IMPORTANT INFORMATION

READ CAREFULLY THE TERMS AND CONDITIONS OF THIS END USER LICENSE AGREEMENT, WHICH CONTAINS THE EXCLUSIVE TERMS AND CONDITIONS THAT GOVERN ALL USE OF THE APPLICABLE VIOLIN SOFTWARE TOOL OFFERED FREE OF CHARGE (“SOFTWARE”). THIS END USER LICENSE AGREEMENT DOES NOT APPLY TO VIOLIN’S FIRMWARE OR OPERATING SYSTEMS FOR USE WITH VIOLIN’S HARDWARE PRODUCTS. THE END USER LICENSE AGREEMENT FOR SUCH FIRMWARE OR OPERATING SYSTEMS IS AVAILABLE AT HTTP://WWW.VMEM.COM/WP-CONTENT/UPLOADED/VIOLIN-END-USER-LICENSE-AGREEMENT.PDF

INSTALLING, COPYING, ACCESSING, LOADING OR USING THE SOFTWARE IN ANY MANNER CONSTITUTES COMPLETE AND UNCONDITIONAL ACCEPTANCE OF THIS AGREEMENT AND CREATES A LEGALLY ENFORCEABLE CONTRACT IN WHICH LICENSEE WILL BE BOUND BY ALL TERMS AND CONDITIONS OF THIS AGREEMENT, WITHOUT MODIFICATION.

IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THIS AGREEMENT, OR IF YOU DO NOT HAVE FULL LEGAL AUTHORITY TO ACCEPT AND ENTER INTO THIS AGREEMENT, THEN YOU MAY NOT INSTALL, COPY, ACCESS, LOAD OR USE THE SOFTWARE IN ANY MANNE.

END USER LICENSE AGREEMENT FOR VIOLIN SOFTWARE TOOLS

This End User License Agreement (the Agreement) is entered into between Violin Systems LLC (Violin), and you (together with the business or other entity for which you obtain the Software, Licensee). Violin and Licensee agree as follows:

1. License. Subject to all terms and conditions in this Agreement, Violin grants Licensee a royalty-free, revocable, nonexclusive, nontransferable, non sublicensable right and license to install, run, and use the Software without modification, solely for Licensee’s testing and evaluation of Licensee’s storage environment. Use of the Software, other than in connection with Licensee’s testing and evaluation described herein, is permitted only pursuant to a separate written agreement with Violin. Licensee may make a reasonable number of copies of the Software for inactive archival purposes. Software is licensed, not sold. The Software is the property of Violin or its licensors and is protected by United States copyright laws. Licensee shall use all reasonable efforts to safeguard the Software against unauthorized access, use and disclosure.

2. Limitations. Licensee is not permitted to (a) publish, discuss, release, broadcast or otherwise disseminate to any third party, the results of any tests run with the Software without the express written permission of Violin; (b) use the Software, or any part thereof, to develop any software that is similar to (or replicates the functionality of) the Software; (c) disassemble, decompile, reverse engineer, modify, translate or otherwise make any attempt to discover the Software’s source code or underlying organization, structures, ideas or algorithms of the Software (except and only to the extent these restrictions are expressly prohibited by applicable law); (d) encumber, rent, lease, sublicense, distribute or transfer the Software; (e) copy (except as permitted in n 1.1), adapt, combine, create derivative works of, translate, localize, part or otherwise modify the Software; (f) use the Software in a live operating environment; (g) use the Software, or allow the transfer, transmission, export or re-export of all or any part of the Software or any product thereof, in violation of the provisions of Section 18 of this Agreement, or (h) permit any third party to do or attempt to do any of the foregoing.

3. Third Party Materials. The Software may include, access or otherwise operate, interface or be delivered with software or other applications or copyrighted materials (Third Party Materials), which are licensed from and owned by third parties (Third Party Licensor). Licensee unconditionally agrees that it will use Third Party Materials in accordance with this Agreement unless different license terms are expressly specified as being applicable to such Third Party Materials (Third Party License), and that Third Party Licensors (a) make no representation or warranty to Licensee concerning the Software, (b) have no obligation or liability to Licensee as a result of this Agreement and (c) are intended third party beneficiaries of this Agreement.

