three month periods ended March 31, 2006 and 2005, to EBITDA is as follows:

	Three Months Ended March 31,	
	2006	2005
Net loss	\$(771,560)	\$(196,392)
Depreciation and amortization	896,887	421,326
Interest expense, net	48,147	60,744
Income tax expense	1,715	800
EBITDA	<u>\$175,189</u>	<u>\$286,478</u>

Capital Commitments and Restrictions

The following table discloses aggregate information about our contractual obligations including operating and capital lease payments, office lease payments, contractual service agreements and line of credit obligations, with the periods in which payments are due as of March 31, 2006:

Contract Type	Total	Less than			After 5
		1 Year 04//01/06-03/ 31/07	1 - 3 Years 04/01/08 - 03/ 31/10	4 - 5 Years 04/01/10 - 03/ 31/12	Years After 04 /1/ 12
Operating leases	\$87,636	\$24,286	\$51,913	\$11,437	\$-
Capital leases	703,959	637,002	66,957	-	-
Office facility leases	1,737,044	607,740	1,100,009	29,295	-
Contractual service agreements	657,849	657,849	-	-	-
Long-term note	5,487,432	3,908,288	1,579,144	-	-
Total contractual obligations	<u>\$8,673,920</u>	<u>\$5,835,165</u>	<u>\$2,798,023</u>	<u>\$40,732</u>	<u>\$-</u>

Our capital leases represent \$621,980 plus interest spread over ten capital lease financing arrangements. The hardware and software obtained through these capital lease arrangements are used in our data center operations, for supplying service to our customers, maintaining and increasing the capacity of our internal network and providing the equipment needed for internal staff.

Liquidity and Capital Resources

Cash used during the three months ended March 31, 2006 included \$309,323 used in operations as well as \$882,724 used in investing activities, primarily for the purchase of equipment to maintain and increase the capacity and scalability of our content delivery network as well as to support customer applications. Sources of cash from financing activities during the three month period ended March 31, 2006 was \$17,219,626 primarily from the proceeds from a sale of common stock, our equipment line of credit, and the exercise of warrants and stock options.

In January 2006, holders of the remaining outstanding warrants from the June 2004 financing exercised their warrants, and were issued 617,270 shares of common stock for approximately \$1.5 million in proceeds to the Company. During the first quarter of 2006, there were also option exercises in which 93,547 shares of common stock were issued generating proceeds of \$198,665 to the Company.

On February 3, 2006, we closed a financing transaction with institutional investors by issuing 2,692,307 shares of common stock at a price of \$5.20 per share generating gross proceeds to the Company of \$14 million. Net proceeds from this transaction will be used for general corporate purposes, including network and infrastructure expenditures, supporting domestic and international growth, and funding ongoing product development.

Capital expenditures in the first three months of 2006 and 2005 were approximately \$882,574 and \$529,653, respectively. These expenditures primarily related to the purchase of equipment to maintain and increase the capacity and scalability of our content delivery network and to support customer applications. We expect annual capital expenditures in 2006 to be at approximately half

of 2005 total levels excluding capital expenditures for strategic investments or acquisitions which would generate additional related revenue.

The Company had \$200,776 of restricted cash at March 31, 2006, securing a facility lease.

We hope to rapidly expand our operations during 2006. We may seek to expand our operations through additional strategic acquisitions. If we were to engage in further acquisitions, we may need to seek additional financing in order to pay for the transaction costs of any large mergers or acquisitions (e.g., legal and accounting fees, integration expense and working capital to support the acquired entity). However, we expect that the cash we have on hand, together with recurring operating revenues, and funds obtained through our credit facility and leasing arrangements, will be sufficient to meet our current and future obligations until the time that the Company can consistently sustain itself on its internally generated cash flow.

Item 3. Quantitative and Qualitative Disclosures About Market Risk

The primary objective of our investment activities is to preserve our capital to fund operations. We also seek to maximize income from our investments without assuming significant risk. To achieve our objectives, we maintain a portfolio of cash equivalents and investments in a variety of securities of high credit quality. As of March 31, 2006, we had cash and cash equivalents and short-term investments of approximately \$20.1 million, consisting of cash and highly liquid investments deposited in a highly rated financial institution in the United States. A portion of our investments may be subject to interest rate risk and could fall in value if market interest rates increase. However, because our investments are short-term in duration, we believe that our exposure to interest rate risk is not significant and a 1% movement in market interest rates would not have a significant impact on the total value of our portfolio. We actively monitor changes in interest rates.

Item 4. Controls and Procedures

- (a) Based on the evaluation of our "disclosure controls and procedures" (as defined in the Securities Exchange Act of 1934 Rules 13a-15(e) or 15d-15(e)) required by paragraph (b) of Rules 13a-15 or 15d-15, our chief executive officer and our chief financial officer have concluded that, as of March 31, 2006, our disclosure controls and procedures were effective in ensuring that information required to be disclosed by the Company in reports that it files under the Exchange Act is recorded, processed, summarized and reported within the time periods required by governing rules and forms.
- (b) There have been no changes in our internal control over financial reporting identified in connection with the evaluation required by paragraph (d) of Exchange Act Rules 13a-15 or 15d-15 that occurred during our last fiscal quarter that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

PART II - OTHER INFORMATION

Item 1. Legal Proceedings

In the ordinary course of its business, the Company becomes involved in certain legal actions and claims, including lawsuits, administrative proceedings, regulatory and other matters. Substantial and sometimes unspecified damages or penalties may be sought from the Company in some matters, and some matters may remain unresolved for extended periods. While the Company may establish reserves from time to time based on its periodic assessment of the potential outcomes of pending matters, there can be no assurance that an adverse resolution of one or more such matters during any subsequent reporting period will not have a material adverse effect on the Company's results of operations for that period. However, on the basis of information furnished by counsel and others and taking into consideration the reserves, if any, established for pending matters, the Company does not believe that the resolution of currently pending matters, individually or in the aggregate, will have a material adverse effect on the Company's financial condition.

Item 1A. Risk Factors

Risk Factors

If any of the adverse events described in the following factors actually occur or the Company does not accomplish necessary events or objectives described in the factors, its business, financial condition and operating results could be materially and adversely affected, the trading price of the Company's common stock could decline and shareholders could lose all or part of their investments. The risks and uncertainties described below are not the only risks we face.

THERE HAVE BEEN NO MATERIAL CHANGES IN THE RISK FACTORS PREVIOUSLY SET FORTH IN THE COMPANY'S ANNUAL REPORT ON FORM 10-K FOR THE FISCAL YEAR ENDED DECEMBER 31, 2005, WHICH ARE RESTATED BELOW, EXCEPT AS OTHERWISE INDICATED IN BOLD AND ITALICIZED LANGUAGE AT THE END OF CERTAIN RISK FACTORS BELOW.

We may continue to experience net losses from operations.

We have experienced net losses in each quarter since inception, with net losses of approximately \$13.4 million from inception through March 31, 2006, and we are uncertain when, or if, we will experience net income from operations. Even if we do experience net income in one or more calendar quarters in the future, subsequent developments in our industry, customer base, business or cost structure or expenses associated with significant litigation or a significant transaction may cause us to again experience net losses. We may never become profitable. ***The Company's cumulative net losses set forth in this risk factor above has been updated through March 31, 2006, and represents an increase over the amount stated in the Company's most recent annual report on Form 10-K.***

The market for Internet broadcasting and streaming services is in the early stage of development and may not grow at a pace that permits us to continue to grow.

The market for Internet broadcasting and streaming services is relatively new and evolving. As a result, we cannot be certain that a viable market for our services will emerge or be sustainable. Factors that may inhibit the development of a viable market for Internet broadcasting services include:

- Our customers may be unwilling to broadcast over the Internet because of issues related to protection of copyrights, royalty payments to artists and publishers, illegal copying and distribution of data, and other intellectual property rights issues.
- Consumers may decide not to acquire high speed connectivity to the Internet at rates sufficient to support the continued growth of Internet broadcasting.

- Consumers may determine not to view or listen to media broadcasts over the Internet because of, among other factors, poor reception of electronic broadcasts or the creation or expansion of competing technologies, such as television beaming or interactive cable, that provide a similar service at lower cost or with better features.
- Customers that use the Internet to broadcast presentations or meetings may determine that alternative means of communications are more effective or less expensive.
- New laws and regulations may negatively affect consumers' and businesses' use of the Internet, thereby reducing demand.

If the market for Internet broadcasting services does not continue to grow, or grows more slowly than expected, our business, results of operations and financial condition will be seriously harmed.

We are dependent upon third-party suppliers and may be unable to find alternative suppliers on reasonable terms, or at all.

We rely on other companies to provide licensing arrangements and supply key components of our network infrastructure, including Internet bandwidth, which constitutes our largest direct cost of providing services, and networking equipment. Additionally, we rely on third-party development of technology to provide media-related functionality, such as streaming media formats and payment processing. We do not have long-term agreements governing the supply of many of these services or technologies, and most are available from only limited sources. For example, the majority of our revenue is dependent on technology licensed from two vendors, Adobe Systems Incorporated and Microsoft Corporation. We may be unable to continue to obtain needed services or licenses for needed technologies on commercially reasonable terms, including cost (or, in some cases, at all), which would adversely affect our business, financial condition and results of operations.

We may acquire businesses or assets, or enter into other business combination transactions, that may be difficult to integrate.

As part of our growth strategy we established PlayStream, Inc. to acquire substantially all of the assets of PlayStream, LLC (now Easy Link, LLC), located in Seattle, Washington in 2005. In the future, we expect to enter into additional transactions to acquire other companies or a substantial portion of their assets, or to combine our business with theirs. These acquisitions or business combinations involve numerous risks, including the following possibilities:

- that the combined entity will not perform as well as the separate businesses performed prior to the transaction;
- that anticipated cost savings, cross-marketing to new customers or other anticipated synergies will not be achieved;
- that management resources will be diverted towards negotiations and effecting the acquisition and then integrating the operations and personnel of the acquired business, instead of focusing on our existing business;
- that the stock and other consideration paid in the transaction will exceed the value of the assets or business acquired;
- that the use of cash as consideration for the transaction will reduce cash that may be needed for operations below necessary levels;
- that we may be assuming potential unknown liabilities of the acquired business; and
- that if we do not consummate such a transaction, we will have expended substantial costs and resources without achieving the anticipated benefit.

Acquisitions or business combinations (or attempted transactions) could have an adverse, rather than a positive, effect on our business, operations and financial results.

We have pledged substantially all of our assets to secure a financing agreement and have agreed to certain limitations on our business operations.

We have pledged substantially all of our assets to secure a bank financing arrangement with Comerica Bank. Under governing security agreements, we grant Comerica Bank rights and remedies that are commonly provided a secured creditor, including the right to seize and dispose of all pledged assets following a default. Related agreements also contain restrictive covenants related to our future operations. These include covenants that prohibit, or place limitations, on our ability to enter into merger or consolidation transactions, pay dividends, create additional indebtedness or make certain investments.

We may be unable to manage significant growth.

In order to successfully implement our business strategy, we must establish and achieve substantial growth in our customer base through sales, business acquisitions or a combination thereof. If achieved, significant growth would place significant demands on our management and systems of financial and internal controls, and will almost certainly require an increase in the capacity, efficiency and accuracy of our billing and customer support systems. Moreover, significant growth would require an increase in the number of our personnel, particularly within sales and marketing, customer service and technical support. The market for such personnel remains highly competitive, and we may not be able to attract and retain the qualified personnel required by our business strategy. If successful in attracting new customers, we may outgrow our present facilities and/or network capacity, placing additional strains on our human resources in trying to locate, manage and staff multiple locations and to scale our network.

There are numerous risks associated with having Dolphin and WaldenVC as significant shareholders.

Through their holdings of common stock, as of March 31, 2006, affiliates of Dolphin Equity Partners presently control 3,190,114 votes in connection with the election of directors and other matters, 15.2% of the voting power of our company, and affiliates of WaldenVC presently control 3,372,302 votes in connection with the election of directors and other matters, representing 16.1% of the voting power of the Company. Each of Dolphin Equity Partners and Walden VC also have contractual rights effectively assuring each of them a seat on our board of directors. As a result of their stock holdings and board seats, Dolphin or WaldenVC may be able to block, or extract concessions or special benefits in connection with, various transactions, including any future merger or asset sale transactions.

The markets in which we operate are highly competitive, and we may be unable to compete successfully against existing or future competitors of our businesses.

We have experienced, and expect to continue to experience, an increasingly competitive market. Our current and future competitors in Internet streaming may include other digital content delivery providers, Internet broadcast network specialty providers and alternative access providers such as various cable television companies, direct broadcast satellite, DSL, wireless communications providers and other established media companies. Our current and future competitors in hosting and colocation may include other Internet hosting, colocation and access businesses, including such major providers as Savvis and AT&T, and essentially any other participant in the Internet industry.

Many of these competitors have a longer operating history and greater market presence, brand recognition, engineering and marketing capabilities, and financial, technological and personnel resources than we do. Competitors with an extended operating history, a strong financial position and an established reputation have an inherent marketing advantage because of the reluctance of many potential customers to entrust key operations to a company that may be perceived as unproven or unstable. In addition, our competitors may be able to use their extensive resources:

- to develop and deploy new products and services more quickly and effectively than we can;
- to improve and expand their communications and network infrastructures more quickly than we can;
- to reduce costs, particularly bandwidth costs, because of discounts associated with large volume purchases;
- to offer less expensive streaming, hosting, colocation and related services as a result of a lower cost structure, greater capital reserves or otherwise;
- to adapt more swiftly and completely to new or emerging technologies and changes in customer requirements;
- to offer bundles of related services that we are unable to offer;
- to take advantage of acquisition and other opportunities more readily; and
- to devote greater resources to the marketing and sales of their products.

If we are unable to compete effectively in our various markets, or if competitive pressures place downward pressure on the prices at which we offer our services, our business, financial condition and results of operations may suffer.

Our services are subject to potential liability from system failure and security risks.

Our operations are dependent upon our ability to protect our network infrastructure against interruptions, damages and other events that may adversely affect our ability to provide services to our customers (on a short-term or long-term basis) and may lead to lawsuits and contingent liabilities. Despite the implementation of precautions, the core of our network infrastructure is vulnerable to various potential problems, including the following:

- Our network infrastructure, or that of our key suppliers, may be damaged or destroyed, and our ability to provide service interrupted or eliminated, by natural disasters, such as fires, earthquakes and floods, or by power losses, telecommunications failures and similar events. This risk is increased by the concentration of our servers and infrastructure, and that of our key suppliers, in a natural disaster and power failure prone area in Southern California.
- We and our users may experience interruptions in service as a result of the accidental or malicious actions of Internet users, hackers, or current or former employees.
- Unauthorized access to our network and servers may jeopardize the security of confidential information stored in our computer systems and our customers' computer systems, which may result in liability to our customers and also may deter potential customers.
- We may face liability for transmitting viruses to third parties that damage or impair their access to computer networks, programs, data or information. Eliminating computer viruses and alleviating other security problems may require interruptions, delays or cessation of service to our customers.
- Failure of our equipment or that of our suppliers may disrupt service to our customers (and from our customers to their customers), which could materially impact our operations (and the operations of our customers) and adversely affect our relationships with our customers and lead to lawsuits and contingent liability.

The occurrence of any natural disaster (including earthquakes), power outage, unauthorized access, computer virus, equipment failure or other disruptive problem could have a material adverse affect on our business, financial condition and results of operations.

The network architecture and data tracking technology underlying our services is complex and may contain unknown errors in design or implementation that could result in incorrect billings to our customers.

The network architecture and data tracking technology underlying our streaming and hosting services is complex and includes software and code used to generate customer invoices. This software and code is either developed internally or licensed from third parties. Any of the system architecture, system administration, software or code may contain errors, or may be implemented or interpreted incorrectly, particularly when they are first introduced or when new versions or enhancements to our services are released. In addition, with respect to certain usage-based billing, the data used to bill the customer for usage is an estimate, based upon complex formulas or algorithms. We or the customer may subsequently believe that such formulas or algorithms overstate or understate actual usage. In any such case, a design or application error could cause overbilling or underbilling of our customers, which may:

- adversely impact our relationship with those customers and others, possibly leading to a loss of affected and unaffected customers;
- lead to billing disputes and related legal fees, and diversion of management resources;
- increase our costs related to product development; and/or
- adversely affect our revenues and expenses, either prospectively or retrospectively.

Our continued growth could be adversely affected by the loss of key customers.

During the quarter ended March 31, 2006, we had one customer that accounted for more than 10% of our revenues. Several additional customers accounted for between 5% and 10% of our revenues. Our agreements with many of these key customers expire in any given year unless renewed by the customer, are terminable at any time upon short-term notice, or are otherwise terminable during 2006. Decisions by one or more of these key customers to not renew, terminate, or substantially reduce, their use of our services could substantially slow our revenue growth and even lead to a decline in revenue. Our business plan assumes continued growth in revenue, and it is unlikely that we could become profitable if our revenue were to cease growing. ***The number of our customers that accounted for more than 10% of our revenues decreased in this risk factor over the number stated in the Company's most recent annual report on Form 10-K.***

We are dependent upon key personnel who may leave at any time and may be unable to attract qualified personnel in the future.

We are highly dependent upon the continued services of our senior management team. To the extent our principal managers are parties to employment agreements, such agreements are terminable at will. Although our principal managers have significant equity interests or options to purchase equity interests in the company, such options to purchase equity interests are substantially vested (except with respect to our Chief Executive Officer). In addition, none of the shares held by, or issuable upon the exercise of options held by our principle managers is subject to repurchase rights and may be retained whether or not such persons remain with the company. The loss of the services of key management personnel could have a material adverse effect on our business, financial condition and results of operations.

We may become subject to risks associated with international operations.

We plan to expand our marketing efforts in foreign countries and are in the process of establishing data center capabilities outside of the United States. The establishment or expansion of foreign operations involves numerous risks, including without limitation:

- we may incur losses solely as a result of the fluctuation of the value of the dollar, as most of our costs will continue to be denominated in U.S. dollars while our revenues may increasingly be denominated in other currencies;
- we may incur significant costs in order to comply with, or obtain intellectual property protection under, the laws of foreign countries; even then, foreign courts or other tribunals may decline to honor our intellectual property rights, may not enforce our contracts as written and may impose restrictions, taxes, fines and other penalties that exceed those that would generally be imposed under U.S. laws;
- we may be the target of anti-U.S. politically motivated actions, including sabotage, violence, nationalization of resources, or discrimination;
- costs and risks associated with management and internal controls will increase as our employees and assets our located outside of the Southern California region; and
- as our overseas revenues, and dependence on such revenues expands, we will become increasingly subject not only to economic cycles in the U.S. but also to cycles in other nations, which may be more variable that those in the U.S.
- we may be subject to tariffs, export controls or other trade barriers; and
- we may experience difficulties in collecting delinquent accounts receivable

We may be unable to keep up with evolving industry standards and changing user needs.

