



Visioneer OneTouch[®] Links SDK AGREEMENT

THIS SDK AGREEMENT (“Agreement”) is made and shall be effective as of the ___ day of _____, 2007, (the “Effective Date”) between Visioneer Inc., a Delaware Corporation, having a principal place of business at 5673 Gibraltar Drive, Suite 150, Pleasanton, California, 94588 (“Visioneer”) and _____, a _____ corporation having a principal place of business at _____ (“Licensee”).

1. Definitions

Capitalized terms in this Agreement have the following meanings:

“**Code**” means computer-programming code in either Object Code or Source Code form.

“**Documentation**” means the guides and manuals for use with the Software Product which are customarily supplied by Licensee to its customers along with the Software Product.

“**End User**” means a customer of Licensee receiving the Software Product pursuant to the distribution rights described in this Agreement.

“**Object Code**” means computer-programming code in substantially binary form, directly executable by a computer after processing or linking, but without compilation or assembly, and may include header files of the type necessary for use or interoperation with other computer programs.

“**OneTouch Link**” means a link that works with Visioneer OneTouch software so as to direct scanned images to destinations that include but are not limited to applications, devices, file folders or network destinations.

“**SDK**” means the Visioneer OneTouch Links Software Development Kit to be used solely for the development, marketing, sale and support of OneTouch Links developed by the Licensee. The software in the SDK will be delivered in Object Code with sample Source Code libraries as deemed necessary by Visioneer.

“**Software Product**” means the OneTouch Links developed by the Licensee using the SDK that may be distributed in Object Code form only, and may function only with Visioneer OneTouch software on Visioneer-branded, Xerox-branded or Visioneer OEM-branded devices.

“**Source Code**” means computer-programming code in a human-readable form and understandable by a programmer of ordinary skill.

“**Visioneer OneTouch**” means the Visioneer OneTouch software version 4, and all subsequent versions thereof and improvements thereto.

2. PRODUCT LICENSE AND LICENSEE’S OBLIGATIONS

2.1 License Grant: SDK Product. Visioneer hereby grants Licensee a limited, non-exclusive, non-transferable, non-sub-licensable right and license during the term of this Agreement: (i) to use the SDK only to develop and support the Software Product; (ii) to reproduce an unlimited number of OneTouch Links developed

under this agreement in object code form only for purposes of this license grant; and (iii) to distribute, offer for sale, sell and support the Software product within the Territory. To assist the Licensee in the development of OneTouch Links, Visioneer may at its sole discretion provide Source Code for the OneTouch Software to Licensee. This Source Code will be immediately considered part of the SDK License Grant and must be protected by the same means that Licensee protects the SDK and in a manner no less than it would protect its own Source Code or intellectual property. This permits development-only licenses of OneTouchLinks distributed in object code form, functioning only with Visioneer OneTouch Software, for use on Visioneer-branded, Xerox-branded, or Visioneer OEM-branded devices.

For avoidance of doubt, the parties agree that the development of any OneTouch Links by the Licensee does not constitute any form of exclusivity whatsoever and that Visioneer (directly or through any of its other licensees) retains the right to develop similar links.

2.2 Discontinuance/Additions. Visioneer may discontinue any version of OneTouch software (the “Discontinued Product”) at Visioneer’s sole discretion. Visioneer will provide Licensee not less than ninety (90) days written notice prior to such discontinuance. Visioneer may make new releases of its OneTouch software, at Visioneer’s sole discretion, from time to time during the term of this Agreement.

2.3 Ownership. Visioneer retains all rights, title and interest in the SDK, associated documentation, and Visioneer trademarks provided to Licensee under this Agreement, and all translations and derivatives works thereof, and all intellectual property rights embodied therein or relating thereto (collectively, the “Licensed Materials”). Visioneer hereby reserves all rights not expressly granted to Licensee in this Agreement. No right or license is granted to Licensee except as expressly set forth herein. Licensee shall take no action that might impair in any way any right, title, or interest of Visioneer in or to the Licensed Materials or other intellectual property.