4. No Implied Licenses. Except for the limited rights and licenses expressly granted hereunder: no other license is granted (including by implication, estoppel or otherwise) and no other use is permitted; Licensee shall not use, possess, publish, copy (except as expressly permitted herein) or otherwise disclose the Software without the prior written consent of Violin; and Violin (and its licensors) shall retain all rights, title and interests (including all patent rights, copyright rights, trade secret rights and all other intellectual property and proprietary rights) in and to the Software. Licensee shall not to take any action inconsistent with such ownership.

5. Markings. Licensee shall not (and shall not permit any third party to) alter, obscure or remove any patent, trademark or other proprietary or legal notice contained on the Software.

6. Data. Licensee acknowledges and agrees that technical and other information related to the status and use of the Software that Licensee provides to Violin may (without attribution or restriction) be stored, analyzed and used by Violin in connection with updating Software, or supporting, developing and providing other commercial products and services and enforcing the terms of this Agreement.

7. Confidential Information. Confidential Information means any non-public information relating to, or derived from, the Software, including any test results, technical features, and benchmark or performance results. Except for the specific rights granted by this Agreement, Licensee shall not use or disclose any Confidential Information without Violin’s written consent, and shall use reasonable care to
protect the Confidential Information. Licensee shall be responsible for any breach of confidentiality by its employees and contractors. Promptly after any termination of this Agreement Licensee shall destroy or permanently erase all Confidential Information. Licensee may provide a copy of this Agreement or otherwise disclose its terms in connection with any financing transaction or due diligence inquiry or as otherwise required by applicable law or compulsory process.

8. Indemnification. Licensee agrees to defend, indemnify, and hold Violin harmless from any claim, by or on behalf of any third party or person claiming damage, which is brought against Violin, regardless of the cause, if such claim arises for any reason whatsoever, out of the use, operation, installation, configuration, uninstalling, or reliance upon the results generated by the Software licensed under this Agreement. To the extent applicable, Licensee will obtain Violin’s prior written consent to any settlement or judgment in which Licensee agrees to any finding of fault of Violin or defect in the Software. Violin will notify Licensee in writing of any claim subject to this indemnification, promptly provide Licensee with the information reasonable required for the defense of the same, and grant to Licensee exclusive control over its defense and settlement.

9. Disclaimers. THE SOFTWARE AND DOCUMENTATION ARE PROVIDED "AS IS" WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND.VIOLIN DOES NOT WARRANT THAT THE SOFTWARE WILL BE COMPATIBLE WITH ANY APPLICATION, HARDWARE OR ENVIRONMENT, OR THAT THE SOFTWARE WILL MEET LICENSEE'S REQUIREMENTS, OR THAT SOFTWARE OPERATION WILL BE UNINTERRUPTED OR ERROR-FREE. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, VIOLIN HEREBY DISCLAIMS (FOR ITSELF, THIRD PARTY LICENSORS AND AUTHORIZED DISTRIBUTORS) ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ORAL OR WRITTEN, INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, QUIET ENJOYMENT, ACCURACY, INTEGRATION, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE AND ALL WARRANTIES ARISING FROM ANY COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE. Licensee understands and accepts the entire risk of installing and using the Software, particularly in a production environment. Licensee is solely responsible for backing-up or otherwise protecting all software, data and other information on its system prior to installing, using or removing the Software.

LICENSEE ACKNOWLEDGES THAT THE SOFTWARE IS PROVIDED FOR TESTING AND ESTIMATION PURPOSES ONLY. ACTUALLY RESULTS OF VIOLIN'S PRODUCTS AND SOFTWARE MAY VARY.

10. Limitation of Liability. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER VIOLIN, NOR THIRD PARTY LICENSORS SHALL BE LIABLE CONCERNING THE SUBJECT MATTER OF THIS AGREEMENT, REGARDLESS OF THE FORM OF ANY CLAIM OR ACTION (WHETHER IN CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE), FOR ANY (A) MATTER BEYOND ITS REASONABLE CONTROL, OR COST OF PROCURING SUBSTITUTE TECHNOLOGIES, GOODS OR SERVICES, (B) INDIRECT, PUNITIVE, INCIDENTAL, RELIANCE, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES INCLUDING, BUT NOT LIMITED TO, INTERRUPTION OR LOSS OF DATA, USE, BUSINESS, REVENUES, PROFITS OR GOODWILL, OR (C) INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, PUNITIVE, OR DIRECT DAMAGES, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THESE LIMITATIONS ARE INDEPENDENT FROM ALL OTHER PROVISIONS OF THIS AGREEMENT AND SHALL APPLY NOTWITHSTANDING THE FAILURE OF ANY REMEDY PROVIDED HEREIN.