The market for Internet media-related services is characterized by rapidly changing technology, evolving industry standards, changing user needs and frequent new service and product introductions. Our success will depend in part on our ability to identify, obtain authorized access to and use third party-provided technologies effectively, to continue to develop our technical capabilities, to enhance our existing services and to develop new services to meet changing user needs in a timely and cost-effective manner. In addition, new industry standards have the potential to replace or provide lower-cost alternatives to our services. The adoption of such new industry standards could render our existing services obsolete and unmarketable or require reduction in the fees charged. Any failure on our part to identify, adopt and use new technologies effectively, to develop our technical capabilities, to develop new services or to enhance existing services in a timely and cost-effective manner could have a material adverse effect on our business, financial condition and results of operations.

We may incur significant costs to effectively comply with the requirements of the Sarbanes-Oxley Act of 2002 and may be unable to comply in a timely manner

We are subject to the regulatory requirements of the Sarbanes-Oxley Act of 2002. We are a smaller company relative to other public companies. As such, the costs to comply with these extensive requirements may impact the company in a disproportionate manner. In addition, we may not be able to comply with the requirements by the applicable deadline. Either or both of these occurrences could have a material adverse effect on our business, financial condition and results of operations.

Increases in government regulation may have an adverse affect on our business.

The services provided by telecommunications carriers are governed by regulatory policies establishing charges and terms for wireline communications. We are not a telecommunications carrier or otherwise subject to regulations governing telecommunications carriers (or the obligation to pay access charges and contribute to the universal service fund). The Federal Communications Commission (FCC) could, however, expand the reach of telecommunications regulations so as to apply to companies such as ours. In particular, the FCC could require Internet service providers like us to pay access charges or to contribute to the universal service fund when the Internet service provider provides its own transmission facilities and engages in data transport over those facilities in order to provide an information service. The resultant increase in cost could have a material adverse effect on our business, financial condition and results of operations.

As Internet commerce continues to evolve, we expect that federal, state or foreign legislatures and agencies may adopt laws and regulations affecting our business or our customers, including laws or regulations potentially imposing taxes or other fees on us or our customers, imposing reporting, tracking or other costly reporting requirements or imposing restrictions or standards on us or our customers related to issues such as user privacy, pricing, content and quality of products and services. Such laws and regulations may significantly increase our costs of operations, may expose us to liability or may limit the services we can offer, or may impose similar burdens on our customers, which in turn may negatively impact our business, financial condition and results of operations.

If the protection of our intellectual property is inadequate, our competitors may gain access to our technology, and our business may suffer.

We depend on our ability to develop and maintain the proprietary aspects of our technology. To protect our proprietary technology, we rely primarily on a combination of contractual provisions, confidentiality procedures, trade secrets, and common law copyright and trademark principles. Protection of our intellectual property is subject to the following risks:

- we have not applied for a copyright registration or patent with respect to our proprietary rights, and the common law associated with copyrights and trade secrets affords only limited protection;
- our claims of proprietary ownership (and related common law copyright assertions) may be challenged or otherwise fail to provide us with any competitive advantages;
- our existing or any future trademarks may be canceled or otherwise fail to provide meaningful protection; and
- the validity, enforceability and type of protection of proprietary rights in Internet-related industries are uncertain and still evolving.

Despite our efforts to protect our proprietary rights, unauthorized parties may attempt to copy aspects of our products or to obtain and use information that we regard as proprietary. Policing unauthorized use of our products is difficult, and while we are unable to determine the extent to which piracy of our software products exists, software piracy can be expected to be a persistent problem. In addition, the laws of some foreign countries do not protect our proprietary rights to as great an extent as do the laws of the United States.

Third party claims that we infringe upon their intellectual property rights could be costly to defend or settle.

Litigation regarding intellectual property rights is common in the Internet and software industries. We expect that Internet technologies and software products and services may be increasingly subject to third-party infringement claims as the number of competitors in our industry segment grows and the functionality of products in different industry segments overlaps. We may from time to time encounter disputes over rights and obligations concerning intellectual property. Although we believe that our intellectual property rights are sufficient to allow us to market our services without incurring liability to third parties, third parties may bring claims of infringement against us, which may be with or without merit. We could be required, as a result of an intellectual property dispute, to do one or more of the following:

- cease selling, incorporating or using products or services that rely upon the disputed intellectual property;
- obtain from the holder of the intellectual property right a license to sell or use the disputed intellectual property, which license may not be available on reasonable terms;
- redesign products or services that incorporate disputed intellectual property; or
- pay monetary damages to the holder of the intellectual property right.

The occurrence of any of these events could result in substantial costs and diversion of resources or could severely limit the services we can offer, which could seriously harm our business, operating results and financial condition.

In addition, we have agreed, and may agree in the future, to indemnify certain of our customers against claims that our software infringes upon the intellectual property rights of others. We could incur substantial costs in defending ourselves and our customers against infringement claims. In the event of a claim of infringement, we and our customers may be required to obtain one or more licenses from third parties. We, or our customers, may be unable to obtain necessary licenses from third parties at a reasonable cost, or at all. Defense costs or negative publicity associated with of any lawsuit or failure to obtain any such required licenses could harm our business, operating results and financial condition.

Trading in our common stock is thin, and there is a limit to the liquidity of our common stock.

Our common stock is quoted on the OTC Bulletin Board. The volume of trading in our common stock is relatively small, and trading in our common stock is likely dominated by a few individuals. Because of the thinness of the market for our stock, the price of our common stock may be subject to manipulation by one or more shareholders and may increase or decrease significantly because of buying or selling by a single shareholder. In addition, the limited volume of trading limits significantly the number of shares that one can purchase or sell in a short period of time. Consequently, an investor may find it more difficult to dispose of large numbers of shares of our common stock or to obtain a fair price for our common stock in the market. ***Effective as of April 4, 2006, the Company completed a one-for-four reverse stock split and subsequently submitted an application to NASDAQ® for listing on the NASDAQ Capital Market. NASDAQ is currently in the process of reviewing the application and their response is expected during the next one to two months. Even if our stock later becomes traded on the NASDAQ Capital Market, NASDAQ National Market or a major stock exchange as is contemplated, there is still the possibility that some or all of the foregoing risks may continue to apply.***

The market price for our common stock is volatile and may change dramatically at any time.

The market price of our common stock, like that of the securities of other early stage companies, may be highly volatile. Our stock price may change dramatically as the result of announcements of our quarterly results, new products or innovations by us or our competitors, significant customer contracts, significant litigation or other factors or events that would be expected to affect our business financial condition, results of operations and other factors specific to our business and future prospects. In addition, the market price for our common stock may be affected by various factors not directly related to our business, including the following:

- intentional manipulation of our stock price by existing or future shareholders;
- a single acquisition or disposition, or several related acquisitions or dispositions, of a large number of our shares;
- the interest of the market in our business sector, without regard to our financial condition or results of operations;
- the adoption of governmental regulations and similar developments in the United States or abroad that may affect our ability to offer our products and services or affect our cost structure;
- disputes relating to patents or other significant intellectual property rights held by others that we, our suppliers or our customers use;
- new product offerings or other business developments announced by our competitors;
- developments in the businesses of companies that use our streaming or hosting services (such as the expansion or contraction of the use of the Internet to stream to deliver music or other media); and
- economic and other external market factors, such as a general decline in market prices due to poor economic indicators or investor distrust.

Our ability to issue preferred stock and common stock may significantly dilute ownership and voting power, negatively affect the price of our common stock and inhibit hostile takeovers.

Under our Articles of Incorporation, as amended, we are authorized to issue up to 10 million shares of preferred stock and 290 million shares of common stock without seeking stockholder approval. Our board of directors has the authority to create various series of preferred stock with such voting and other rights superior to those of our common stock and to issue such stock without shareholder approval. Our Board of directors also has the authority to issue the remainder of our authorized shares of common stock without shareholder approval. Any issuance of such preferred stock or common stock would dilute the ownership and voting power of existing holders of our common stock and may have a negative effect on the price of our common stock. The issuance of preferred stock without stockholder approval may also be used by management to stop or delay a change of control, or might discourage third parties from seeking a change of control of our company, even though some stockholders or potential investors may view possible takeover attempts as potentially beneficial to our stockholders.

Because certain existing shareholders own a large percentage of our voting shares, other shareholders' voting power may be limited.

As of March 31, 2006, our executive officers and directors beneficially owned or controlled approximately 7.9% of the voting power of our company. In combination with officers and directors and their affiliates, and entities owning 5% or more of our outstanding common shares, this group beneficially owned or controlled approximately 46.9% of the voting power of our company. As a result, if such persons act together, they have the ability to control all matters submitted to our shareholders for approval, including the election and removal of directors and the approval of any merger, consolidation or sale of all or substantially all of our assets. These shareholders may make decisions that are adverse to your interests. ***The percentage of voting power of the Company's management alone and in combination with other parties set forth above in this risk factor represents a decrease over the amount stated in the Company's most recent annual report on Form 10-K.***

We have not declared any dividends with respect to our common stock.

We have not declared any dividends on our common stock. We intend to retain earnings, if any, to finance the operation and expansion of our business and, therefore, we do not expect to pay cash dividends on our shares of common stock in the foreseeable future. In addition, restrictive covenants in our financings agreements with Comerica Bank presently prohibit our paying dividends without the consent of Comerica Bank.

We are subject to certain provisions of the California corporate code.

Because we are a Nevada corporation, the rights of our stockholders are generally governed by the Nevada Private Corporations Law. However, under Section 2115(a) of the California Corporations Code, we became subject to various sections of the California Corporations Code on January 1, 2004 and will continue to be subject to such conditions until the year after fewer than one-half of our outstanding voting securities (held by other than nominee holders) are held by persons located in California. Although the applicable portions of the California Corporations Code are generally consistent with governing provisions of the Nevada Private Corporations Law and our charter documents, they are not identical. We may be faced with circumstances in which applicable provisions of the Nevada Private Corporations Law or our charter documents cannot be reconciled to governing provisions of the California Corporations Code. The existence of such a conflict may adversely effect our business and operations in various ways in that it may require us to withdraw from a proposed transaction, seek authorizations, interpretations, injunctions or other orders from various courts in connection with a conflict, rescind or re-execute a transaction or pay damages if our good faith attempts at reconciliation are deemed inadequate or incur additional expenses in order to attempt compliance with both governing laws.

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds

Previously reported in Report on Form 8-K filed with the SEC on February 9, 2006 (File No. 001-10013)

Item 3. Defaults Upon Senior Securities

None

Item 4. Submission of Matters to a Vote of Security Holders

None

Item 5. Other Information

None

Item 6. Exhibits

See Exhibit Index following the Signature and Certification pages.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

VitalStream Holdings, Inc.

July 5, 2006

By: /s/ Mark Belzowski

Mark Belzowski, Chief Financial Officer
(Principal Financial Officer)

EXHIBIT INDEX

<u>Exhibit No.</u>	<u>Exhibit</u>	<u>Incorporated by Reference/ Filed Herewith</u>
10.1	Testing Agreement dated January 21, 2003 with Microsoft	Filed herewith
10.2	Logo License Agreement dated January 21, 2003 with Microsoft	Filed herewith
10.3	Amendment No. 5 to License Agreement dated December 30, 2005 with Adobe*	Filed herewith
10.4	Participation Agreement dated July 19, 2004 with Microsoft	Filed herewith
10.5	Services Provider License Agreement dated February 1, 2004 with Microsoft	Filed herewith
10.6	Amendment to Services Provider License Agreement dated February 1, 2004 with Microsoft	Filed herewith
21	Subsidiaries	Filed herewith
31.1	Section 302 Certification of Chief Executive Officer	Filed herewith
31.2	Section 302 Certification of Chief Financial Officer	Filed herewith
32.1	Section 906 Certification of Chief Executive Officer	Filed herewith
32.2	Section 906 Certification of Chief Financial Officer	Filed herewith

* Portions of this Exhibit have been omitted pursuant to Rule 24b-2, are filed separately with the SEC and are subject to a confidential treatment request.

**MICROSOFT .NET CONNECTED LOGO PROGRAM
TESTING AGREEMENT**

This Microsoft .NET Connected Logo Program Testing Agreement (the "Agreement") is by and between MICROSOFT CORPORATION, a Washington corporation ("Microsoft"), and the individual or entity who agrees and accepts the following terms and conditions of this Agreement by typing their name and clicking "I Accept" below ("Company"). The date upon which this Agreement takes effect is the date Microsoft counter accepts this Agreement (the "Effective Date"). Microsoft and Company may be referred to herein individually as a "party" or collectively as the "parties."

Background

- A.** Company is the owner or authorized licensor of certain XML web services and applications defined as "Company Products" herein;
- B.** Company desires to Test and certify that its Company Products meet the Microsoft .NET Connected Logo Program Technical Specifications as identified herein and has designed the Company Products to be in compliance with the same throughout the Term as defined herein; and
- C.** Microsoft further desires the right to list Company Products on the ".NET Connected Directory" for such Company Products certified to be compliant, solely as permitted by the terms and conditions herein.

Agreement

Now, therefore, the parties agree as follows:

1. Definitions.

- (a)** ".NET Connected Directory" means the online directory located at <http://www.microsoft.com/net/directory> for web services and applications that conform to the Microsoft .NET Connected Logo Program Technical Specifications.
- (b)** "Company Products" means Company's XML web services and applications.
- (c)** "Criteria" means the requirements set forth in the Microsoft .NET Connected Logo Program Technical Specifications for the Microsoft .NET Connected Designation.
- (d)** "Microsoft .NET Connected Designation" means (1) the Base Logo, or (2) the Premium Logo referenced at, and subject to the terms and conditions of use, located at www.microsoft.com/net/logo.
- (e)** "Microsoft .NET Connected Logo Program Technical Specifications" means the technical requirements and Testing procedures located at www.microsoft.com/net/logo.
- (f)** "Test", "Tested" or "Testing" means testing by Company of the Company Product for compliance with the Microsoft .NET Connected Logo Program Technical Specifications.

2. Microsoft Certification Testing and Standards.

- (a)** Microsoft shall at all times establish the requirements for conformance testing, pursuant to procedures established by Microsoft from time to time and described in the Microsoft .NET Connected Program Technical Specifications.

(b) Company shall ensure each Company Product meets the Criteria and remains in compliance throughout the Term as set forth in the then-current Microsoft .NET Connected Logo Program Technical Specifications.

(c) Microsoft may post information regarding any Company Product in the .NET Connected Directory provided (i) such Company Product meets the Criteria described herein; and (ii) Company continues to support such Company Product for operation in compliance with the Microsoft .NET Connected Logo Program Technical Specifications and has not requested that Microsoft exclude such Company Product from the .NET Connected Directory. Company may

elect to exclude Company Product from the .NET Connected Directory by checking the appropriate box during registration.

(d) Company shall be responsible for maintaining and supporting the Company Products and shall continue to support the Company Products for so long as each applicable Company Product is listed in the .NET Connected Directory, and shall notify Microsoft at least ninety (90) days in advance of any cessation of support.

3. Testing of Company Products.

(a) Testing By Company. Company shall conduct Testing of Company Products to ensure to the best of Company's knowledge that such Company Product meets the Criteria. Any and all Testing by Company shall be performed at Company's sole expense.

(b) Audit. Microsoft shall have the right, upon written notice to Company, to conduct an audit of any Company Products Tested by Company for the purposes of validating Test results and ensuring compliance with the Criteria. Within five (5) days of the date of the audit notice, Company shall send the Company Products requested or otherwise enable Microsoft to confirm the applicable Company Products meet the Criteria. In addition, Company shall also provide Microsoft with any user, technical reference and/or instruction guides for the Company Products, as well as any other documentation or information reasonably requested by Microsoft for using Company Products and/or conducting the confirmation activities. If, as a result of such audit, Microsoft determines, in its sole discretion, that a Company Product Tested by Company did not actually pass the relevant conformance test, Microsoft shall so notify Company in writing, and Company shall have thirty (30) days from the date of such notice to correct and re-test such Company Product at Company's expense. In the event the Company Product still fails conformance testing, Microsoft's acceptance of such Company Product shall be deemed revoked.

4. Disclaimer of Warranties.

MICROSOFT'S TESTING SERVICES ARE PROVIDED "AS IS" AND WITH ALL FAULTS, AND MICROSOFT DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. IN ADDITION, THERE IS NO WARRANTY OF ACCURACY OF INFORMATION, FUNCTIONALITY, SERVICES AND/OR AVAILABILITY OR LACK THEREOF FOR THE TESTING SERVICES AND/OR ANY MICROSOFT WEBSITE REFERRED TO OR UTILIZED PURSUANT TO THIS AGREEMENT.

5. Limitation of Liabilities.

NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, PUNITIVE, SPECIAL OR OTHER DAMAGES (INCLUDING, WITHOUT LIMITATION, LOSS OF BUSINESS PROFITS OR OPPORTUNITIES OR DAMAGES RESULTING FROM DELAYS IN TESTING), EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL MICROSOFT OR ITS AFFILIATES BE LIABLE TO COMPANY, ITS AFFILIATES OR TO ANY THIRD PARTY, WHETHER IN CONTRACT (INCLUDING ANY PROVISION OF THIS AGREEMENT), TORT, OR OTHERWISE, IN ANY AMOUNT THAT EXCEEDS AMOUNTS PAID BY COMPANY TO MICROSOFT UNDER THIS AGREEMENT.

6. Nondisclosure.

(a) Subject to Section 6(b), each party expressly undertakes to retain in confidence all non-public information and know-how transmitted to the other that the disclosing party has identified as being proprietary and/or confidential or that, by the nature of the circumstances surrounding the disclosure, ought in good faith to be treated as proprietary and/or confidential, and will make no use of such information and know-how except under the terms and during the existence of this Agreement. However, neither party shall have an obligation to maintain the confidentiality of information, however designated, that (i) it received rightfully from another party prior to its receipt from the disclosing party; (ii) the disclosing party has disclosed to a third party without any obligation to maintain such information in confidence; or (iii) is independently developed by the receiving party. Further, either party may disclose confidential information as required by governmental or judicial order, provided such party gives the other prompt notice prior to such disclosure and complies with any protective order (or equivalent) imposed on such disclosure. Each party's obligation under this Section 6 shall extend to the earlier of such time as the information protected hereby is publicly available through no fault of the obligated party or five (5) years following receipt of the confidential information.

(b) Notwithstanding anything to the contrary herein, Company expressly agrees that the only information it shall provide under this Agreement shall be limited to information necessary solely in connection with Testing to confirm that a Company Product meets the Criteria through the procedures and standards of the Microsoft .NET Connected Logo Program Technical Specifications.

(c) The parties' obligations of confidentiality under this Agreement shall not be construed to limit either party's right to independently develop or acquire products without use of the other party's confidential information. Further, either party shall be free to use for any purpose the residuals resulting from access to or work with such confidential information, provided that such party shall maintain the confidentiality of the confidential information as provided herein. The term "residuals" means information in non-tangible form, which may be retained by persons who have had access to the confidential information, including ideas, concepts, know-how or techniques contained therein. Neither party shall have any obligation to limit or restrict the assignment of such persons or to pay royalties for any work resulting from the use of residuals. However, the foregoing shall not be deemed to grant to either party a license under the other party's copyrights or patents.