Licensee agrees to maintain the copyright, trademark and other notices that appear on the Licensed Materials and associated media; and to reproduce the markings and Visioneer trademarks on which Software Product is distributed. Any right or benefit that results from Licensee’s use of the Licensed Material shall inure solely to the benefit of Visioneer, its licensors, or both

2.4 Licensee Restrictions and Covenants. Licensee and its subsidiaries, contractors, affiliates and principals represent, warrant, and agree: (a) not to modify or create any derivative work of the SDK or any portion thereof; (b) not to decompile, reverse engineer or otherwise attempt to derive source code (or the underlying ideas, algorithms, structure or organization) from the SDK; (c) not to use the SDK for any purposes other than the development of OneTouch Links for use exclusively with Visioneer OneTouch software, (d) to use its best efforts to successfully market and distribute Software Product; (e) to take such security measures to protect Visioneer's rights with respect to the Licensed Materials as Licensee uses to protect its own software, trademark, or other rights, which measures shall at least be reasonable under the circumstances; and (f) to comply with the U.S. Foreign Corrupt Practices Act and all applicable export laws, restrictions, and regulations of any United States or foreign agency or authority and not to export or re-export, or allow the export or re-export of any product, technology or information it obtains from Visioneer pursuant to this Agreement in violation of such laws, restrictions or regulations.

2.5 Licensee’s Marketing and Distribution Obligations. In marketing and performing under this Agreement, Licensee shall: (a) not engage in any deceptive, misleading, illegal, or unethical practices that may be detrimental to Visioneer or to the Licensed Materials; (b) not make any representations, warranties, or guarantees to customers concerning the Licensed Materials that are inconsistent with or in addition to those made in this agreement or in documentation provided by Visioneer; and, (c) comply with all applicable federal, state, and local laws and regulations in performing its duties with respect to the Licensed Materials.

2.6 Binding and Marking Obligations. Licensee will conspicuously and permanently place logos associated with Visioneer OneTouch (the “Authorized Logo”), as provided by Visioneer. The Authorized Logo, provided to Licensee in electronic format, will be placed on Licensee’s Software Product CD and end-user documentation so as to make the Authorized Logo visible to the end user and otherwise in conformance with the graphic requirements of Exhibit A, “Trademark Authorization.” Licensee will also prominently display the Authorized Logo on its web site, collateral, tradeshow signage and make the appropriate trademark attributions thereto. Visioneer shall have the right to update or modify the Authorized Logo from time-to-time. Any right or benefit that results from what the Authorized Logo shall inure solely to the benefit of Visioneer.

3. DELIVERY, SUPPORT AND TRAINING.

3.1 Delivery. Visioneer will provide Licensee with one (1) copy of the software component of the SDK, and any associated Documentation. Licensee acknowledges and agrees that software components of SDK licensed herein may be delivered to Licensee by electronic means, including through electronic mail, via access to a password protecting FTP site, or by physical shipment.

3.2 Support. To facilitate the process of using the SDK for developing OneTouch Links by the Licensee, Visioneer may, upon payment of the fees set forth in Exhibit B and subject to the availability of appropriate Visioneer personnel, provide technical and professional support to Licensee to assist in the development of OneTouch Links. If travel is necessary to the Licensee's location, Licensee will pay for all travel expenses including transportation, hotel, rental car and meals.

3.3 End User and Licensee Technical Support.

- (a) Licensee will be responsible for any assistance needed to install and implement the SDK at its development location.
- (b) Licensee shall provide to its End Users first line responsibility for installation, operation and support of the Software Product.

4. FEES and ROYALTIES

4.1 SDK Fee. Licensee will pay Visioneer the amount of \$499.00 for the SDK License and includes one hour of support, payable with 30 days of the Effective Date of this Agreement. The SDK will not be delivered to Licensee until the SDK Fee has been received by Visioneer. Failure to pay the SDK Fee within 30 days of the Effective Date will result in the immediate termination of this Agreement.

4.2 Royalties. Visioneer hereby grants Licensee a royalty-free license for any Visioneer OneTouch version 4.0 links that the Licensee develops using the SDK. OneTouch Links that use additional functionality beyond that available in Visioneer OneTouch version 4.0 will have royalties and/or license fees defined in Exhibit C.

4.3 Certification fees. There is fee for testing and certification of links to obtain the "OneTouch Certified" mark. Licensee must supply the application and/or server software necessary to test the link. Non-Windows-based software will require provision of the necessary hardware and software for testing. The fee for Client-based link certification is \$500, and for Server-based link certification is \$1,000.

4.4 Maintenance Fees. To receive updates to the SDK, there is an annual fee of \$299 which will be invoiced on each anniversary of Effective Date.