This license is provided to Licensee free of charge. Because of this, Licensee agrees that Sections 8, 9, and 10 of this Agreement are reasonable. Licensee acknowledges that the license for the Software would not be free if the provisions of Section 8, 9, and 10 were not in full force and effect.

11. TERMINATION. Licensee’s rights under this Agreement shall automatically terminate, without notice from Violin, if Licensee fails to comply with any provision of this Agreement. Upon termination of this Agreement, Licensee must stop using the Software, destroy all copies of the Software, and uninstall the Software from all Licensee machines upon which it was installed or stored. The provisions of Sections 2, 7, 8, 9, 10, 11, 12, 13, and 14 shall survive termination.

12. Entire Agreement. This Agreement constitutes the entire agreement, and supersedes all prior negotiations, understandings or agreements (oral or written), between the parties concerning the subject matter of this Agreement. Notwithstanding the foregoing, nothing in this Agreement will diminish Licensee’s rights under applicable law that may not be waived by contract. No waiver, consent or modification of this Agreement shall bind either party unless in writing and signed by the party against which enforcement is sought. The failure of either party to enforce its rights under this Agreement at any time for any period will not be construed as a waiver of such rights. If any provision of this Agreement is determined to be illegal or unenforceable, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable. This Agreement is in English only, which shall be controlling in all respects. No version of this Agreement in another language shall be binding or of any effect.

13. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California, USA, without regard to its conflicts of law provisions. In the event of any conflict between United States and foreign laws, regulations and rules, United States laws, regulations and rules shall govern. Exclusive jurisdiction and venue for any action arising under this Agreement is in the federal and state courts located in California having jurisdiction over Violin’s principal office, and both parties hereby consent to such jurisdiction and venue for this purpose.

14. Remedies. Unless specifically provided otherwise, each right and remedy in this Agreement is in addition to any other right or remedy, at law or in equity. Licensee agrees that, in the event of any breach or threatened breach of Sections 2 or 7, Violin may suffer irreparable damage for which there is no adequate remedy at law. Accordingly, in addition to any other remedy, Violin shall be entitled to seek injunctive and other equitable remedies to enjoin such breach or threatened breach, without the necessity of proving actual damages or posting any bond or surety.

15. Notices. Any notice or communication hereunder shall
be in writing and either personally delivered or sent via recognized express delivery courier or certified or registered mail, prepaid and return receipt requested. All notices shall be in English, effective upon receipt.

16. Assignment. This Agreement and the rights and obligations hereunder are personal to Licensee, and may not be assigned or otherwise transferred, in whole or in part, without Violin’s prior written consent.

17. License to Government. If any user of the Software is an agency, department or other entity of the United States Government, the use, duplication, reproduction, modification, release, disclosure or transfer of the Software or Documentation is restricted in accordance with FAR 12.212 for civilian agencies and DFAR 227.7202 for military agencies. The Software is commercial computer software and the Documentation is commercial computer software documentation. The use of the Software and Documentation is further restricted in accordance with the terms of this Agreement.

18. Export Laws and Regulations. Export laws of the United States and any other applicable local export laws and regulations apply to the Software. Licensee acknowledges and agrees: (a) that such export laws and regulations govern the use of the Software; (b) to comply with all such export laws and regulations (including “deemed export” and “deemed re-export” regulations; (c) and no portion of the Software will be exported, directly or indirectly, in violation of such laws and regulations, or used for any purpose prohibited by such laws and regulations including, but not limited to, the design, development, fabrication, training or testing of nuclear, chemical or biologic al weapons, or missiles, drones or space launch vehicles capable of delivering weapons of mass destruction. Licensee represents and warrants that Licensee: (x) is not located in a country that is subject to a United States Government embargo; or (y) has not been designated by the United States Government as a “terrorist supporting” country; or (z) is not listed on any United States Government list of prohibited or restricted persons or entities.

19. Acknowledgment. Licensee acknowledges that (a) it has read and understands this Agreement, (b) it has had an opportunity to have its legal counsel review this Agreement, (c) this Agreement has the same force and effect as a signed agreement and (d) issuance of this License does not constitute general publication of the Software.