7. Term and Termination.

(a) **Term.** The initial term of this Agreement shall commence as of the Effective Date and shall continue for a period of one (1) year (the "Term"). This Agreement may be renewed for additional one (1) year term(s), provided (i) Company is not in breach of this Agreement; (ii) Company re-Tests each Company Product to certify that such products comply with the then-current Microsoft .NET Connected Logo Program Technical Specifications; and (iii) Microsoft counter accepts such renewal at that time.

(b) **Termination.** Either party may terminate this Agreement at any time upon thirty (30) days' prior written notice to the other party.

(c) **Survival.** Sections 2(d), 3(b), and 4-9 shall survive termination or expiration of this Agreement.

8. Notices. All notices, authorizations, and requests In connection with this Agreement shall be in writing, addressed as stated herein, (or to such other address as the party to receive the notice so designates by written notice to the other) and shall be deemed given when: (i) deposited in the mail, postage prepaid, certified or registered, return receipt requested; or (ii) sent by air express courier, charges prepaid. The parties shall fax a copy of any such notices to the fax numbers identified below on the same day.

MICROSOFT:

Microsoft Corporation
One Microsoft Way
Redmond, WA 98052-6399
Attention: Lynn Cafferty
Re: Microsoft .NET Connected Logo Program Testing Agreement
FAX: 425-936-7329

With Copy To:

Microsoft Corporation
One Microsoft Way
Redmond, WA 98052-6399
Attention: Law & Corporate Affairs
Re: Microsoft .NET Connected Logo Program Testing Agreement
Fax: 425-936-7329

COMPANY:

Information listed in the registration form.

9. Miscellaneous.

(a) Governing Law. This Agreement shall be construed and controlled by the laws of the State of Washington, and Company consents to exclusive jurisdiction and venue in the federal courts sitting in King County, Washington, unless no federal jurisdiction exists, in which case Company consents to exclusive jurisdiction and venue in the Superior Court of King County, Washington. Company waives all defenses of lack of personal jurisdiction and forum non conveniens. Process may be served on either party in the manner authorized by applicable law or court rule.

(b) Attorneys' Fees. If either party employs attorneys to enforce any rights arising out of or relating to this Agreement, the prevailing party shall be entitled to recover its reasonable costs and attorneys' fees.

(c) Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements or communications with respect to the subject matter hereof. This Agreement shall not be modified except by a written agreement dated subsequent to the date of this Agreement and signed on behalf of Company and Microsoft by their respective duly authorized representatives. For the avoidance of doubt, nothing in this Agreement shall limit Microsoft's ability to modify the Microsoft .NET Connected Logo Program Technical Specifications and/or terms of use for the Microsoft .NET Connected Designation after the Term. No waiver of any breach of any provision of this Agreement shall constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provisions hereof, and no waiver shall be effective unless made in writing and signed by an authorized representative of the waiving party.

(d) Prohibition on Assignment. This Agreement may be assigned by Microsoft but shall not be assigned by Company without Microsoft's prior written approval. Except as otherwise provided, this Agreement shall be binding upon and inure to the benefit of the parties' successors and lawful assigns.

(e) No Partnership. Neither this Agreement, nor any terms or conditions contained herein, shall be construed as creating a partnership, joint venture, agency relationship or franchise. Except as used in this Section, the use of the term "partner" or "partnership" shall have no legal significance as those terms are construed under the statutory or common law of any national, state or local jurisdiction.

(f) Severability. If any provision of this Agreement shall be held by a court of competent jurisdiction to be illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect.

(g) Section Headings. The Section headings herein are for the convenience of the parties and shall not be deemed to supersede or modify any provisions.

[Agreement entered into on January 21, 2003 online by Tim Napoleon on behalf of the Company]

Exhibit 10.2

MICROSOFT .NET CONNECTED LOGO LICENSE AGREEMENT

This Logo License Agreement (“Logo Agreement”) is made and entered into by and between Microsoft Corporation (“Microsoft”), and (“Licensee”), the individual or entity who agrees and accepts the following terms and conditions of this Agreement by typing their name, and clicking “I Accept” below.

1. DEFINITIONS

- (a) **“Criteria”** means the specifications set forth in the “Microsoft .NET Connected Logo Program Technical Specification” document.
- (b) **“Effective Date”** means the date Microsoft counter accepts this Logo Agreement, and shall be the date upon which the Logo Agreement takes effect.
- (c) **“Logo”** means the Microsoft .NET Connected logo(s) depicted in the attached Exhibit A, or such additional or replacement logo(s) Microsoft may provide under this Logo Agreement.
- (d) **“Product”** means Licensee’s web service or application identified by name and version in Exhibit B to this Logo Agreement.
- (e) **“Product Add-on”** means a toolkit, software development kit, or other separately-distributed code that can be added to Product to enable it to meet the Criteria.

2. LICENSE GRANT & RESTRICTIONS

- Microsoft hereby grants to Licensee a worldwide, nonexclusive, nontransferable, royalty-free, personal license to use the specific Logo listed in Exhibit B solely on, or in direct reference to Product that meets the Quality Standards (as set forth in Section 4(a)), in the manner described in the specifications set forth in the attached Exhibit A. Microsoft reserves all rights not expressly granted herein. Licensee shall not assign, transfer or sublicense this Logo Agreement (or any right granted herein) in any manner without prior written consent from Microsoft.
- (a)

- If Product requires a Product Add-on to meet the Criteria, Licensee must offer such Product Add-on to Product end-users at no additional charge, and make it freely available online for downloading by Product end-users at all times during the term of this Logo Agreement. Licensee must also list such Product Add-on, and the URL where it will be available, in Exhibit B to this Logo Agreement. When using the Logo on or in reference to Product that requires a Product Add-on to meet the Criteria, the following text must be clearly legible immediately below the empty space under the Logo required by the “Spacing” section of Exhibit A to this Logo Agreement: “*Microsoft .NET Connected status requires installation of the free download available at: [URL].” (URL must be provided).
- (b)

- This Logo Agreement does not grant by implication, estoppel, or otherwise, any license to any Microsoft technology or proprietary rights other than the use of the Logo permitted pursuant to Section 2 (a).
- (c)

3. OWNERSHIP, IDENTIFICATION & USE

(a) Licensee acknowledges Microsoft's sole ownership of the Logo, and all associated goodwill, and that Microsoft retains all right, title and interest in and to the Logo. All goodwill arising from use of the Logo by Licensee will inure to the sole benefit of Microsoft.

(b) Licensee will not use the Logo in a manner that will diminish or otherwise damage Microsoft's goodwill in the Logo as determined by Microsoft at its sole discretion. Licensee will not adopt, use, or register any corporate name, trade name, trademark, domain name, service mark or certification mark, or other designation that violates Microsoft's rights in the Logo.

(c) Licensee shall take reasonable steps to notify Microsoft of any suspected violation of, or challenge to, Microsoft's rights in the Logo of which Licensee becomes aware. Microsoft shall have the sole right to, and in its sole discretion may control any action concerning the Logo.

4. QUALITY CONTROL

(a) All Product distributed in connection with the Logo shall: (i) meet the Criteria, (ii) meet or exceed the quality of similar products provided by Licensee before the Effective Date, (iii) meet or exceed standards of quality and performance generally accepted in the industry, and (iv) comply with all applicable laws, rules, and regulations (collectively the "**Quality Standards**"). Licensee shall use the Logo solely in connection with Product that meets the Quality Standards.

(b) Licensee shall cooperate with Microsoft to facilitate period review of Licensee's use of the Logo, and of Licensee's compliance with the Quality Standards. Licensee shall promptly correct and remedy any deficiencies in its use of the Logo and conformance to the Quality Standards upon reasonable notice from Microsoft.

5. INDEMNIFICATION FROM LICENSEE

Licensee will indemnify and defend Microsoft from and against any and all third party claims, damages, costs, and expenses (including reasonable attorneys' fees) related to the Product or Licensee's use of the Logo in breach of this Logo Agreement, ("**Licensee Indemnified Claim**"), provided (i) Licensee is notified promptly in writing of any Licensee Indemnified Claim, (ii) Licensee has sole control over the defense of the Licensee Indemnified Claim, and (iii) Microsoft provides reasonable cooperation, in the defense of the same.

6. INDEMNIFICATION FROM MICROSOFT

(a) Microsoft will indemnify and defend Licensee from and against any and all third party claim(s), damages, costs, and expenses (including reasonable attorney's fees) that the Logo infringes any trademark rights of such third party ("**Microsoft Indemnified Claim**"), provided: (i) Microsoft is notified promptly in writing of any Microsoft Indemnified Claim, (ii) has sole control over the defense of the Microsoft Indemnified Claim, and (iii) Licensee provides reasonable cooperation in the defense of the same.

(b) In connection with any pending or reasonably anticipated Microsoft Indemnified Claim, Licensee shall promptly discontinue or modify use of the Logo upon Microsoft's request. Microsoft shall have no liability for any Microsoft Indemnified Claim based on Licensee's use of the Logo more than twenty (20)

days after Microsoft's written notice that Licensee should cease use of the Logo due to such claim. Company shall indemnify and defend Microsoft from and against all damages, costs, and expenses (including reasonable attorney's fees) incurred due to Licensee's continued use of the Logo after such twenty (20) day notice period.

7. DISCLAIMER OF WARRANTY & LIMITATION OF LIABILITY

(a) MICROSOFT MAKES NO WARRANTIES REGARDING THE LOGO, AND HEREBY DISCLAIMS ALL WARRANTIES THAT MIGHT OTHERWISE BE IMPLIED BY LAW.

(b) EXCEPT AS PART OF A THIRD PARTY DAMAGE CLAIM FOR WHICH ONE OF THE PARTIES IS OBLIGATED TO INDEMNIFY THE OTHER, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY DAMAGES ARISING OUT OF THIS AGREEMENT, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

8. TERM AND TERMINATION

(a) The term of this Logo Agreement shall commence on the Effective Date and continue for one (1) year, unless terminated earlier by either party.

(b) Either party shall have the right to terminate this Logo Agreement without cause upon sixty (60) days prior written notice. Either party shall have the right to immediately terminate this Logo Agreement for breach by the other party if such breach is not cured within thirty (30) days of written notice to the other party of such breach.

(c) Upon expiration or termination of this Logo Agreement, Licensee will immediately cease all use of the Logo. However, unless the Logo Agreement is terminated for breach, and subject to Section 6 (b), Licensee may distribute then-existing Product packaging or advertising materials containing the Logo for a period of sixty (60) days from termination, or expiration of the term, provided use of the Logo complies with this Logo Agreement.

9. NOTICES

All notices, authorizations, and requests in connection with this Logo Agreement shall be in writing, addressed as stated herein, (or to such other address as the party to receive the notice so designates by written notice to the other) and shall be deemed given when: (i) deposited in the mail, postage prepaid, certified or registered, return receipt requested; or (ii) sent by air express courier, charges prepaid. The parties shall fax a copy of any such notices to the fax numbers identified below on the same day.

MICROSOFT: Microsoft Corporation
One Microsoft Way
Redmond, WA 98052-6399
USA

Attention: netlogo@microsoft.com
Microsoft .NET Connected Logo Program

Fax: (425) 706-7329

With Copy To: Law & Corporate Affairs, Trademarks

Fax: (425) 706-4112
LICENSEE: Information listed in the registration form.

10. MISCELLANEOUS

- (a) *Entire Agreement.* This Logo Agreement, including all Exhibits, comprises the entire parties' agreement concerning its subject matter, and supersedes and merges all prior or contemporaneous communications. It may be amended only by written agreement signed by the parties.
 - (b) *Governing Law.* This Logo Agreement shall be governed by the laws of the State of Washington. Venue over all disputes arising under or relating to this Logo Agreement shall be in the state and federal courts within the State of Washington or the federal courts within the State of New York, but in either case Washington state law shall apply. Process may be served on either party as authorized by applicable law or court rule.
 - (c) *Attorneys' Fees.* In any action to enforce this Logo Agreement, the non-prevailing party shall pay the prevailing party's reasonable costs, attorneys' fees, and other expenses.
 - (d) *No Waiver.* No waiver of any breach of this Logo Agreement shall constitute a waiver of any other breach, and no waiver shall be effective unless in writing, signed by the waiving party.
 - (e) *Severability.* If any provision (or portion thereof) of this Logo Agreement shall be held to be illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect, and the court shall enforce such provisions to the extent allowable by law.
 - (f) *Relationship.* Neither this Logo Agreement, nor any terms and conditions contained herein, shall be construed as creating a partnership, joint venture or agency relationship or as granting a franchise.
 - (g) *Survival.* The provisions of Sections 7,8,9,10, as well as Sections 5 with respect to Product(s) distributed with the Logo, and 6 for claims based on use of the Logo permitted herein, shall survive the expiration or termination of this Logo Agreement.
 - (h) *Exhibits.* This Logo Agreement includes Exhibits A and B which are hereby incorporated by reference.
-

EXHIBIT A

MICROSOFT .NET CONNECTED LOGO LICENSE AGREEMENT

Specifications for Using the Logo

[MICROSOFT .NET CONNECTED LOGO]

Microsoft has established the following set of specifications for proper use of the Logo(s). Licensee must comply with these specifications.

1. Licensee must have a valid Microsoft .NET Connected Logo License Agreement in place before using the Logo. Licensee may only use the specific version of the Logo (base or premium) as listed in Exhibit B to this Logo Agreement for Product.

The Logo may only be used on packaging, collateral materials, documentation, and advertising, including Web advertising for licensed Product, as well as on Licensee's web site in any area related to Product. The Logo may not in any manner that may imply that non-licensed products meet the Criteria set forth in the Logo Agreement. When used on Licensee's web site, the Logo may be used as a link to the Microsoft .NET Connected directory. The Logo may not be used as a link to any other page.
- 2.
3. Licensee's company name, logo, or product name must appear on any materials where the Logo is used. The Logo must be less prominent than Licensee's Product name, trademark, logo, or trade name.
4. The Logo may not be used in any manner that expresses or might imply Microsoft's affiliation, sponsorship, endorsement, or approval other than as contemplated by the Logo Agreement.
5. Licensee may not use the Logo in a manner that might suggest co-branding or otherwise create a potential confusion as to the source of the Product or ownership of the Logo. Licensee may not display the Logo in any manner that suggests that Product is a Microsoft product, or in any manner that suggests that Microsoft or .NET is a part of the Product name.
6. Licensee may use the Logo only as provided by Microsoft. Except for size subject to the restrictions herein, the Log may not be altered in any manner, including proportions, colors, elements, etc., or animated, morphed, or otherwise distorted in perspective or dimensional appearance.
7. The Logo may not be included in any non-Microsoft trade-name, business name, product or service name, logo, trade dress, design, slogan, domain name, or other trademark.
8. The Logo may not be combined with any other symbols including, words, logos, icons, graphics, photos, slogans, numbers, or other design elements.
9. The Logo must include the ® and ™ symbols as show in this exhibit.
10. The Logo shall be attributed to Microsoft Corporation in all materials where it is used, with the attribution clause: "*Microsoft and the .NET Logo are trademarks, or registered trademarks of Microsoft Corporation in the United States and/or other countries.*"

Size

The integrity of all elements of the Logo must be maintained. For example, the type and trademark notations must be readable; in no case should the Logo appear at such a small size that these conditions are not met. Minimum size for the Logo shall be: *Inches*: 1" x .91" *Pixels*: 72 x 64, or *Millimeters*: 25.5 x 23

Spacing

The Logo must stand alone. A minimum amount of empty space must be left between the Logo and any other object such as type, photography, borders, edges, etc. The required border of empty space around the Logo must be X, where X equals the height of the letter “c” in connected.

Color

The color version is the preferred way of reproducing the Logo. The CMYK and RGB values are built into the logo artwork files. You must use the Logo artwork as provided; the color values may not be altered. The area behind the interior oval of the arrow graphic element needs to remain white behind Microsoft .NET Connected (not transparent under any circumstances).

Stickers

The Logo may be used on a sticker for placement on Product packaging, so long as all specifications herein are met.

For Questions regarding the Logo: contact netlogo@microsoft.com

EXHIBIT B

**MICROSOFT .NET CONNECTED
LOGO LICENSE AGREEMENT**

Licensed Product

The information below must be filled out for Product to be licensed under this Logo Agreement.

SAMPLE ONLY. TO BE FILLED IN BY MICROSOFT.

Product name	Product version identifier	Logo for which Product is licensed (base or premium)

SAMPLE ONLY. TO BE FILLED IN BY MICROSOFT.

Licensee	
Name of person accepting this Exhibit B to the Logo Agreement	
Title	
Date	

EXECUTION OF THIS AGREEMENT: Typing your name, and clicking "I Accept" is a symbol of your signature that you accept and agree to be bound by all terms and conditions of this Agreement. Do not proceed if you are not authorized to bind the Licensee and/or you do not agree to the terms and conditions of this Agreement. This Agreement shall be complete upon Licensee's receipt of confirmation email from Microsoft.

[Agreement entered into on January 21, 2003 online by Tim Napoleon on behalf of the Company]

Exhibit 10.3

[Certain portions of this exhibit have been omitted pursuant to Rule 24b-2 and are subject to a confidential treatment request. Copies of this exhibit containing the omitted information have been filed separately with the Securities and Exchange Commission. The omitted portions of this document are marked with a *.]**

AMENDMENT NO. 5 TO MACROMEDIA FLASH COMMUNICATION
SERVER LICENSE AGREEMENT

This Amendment No. 5 (“Amendment”) to the Macromedia Flash Communication Server License Agreement by and between VitalStream, Inc., a Delaware corporation with its principal place of business at One Jenner, Suite 100, Irvine, California 92618 (“Licensee”) and Adobe Systems, Incorporated (“Adobe”) (as successor to Macromedia, Inc.), a Delaware corporation, with its principal place of business at 345 Park Avenue, San Jose, CA 95110, is effective as of December 30, 2005 (the “Amendment Effective Date”).

WHEREAS, the parties entered into the Macromedia Flash Communication Server License Agreement dated as of November 17, 2003 (the “Original Agreement”), as amended by Amendment No. 1 to the Original Agreement dated as of April 28, 2004 (“Amendment 1”), Amendment No. 2 to Original Agreement dated as of April 28, 2004 (“Amendment 2”), Amendment No. 3 to the Original Agreement dated as of August 6, 2004 (“Amendment 3), and Amendment No. 4 to the Original Agreement dated as of March 1, 2005 (“Amendment 4). Amendment 1, Amendment 2, Amendment 3, and Amendment 4 together with the Original Agreement, shall be referred to herein as the “Agreement”; and

WHEREAS, the parties desire to expand their business relationship;

NOW, THEREFORE, in consideration of the foregoing and other valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

Except as expressly provided herein, all defined terms shall have the meanings ascribed to them in the Agreement.

1. **Term Extension.** The Term of the Agreement shall be extended to [***]. In Section 7 of the Original Agreement, the following words shall be deleted from the second sentence thereof: “...however, after the initial term of the Agreement, either party may terminate the Agreement with at least ninety (90) days prior written notice.”

2. **Fees.** Section 2 of the Original Agreement (Fees) and Section 1 of Amendment 4 shall be replaced in their entirety with the following.