5. LIMITED WARRANTY AND DISCLAIMERS

- (a) Visioneer in no way warrants that any OneTouch Links developed for one integer version of Visioneer OneTouch Software will function with a later or previous version of Visioneer OneTouch Software.
- (b) Visioneer's entire liability and Licensee's exclusive remedy under this warranty will be, at Visioneer's option, to use reasonable commercial efforts to attempt to correct or work around errors, to replace the SDK with functionally equivalent product, or to terminate this Agreement.
- (c) Visioneer represents and warrants that Visioneer has the right and power to enter into this Agreement and grant the licenses set forth herein.
- (d) Visioneer represents and warrants that, to Visioneer's actual knowledge, the SDK and associated media, in the form delivered by Visioneer to Licensee, contain no computer instructions designed to (i) disrupt, damage or interfere with use of computer or telecommunications equipment or facilities, or (ii) disrupt or corrupt the use, operation or results of any computer program.

EXCEPT AS EXPRESSLY PROVIDED IN SECTIONS 5(a), 5(b), 5(c) AND 5(d), VISIONEER DOES NOT MAKE ANY, AND EXPRESSLY DISCLAIMS, ANY AND ALL EXPRESS OR IMPLIED WARRANTIES INCLUDING, BUT NOT LIMITED TO, THE WARRANTIES OF DESIGN, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR AGAINST INFRINGEMENT OF THIRD PARTY PROPRIETARY RIGHTS. EXCEPT AS OTHERWISE PROVIDED ABOVE, THE TECHNOLOGY IS PROVIDED BY VISIONEER TO LICENSEE "AS-IS."

6.0 INDEMNIFICATION

6.1 Indemnification. Each party hereto (the "**Indemnitor**") agrees to, and shall, indemnify, defend and hold harmless the other party hereto (the "**Indemnitee**"), and its directors, shareholders, officers, agents, employees, successors and assigns from any and all third party claims, suits, proceedings, judgments, damages, costs (including reasonable attorneys' fees and expenses) agreed upon in settlement or awarded by a court of competent jurisdiction arising from, in connection with or related in any way to the Indemnitor's actual or alleged material breach of any warranty of the Indemnitor specified in this Agreement or the infringement by of the Indemnitor's products of any third party intellectual property right.

The Indemnitor's obligations under this Section 6.0 are at all times conditioned on Indemnitee providing Indemnitor with prompt written notice of any such claim, and the Indemnitor, upon receipt of such notice, having the right to assume full control over the defense of such claim (including any settlements); provided however, that: (a) the Indemnitor shall, at Indemnitee's request, inform the Indemnitee of the progress of such litigation or settlement; and (b) the Indemnitor shall not have any right, without the Indemnitee's written consent, (which shall not be unreasonably withheld), to settle any such claim if such settlement arises from or is part of any criminal action, suit or proceeding or contains a stipulation to or admission or acknowledgment of, any liability or wrongdoing (whether in contract, tort or otherwise) on the part of the Indemnitee, or requires any specific performance or non-pecuniary remedy by the Indemnitee.

6.2 Remedies. Should materials of Indemnitor provided to Indemnitee under this Agreement become, or in the Indemnitor's reasonable opinion be likely to become, the subject of a claim of infringement by a third party of its intellectual property rights under Section 6.1 above, Indemnitor shall, at its sole expense, either: (a) procure for Indemnitee the right to continue to use or distribute the materials and for customers to use the materials; or (b) replace or modify the materials to make them non-infringing, provided that the same functions are performed by the replaced or modified materials. If (a) or (b) are not reasonably possible or are technically infeasible, respectively, Indemnitor shall so notify Indemnitee in writing and Indemnitee's license to use, sell, offer for sale and distribute such infringing materials shall terminate thirty (30) days from the date of such notice, and Indemnitor shall have no further obligation to indemnify, defend and hold Indemnitee harmless for Indemnitee's use or distribution of the infringing materials beyond thirty (30) days after the date of such notice. This Section states the entire liability of either Party with respect to any third party claim of infringement.

6.3 Limitation on Indemnification. Visioneer shall have no obligation to indemnify Licensee with respect to any claim to the extent it is based on (i) Licensee's use, sale, offer for sale, or distribution of the SDK or Software Product other than as permitted under this Agreement, if such claim would have been avoided in the absence of such use of the SDK or offer for sale or sale of the Software Product; (ii) the combination of the Software Product with products, equipment or devices not provided by Visioneer, if such claim would not arise but for such combination; or (iii) the alteration or modification of the SDK or Software Product according to specifications provided by the Licensee, or modification of the SDK Product by or for Licensee without Visioneer's written consent, if such claim would have been avoided in the absence of such alteration or modification.

6.4 Entire Obligation. The foregoing states the entire liability of each party and the exclusive remedy of the other party with respect to infringement of copyrights, patents, trademarks, trade secrets, or any other intellectual property rights.

7. LIMITATION OF LIABILITY

EXCEPT FOR DAMAGES ARISING FROM BREACH OF ANY APPLICABLE LICENSE GRANT OR OWNERSHIP PROVISION, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY LOST REVENUES, PROFITS OR OTHER SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES

ARISING OUT OF THIS AGREEMENT, INCLUDING LOSS OF BUSINESS, REVENUE, PROFITS, GOODWILL, USE, DATA OR OTHER ECONOMIC ADVANTAGE AND ANY NON-ECONOMIC LOSSES, EVEN IF A PARTY HAS BEEN ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES. These limitations shall apply notwithstanding the failure of the essential purpose of any limited remedy.

8. TERM AND TERMINATION

The term of this Agreement shall commence on the Effective Date of the Agreement and continue for a period of twelve (12) months, unless terminated earlier in accordance with subsection (c) below. The Agreement shall be extended or renewed by mutual written agreement of the parties.

(a) The rights and remedies provided to the parties in this Section shall not be exclusive and are in addition to any of the other rights provided by this Agreement or by law.

(b) Upon termination by either party, or expiration of this Agreement:

- (i) the provisions of Sections 1, 2.2, 2.3, 2.6, 3.3, 4, 6, 7, 8, 9, and 10 shall remain in effect to the extent applicable,
- (ii) Licensee shall return within 15 days to Visioneer all copies of the SDK, SDK documentation, and Visioneer Confidential Information in its possession or under its control,
- (iii) Licensee shall erase all components of the SDK from any of its computers, servers, fixed media or removable media,
- (iv) Licensee shall return all materials delivered pursuant to Section 2.1; and
- (v) all rights and licenses of Licensee shall terminate.

(c) Either party may terminate this agreement for convenience given 90 days written notice.

9. CONFIDENTIALITY

9.1 Licensee understands and agrees that the source code and object code of the SDK and all technical information relating to the SDK, all knowledge of Visioneer's business plans and practices are the confidential information and trade secrets of Visioneer. In addition to the foregoing, the term "Confidential Information" means any information that is designated as confidential or proprietary at the time of disclosure by either party. Confidential Information may include information disclosed verbally by one party to the other pursuant to this Agreement, provided that the disclosing party provides a written summary to the receiving party identifying the information as confidential or proprietary within thirty (30) days of the disclosure. The existence and terms of this Agreement shall be treated as Confidential Information.

9.2 Each party shall treat as confidential all Confidential Information of the other party, shall not use such Confidential Information except to exercise its rights and perform its obligations under this Agreement, and shall not disclose such Confidential Information to any third party. Without limiting the foregoing, each of the parties shall use the same degree of care it uses to prevent the disclosure of its own confidential information, but in no case less than a reasonable degree of care, to prevent the disclosure of Confidential Information of the other party. Each party shall promptly notify the other party of any actual or suspected misuse or unauthorized disclosure of the other party's Confidential Information.

9.3 Exclusions. The obligations under this Section 9 will not apply to any information that the receiving Party can demonstrate by written records: (i) was known to the receiving party prior to its disclosure hereunder by the disclosing party; (ii) is independently developed by the receiving party; (iii) is or becomes publicly known through no wrongful act of the receiving party; (iv) has been rightfully received from a third party who is authorized to make such disclosure without restriction; (v) has been approved for public release by the disclosing party's prior written authorization; or (vi) must be produced or disclosed pursuant to applicable law, regulation or court order, provided that the receiving Party provides prompt advance notice thereof to enable the disclosing party to seek a protective order or otherwise prevent such disclosure.