A. License Fees.

At the beginning of each Term, Licensee shall pay Adobe a non-cancelable and non-refundable fee (the “Prepayment Fee”). The rate for the license fees due under the Agreement

(the "License Fees") for the Term shall be calculated based upon the amount of the Prepayment Fee as follows:

<u>Prepayment Fee</u>	<u>License Fee</u>	<u>Minimum Transfer Fee</u>
\$[***]	[***]%	\$[***]
\$[***]	[***]%	\$[***]
\$[***]	[***]%	\$[***]
\$[***]	[***]%	\$[***]
\$[***]	[***]%	\$[***]

The Licensee Fee shall equal the percentage of all fees that Licensee receives from Customers for the set-up and use of the Service and the Additional Service, subject to the Minimum Transfer Fees (as defined below) or the Minimum Additional Service Fees (as defined below), as the case may be. If during the Term, Licensee advises Adobe in writing that it elects to make additional Prepayment Fees above the commitment in Paragraph B of this Section ("Additional Prepayment Fee") specifying the USD amount of such Additional Prepayment Fee, subject to the payment provisions of Section 2.B. below, then the License Fees and Minimum Transfer Fees subsequent to Adobe's receipt of notice from Licensee of Additional Prepayment Fee shall be adjusted to reflect the License Fee and Minimum Transfer Fee rate applicable to the amount of the Prepayment Fee plus the Additional Prepayment Fee.

The pricing of the Service and the Additional Service (as defined in Amendment 3) shall be at the sole discretion of Licensee, as the same may be changed from time to time.

B. Prepayment Fee.

The Prepayment Fee is non-cancelable and non-refundable, except that if this Agreement is terminated by Licensee for Cause (as defined in Section 7 of the Agreement, as amended by Section 5 hereof) prior to the Prepayment Fee and, if applicable, any Additional Prepayment Fee, having been fully expended, then Licensee shall be entitled to receive a refund in the amount of that portion of the Prepayment Fee and, if applicable, any Additional Prepayment Fee, that had not been expended as of the date of such termination, which refund payment shall be made by Adobe to Licensee within 15 days of the date of termination, and any portion of the refund not paid within such 15 days shall be subject to a late charge of one and one-half percent (1.5 %) per month or the maximum rate allowed by applicable law, whichever is less, on the overdue balance. Notwithstanding any refund of the Prepayment Fee and any Additional Prepayment Fee as described in the preceding sentence, Licensee shall continue to pay License Fees if and as Licensee continues to use the Software to provide the Service to Customers in accordance with Section 7 of the Agreement. Licensee shall pay the Prepayment Fee for the next Term in accordance with the following schedule:

USD\$[***] due on or before February 5, 2006; and

USD\$[***] due on or before August 7, 2006.

Licensee shall pay any Additional Prepayment Fee in accordance with the following schedule:

[***]

C. Minimum Transfer Fees.

Licensee shall meter the amount of video transferred by the Software for the Service and the Additional Service in Gigabytes (GB). The minimum transfer fees payable, per Customer, to Adobe for use of the Software for the Service and the Additional Service (the “Minimum Transfer Fees”) are reflected in Section 2.A and shall be based on the Prepayment Fee made during the Term. Eighty-five percent (85%) of the Minimum Transfer Fees shall be deemed allocated for license fees and fifteen percent (15%) shall be allocated to Support and Maintenance.

D. Unexpended Prepayment Fees at the End of the Term

At the end of the Term, if Licensee renews the Agreement for [***] pursuant to Section one of Amendment 5, Licensee shall have an additional [***] to use any Prepayment Fees not expended during the Term (at the License Fee and Minimum Transfer Fee rates existing at the end of the Term); provided however, the unexpended Prepayment Fees, shall not be considered in determining the License Fees or Minimum Transfer Fees for the renewal Term. For example, if Licensee made Prepayment Fees of \$[***] during the Term, but only expended \$[***] during the Term, in the next renewal term, Licensee would have [***] months to use the unexpended \$[***] at the License Fee rate of [***]% and the Minimum Transfer Fee rate of \$.12.

E. Support and Maintenance Fees.

Licensee has elected to purchase Support and Maintenance for the Software for [***] year following the Amendment Effective Date. The annual fee for such Support and Maintenance is included in the License Fees set forth under Section A above, and is equal to [***]% of the License Fees for the Service or the Additional Service, as the case may be.

F. Trials.

Licensee is permitted to offer one trial (or pilot program, as applicable) per Customer for the Service or the Additional Service (each, a “Trial”). During a Trial, neither Customer nor Licensee shall owe Adobe any fees for use of the Software provided that such Trial does not last more than [***] and no more than [***] GB of total video is transferred during the Trial. Notwithstanding the foregoing, Licensee may request an additional amount of video transfer for a Trial, and such request may be granted at Adobe’s discretion. In the event that a Trial for the Service exceeds the GB limits set forth above, Licensee shall owe Adobe the Minimum Transfer Fees for each GB transferred in excess of the [***] GB. In the event that a Trial for the Additional Service exceeds the GB limits set forth above, Licensee shall owe Adobe the Minimum Additional Service Fee as set forth below for each such Trial as a flat fee and in lieu of a fee based upon GB transferred in such Trial.

3. The following shall be added to Section 2 (d) of Exhibit C of the Original Agreement:

“For each incident escalated pursuant to this section, a response will be made before the end of the next business day.

4. Licensee will be invited to participate in the beta testing programs for Flash Media Server, Premiere Pro, Flash Professional and any newly developed Adobe Products in the digital video field subject to the terms of each product’s Beta EULA.

5. **VIP Customer Pricing Program.** Exhibit E (VIP Customer Pricing Program) attached hereto shall be added to the Agreement.

6. **Support Levels.** If during the Term, Adobe offers a higher level of support than the Gold Level Support currently received by Licensee, than Licensee shall be eligible to receive said higher level of support at no additional cost.

7. **Effect of Amendment.** Except as otherwise modified herein, the Agreement (and each amendment thereto) shall continue in full force and effect until expiration or termination in accordance with its terms.

The parties have caused this amendment to be executed by their respective duly authorized representatives as of the Amendment Effective Date.

ADOBE SYSTEMS INCORPORATED

VITALSTREAM, INC.

By: /s/ Barbara Hill
(signature)

By: /s/ Philip N. Kaplan
(signature)

Name: /s/ Barbara Hill

Name: /s/ Philip N. Kaplan

Title: VP Treasury

Title: President & COO

EXHIBIT E

[***]

TAP Framework Participation Agreement

Microsoft Corporation ("Microsoft") and you (as identified in the signature box below) hereby agree to the following terms for your participation in Microsoft's Technology Adoption Programs ("TAP") framework:

1. Overview.

1.1. Purpose. The TAP framework centralizes administration of many programs that include intensive testing and evaluation of Microsoft technologies. TAP framework programs facilitate deployment of Microsoft technologies, generate feedback for further technology development, provide the basis for case studies and other valuable marketing materials and activities, and provide companies that take part with an opportunity to obtain a greater understanding and awareness of the architecture and capabilities of the technologies covered.

1.2. Process. Microsoft will make available to you information about TAP framework programs. However, you may not be invited to join every TAP framework program. The Microsoft product group or other Microsoft organization that sponsors a given TAP framework program will determine which TAP framework participants it wishes to invite to take part in its program. These decisions will be based in part on the respective qualifications of TAP framework participants interested in taking part and the number of opportunities for taking part in a given program. A sponsoring group may have additional criteria and/or processes for determining the TAP framework participants that are best suited for its program, gathered by (for example) submitting requests for information, engaging in interviews, or reviewing preliminary expressions of interest. If you seek to take part in a particular TAP framework program, you will need to respond to the sponsoring group's requests for information regarding the nature and extent of your interest and the resources that you are prepared to commit to make your involvement in that program meaningful and successful, both for you and the sponsoring group.

1.3. Taking Part in Programs. Each group sponsoring a TAP framework program will determine which TAP framework participants it would like to invite to take part in its program. Your being asked whether you have an interest in a program, or to apply formally to a program, is not the same as being invited or accepted into that program. If you are invited to take part in a program and confirm your desire to do so, your association with that program will proceed according to the applicable terms of this agreement, the program description applicable to the program, the end user license agreement ("EULA") and any supplemental license for technologies covered by the program (as described in section 2), and such other documentation as may apply to that program. If you are offered the opportunity to take part in a program, you may decide not to respond to such opportunity, in which case the sponsoring group will interpret that choice as your having declined the opportunity.

1.4. TAP Web Site. Microsoft expects to administer TAP framework programs primarily through an extra net website accessible through <http://www.microsoft.com>. This site will include a description of programs covered by the TAP framework. Together with this participation agreement, the program descriptions of the programs that are published on the TAP site and associated program documentation will govern the elements, participation, duration, and specifics of administration of each program.

2. Technology Licensing. Your use of any Microsoft technology made available under a TAP framework program will be governed by the terms and conditions of the EULA(s), including any supplemental license(s) that Microsoft provides for that technology. The sponsoring group for a program will endeavor to provide a copy of the relevant license(s) when it provides the program description, but may not be able to do so in all instances. If you elect not to accept the terms of the license(s) applicable to Microsoft technologies covered by a program in which you are taking part, you will be deemed to have withdrawn from that program. As an exception to the preceding sentence, your election not to accept a supplemental license will not be deemed an election to withdraw from the applicable program, but you will not have any of the rights granted under that supplemental license (and you should be aware that such rights are sometimes necessary for successful participation in a particular program). In addition, if there is any conflict between other terms of this agreement and a EULA or a supplemental license, the terms of the EULA and/or supplemental license will apply with regard to your use of the applicable technology.

3. Confidentiality.

3.1. Existing NDA. If you have an existing non-disclosure agreement with Microsoft, its terms will

govern Confidential Information exchanged during your participation in the TAP framework. We must agree to the use of the existing non-disclosure agreement and a copy of it must be attached to this agreement at the time of signing. If we do not have an existing non-disclosure agreement that we both agree should apply to your participation in the TAP framework, section 3.2 will apply.

3.2. Confidential Information. Confidential Information means nonpublic information that one of us, or one of our affiliates, designates as being confidential or which, under the circumstances surrounding disclosure ought to be treated as confidential. Each of us must refrain from disclosing any Confidential Information of the other for five years following the date of disclosure. However, that Confidential Information may be disclosed in accordance with a judicial or other governmental order, if the receiving party either: (a) gives reasonable notice of such disclosure to allow the other party a reasonable opportunity to seek a protective order or its equivalent, or (b) obtains written assurance from the applicable judicial or governmental entity that it will afford the Confidential Information the highest level of protection afforded under applicable law or regulation. Each of us is free to use for any purpose the residuals resulting from access to or work with Confidential Information, however, the receiving party may not disclose the Confidential Information except as expressly permitted pursuant to the terms of this agreement. This sub-paragraph does not grant a license to the receiving party under the disclosing party's copyrights or patents. The term "residuals" means information in intangible form, which is retained in memory by persons who have had access to the Confidential Information, including ideas, concepts, know-how, or techniques contained therein. The receiving party shall not have any obligation to limit or restrict the assignment of such persons or to pay royalties for any work resulting from the use of residuals. If you are a government entity subject to public records laws, we agree that any Microsoft technology made available to you under this agreement constitutes Microsoft trade secret information or similarly-designated information exempt from disclosure to the maximum extent permitted under public records law.

4. Publicity Opportunities.

4.1. Generally. A TAP framework program may include various publicity-related activities, as described in its program description. If you take part in a program that results in the creation of documentation of these publicity activities, the following terms apply:

(a) Microsoft may film, photograph, interview and tape record, as appropriate, your business operation and relevant employees, in creating the documentation. Microsoft may publish the documentation in any media, including television, film, videotapes, CDs, DVDs, audio recordings, print publications, keynote or presentations by Microsoft, the Internet and World-Wide-Web. Microsoft is not obligated to use the documentation.

(b) Microsoft owns the documentation (except for any of your names or trademarks, service marks, logos, or other identifying information incorporated into the documentation). To the extent you own rights to any part of the documentation, including your name or any of your trademarks, service marks, logos, or other identifying marks incorporated in the documentation, you grant Microsoft a non-exclusive, royalty-free, perpetual, worldwide license to use, distribute, duplicate, perform, transmit, print, display, and exhibit the documentation, in whole or part, and in any form and medium, for marketing and promotional purposes.

(c) Microsoft will have the right to review and approve your proposed use of the documentation, which approval will not be unreasonably withheld or delayed. Microsoft will provide you with a copy of all documentation prior to its first public release. You agree to review documentation, when provided to you, for factual accuracy and prevention of the release of any of your Confidential Information (as defined in the NDA applicable to your participation in the TAP Framework or described in section 3). You also agree that your approval of any reviews will not be unreasonably withheld, and will be completed within ten (10) business days after you receive the documentation. In the case of audiovisual publications containing documentation, you agree to grant or deny any requested approvals during taping. If Microsoft receives your request for correction of errors and/or removal of Confidential Information within the 10-day time frame, Microsoft will use commercially reasonable efforts to incorporate those requested changes into the documentation before it is publicly released.

(d) For any program in which you take part that has publicity related aspects, you may elect to terminate your involvement in those aspects of the program by giving forty-five (45) days' prior notice to Microsoft, as outlined in section 10.2.

4.2. Publicity Release Confidential Information. As long as the opportunity for review is given to you prior to any public release of the documentation by Microsoft, (a) you are solely responsible for bringing to Microsoft's attention any of your Confidential Information and requesting its removal; (b) Microsoft will not be held responsible for the release of your Confidential Information if you did not previously request its removal; and (c) you will indemnify

and hold Microsoft harmless from any third party claim related to disclosure of your Confidential information, if you did not previously request its removal.

5. Termination or Withdrawal from a Program. Your taking part in a program is always voluntary for both you and Microsoft. Except as provided in section 4, you may elect to withdraw from any TAP framework program at any time. Similarly, Microsoft may discontinue your association with any TAP framework program at any time. If a given program ends, or if you withdraw from that program, or if Microsoft elects to discontinue your association in the program, then both parties' rights and responsibilities with respect to that program will terminate, except that Microsoft's rights with respect to documentation will continue as described in section 4. Any expiration or termination will not necessarily affect your status generally as a TAP framework participant, but will terminate the EULA and any supplemental license(s) applicable to the Microsoft technology in the affected program (such termination will not affect terms and conditions that are expressly identified in as surviving termination).

6. Termination of TAP Framework Participant Status. Except as provided in section 4, we may each terminate this agreement upon five (5) days' prior written notice to the other party, including email notice to the contacts/addresses listed in section 10.2. Termination of your status as a TAP framework participant will not affect your ability to remain in any TAP framework program in which you are taking part as of the termination date. Subject only to section 5, you may continue to take part in any such program until it is otherwise completed. In addition, if this agreement, or your involvement in any particular program, is terminated, sections 2 through 7 will continue to apply.

7. Assignment.

7.1. Generally. Subject only to section 7.2, this agreement is binding upon and inures to the benefit of each of our respective successors and lawful assigns. Either of us may assign this agreement at any time to an affiliated company; otherwise, this agreement may not be assigned, by agreement, operation of law, or otherwise, without the prior, written approval of the other party.

7.2. Other Relationships. Some TAP framework programs contemplate that you will work with other companies that are not participants in the TAP framework in testing, evaluating, deploying or providing feedback on a Microsoft technology. If you take part in such a program, its program description will specify the extent to which you may assign your rights and responsibilities with respect to those companies for that particular program.

8. Program Limitations and Warranties.

8.1. Program Limitations and Our Warranties. Your effort and resulting performance are completely under your control. We do not guarantee your satisfaction with the program or your results. Except for loss and damage which cannot be limited or excluded under applicable law, (a) the Microsoft materials we provide you are "AS IS," and are provided without any other warranties of any kind and (b) WE DISCLAIM ON OUR OWN BEHALF AND ON BEHALF OF OUR AFFILIATES AND SUPPLIERS ALL OTHER WARRANTIES OF ANY KIND WHETHER EXPRESS OR IMPLIED. THIS LIMITATION INCLUDES, BUT IS NOT LIMITED TO TITLE, NON-INFRINGEMENT, MERCHANTABILITY, SATISFACTORY QUALITY and FITNESS FOR A PARTICULAR PURPOSE, OR ANY IMPLIED WARRANTY ARISING FROM COURSE OF DEALING OR USAGE OF TRADE. You must defend, indemnify and hold our affiliates and us harmless from any claim (including without limitation, reasonable attorney's fees) arising from your acts or omissions (and those of your agents) relating to your performance of this agreement. This limited warranty gives you specific legal rights. You may have others which vary by state/ jurisdiction. For purposes of this section, when we use "warranty," we include any other applicable terms or conditions.

8.2. Your Warranties. You represent that you will obtain sufficient permissions from your employees and/or contractors to grant the rights described in section 4.

9. Disclaimers and Limitations of Liability.

9.1. Disclaimer of Damages/Limitation of Remedies. IN THE ABSENCE OF FRAUD OR GROSS NEGLIGENCE, AND EXCEPT WITH REGARD TO A BREACH OF THE TERMS OF SECTION 3, NEITHER OF US WILL BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, PUNITIVE, INCIDENTAL OR SPECIAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, INCLUDING WITHOUT LIMITATION ANY SUPPORT SERVICES PROVIDED UNDER THE TAP FRAMEWORK FURTHER, THE SOLE REMEDY THAT EACH OF US MAY HAVE FOR ANY CLAIM ARISING OUT OF OR RELATED TO THIS AGREEMENT (INCLUDING ANY SUPPORT SERVICES PROVIDED UNDER THE TAP FRAMEWORK, BUT EXCLUDING CLAIMS RELATED TO BREACH OF A EULA OR THE TERMS OF SECTION 3) IS TO TERMINATE THIS

AGREEMENT AND/OR YOUR ASSOCIATION WITH A GIVEN TAP FRAMEWORK PROGRAM. THESE TERMS APPLY REGARDLESS OF THE FORM OR CAUSE OF ACTION OR THE ALLEGED BASIS OF THE CLAIM. THIS LIMITATION OF REMEDIES OR LIABILITY IS ENFORCEABLE TO THE MAXIMUM EXTENT PERMITTED BY LAW. Our liability for loss or damage of any kind (including loss or damage caused by negligence) is reduced to the extent that you or your agents caused or contributed to that loss or damage.

9.2. Consumer Rights. Nothing in this agreement is intended to limit the rights of a consumer, as may be defined by applicable law. To the extent necessary, this agreement is considered to be modified to reflect this intention. Consumers may have the benefit of certain rights or remedies which may not be excluded under applicable law. If so, then to the maximum extent permitted by law, our liability is limited, at our option either to (a) resupply the services or (b) the reasonable cost to resupply the services.

10. Additional Terms.

10.1. Expenses; Duration. Except as modified or deleted by the program description for a particular program, we agree that: (a) we will each be responsible for our own expenses in connection with the TAP framework and any particular TAP framework program; and (b) the Microsoft group sponsoring a program may, at its discretion, change its duration or its start or end date.

10.2. Notices. Notices may be provided either by electronic mail or physical mail. We designate the following individual(s) to receive notices:

You:	Microsoft:
Name: Phil Kaplan	Name: TAP Director
Email: philk@vitalstream.com	Email: tapagree@microsoft.com
Fax: 949-727-9660	Fax: 425-708-1883
Telephone: 949-743-2000	Telephone: 425-882-8080
Address: One Jenner, Suite 100 Irvine, CA 92611	Address: One Microsoft Way Redmond, WA 98052
Name: Art Sida	Name: LCA
Email: asida@vitalstream.com	Email: N/A
Fax: 949-727-9660	Fax: 425-706-7329
Telephone: 949-743-2000	Telephone: 425-882-8080
Address: One Jenner, Suite 100 Irvine, CA 92611	Address: One Microsoft Way Redmond, WA 98052

We may each specify substitutions of the foregoing individuals by giving written notice in accordance with this section.

10.3. Government Participation. If you are a government (including any specific agency or other entity of a government), you agree that any technology or services provided in any particular program are for your sole use and benefit of the government and are not provided to or for any individual government employee. As there may be legal restrictions on your ability to provide or participate in publicity activities or related program requirements, we agree to negotiate in good faith an amendment to conform specific program requirements related to publicity to your legal requirements.

10.4. Order of Precedence. With any inconsistency between these terms and conditions and the TAP web site, the TAP web site will prevail over this agreement. When the TAP web site changes, we will give you notice 30 days before the change(s) takes effect. You agree either (a) to be bound by those changes or (b) to terminate your participation in the TAP framework. To enable flexibility in individual programs, if a program description includes terms that supplement or conflict with the terms in this framework agreement or the TAP web site, the terms of the program description will control with respect to that particular program.

10.5. Non-Microsoft Technology. Nothing in this agreement restricts you from supporting, promoting, distributing, or using non-Microsoft technology.

10.6. Language. We offer this agreement in several languages. The language version of the agreement you accept will control. If you are in Canada, it is the express wish of the parties that this agreement, and any associated program documentation, be written and signed in English. C'est la volonté expresse des parties que la présente convention ainsi que les documents qui s'y rattachent soient rédigés en anglais.

10.7. Services. Microsoft Consulting Services and/or Premier Support Services may be provided to you under a specific program. These services will be provided to you according to the terms and conditions of the Microsoft Master Services Agreement or Microsoft Business Agreement and applicable Statement of Services or under the terms and conditions governing PSS support incidents. You may use an existing MSA or MBA to receive MCS or Premier Support. If you are providing services to your customer under a TAP program, the services you provide must be in accordance with the program documentation.

10.8. Microsoft Corporation and Affiliates - Third Party Beneficiaries. You acknowledge and agree that certain sections of this agreement are for the express benefit of Microsoft Corporation and its affiliates. As a result, Microsoft and its affiliates are entitled to require your due performance of each such provision. This agreement is being entered into by us not only in our own right but also as agent and trustee for each of our affiliates. Subject to the foregoing, this agreement does not create any enforceable rights by anyone other than the parties to this agreement.

10.9. Taxes. If goods and services, value-added, use or sales tax are payable by us on any supplies made under this agreement, an amount on account of these taxes will be payable by you as invoiced to you.

11. Law.

11.1. Applicable Law; Attorneys' Fees. Applicable law, jurisdiction and venue for this agreement are identified in this section 11. This choice of jurisdiction and venue does not prevent either party from seeking injunctive relief with respect to a violation of intellectual property rights, confidentiality obligations or enforcement or recognition of any award or order in any appropriate jurisdiction. If either party commences litigation in connection with this agreement, the prevailing party will be entitled to recover its reasonable attorneys' fees, costs and other expenses.

11.2 Generally. Except as provided in section 11.3 below, this agreement is governed by the laws of the State of Washington. The parties consent to exclusive jurisdiction and venue in the courts sitting in King County, Washington. You waive all defenses of lack of personal jurisdiction and forum non conveniens.

11.3. Other Terms. If your principal place of business is in one of the countries or regions listed below, or if you are a government entity, the corresponding provision applies, which supersedes section 11.2 to the extent that it is inconsistent:

(a) If your principal place of business is in **Australia and its external territories, Malaysia, New Zealand, and Singapore**, the following applies:

The jurisdiction of the courts of King County, Washington is non-exclusive.

(b) If your principal place of business is in **Japan**, the following applies:

Our agreement shall be construed and controlled by the laws of Japan, and you consent to exclusive original jurisdiction and venue in the Tokyo District Court. In any action to enforce any right or remedy under this agreement or to interpret any provision of this agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees, costs and other expenses.

(c) If your principal place of business is in **Afghanistan, Albania, Algeria, Andorra, Angola, Armenia, Austria, Azerbaijan, Bahrain, Belarus, Belgium, Benin, Bosnia and Herzegovina, Botswana, Bouvet Island, Bulgaria, Burkina Faso, Burundi, Cameroon, Central African Republic, Chad, Comoros, Congo, Cote d'Ivoire, Croatia, Cyprus, Czech Republic, Democratic**

Republic of Sao Tome and Principe, Denmark, Djibouti, Egypt, Estonia, Ethiopia, Faeroe Islands, Finland, France, Gabon, Gambia, Georgia, Germany, Ghana, Gibraltar, Greece, Greenland, Guadeloupe, Guinea-Bissau, Hungary, Iceland, Ireland, Israel, Italy, Jordan, Kazakhstan, Kenya, Kosovo, Kuwait, Kyrgyzstan, Latvia, Lebanon, Lesotho, Liberia, Liechtenstein, Lithuania, Luxembourg, Macedonia, Madagascar, Malawi, Mali, Malta, Mauritania, Mauritius, Moldova, Monaco, Morocco, Mozambique, Namibia, Netherlands, New Caledonia, Niger, Nigeria, Norway, Oman, Pakistan, Poland, Portugal, Qatar, Republic of Cape Verde, Republic of Equatorial Guinea, Republic of Guinea, Republic of Senegal, Reunion, Romania, Russian Federation, Rwandese Republic, Saint Helena, San Marino, Saudi Arabia, Seychelles, Sierra Leone, Slovakia, Slovenia, Somalia, Spain, Svalbard and Jan Mayen, Swaziland,

Sweden, Switzerland, Tajikistan, Tanzania, Togo, Tunisia, Turkey, Turkmenistan, Uganda, Ukraine, United Arab Emirates, United Kingdom, Uzbekistan, Vatican City State, Yemen, Zaire, Zambia, Zimbabwe, the following applies:

Our agreement is governed by and construed in accordance with the laws of Ireland and you consent to the jurisdiction of and venue in the Irish courts in all disputes arising out of or relating to this agreement.

(d) If your principal place of business is in the **People's Republic of China** (for the purpose of this agreement, the People's Republic of China does not include Hong Kong SAR or Taiwan), the following applies:

Our agreement shall be construed and controlled by the laws of the People's Republic of China, and you consent to submit any dispute arising out of or in relation to the agreement and the Addendum to the binding arbitration at the China International Economic and Trade Arbitration Commission in Beijing (CEITAC) in accordance with its rules in effect from time to time.

(e) If your principal place of business is in **India, Indonesia, or Thailand**, the following applies:

Any dispute arising out of or in connection with this agreement, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration in Singapore in accordance with the Arbitration Rules of the Singapore International Arbitration Centre ("SIAC"), which rules are deemed to be incorporated by reference into this section. The Tribunal shall consist of one arbitrator to be appointed by the Chairman of SIAC. The language of the arbitration shall be English. The decision of the arbitrator shall be final, binding and incontestable and may be used as a basis for judgment thereon in India, Indonesia, or Thailand (as appropriate), or elsewhere. The agreement shall be governed by the laws of the State of Washington, USA.

(f) If your principal place of business is in **Columbia, Philippines, Uruguay, or Vietnam**, the following applies:

All disputes, claims or proceedings between the parties relating to the validity, construction or performance of this agreement shall be settled by arbitration in accordance with UNCITRAL Arbitration Rules as at present in force. This appointing authority shall be the International Chamber of Commerce ("ICC") acting in accordance with the rules adopted by the ICC for this purpose and the place of arbitration will be Seattle, Washington, U.S.A. There shall only be one arbitrator. The award shall be final and binding on the parties. The parties hereto irrevocably agree to submit all matters and disputes arising in connection with this agreement to arbitration in Washington.

(g) If your principal place of business is in **Republic of Korea**, the following applies:

Our agreement shall be construed and controlled by the laws of Republic of Korea, and you consent to exclusive original jurisdiction and venue in the Seoul District Court. In any action to enforce any right or remedy under this agreement or to interpret any provision of this agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees, costs and other expenses.

(h) If your principal place of business is in **Taiwan**, the following applies:

The terms of this agreement shall be governed by and construed in accordance with the laws of Taiwan. The parties hereby designate the Taipei District Court as the court of first instance having jurisdiction over any disputes arising out of or in connection with this agreement.

(i) If you are a government entity, this agreement will be governed by your laws.

12. **Entire Agreement.** This agreement constitutes the entire agreement (including the program Web site) between us with respect to your participation in the TAP framework. This agreement may not be modified except by a written document dated subsequent to the date of this agreement and signed on behalf of you and Microsoft by our respective duly authorized representatives. This agreement supersedes any prior agreements and representations between the parties in relation to the subject matter. Upon entering into this agreement, each party does

not rely, and has not relied, upon any representation (whether negligent or innocent), statement or warranty made or agreed to by any person except those expressly set out in this agreement. This clause shall not apply to any statement representation or warranty made fraudulently. You warrant that you will rely on your own skill and judgment or that of your advisers to determine whether to sign this agreement, participate in a TAP program, or acquire Microsoft technology.

To acknowledge and confirm your acceptance and agreement to the terms set forth above, please sign two copies in the space provided below and return them to your Microsoft TAP program manager.

Microsoft Corporation

By: /s/ Chris Burroughs

Name: Chris Burroughs

Title: Product Unit Manager

Date: August 24, 2004

VitalStream

By: /s/ Phil Kaplan

Name: Phil Kaplan

Title: Chief Operating Officer

Date: August 6, 2004

Exhibit 10.5

Microsoft Services Provider License Agreement

Microsoft Certified Partner
 Number
 (Services Provider to complete)
 (waiver attached)

Agreement Number 9366940
 (Microsoft to complete)

This Microsoft Services Provider License Agreement ("Agreement") is between the entities identified below. You must be a Microsoft Certified Partner in order to enter into this Agreement. Please provide your Microsoft Certified Partner number above.

This Agreement and attached documents must be sent to Microsoft (as specified below) for processing and approval. If the Agreement is approved, Microsoft will sign the Agreement and send you a fully executed original. The Effective Date of this Agreement will be the date Microsoft signs the Agreement after execution by you as specified below. Each party agrees to notify the other in accordance with Section 16(d) if the information below changes during the Term.

This Agreement consists of this cover page, the contact information, the enclosed Terms and Conditions (including the Exhibits), the SPUR, the Price List, and any addenda, amendments and/or Affiliate Agreements entered into under this Agreement. These documents form the entire agreement between you and Microsoft and supersede all prior and contemporaneous communications, agreements or contracts, whether oral or written, concerning the subject matter hereof. By signing this Agreement, you acknowledge that you have access to the Internet and have the capability to send and receive electronic mail ("e-mail").

Company	Contracting Microsoft affiliate
Name of Entity VitalStream, Inc.	Microsoft Licensing, GP
Signature /s/ David R. Williams	Signature /s/ Patrick Morgan
Printed Name David R. Williams	Printed Name Patrick Morgan
Printed Title Vice President, Operations	Printed Title Contract Admin.
Signature Date 1/9/04	Signature Date (date Microsoft affiliate countersigns) 1/20/04
	Effective Date (may be different than our signature date) 2/1/04

Notices to Microsoft should be sent to:	Copies should be sent to:
Microsoft Licensing, GP 6100 Neil Road, Suite 210 Reno, Nevada USA 89511-1137 Dept. 551, Volume Licensing	Microsoft Law and Corporate Affairs One Microsoft Way Redmond, WA 98052 USA

Company Contact Information

Company	
Name of Entity VitalStream, Inc.	Contact Name (This person handles access to online information and Receives notices, unless a different contact is provided below.) /s/ Dave Williams
Street Address (physical address only) One Jenner, #100	Contact Email Address (required for online access) dwilliams@vitalstream.com
City and State/Province Irvine, CA	Phone 944-743-2030
Country and Postal Code USA 92618	Fax 949-727-9660
Microsoft Account Manager Name Ken Fiore	Microsoft Account Manager Email Address kenfi@microsoft.com

If online access and notices should be provided to someone or some place other than above, complete this section:	
Name of Entity	Contact Name
Street Address (physical address only)	Contact Email Address (required for online access)
City	Phone
Country	Fax
Microsoft Account Manager Name	Microsoft Account Manager Email Address

Enter the billing information that we should use to invoice you.	
Name of Entity	Contact Name

VitalStream, Inc.	/s/ Sue Dryden
Street Address (physical address only)	Accounts Payable Contact Email Address
One Jenner, #100	sdryden@vitalstream.com
City and State/Province	Accounts Payable Phone
Irvine, CA	949-743-2031
Country and Postal Code	Accounts Payable Fax
USA 92618	949-727-9660
	Tax-Exempt Status (To be completed by U.S. company's only) <input type="checkbox"/> Check if tax exempt and attach tax-exempt certificate or other documentation to support your tax-exempt status. If we do not receive your certificate or documentation, tax will be applied.

TERMS AND CONDITIONS

1. Scope of Agreement.

This Agreement sets forth the terms upon which you may license Microsoft Software Products on a nonperpetual basis in order to provide Software Services to your Customers. This Agreement is not intended to, and does not, modify or restrict your use of Microsoft software products that you license solely for internal use under other license agreements with Microsoft (e.g., Open, Select or Enterprise license agreements).

2. Definitions.

In this Agreement, "you" means the legal entity that has entered into this Agreement with Microsoft, including any Affiliates to whom you have granted rights under this Agreement; and "Microsoft" means the Microsoft company which has signed this Agreement and its Affiliates. Microsoft and you may each be referred to individually as a "party" or collectively as the "parties" in this Agreement. In addition, the following terms are defined:

"Affiliate" means a legal entity that (a) owns and controls a party, directly or indirectly, or (b) is owned and controlled, directly or indirectly, by a party, or (c) is directly or indirectly under common ownership and control with a party.

"Affiliate Agreement" means the agreement contained in Exhibit A to this Agreement.

"Client Software" means software that is installed on a Device, which allows the Device to access or use the services or functionality provided by Server Software.

"Confidential Information" means these Terms and Conditions as negotiated between the parties, the Price List, all addenda, amendments and/or Affiliate Agreements entered into under this Agreement, and any items of information provided by a party that the other party is required to treat as confidential under the terms of this Agreement. Confidential Information does not include information which: (a) the recipient developed independently; (b) the recipient rightfully knew before receiving it under this Agreement; or (c) is or subsequently becomes publicly available or is received from another source, in both cases other than by a breach of an obligation of confidentiality.

"Customer" means an individual or legal entity that obtains Software Services from you, either directly from you or indirectly through a Reseller.

"Customer Agreement" means the contract between you and a Customer under which you provide Software Services to such Customer; or, in the case of a Reseller, the contract between the Reseller and the Customer under which the Reseller provides Software Services obtained from you to such Customer.

"Customer License Terms" means the license terms contained in Exhibit B to this Agreement.

"Device" means a computer, workstation, terminal, handheld PC, pager, telephone, personal digital assistant, "smart phone," or other electronic device.

"Media" means a CD, diskette or other tangible storage media containing one or more of the Software Products.

"Microsoft Certified Partner" means an individual or other legal entity that participates in the Microsoft Certified Partner Program by entering into a Microsoft Certified Partner Agreement.

"Microsoft Designated Web Site" means one or more Microsoft Internet sites that support Microsoft's licensing business. Microsoft will provide you with the Internet addresses (URLs), user IDs and passwords for each applicable Microsoft Designated Web Site. You will treat as Confidential Information any user IDs and passwords provided to you under this Agreement.

"MOET" means the Microsoft Order Entry Tool. MOET is an online tool that enables Monthly Use Reports to be submitted electronically to Microsoft. MOET is accessed through a Microsoft Designated Web Site that Microsoft will identify to you.

"Monthly Use Report" means the software use report that you must submit each month via MOET or other electronic format specified by Microsoft.

"OEM" means an original equipment manufacturer that pre-installs Microsoft operating system Software Products on a computer system purchased by you.

"PL" means a processor license, as further described in the SPUR.

"Price List" means the Microsoft document containing the per-month unit prices for each of the Software Products that may be licensed under this Agreement. The Price List is published periodically on a Microsoft Designated Web Site that Microsoft will identify to you.

"Redistribution Software" means software that may be installed on a Device and which may be used, modified, reproduced and/or redistributed by a Customer without separate payment to Microsoft, such as "sample," "redistributable," and/or software development ("SDK") software code and tools.

"Related Printed Materials" means the copyrighted Microsoft guides, manuals or other printed materials describing or explaining any of the Software Products.

"Reseller" means a legal entity to which you grant rights under Section 3(g) to redistribute, to its Customers, Software Services provided by you.

"SAL" means a subscriber access license, as further described in the SPUR.

"Server" means a shared computer in a network, which computer provides resources, services, or information to other computers or hardware devices in the network.

"Server Software" means software that is installed on, and provides services or functionality on, a Server.

"Services Provider" means a business entity that uses one or more Software Products licensed under this Agreement to provide Software Services.

"Services Provider Use Rights" or **"SPUR"** means the Microsoft document containing the use rights specific to each version of the Software Products that may be licensed under this Agreement.

"Software Products" means the Microsoft software products identified in the Price List and the SPUR that you may license under this Agreement to provide Software Services to Customers. A Software Product includes Server Software and may also include Client Software and/or Redistribution Software, depending on the product. The term Software Products also includes any fix that Microsoft releases generally (such as commercial product service paks) provided to you under this Agreement that updates, fixes, patches or supplements the original Software Products.

"Software Services" means services that make available, display, run, access, or otherwise interact with the functionality of the Software Products, which you provide to Users from one or more data centers through the Internet or a private network on a rental, subscription or services fee basis. Software Services excludes any services that involve installation of any Software Product directly on any Device such that a Customer could interact with the Software Product even if that Device were not connected to the Internet or a private network.

"Term" means the term of this Agreement, which is defined in Section 10(a), including any extension for particular Customer Agreements as described in Section 10(b).

"User" means an individual who is authorized by you or your Reseller to access and/or use a Software Product in the form of Software Services.

"Zero Use" means you, your Affiliates (if any) and Resellers (if any) did not use any of the Software Products to provide Software Services during the previous calendar month.

3. Use of the Software Products.

(a) Use and Ownership. Subject to these Terms and Conditions (including but not limited to paragraphs (b) through (o) below) and the use rights contained in the SPUR, Microsoft grants you a non-perpetual, non-exclusive, terminable, non-transferable, worldwide and limited right during the Term to copy, install, access, display, run, distribute, make available or otherwise interact with the functionality of the Software Products in order to provide Software Services. This Agreement does not transfer any ownership rights in any Software Product and Microsoft reserves all rights not expressly granted. This license will automatically terminate upon expiration or termination of this Agreement.