9.4 Remedies. It is understood and agreed that Visioneer's rights in and to the SDK and the Confidential Information (as defined in this Section 9) are unique and that the remedies at law may be insufficient to compensate Visioneer for any infringement of such rights. Visioneer shall be entitled to seek such injunctive and other equitable relief as may be necessary to protect, maintain, defend, enforce and preserve such rights, but shall not be precluded from obtaining any remedy at law in respect of such rights.

10. MISCELLANEOUS

10.1 Compliance with Law. Licensee shall comply with all applicable laws, ordinances, rules and regulations, and shall obtain any and all permits, licenses, authorization, and/or certificates that may be required in any jurisdiction or any regulatory or administrative agency in connection with the sale, use and/or operations of the Software Product. Regardless of any disclosure made by Licensee to Visioneer of an ultimate destination of the Software Product, Licensee agrees not to export either directly or indirectly any Software Product or system incorporating or otherwise including such Software Product without first obtaining a license to export or re-export from the United States Government, as may be required and to comply with the United States Government export regulations as applicable.

10.2 Independent Contractor. Nothing in this Agreement is intended to create a partnership, franchise, joint venture, agency, or a fiduciary or employment relationship. Neither Party may bind the other party or act in a manner which expresses or implies a relationship other than that of independent contractor. Except as otherwise set forth herein, each Party shall bear its own costs and expenses in performing this Agreement.

10.3 Governing Law, Venue and Attorney Fees. This Agreement shall be construed and interpreted in accordance with the laws of the State of California without giving effect to California's conflicts of laws principles thereof. Any action, suit or proceeding relating to this Agreement must be brought exclusively in a federal or state court located in Alameda County, California, and each party hereby consents to the jurisdiction of such court. In the event of any such action, suit or proceeding, the prevailing party shall be entitled to receive from the other party its reasonable attorney's fees, costs and expenses incurred in connection therewith.

10.4 Assignment. This Agreement will be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns; provided, however, that neither party shall assign any of its rights, obligations, or privileges (by operation of law or otherwise) hereunder without the prior written consent of the other party. Notwithstanding the foregoing, however, (i) either party may assign this Agreement to a successor in interest (or its equivalent) of all or substantially all of its relevant assets, whether by sale, merger, or otherwise, provided that Licensee may not assign this Agreement to a competitor of Visioneer without Visioneer's express written consent; and (ii) Visioneer may assign this Agreement to any of its affiliated companies. Any attempted assignment in violation of this section will be void.

10.5 Force Majeure. Neither party shall be liable for failure to fulfill its obligations under this Agreement or any purchase order issued hereunder or for delays in delivery due to causes beyond its reasonable control, including but not limited to act of God, acts or omissions of the other party, man-made or natural disasters, material shortages, strikes, delays in transportation or inability to obtain labor or materials through its regular sources. The time for performance of any such obligation shall be extended for the time period lost by reason of the delay.

10.6 Notices. All notices provided for in this Agreement shall be given in writing and shall be effective when either served by personal delivery, or deposited, postage prepaid, in the United States registered or certified mail addressed to the parties at their respective addresses hereinabove set forth, or to such other address or addresses as either party may later specify by written notice to the other.

10.7 Severability. If any provision of this Agreement shall be held by a court of competent jurisdiction to be contrary to law or public policy the remaining provisions shall remain in full force and effect.

10.8 Waiver. No term or provision hereof shall be deemed waived and no breach consented to or excused, unless such waiver, consent or excuse shall be in writing and signed by the party claimed to have waived or consented. Should either party consent, waive, or excuse a breach by the other party, such shall not constitute

consent to, waiver of, or excuse of any other different or subsequent breach whether or not of the same kind as the original breach.

10.9 Conflicting Terms; Entire Agreement. This Agreement constitutes the entire understanding and agreement between the parties hereto with respect to the subject matter of this Agreement and merges and supersedes all prior communications, understanding and agreements, written or oral, and no amendments shall become effective without written agreement signed by the parties hereto.

IN WITNESS WHEREOF, the parties have caused their duly authorized officers to execute this Agreement, on the dates below indicated.

Licensee

Visioneer, Inc.

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Upon completion of this agreement, Licensee should send a signed original to onetouchsdk@visioneer.com.

EXHIBIT A
TRADEMARK AUTHORIZATION



**EXHIBIT B
SUPPORT FEES**

Visioneer Engineering Services = US\$250.00 per hour beyond the one hour included in the paid-up initial license.

EXHIBIT C
ROYALTIES AND LICENSE FEES