(b) **Restrictions on Use.** You may not:

- (1) Rent, lease, encumber, pledge, lend, copy, make available or distribute the Software Products to any third party, except as expressly permitted by this Agreement;
- (2) Separate the components of a Software Product made up of multiple components by installing them on different Servers, or by upgrading or downgrading them at different times, except as expressly permitted in the SPUR;
- (3) Remove, modify or obscure any copyright, trademark or other proprietary rights notices that appear on the Software Products or that appear during use of the Software Products;
- (4) Reverse engineer, decompile, or disassemble the Software Products, except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation; and
- (5) Provide Software Services to the U.S. Government under any agreement resulting from a solicitation issued prior to December 1, 1995.

Obtaining Software Product Media and Related Printed Materials. You may order Media containing the Software Products directly from Microsoft. You may also obtain Microsoft operating system Software Products from an OEM that has preinstalled such software on a computer system purchased by you. If necessary or appropriate, Microsoft will provide you with specific and unique product activation / copy protection bypass codes in order to permit installation, re-installation and copying of the Software Products; and you will treat as

(c) Confidential Information any product activation / copy protection bypass codes that are provided to you. Microsoft will invoice you for all orders. Microsoft may request additional information and verification from you before fulfilling any orders for Media and Related Printed Materials. Contact information for Microsoft will be provided at the time this Agreement is signed by Microsoft and may be updated by Microsoft from time-to-time. Microsoft may change the process for ordering Media and Related Printed Materials upon thirty (30) days prior written notice.

Applicability of License Terms Contained in End-User license Agreement. If you obtain Software Products from Microsoft, the terms of this Agreement permanently and irrevocably supersede the terms of any end user license agreement (“EULA”) which may be presented in electronic form during installation of the Software Products. If you obtain any Microsoft operating system Software Product from an OEM, unless the SPUR specifically states otherwise, the terms of this Agreement will supersede the use terms (but not warranty terms) of any EULA that accompanies such Software Product or which may be presented in electronic form during installation of such Software Product, but only when such Software Product is used by you to provide Software Services under this Agreement. If any additional software (such as patches or fixes) is provided to you with the Software Products, and such additional software comes with a separate EULA, then such software is licensed to you under the terms of the EULA and not under this Agreement.

Internal Use. You may use Software Products licensed under this Agreement for your internal use, so long as: (1) you report such use in your Monthly Use Report and pay for such use pursuant to Section 6; and (2) such use is less than fifty percent (50%) of the total use of such Software Products by all of your Customers (calculated on a product-by-product basis) each month.

Copying and Distribution of Software Products and Related Printed Materials. For purposes of installation and back-up only, you may make one (1) copy of the Media containing the Software Products for each of your data centers. You must include on the backup copies all copyright, trademark and proprietary notices contained in or on the Software Products. You may not distribute any Media containing Server Software to any Customer or to any other third party except Outsourcing Companies and Affiliates. So long as your Customer Agreements comply with Section 8(b) below, you may distribute Media containing only Client Software and/or Redistribution Software to your Customers. You may not copy any Related Printed Materials. If a Software Product contains documentation that is provided only in electronic form, you may print one (1) copy of such electronic documentation for your own use.

Distribution of Software Services Through Resellers. You may resell and distribute your Software Services through one or more Resellers, subject to the terms of this Section 3(g) and the other terms of this Agreement.

(1) **Identification of Resellers.** In connection with any compliance verification under Section 9(b), you will provide Microsoft with the name and address of your Reseller(s). Microsoft will treat the names and addresses of your Resellers as Confidential Information.

(2) **Limited Right.** If you permit a Reseller to distribute your Software Services, your agreement with the Reseller must state that further distribution of the services other than to Customers is not permitted.

Copying and Distribution of Software Products by Resellers. Your Reseller's Customer Agreements must comply with Section 8(a) below. So long as your Reseller's Customer Agreements comply with Sections 8(b) and 8(e) below, you may authorize the Reseller to distribute Media containing only Client Software and/or Redistribution Software to its Customers. If you distribute Client Software and/or Redistribution Software to a Reseller, you will be legally responsible to Microsoft for any unauthorized installation, use, copying, access or distribution of such Client Software and/or Redistribution Software by such Reseller.

- (4) **Reporting Use.** You are responsible for consolidating all information regarding the use of the Software Products (in the form of Software Services) by your Reseller's Customers and reporting such information to Microsoft in your Monthly Use Report.
- (5) **Termination of Right.** Any termination or expiration of this Agreement will automatically terminate any rights granted under this Section 3(g).

Affiliates. You may grant to your Affiliates the rights granted to you under this Agreement, so long as each Affiliate: (1) executes an Affiliate Agreement in substantially similar form to the agreement contained in Exhibit A prior to exercising any rights under this Agreement; and (2) remains an Affiliate as defined herein. You will keep on file all executed Affiliate Agreements and deliver them (h) to Microsoft upon request. You unconditionally and irrevocably guarantee the Affiliate's compliance with the terms of this Agreement; however, your Affiliates do not submit Monthly Use Reports to Microsoft. You are responsible for consolidating all information regarding the use of the Software Products by your Affiliates and reporting such information to Microsoft in your Monthly Use Reports. You and your Affiliate will be jointly and severally liable for any breach of the terms of this Agreement or the SPUR by such Affiliate.

(i) **Customer Demonstrations.** You may permit your employees and authorized persons acting on your behalf to demonstrate your Software Services to prospective Customers, so long as the use rights for the Software Product(s) that you want to demonstrate (contained in the SPUR) do not restrict such use. You do not need to report demonstrations of the Software Products in your Monthly Use Report; however, you may not have more than fifty (50) active user IDs for demonstration purposes. You will keep accurate records of all demonstrations, including the name of the prospective Customer and the number of user IDs involved in the demonstration; and you will make such records available for inspection in connection with any compliance verification conducted under Section 9(b).

(j) **Customer Evaluations.** You may use the Software Products to provide Software Services on a trial basis to your Customers, for up to thirty (30) days per Customer, solely for the purpose of evaluation of such Software Services by such Customers, so long as: (1) the use rights for the Software Product(s) (contained in the SPUR) do not restrict such use; (2) the Customer Agreement between you and the Customer meets the requirements of Section 8 below; and (3) you do not charge or impose any fee on, or receive any benefit from, the Customer in connection with evaluation of the Software Services. You do not need to report evaluation use of the Software Products in your Monthly Use Report. You will keep accurate records of all Customer evaluations, including the name and address of the prospective Customer and the total number of user IDs involved in the evaluation; and you will make such records available for inspection in connection with any compliance verification conducted under Section 9(b).

(k) **Evaluation and Testing of Software Products.** You may install and use the Software Products on Servers connected to your internal network(s) for the purpose of internal testing and evaluation. You do not need to report such use of the Software Products in your Monthly Use Report. For Software Products commercially released on or before the Effective Date, you may test and evaluate such products for a period of ninety (90) days beginning on the Effective Date. For Software Products released after the Effective Date, you may test and evaluate such products for a period of ninety (90) days beginning on the commercial release date of such products.

(l) **Data Center Outsourcing.** Subject to the terms imposed in this Section 3(1), you may allow installation of Server Software on Servers under the day-to-day management and control of a third party ("Outsourcing Company") who performs data center management services for you.

Identification of Outsourcing Company. In connection with any compliance verification under Section 9(b), you will provide

- (1) Microsoft with the name and address of the Outsourcing Companies providing services to you. Microsoft will treat the names and addresses of your Outsourcing Companies as Confidential Information.

Scope of Use. You are responsible for all of your obligations under this Agreement regardless of the physical location of the Servers containing the Server Software. The Outsourcing Company's access to and use of Server Software is limited to performing data center

- (2) administration, testing and/or maintenance support services for you only. The Outsourcing Company may not access or use the Server Software for any other purpose. You will be legally responsible to Microsoft for any unauthorized installation, use, copying, access or distribution of the Server Software by the Outsourcing Company.

Data Center Inspection. In connection with any compliance verification under Section 9(b), Microsoft may conduct a reasonable inspection of all Servers that contain Server Software at the Outsourcing Company's data center(s). Your agreement with the

- (3) Outsourcing Company must permit this inspection by Microsoft. Any inspection will be conducted during regular business hours at the Outsourcing Company's facilities, with at least ten (10) days prior notice, and in such a manner as not to interfere unreasonably with the operations of the Outsourcing Company.

Copies of Software Products. Upon termination or expiration of your agreement with an Outsourcing Company, you will use all commercially reasonable efforts to:

- (4) (i) remove all copies of Server Software installed on the Outsourcing Company's Servers or otherwise render such Server Software permanently unusable; and (ii) ensure that the Outsourcing Company returns or destroys all copies of the Software Products in its possession or under its control.

Server Administration and Maintenance. You may authorize up to twenty (20) employees or authorized persons acting on your behalf

- (m) per data center (including persons employed by an Outsourcing Company performing services for you under Section 3(l) above) to have access to and use the services or functionality of the Software Products for the sole purpose of testing, maintenance and administration of the Software Products. You do not need to report such use of the Software Products in your Monthly Use Report.

Use of Trademarks and Logos. Except as provided for in Section 3(f), this Agreement does not grant you any rights to any Microsoft trademarks, logos or service marks. You may make descriptive references to Microsoft's non-stylized word marks in documentation, advertising, and marketing materials, including web pages, according to Microsoft's standard trademark guidelines (available for viewing at www.microsoft.com/trademarks). You do not have permission to use any Microsoft logo without a license from Microsoft. Microsoft logo license information can be obtained from <http://www.microsoft.com/trademarks> or by contacting Microsoft. Microsoft's legal or equitable rights to protect its trademarks against infringement, dilution, or other misuse are not restricted by this Agreement.

- (n)

Compliance with license Requirements. You will inform your employees, agents, and other individuals who have access to the Software Products that the Software Products (1) are licensed by Microsoft, (2) may only be used subject to the terms of this Agreement, and (3)

- (o) may not be copied, transferred or otherwise used in violation of such terms. You will use all commercially reasonable efforts to prevent any unauthorized distribution, copying, use, or pirating of the Software Products.

4. Services Provider Use Rights.

Version Specific. Your use of any Software Product is subject to the applicable use rights contained in the SPUR. The use rights for the Software Products are version-specific. Once use rights for a version of a Software Product are added to the SPUR, Microsoft will not

(a) change the use rights for such version during the Term. However, Microsoft may revise the SPUR during the Term in order to add use rights for new Software Products, add use rights for new versions of Software Products, remove Software Products, or make non-material changes to the SPUR.

Publication. The SPUR is published periodically on a Microsoft Designated Web Site that Microsoft will identify to you. Microsoft will

(b) publish revisions to the SPUR no later than the first day of the month one (1) calendar month before the effective date of the revised SPUR.

Effective Date. The effective date of a revised SPUR will be stated in the SPUR. The effective date will be at least one (1) calendar month

(c) after the publication date as provided under Section 4(b) above. If a new Software Product (or new version of a Software Product) is the subject of a SPUR revision, you may begin to license the new Software Product on the effective date of the new SPUR.

Removal of Software Products from SPUR. You may continue to license any Software Product that is removed from the SPUR if

(d) (1) you had previously licensed the removed Software Product prior to the time of its removal from the SPUR, and (2) Microsoft has not notified you (in accordance with Section 16(d) below) that the Software Product was removed from the SPUR due to an intellectual property infringement claim or in accordance with a court or other governmental order. The use rights applicable to any removed Software Product will be those stated in the SPUR that was in effect immediately prior to removal of the Software Product.

5. Monthly Use Reports.

Reporting Use; Zero Use. You must report your use of the Software Products each month of the Term by submitting a Monthly Use Report through MOET, or a Zero Use report through emquest@microsoft.com or an alternative as specified by Microsoft. Microsoft will provide you with details concerning the use of MOET once this Agreement is approved by Microsoft (or at your request). You will provide all applicable information requested in the Monthly Use Report, including but not limited to your Customers' name, address, zip/postal

(a) code, countries where you provide Software Services, and the total number of SALs and PLs required for each Software Product licensed by you during the preceding calendar month. If you grant rights to any Affiliates or to any Resellers under this Agreement, you must incorporate and consolidate their use of the Software Products in your Monthly Use Report. A report of Zero Use, if applicable, must contain a statement that you, your Affiliates (if any) and Resellers (if any) did not use any of the Software Products to provide Software Services during the previous calendar month.

Submission; Failure to Submit. You must submit the Monthly Use Report through MOET, or submit a Zero Use report by e-mail, no later than fifteen days (15) days after the last day of the calendar month covered by the report. A duly authorized representative of your company must certify the Monthly Use Report (or Zero Use report, if applicable) as accurate and complete. The failure to timely submit

(b) a complete and accurate Monthly Use Report each month (or Zero Use report, if applicable) will be a breach of this Agreement under Section 10(c)(2). For purposes of this Section 5 and Section 6(e) below, "timely" means that Microsoft has received the report by the stated due date, "accurate" means that you have correctly filled-in all reporting fields in the report, and "complete" means that you have filled-in all required reporting fields in the report.

Report Revisions. All adjustments or revisions (e.g., ordering mistakes) to a Monthly Use Report that result in a reduction of license fees

(c) to Microsoft must be submitted within ninety (90) calendar days from the original invoice date. All revised Monthly Use Reports must be accompanied with a detailed explanation of the adjustment or revision.

Modification of Reporting Structure. Microsoft may reasonably revise the format of the Monthly Use Report submitted through MOET from time-to-time, as well as specify another electronic format and procedure for submitting Monthly Use Reports and/or Zero Use reports.

- (d) Microsoft will notify you of any reporting changes by publishing the revised form or procedures on a Microsoft Designated Web Site no later than the first day of the month one (1) calendar month before the changes go into effect. You will not be required to submit more than one (1) Monthly Use Report per month.
- (e) **Final Monthly Use Report.** Upon termination or expiration of this Agreement, you will submit within thirty (30) days, a final Monthly Use Report (or Zero Use report, as applicable) covering your use of the Software Products up to the date of termination or expiration.
- (f) **Assistance With Reporting.** Upon request, Microsoft will use commercially reasonable efforts to assist you with reporting and will work with you to facilitate the monthly reporting process.
- (g) **Use of Information.** Microsoft will use information provided in a Monthly Use Report only for revenue calculation, internal revenue allocation, compliance, and billing purposes. Microsoft will treat such information as Confidential Information.

6. Pricing; Invoices; Payment Terms and Rebates.

- Pricing and Invoices.** Using the SAL and PL unit prices stated in the Price List, Microsoft will invoice you monthly based upon the number
- (a) of SALs and PLs reported in your Monthly Use Report. Your monthly invoice will include any internal use of the Software Products as reported by you in your Monthly Use Report.

- Adding and Removing Software Products from the Price List.** Microsoft may periodically change the Price List by adding or removing Software Products. Microsoft will publish revisions to the Price List on a Microsoft Designated Web Site no later than the first day of the month one (1) calendar month before the effective date of the revised Price List. The continued licensing of Software Products removed from the Price List is described in Section 4(d).
- (b)

- (c) **Price Changes.** Microsoft may decrease prices in the Price List at any time. Microsoft may increase prices in the Price List only as follows:

- (1) Once each calendar year effective on January 1st. This price increase will not exceed, on a percentage basis, any price increase for the same Software Product during the same calendar year under the "No Level" price level of Microsoft's Open licensing program; and

- (2) At any other time without limit (but in no event more often than in other licensing programs that Microsoft offers), for prices other than in U.S. Dollars, to offset exchange rate fluctuations. Microsoft will apply in that currency the same exchange rate that it applies in other licensing programs.

Microsoft will notify you of any price changes by publishing a revised Price list on a Microsoft Designated Web Site no later than thirty (30) days before they become effective. For purposes of your reporting obligations under Section 5 and your payment obligations under Section 6(d) the applicable Price list will be the Price List in effect during the usage month for which you are reporting. For example, if price changes become effective July 1st, you will report and make payment for June usage pursuant to the Price List that was in effect through June 30th.

Payment Terms. All amounts payable by you under this Agreement are due and owing thirty (30) days after the date of Microsoft's invoice. If payment is not received by Microsoft by the due date stated in the invoice, you may be assessed a finance charge (accruing from the due date until payment is received) of one and one-half percent (1.5%) of the invoice amount per month or the legal maximum, whichever is less. You agree to pay all Microsoft invoices regardless of whether you have received payment from your Customers and/

(d) or Resellers. You will pay the full amount of the invoice in U.S. Dollars (or Canadian Dollars if you are located in Canada) by bank wire transfer or electronic funds transfer through an Automated Clearing House ("ACH") with electronic remittance detail attached. You will include the Agreement number and the Microsoft invoice number, if any, on each electronic payment. You may not withhold payment or make deductions to any payment prior to the issuance of a credit by Microsoft for rebates, billing errors or for any other appropriate reasons.

Depending on your location, you will remit payment each month to one of the following accounts (or such other account(s) as Microsoft may specify in writing):

(All locations in the Americas except Canada):

(Use only if you are located in Canada):

MICROSOFT LICENSING, GP

Region Collections

PO Box 842467

Account # 375 1205782

ABA#: 111000012

Bank of America, N.A.

1401 Elm Street, 5th Floor

Dallas TX 75202-2467

United States

MICROSOFT LICENSING, GP

Collections

Royal Bank of Canada, Plaza Branch

Account #125-391-3

Bank/Branch Transit # 003/0002

Toronto, ON

Canada

Remittance detail for wire transfers must also be sent either by fax or e-mail:

Remittance detail for wire transfers must also be sent either by fax or e-mail:

Fax: (425) 936-7329, Attention: Special

Agreements Payments

E-mail: spagpay@microsoft.com

Fax: (425) 936-7329, Attention: Special

Agreements Payments

E-mail: spagpay@microsoft.com

Rebates. You may earn a semi-annual rebate from Microsoft of up to three percent (3%) of the total amount stated in all of your monthly invoices issued during the Applicable Rebate Period (the "Rebate Amount"). You may earn: (1) up to fifty percent (50%) of the Rebate Amount for the timely, accurate and complete submission of your Monthly Use Report; and (2) up to fifty percent (50%) of the Rebate Amount for payment of all of your monthly invoices within thirty (30) days after the date of Microsoft's invoice. Your entitlement to the Rebate Amount will be measured on a month-to-month basis every six (6) calendar months (i.e., January 1st to June 30th, and July 1st to December 31st, each a "Rebate Period"). If the Effective Date of this Agreement falls within a Rebate Period, you may earn a prorated rebate based upon the number of whole months falling within the Rebate Period.

(e)

Payment. If you earn all or a portion of the Rebate Amount during a Rebate Period, it will be paid to you in the form of an invoice credit that will be applied to the monthly invoice sent to you three (3) months after the end of the applicable Rebate Period (e.g., the October invoice for the January - June Rebate Period). If you are entitled to receive a rebate following the end of the Term, Microsoft will apply the rebate to your final invoice. However, if you are in breach of any of the terms of this Agreement at the time of issuance of a rebate, your rebate will be withheld until you cure the breach; and, if you fail to cure the breach in accordance with Section 10(c)(2), you will forfeit the rebate.

(1)

Rebate Disputes. You must notify Microsoft of any issues regarding the amount of the Rebate Amount issued (or not issued) to you
(2) no later than sixty (60) days following your receipt (or failure to receive) a credit for the applicable Rebate Period. You waive any and all right to dispute the amount of a credit if you do not notify Microsoft within such sixty (60) day period.

Taxes. The unit prices stated in the Price List do not include any applicable taxes (including, without limitation, income, property, franchise, gross receipts, goods and services, excise, sales, use, and value added taxes), duties, fees, tariffs, or other governmental charges or expenses (individually and collectively "Taxes").
(f)

Liability for Taxes. You will pay all applicable Taxes (and any penalties, interest, or other additions to such Taxes) now or hereafter imposed, levied or assessed by a duly constituted and authorized taxing authority on the Software Products licensed by you under
(1) this Agreement or on any transactions arising out of or related to your use of the Software Products (including, but not limited to, the Software Services provided by you). "Taxes" do not include taxes that Microsoft is obligated to pay under applicable law that are based on the net worth, capital, property, or income of Microsoft.

Billing and Collection. If Microsoft is required or permitted to collect Taxes from you under applicable law, and if such Taxes are your responsibility under this Agreement, then Microsoft will include the amount of such Taxes in your monthly invoice ("Collected Taxes"). Upon request, Microsoft will provide you with tax receipts or other evidence indicating that Microsoft has remitted the
(2) Collected Taxes to the appropriate taxing authority. If you provide a tax exemption certificate to Microsoft that is acceptable to Microsoft and to the appropriate taxing authority (including without limitation a resale certificate), then, after the date upon which such certificate is received in proper form, Microsoft will not collect the Taxes covered by such certificate.

Failure to Pay Taxes. If you fail to pay any Taxes that are your responsibility under this Agreement, and if Microsoft is required to
(3) pay such Taxes on your behalf, you will reimburse Microsoft for the full amount of such Taxes, including any interest, penalties, costs and expenses (including reasonable attorneys' fees) incurred by Microsoft resulting from your failure.

Withholding by Foreign Tax Authorities. If you are required to withhold Taxes from payments made by you to Microsoft under this Agreement, you may deduct such Taxes from the amount owed Microsoft and pay them to the appropriate taxing authority. In such event, you will promptly obtain and send to Microsoft an official receipt for any such Taxes withheld or other documents necessary to
(4) enable Microsoft to claim a U.S. Foreign Tax Credit. You will be responsible to Microsoft for any amounts withheld by you for which you have not delivered to Microsoft such official receipt. You will minimize the amount of withheld Taxes to the extent possible under applicable law.

Tax Treatment. This tax section shall govern the treatment of all taxes arising as a result of or in connection with this Agreement
(5) notwithstanding any other section of this Agreement.

7. Support Services.

- (a) **Microsoft Support.** Product support is not included under this Agreement. You may obtain product support services from Microsoft under a separate agreement.

- (b) **Customer Support Requirements.** You will provide commercially reasonable support to your Customers by obtaining and continuously maintaining: (1) a Microsoft Premier support services agreement; (2) support services through the Microsoft Professional support program with prepayment for at least ten (10) incidents; or (3) support services that are equivalent to either (1) or (2) above from a third party support services provider.

8. Customer Agreements.

- (a) **Minimum Required Terms.** Your Customer Agreements will, at a minimum, contain terms protective of Microsoft as follows: (1) terms that are at least as protective of Microsoft's intellectual property rights as the terms contained in Section 3(b)(3) and 3(b)(4) above; (2) terms that disclaim, to the extent permitted by applicable law, all warranties by Microsoft and any liability by Microsoft for any damages, whether direct, indirect, or consequential, arising from the use of the Software Services; and (3) terms stating that product support for the Software Services are provided by you or a third party on your behalf and are not provided by Microsoft.

- (b) **Customer License Terms.** If you distribute Client Software and/or Redistribution Software in order to provide Software Services to your Customers, you will incorporate, into your Customer Agreements for any Customers that require such Client Software and/or Redistribution Software, terms and conditions that are substantially similar to, and in any event no less restrictive than, the Customer License Terms contained in Exhibit B. In addition, if you distribute Redistribution Software, you will also incorporate into your Customer Agreements (but only for such Customers that will be using such Redistribution Software) the applicable terms contained in the SPUR regarding the use, modification, copying and/or distribution of such Redistribution Software. You may, subject to confidentiality restrictions, disclose the SPUR to your Affiliates, Customers and Resellers in order to fulfill these obligations.

- (c) **Compliance.** At any time during the Term, if Microsoft believes in good faith that any Customer is not complying with the Customer License Terms, you will cooperate in good faith with Microsoft in investigating and remedying such non-compliance.

- (d) **Failure to Flow Down Customer License Terms.** You will be legally responsible to Microsoft for any unauthorized installation, use, copying, access or distribution of Client Software and/or Redistribution Software by a Customer if you fail to: (1) incorporate, into your Customer Agreements as required above, terms and conditions that are similar to, and in any event no less restrictive than, the Customer License Terms; and/or (2) require your Resellers to incorporate, into their Customer Agreements as required under Section 3(g) (3), terms and conditions that are substantially similar to, and in any event no less restrictive than, the Customer License Terms.

- (e) **Copies of Software Products.** Upon termination of a Customer Agreement, you will use all commercially reasonable efforts to: (1) remove all copies of Client Software and/or Redistribution Software from the Customer's Devices or otherwise render such software permanently unusable; and (2) ensure that the Customer returns or destroys all copies of Client Software and/or Redistribution Software in its possession.

9. Record Keeping and Verifying Compliance.

- (a) **Record Keeping.** During the Term and for two (2) years thereafter, you will keep records of your use of the Software Products, the use of the Software Products by your Affiliates (if any), the Software Services provided by you and/or your Affiliates to Customers and through Resellers, and all other records that are required to be kept under this Agreement.

Verifying Compliance. Microsoft has the right to verify compliance with this Agreement, at its expense, during the Term and for two (2) years thereafter. Such verification will take place at your facilities upon not less than thirty (30) days prior notice, during normal business hours and in a manner that does not interfere unreasonably with your operations. Microsoft will engage an independent accountant from a nationally recognized public accounting firm ("Independent Auditor"), selected by Microsoft, to verify compliance. The Independent Auditor will be subject to a confidentiality obligation, which is at least as protective of your Confidential Information as set forth herein.

- (b) You will provide the Independent Auditor with access to the relevant records, information and facilities, including access to any data center(s) or facilities where Server Software is installed. Microsoft may also require you to accurately complete a self-audit questionnaire relating to your use, and the use by your Affiliates (if any), of the Software Products. Microsoft will treat information disclosed by you during verification or self-audit as Confidential Information and will use such information only to enforce its rights under this Agreement and any applicable laws, and to determine whether you are in compliance with the terms of this Agreement. By invoking the rights and procedures described above, Microsoft does not waive its right to enforce this Agreement or to protect its intellectual property by any other means permitted by law.

Unreported Use. If verification or self-audit reveals unreported use of the Software Products, you must promptly order sufficient PLs and/or SALs to cover all such unreported use. If verification or self-audit reveals material unreported use of the Software Products, in addition to promptly ordering sufficient PLs and/or SALs to cover the unreported use, you must also pay Microsoft: (1) an additional fee of fifteen percent (15%) of the prices stated in the then current Price List for each SAL and/or PL that you are required to order; plus (2) the reasonable costs incurred by Microsoft to conduct the verification. In addition, in any case where material unreported use of a Software Product is

- (c) found, it will be presumed that such unreported use began upon commencement of each Customer relationship with you, unless your records reasonably demonstrate that such unreported use was limited in scope and duration. For purposes of this Section 9(c), "material unreported use" will exist if your use of the Software Products, as reported in your Monthly Use Reports, is less than ninety-five percent (95%) of your actual use (as disclosed during verification or self-audit). If verification or self-audit does not disclose material unreported use of the Software Products, Microsoft will not undertake another verification or self-audit for at least one (1) year, unless Microsoft receives information that would lead it to believe in good faith that material unreported use of the Software Products has occurred since the previous verification.

10. Term and Termination.

- (a) **Term.** The term of this Agreement is three (3) years, commencing on the Effective Date (the "Term"), unless the Term is extended or this Agreement is otherwise terminated as provided below.

- Term Extension.** If you are not in breach of this Agreement on the last day of the Term, and if you have continuing obligations to provide Software Services under existing Customer Agreements which extend beyond the end of the Term, then you may obtain an extension of the Term of this Agreement for the sole purpose of providing Software Services to such existing Customers. In order for the Term extension to apply, you must notify Microsoft of the extension in accordance with Section 16(d) no later than thirty (30) days before the end of the Term, and your notice must include the total number of Customer Agreements that extend beyond the end of the Term and their respective expiration dates. The Term extension will be limited to the longest remaining contract period

between you and an existing Customer or thirty-six (36) months, whichever period of time is shorter. You may not provide Software Services to any new Customers under a Term extension of this Agreement nor provide Software Services to any existing Customer beyond the remaining contract period of the existing Customer Agreement. Except as stated in this Section 10(b), there is no express or implied obligation on either party to renew or extend this Agreement upon termination or expiration; and, if the Term of this Agreement is extended in accordance with the terms imposed here, such extension does not create any right or obligation to continue such relationship on the same terms as those contained in this Agreement after the Term extension ends. Notwithstanding extension of the Term, this Agreement is, and will always be interpreted as, a fixed term agreement and not an indefinite term agreement.

(c) Termination of the Agreement.

- (1) Termination Without Cause.** You may terminate this Agreement without cause, so long as you provide sixty (60) days advance notice to Microsoft in accordance with Section 16(d).

- (2) Termination for Breach.** A party may terminate this Agreement due to breach by the other party (including, without limitation, any breach of the use rights contained in the SPUR). A notice of breach describing the nature of the breach must first be sent to the breaching party in accordance with Section 16(d). This Agreement will not be terminated if the breaching party cures the breach within thirty (30) days after receipt of notice.

- (3) Termination by Microsoft.** Notwithstanding Section 10(c)(2) above, without prejudice to any other rights, Microsoft may immediately terminate this Agreement by providing you with notice in accordance with Section 16(d) if: (i) you breach Section 16(a) ("Assignment"); (ii) there are three (3) or more material breaches by you of the use rights contained in the SPUR; (iii) you engage in, or participate with any third party in, the unauthorized manufacture, copying, distribution or use of any Software Products, or otherwise engage in the infringement of Microsoft's intellectual property rights; (iv) you make any assignment for the benefit of creditors, file a petition in bankruptcy, or are adjudged bankrupt or become insolvent or are placed in the hands of a receiver; or (v) you report Zero Use in your Monthly Use Report for more than six (6) consecutive months. In addition, if you fail to maintain "Microsoft Certified Partner" member-level status (or equivalent status under any successor program) at all times during the Term, Microsoft may terminate this Agreement upon thirty (30) days prior written notice, so long as such failure is not thereafter corrected within such thirty (30) day period.

- (d) Obligations on Termination or Expiration.** The termination or expiration of this Agreement will automatically terminate all license rights granted under this Agreement. Upon termination or expiration of this Agreement, and provided you have not entered into a subsequent agreement, you must return to Microsoft, or at Microsoft's direction, destroy and certify to Microsoft the destruction of, all copies of the Software Products, their component parts, and Related Printed Materials in your possession or control that were obtained from Microsoft and licensed under this Agreement. You must likewise instruct all Affiliates, Customers, and Resellers, as applicable, to do the same. There will be no refund of amounts paid for Related Printed Materials or for Media containing Software Products that have been so returned or destroyed. Termination or expiration of this Agreement will not affect your right to use, in accordance with the terms of the applicable end user license agreement ("EULA"), any Microsoft software products legally obtained and licensed under other Microsoft license agreements or through other authorized channels of distribution.

11. Limited Warranty.

Software Product Limited Warranty. Microsoft warrants that each version of the Software Products will perform substantially in accordance with its end user documentation ("Documentation"). This limited warranty is valid for a period of one (1) year from the date you first copy, install, access, run, display or otherwise interact with such version of the Software Products (the "Warranty Period"). To the extent permitted by applicable law, any warranties imposed by law concerning the Software Products are limited to the same Warranty Period.

If you notify Microsoft within the Warranty Period that a Software Product does not meet this warranty, then, at Microsoft's option, Microsoft will either: (1) repair or replace such Software Product; or (2) refund the total amount paid by you for such Software Product. Any software that repairs or replaces a Software Product is warranted for the remainder of the Warranty Period or ninety (90) days, whichever period is longer.

This limited warranty does not apply to Redistribution Software, which you are permitted to redistribute under the SPUR. This limited warranty is void if failure of the Software Products is the result of accident, abuse, misapplication or unauthorized modification.

This limited warranty does not apply to any Software Products obtained by you from an OEM. The warranty provided by the OEM, if any, will apply in lieu of the limited warranty stated in this Section 11(a).

You do not have the right to make on behalf of Microsoft any other warranties or promises to any Customer concerning any Software Product that are not contained in this Section 11(a).

After expiration of the Warranty Period but during the Term of this Agreement, if you notify Microsoft of any material deviations between performance of a Software Product and its Documentation, and such deviations have been already reported by other Microsoft licensees, or, after your report, are reported commonly by other Microsoft licensees and are acknowledged by Microsoft, then Microsoft will use commercially reasonable efforts to correct such deviations and provide corrections to you in the form of a fix or patch at such time as Microsoft makes such corrections generally available to other Microsoft licensees.

The foregoing states Microsoft's entire liability and your exclusive remedy for any breach of the limited warranty described in this Section 11(a).

NO OTHER WARRANTIES. EXCEPT FOR THE LIMITED WARRANTY PROVIDED IN SECTION 11(a) ABOVE, TO THE EXTENT PERMITTED BY APPLICABLE LAW, MICROSOFT DOES NOT MAKE ANY REPRESENTATIONS OR EXPRESS WARRANTIES AND DISCLAIMS ALL WARRANTIES, DUTIES AND CONDITIONS WITH RESPECT TO THE SOFTWARE PRODUCTS, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, LACK OF VIRUSES, ACCURACY OR COMPLETENESS OF RESPONSES OR RESULTS, OR CORRESPONDENCE TO DESCRIPTION. THERE ARE NO WARRANTIES OF TITLE, NON-INFRINGEMENT, QUIET ENJOYMENT OR QUIET POSSESSION WITH RESPECT TO THE SOFTWARE PRODUCTS. THE ENTIRE RISK AS TO THE QUALITY OF OR ARISING OUT OF USE OR PERFORMANCE OF THE SOFTWARE PRODUCTS, IF ANY, REMAINS WITH YOU.

Fault Tolerance. The Software Products are not fault-tolerant and are not designed, manufactured or intended for use with on-line control equipment in hazardous environments requiring fail-safe performance (e.g., the operation of nuclear facilities, aircraft navigation or communication systems,

air traffic control, direct life support machines, or weapons systems environments), in which the failure of the Software Products could lead directly to death, personal injury, or severe physical, property or environmental damage ("High Risk Activities"). MICROSOFT AND ITS SUPPLIERS SPECIFICALLY DISCLAIM ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS FOR HIGH RISK ACTIVITIES.

12. Defense of Infringement and Misappropriation Claims.

- Duty to Defend.** Microsoft will defend you against and, subject to Section 13(a) will pay the amount of any resulting adverse final judgment (or settlement to which Microsoft consents) resulting from any claims by an unaffiliated third party that (1) a Software Product infringes any copyright or trademark enforceable in any jurisdiction; or (2) a Software Product infringes any patent issued and enforceable in the United States, Australia, the European Union, or Japan on or before the date this Agreement expires or is terminated, or (3) misappropriates any trade secret protected under the laws of the United States (as the terms "misappropriate" and "trade secret" are defined in the Uniform Trade Secrets Act). Microsoft's obligation under this Section 12(a) is subject to your notifying Microsoft promptly in writing of the claim and giving Microsoft sole control over its defense or settlement. You will provide Microsoft with reasonable assistance in defending the claim, and Microsoft will reimburse you for any reasonable out-of-pocket expenses incurred in providing such assistance.
- (a)** **Exceptions to Duty.** Microsoft's obligations under Section 12(a) will not apply to any infringement claim that is based on your:
- (1) Use of the Software Product after Microsoft notifies you to discontinue use because of an infringement claim, or
 - (2) Combining the Software Product with a non-Microsoft product, data or business process if such claim would not have arisen but for such combination, or
 - (3) Altering the Software Product if such claim would not have arisen but for such alteration
 - (4) Your use of our trademark(s) without express written consent to do so; or
 - (5) For any trade secret claim, your acquiring a trade secret (a) through improper means; (b) under circumstances giving rise to a duty to maintain its secrecy or limit its use; or (c) from a person (other than Microsoft or its affiliates) who owed to the party asserting the claim a duty to maintain the secrecy or limit the use of the trade secret.

You will reimburse Microsoft for all reasonable costs or damages that result from these actions.

- Opportunity to Cure.** If Microsoft receives information concerning an infringement claim related to a Software Product, Microsoft may, at its expense and without obligation to do so, either (1) procure for you the right to continue to use the allegedly infringing Software Product or (2) modify the Software Products or replace it with a functional equivalent, to make it non-infringing, in which case you must immediately stop using the allegedly infringing Software Product. If, as a result of an infringement claim, your use of a Software Product is enjoined by a court of competent jurisdiction, Microsoft will, at its option, either procure the right to continue its use, replace the Software Product with a functional equivalent, or modify the Software Product to make it non-infringing, and in the event that Microsoft is unable to provide any of the above through commercially reasonable efforts, Microsoft will refund the amount paid, and terminate the license, for the infringing Software Product.
- (c)**

- Other Third Party Claims.** If any other type of third party claim is brought against you regarding Microsoft's intellectual property (i.e., any third party claim not covered under Section 12(a) above), you must notify Microsoft promptly in writing. Microsoft may, at its option, choose to treat these claims as being covered by this Section 12.
- (d)**

Exclusive Remedy. The rights and remedies granted to you under this Section 12 and Section 13 (Limitation of Liability) state Microsoft's entire liability and your exclusive remedy with respect to any claim of infringement of the intellectual property rights of a third party, whether arising under statutory or common law or otherwise.

13. Limitation of Liability.

Limitation. Microsoft's liability under this Agreement will be limited to the maximum extent permitted by applicable law to direct damages up to the amount you have paid Microsoft under this Agreement. The foregoing limitation does not apply to Microsoft's obligation to pay the costs of defending an infringement or trade secret misappropriation claim under Section 12(a); however, the foregoing limitation does apply to Microsoft's obligation to pay any final judgment or settlement under Section 12(a).

In the case of Redistribution Software, Microsoft's total liability is limited to Five Thousand Dollars (US\$5,000) or its equivalent in local currency. The limitations contained in this paragraph will not apply with respect to the following in connection with the performance of this Agreement: (1) Microsoft's liability for damages for gross negligence or willful misconduct, to the extent caused by us or our agent and awarded by a court of final adjudication; and (2) our obligations under Section 15 (Confidentiality).

No Liability for Certain Damages. To the maximum extent permitted by applicable law, neither you or Microsoft, nor the parties' respective Affiliates or suppliers, will be legally responsible for any indirect damages (including, without limitation, consequential, special, punitive or incidental damages, damages for loss of profits or revenues, loss of privacy, business interruption, or loss of business information), arising out of the use of or inability to use the Software Products or otherwise under or in connection with this Agreement, even if advised of the possibility of such damages or if such possibility was reasonably foreseeable. The exclusion of liability in this Section 13(b) does not apply to either party's liability to the other for violation of its confidentiality obligation or of the other party's intellectual property rights.

Application. Except as specified expressly in this Section 13, the limitations on and exclusions of liability for damages in this Agreement apply regardless of whether the liability is based on breach of contract, tort (including negligence), strict or product liability, breach of warranty, or any other legal theory, and even if any remedy fails of its essential purpose.

14. Compliance with Export Laws.

The Software Products licensed under this Agreement are of U.S. origin for purposes of U.S. export control laws. You will comply with all applicable international and national laws that apply to the Software Products, including the U.S. Export Administration Regulations, as well as end-user, end-use and destination restrictions issued by U.S. and other governments. For additional information, see <http://www.microsoft.com/exporting/>.

15. Confidentiality.

Use of Confidential information. For a period of five (5) years after initial disclosure, neither party will use the other party's Confidential Information without the other party's written consent except in furtherance of this business relationship (or as expressly permitted by this section 15) or disclose the other party's Confidential Information except: (1) when disclosure is necessary for a party to enforce its rights under this Agreement or any applicable laws; (2) to obtain advice from legal or financial consultants; or (3) if compelled by law, in which case the party compelled to make the disclosure will

use its best efforts to give the other party notice of the requirement so that the disclosure can be contested. The parties will take reasonable precautions to safeguard each other's Confidential Information. Such precautions will be at least as great as those each party takes to protect its own Confidential Information, but in no event less than a reasonable degree of care. A party may disclose the other party's Confidential Information to its employees, agents or consultants, provided that such disclosures are only on a need-to-know basis and are subject to the confidentiality obligations imposed here. When Confidential Information is no longer necessary to perform or enforce any obligation under this Agreement, each party will return it to the other party or destroy it at the other's request.

Cooperation in the Event of Disclosure. A party will immediately notify the other upon discovery of any unauthorized use or disclosure (b) of Confidential Information and will cooperate in any reasonable way to help the other party regain possession of the Confidential Information and prevent further unauthorized use.

16. Miscellaneous.

Assignment. You may not assign your rights or obligations under this Agreement, whether by contract, merger, operation of law, or otherwise, without the prior written consent of Microsoft. Microsoft will not unreasonably withhold or delay its consent to a request for assignment. Microsoft may assign this Agreement or any portion thereof to any Affiliate without your consent. Microsoft will notify you of any such assignment in writing. Any attempted assignment in violation of this Section is null and void. (a)

Order of Precedence. If there is any direct inconsistency between these Terms and Conditions and any terms contained in the SPUR, then these Terms and Conditions will control. However, for the avoidance of doubt, in the event that a subject is addressed in the SPUR and not in these Terms and Conditions, then the terms in the SPUR will control. The terms of this Agreement will control over any purchase order you may send to Microsoft. (b)

Amendments. This Agreement, except for the SPUR and the Price List, may be changed only by a written amendment that is signed by an authorized representative of each party. Microsoft may amend the SPUR in accordance with Section 4(a), and Microsoft may amend the Price List in accordance with Sections 6(b) and 6(c). (c)

Notices. Except as provided in Sections 4(b), 5(c), 6(b) and 6(c), all notices under this Agreement must be addressed to a party (as specified on the first page of this Agreement) and sent by one of the following methods: (1) postage prepaid, certified or registered mail, return receipt requested; (2) overnight courier (e.g., DHL, Federal Express, Airborne), charges prepaid, confirmation requested; or (3) facsimile, with confirmation of delivery. Notices will be deemed delivered on the date shown on the postal return receipt or on the overnight courier or facsimile confirmation of delivery. (d)

Applicable Law. This Agreement will be governed by and construed in accordance with the laws of the State of Washington, U.S.A., exclusive of its choice of law rules, and the federal laws of the United States. The 1980 United Nations Convention on Contracts for the International Sale of Goods and its related instruments will not apply to this Agreement. (e)

Dispute Resolution. If Microsoft brings an action to enforce this Agreement, Microsoft will bring it in the jurisdiction where you have your company headquarters. You will bring any action to enforce this Agreement in the State of Washington, U.S.A. This choice of jurisdiction and venue does not (f)

prevent either party from seeking injunctive relief with respect to a violation of intellectual property rights, confidentiality obligations or enforcement or recognition of any award or order in any appropriate jurisdiction.

(g) Survival. Sections 2, 6, 9, 10(d), 12, 13, 15, and 16 of this Agreement will survive the termination or expiration of this Agreement.

(h) Relationship. This Agreement does not create a joint venture, partnership, agency, representative, franchise or employment relationship between the parties. This Agreement does not grant either party the authority to act for the other party in any capacity or to make commitments of any kind for the account of, or on behalf of, the other party, except to the extent expressly set forth in this Agreement.

(i) No Waiver. No waiver of any breach of this Agreement shall be a waiver of any other breach, and no waiver shall be effective unless made in writing and signed by an authorized representative of the waiving party.

(j) Headings. The paragraph and Section headings in this Agreement are inserted for convenience only and will not in any way affect the meaning or construction of any provision of this Agreement.

(k) Severability. If a court holds any provision of this Agreement to be illegal, invalid or unenforceable, the remaining provisions will remain in full force and effect and the parties will amend the Agreement to give effect to the stricken clause to the maximum extent possible.

(l) Non-exclusivity. Your agreement is non-exclusive. Nothing contained in it requires you to license, use or promote Microsoft software products or services exclusively. You may, if you choose, enter into agreements with other parties to license, use or promote non-Microsoft software products or services.

(m) English Language. It is the express will of the Parties that this Agreement and all related documents have been drawn up in English. C'est la volonté expresse des parties que la présente convention ainsi que les documents qui s'y rattachent soient rédigés en anglais.

EXHIBIT A: AFFILIATE AGREEMENT FORM

Prior to exercising any rights (including but not limited to any use of Software Products) under your Services Provider License Agreement (the "Agreement"), each Affiliate must execute an Affiliate Agreement in the form specified below. Both you and the Affiliate must keep the executed Affiliate Agreement on file and must deliver it to Microsoft upon request.

[To be printed on Affiliate's company letterhead]

AFFILIATE AGREEMENT

For good and valuable consideration, [insert name of affiliate], a corporation organized under the laws of [insert name of jurisdiction] ("Affiliate") hereby covenants and agrees with [insert name of contracting Microsoft Affiliate] ("Microsoft"), that Affiliate will comply with all obligations of [insert name of company that has entered into the Agreement with Microsoft], a corporation organized under the laws of [insert name of jurisdiction] ("Company") under the Microsoft Services Provider License Agreement between Microsoft and Company effective as of [insert Effective Date] (the "Agreement").

Affiliate acknowledges and agrees that its agreement herein is a condition for Affiliate to exercise any of the rights granted by Company to Affiliate under the terms of the Agreement. Affiliate acknowledges and agrees that it will be bound by the Terms and Conditions of the Agreement applicable to Company and that it and Company will be jointly and severally liable to Microsoft for all obligations related to Affiliate's exercise of any license rights under the Agreement, including but not limited to, the payment of monthly fees under the Agreement. Notwithstanding the foregoing, Affiliate acknowledges that all Monthly Use Reports and payments to be provided by each Affiliate to Microsoft under the Agreement will be consolidated and provided to Microsoft each month by Company on behalf of Affiliate.

Affiliate acknowledges and agrees that, in the event Affiliate ceases to be an Affiliate of Company (as such term "Affiliate" is defined in the Agreement), then the rights granted hereunder will automatically terminate on the date that Affiliate ceases to be an Affiliate of Company.

Any terms used herein that are defined in the Agreement will have the same meaning as in the Agreement.

IN WITNESS WHEREOF, a duly authorized representative of Affiliate has executed this document as of the date set forth below. All signed copies of this document will be deemed originals.

(Name of Affiliate)

(Signature)

(Print Name and Title)

(Date)

EXHIBIT B: CUSTOMER LICENSE TERMS

You will use your name in place of references to "Company" below.

TERMS AND CONDITIONS REGARDING USE OF MICROSOFT SOFTWARE

This document concerns your use of Microsoft software, which includes computer software provided to you by [COMPANY] as described below, and may include associated media, printed materials, and "online" or electronic documentation (individually and collectively "SOFTWARE PRODUCTS"). [COMPANY] does not own the SOFTWARE PRODUCTS and the use thereof is subject to certain rights and limitations of which [COMPANY] needs to inform you. Your right to use the SOFTWARE PRODUCTS is subject to your agreement with [COMPANY], and to your understanding of, compliance with and consent to the following terms and conditions, which [COMPANY] does not have authority to vary, alter or amend.

1. **DEFINITIONS.**

"Client Software" means software that allows a Device to access or utilize the services or functionality provided by the Server Software.

"Device" means each of a computer, workstation, terminal, handheld PC, pager, telephone, personal digital assistant, "smart phone," or other electronic device.

"Server Software" means software that provides services or functionality on a computer acting as a server.

"Redistribution Software" means the software described in Paragraph 4 ("Use of Redistribution Software") below.

2. **OWNERSHIP OF SOFTWARE PRODUCTS.** The SOFTWARE PRODUCTS are licensed to [COMPANY] from an affiliate of the Microsoft Corporation ("Microsoft"). All title and intellectual property rights in and to the SOFTWARE PRODUCTS (and the constituent elements thereof, including but not limited to any images, photographs, animations, video, audio, music, text and "applets" incorporated into the SOFTWARE PRODUCTS) are owned by Microsoft or its suppliers. The SOFTWARE PRODUCTS are protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. Your possession, access, or use of the SOFTWARE PRODUCTS does not transfer any ownership of the SOFTWARE PRODUCTS or any intellectual property rights to you.

such Client Software and/or Redistribution Software upon termination or cancellation of your agreement with [COMPANY], upon notice from [COMPANY] or upon transfer of your Device to another person or entity, whichever first occurs.

You may not copy any printed materials accompanying the SOFTWARE PRODUCTS.

6. **LIMITATIONS ON REVERSE ENGINEERING, DECOMPILATION AND DISASSEMBLY.** You may not reverse engineer, decompile, or disassemble the SOFTWARE PRODUCTS, except and only to the extent that applicable law, notwithstanding this limitation expressly permits such activity.
7. **NO RENTAL.** You may not rent, lease, lend, pledge, or directly or indirectly transfer or distribute the SOFTWARE PRODUCTS to any third party, and you may not permit any third party to have access to and/or use the functionality of the SOFTWARE PRODUCTS.
8. **TERMINATION.** Without prejudice to any other rights, [COMPANY] may terminate your rights to use the SOFTWARE PRODUCTS if you fail to comply with these terms and conditions. In the event of termination or cancellation, you must stop using and/or accessing the SOFTWARE PRODUCTS, and destroy all copies of the SOFTWARE PRODUCTS and all of its component parts.

3. **USE OF CLIENT SOFTWARE.** You may use the Client Software installed on your Devices by [COMPANY] only in accordance with the instructions, and only in connection with the services, provided to you by [COMPANY]. The terms of this document permanently and irrevocably supersede the terms of any Microsoft End User License Agreement which may be presented in electronic form during your use of the Client Software.
4. **USE OF REDISTRIBUTION SOFTWARE.** In connection with the services provided to you by [COMPANY], you may have access to certain "sample," "redistributable" and/or software development ("SDK") software code and tools (individually and collectively "Redistribution Software"). **YOU MAY NOT USE, MODIFY, COPY, AND/OR DISTRIBUTE ANY REDISTRIBUTION SOFTWARE UNLESS YOU EXPRESSLY AGREE TO AND COMPLY WITH CERTAIN ADDITIONAL TERMS CONTAINED IN THE SERVICES PROVIDER USE RIGHTS ("SPUR") APPLICABLE TO [COMPANY], WHICH TERMS MUST BE PROVIDED TO YOU BY [COMPANY].** Microsoft does not permit you to use any Redistribution Software unless you expressly agree to and comply with such additional terms, as provided to you by [COMPANY].
5. **COPIES.** You may not make any copies of the SOFTWARE PRODUCTS; provided, however, that you may (a) make one (1) copy of Client Software on your Device as expressly authorized by [COMPANY]; and (b) you may make copies of certain Redistribution Software in accordance with Paragraph 4 (Use of Redistribution Software). You must erase or destroy all
9. **NO WARRANTIES, LIABILITIES OR REMEDIES BY MICROSOFT.** ANY WARRANTIES, LIABILITY FOR DAMAGES AND REMEDIES, IF ANY, ARE PROVIDED SOLELY BY [COMPANY] AND NOT BY MICROSOFT OR ITS AFFILIATES OR SUBSIDIARIES.
10. **PRODUCT SUPPORT.** Any product support for the SOFTWARE PRODUCTS is provided to you by [COMPANY] and is not provided by Microsoft or its affiliates or subsidiaries.
11. **NOT FAULT TOLERANT.** THE SOFTWARE PRODUCTS MAY CONTAIN TECHNOLOGY THAT IS NOT FAULT TOLERANT AND IS NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USE IN ENVIRONMENTS OR APPLICATIONS IN WHICH THE FAILURE OF THE SOFTWARE PRODUCTS COULD LEAD TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL, PROPERTY OR ENVIRONMENTAL DAMAGE.
12. **EXPORT RESTRICTIONS.** The SOFTWARE PRODUCTS are of U.S. origin for purposes of U.S. export control laws. You agree to comply with all applicable international and national laws that apply to the SOFTWARE PRODUCTS, including the U.S. Export Administration Regulations, as well as end-user, end-use and destination restrictions issued by U.S. and other governments. For additional information, see <http://www.microsoft.com/exporting/>.
13. **LIABILITY FOR BREACH.** In addition to any liability you may have to [COMPANY], you agree that you will also be legally responsible directly to Microsoft for any breach of these terms and conditions.

MICROSOFT SERVICES PROVIDER LICENSE AGREEMENT AMENDMENT

This amends the Microsoft Services Provider License Agreement ("Agreement") identified above between VitalStream, Inc. and Microsoft Licensing, GP ("Microsoft") as of the effective date identified below. Any terms that are used but not defined in this amendment will have the same meaning as in the Agreement. Italicized text is used in this amendment for the sole purpose of highlighting textual changes to existing terms of the Agreement.

The parties agree that the Agreement is amended as follows:

WHEREAS, as a prerequisite to entering into the Agreement, Microsoft requires you to be a Microsoft Certified Partner ("MCP") under the standard terms of its MCP program (or equivalent status under any successor program); and

WHEREAS, you must maintain Microsoft Certified Partner member-level status (or equivalent status under any successor program) during the Term of the Agreement; and

WHEREAS, if you fail to maintain Microsoft Certified Partner Program member-level status (or equivalent status under any successor program) during the Term of the Agreement, Microsoft may terminate the Agreement as provided in Section 10(c)(3) of the Agreement.

The parties agree that the Agreement is amended as follows:

1. On the Cover Page of the Agreement, the box that reads "Microsoft Certified Partner Agreement Number" shall remain blank.
2. In the first paragraph of the Agreement, the following sentences are deleted:

"You must be a Microsoft Certified Partner in order to enter into this Agreement. Please provide your Microsoft Certified Partner number below."

3. In Section 10(c)(3) of the Agreement (**Termination by Microsoft**) the last sentence of this subsection is replaced by the following new sentence:

In addition, if you fail to obtain "Microsoft Certified Partner" member-level status (or equivalent status under any successor program) by the date that is six (6) months from the Effective Date of the Agreement, or if you thereafter fail to maintain "Microsoft Certified Partner" member-level status (or equivalent status under any successor program) at all times during the Term, Microsoft may terminate this Agreement upon thirty (30) days prior written notice, so long as such failure is not thereafter corrected within such thirty (30) day period.

Except as specifically amended by this amendment, all provisions of the Agreement shall remain unchanged and in full force and effect. You must execute and return 2 copies of this amendment to Microsoft at the address below in order for the terms and conditions of this amendment to be considered by Microsoft.

This amendment is not legally binding until executed by Microsoft and shall become effective on that date. When this amendment is fully executed, you will receive a confirming copy.

Microsoft Licensing, GP
Attn: Dpt. 551, Volume Licensing
6100 Neil Road, Suite 210
Reno, NV 89511-1137

Microsoft Licensing, GP

By /s/ David R. Williams

Name, Title

By /s/ Patrick Morgan

Name, Title

David R. Williams, VP Operations

Date: 1/9/04

Patrick Morgan, Contract Admin.

EFFECTIVE DATE OF AMENDMENT: 2/1/2004

Prepared by: Renee Ragon

SUBSIDIARIES OF VITALSTREAM HOLDINGS, INC.

VitalStream, Inc, a Delaware corporation

VitalStream Broadcasting Corporation, a Nevada corporation

VitalStream UK Limited, a company organized under the laws of England

VitalStream Advertising Solutions, Inc., a Nevada corporation

PlayStream, Inc., a Nevada corporation (d/b/a “VitalStream Small Business Services” and “VitalStream”)

Note: Other than PlayStream, Inc., none of the subsidiaries listed above does business under a name different than its own name.

I, Jack L. Waterman, certify that:

I have reviewed this quarterly report on Form 10-Q/A of VitalStream Holdings, Inc.;

- Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary
1. to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
 2. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
 3. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (c) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
 4. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: July 5, 2006

/s/ Jack L. Waterman

Jack L. Waterman, Chief Executive Officer & Chairman (Principal Executive Officer)

I, Mark Z. Belzowski, Waterman, certify that:

I have reviewed this quarterly report on Form 10-Q/A of VitalStream Holdings, Inc.;

- Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary
1. to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
 2. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
 3. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (c) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
 4. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: July 5, 2006

/s/ Mark Z. Belzowski

Mark Z. Belzowski, Chief Financial Officer & Treasurer (Principal Financial Officer)

**CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report of VitalStream Holdings, Inc. (the "Company") on Form 10-Q/A for the quarter ended March 31, 2006 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Jack L. Waterman, Chief Executive Officer & Chairman of the Company, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that to the best of my knowledge:

- (1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ Jack L. Waterman

Jack L. Waterman

Chief Executive Officer & Chairman (Principal Executive Officer)

July 5, 2006

This certification accompanies the Report pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 and shall not, except to the extent required by the Sarbanes-Oxley Act of 2002, be deemed filed by the Company for purposes of Section 18 of the Securities Exchange Act of 1934, as amended.

**CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report of VitalStream Holdings, Inc. (the "Company") on Form 10-Q/A for the quarter ended March 31, 2006 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Mark Z. Belzowski, Chief Financial Officer (Principal Financial Officer) of the Company, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that to the best of my knowledge:

- (1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ Mark Z. Belzowski

Mark Z. Belzowski

Chief Financial Officer & Treasurer (Principal Financial Officer)

July 5, 2006

This certification accompanies the Report pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 and shall not, except to the extent required by the Sarbanes-Oxley Act of 2002, be deemed filed by the Company for purposes of Section 18 of the Securities Exchange Act of 1934, as amended.