

PATENT ASSIGNMENT

Electronic Version v1.1
 Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	Asset Purchase Agreement
CONVEYING PARTY DATA	
Name	Execution Date
INCERT SOFTWARE CORPORATION	07/30/2003
RECEIVING PARTY DATA	
Name:	VERITAS SOFTWARE CORPORATION
Street Address:	350 Ellis Street
City:	Mountain View
State/Country:	CALIFORNIA
Postal Code:	94043
PROPERTY NUMBERS Total: 1	
Property Type	Number
Patent Number:	6745383
CORRESPONDENCE DATA	
Fax Number:	(512)853-8801
<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>	
Phone:	512/853/8800
Email:	kashby@intprop.com
Correspondent Name:	BNK / Meyertons Hood Kivlin Kowert Goetz
Address Line 1:	P.O. Box 398
Address Line 4:	Austin, TEXAS 78767-0398
ATTORNEY DOCKET NUMBER:	5760-24200
NAME OF SUBMITTER:	B. Noel Kivlin
Total Attachments: 11 source=Incert_redacted_assignment#page1.tif source=Incert_redacted_assignment#page2.tif source=Incert_redacted_assignment#page3.tif source=Incert_redacted_assignment#page4.tif source=Incert_redacted_assignment#page5.tif	

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ASSET PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT (this "Agreement") dated as of July 30, 2003, is made by and between Geodesic Systems, Inc., a Delaware corporation ("Seller") and VERITAS Software Corporation, a Delaware corporation ("Purchaser").

WITNESSETH:

WHEREAS, Seller and its subsidiaries are engaged in the business of developing, making, selling and providing application reliability management software and solutions to customers at various locations in the United States and other countries (the "Business");

WHEREAS, Seller desires to sell to Purchaser, and Purchaser desires to purchase from Seller, all right, title and interest of Seller and its subsidiaries in and to certain properties and assets of the Business, and in connection therewith, Purchaser is willing to assume certain liabilities of Seller and its subsidiaries relating thereto, all upon the terms and subject to the conditions set forth herein;

WHEREAS, concurrent with the execution and delivery of this Agreement and as a condition and inducement to Purchaser's willingness to enter into this Agreement, Stockholders of Seller holding a majority of (a) Seller's outstanding common stock and Series D Convertible Participating Preferred Stock, voting together as a single class, and (b) Seller's outstanding Series D Convertible Participating Preferred Stock, have irrevocably approved this Agreement and the transactions contemplated hereby, including the indemnification obligations of the Stockholders set forth in Article IX hereof, and have acknowledged the provisions set forth in Section 5.12 and Section 5.13 hereof; and

WHEREAS, certain Stockholders of Seller have entered into non-competition and non-solicitation agreements substantially in the form attached hereto as Exhibit A with Seller, effective upon consummation of the transactions contemplated hereby (collectively, the "Non-Competition and Non-Solicitation Agreements"), as an inducement to Purchaser to enter into this Agreement.

NOW, THEREFORE, in consideration of the premises set forth above and the mutual agreements and covenants hereinafter set forth, and intending to be legally bound hereby, Purchaser and Seller (on behalf of itself and its subsidiaries) hereby agree as follows:

"Governmental Authority" shall mean any U.S. or foreign, national, federal, state, municipal or local or other government, governmental, regulatory or administrative authority, agency or commission or any court, tribunal, or judicial or arbitral body.

"Governmental Order" shall mean any order, writ, judgment, injunction, decree, stipulation, determination or award entered by or with any Governmental Authority.

"Hazardous Materials" shall mean (a) petroleum and petroleum products, radioactive materials, asbestos in any form that is or could become friable, urea formaldehyde foam insulation, transformers or other equipment that contain polychlorinated biphenyls, toxic mold, and radon gas, (b) any other chemicals, materials or substances that is prohibited or regulated by any Environmental Law or that has been designated by any Governmental Authority to be radioactive, toxic, hazardous or otherwise a danger to health, reproduction or the environment.

"Hazardous Materials Activity" shall mean the transportation, transfer, recycling, storage, use, treatment, manufacture, removal, remediation, release, exposure of others to, sale or distribution of any Hazardous Material or any product containing a Hazardous Material.

"Indemnification Claim" shall mean any matter that an Indemnified Party has determined has given rise to a right of indemnification under this Agreement.

"Indemnified Party" shall have the meaning specified in Section 9.2(a).

"Intellectual Property" shall mean any or all of the following and all worldwide common law and statutory rights in, including the rights to sue for past damages for, arising out of, or associated therewith: (i) United States and foreign patents and utility models and applications therefor and all reissues, divisions, reexaminations, renewals, extensions, provisionals, continuations and continuations-in-part thereof ("**Patents**"); (ii) inventions (whether patentable or not), improvements, trade secrets, proprietary information, know-how, and any rights in technology, invention disclosures, technical data and customer lists, and all documentation relating to any of the foregoing; (iii) copyrights, copyright registrations and applications therefor, and all other rights corresponding thereto throughout the world; (iv) domain names, uniform resource locators ("**URLs**"), other names and locators associated with the Internet, and applications or registrations therefor ("**Domain Names**"); (v) industrial designs and any registrations and applications therefor; (vi) trade names, logos, common law trademarks and service marks, trademark and service mark registrations, related goodwill and applications therefor throughout the world ("**Trademarks**"); (vii) all rights in databases and data collections; (viii) all moral and economic rights of authors and inventors, however denominated; and (ix) any similar or equivalent rights to any of the foregoing (as applicable).

"Intellectual Property Contracts" shall have the meaning specified in Section 3.15(a)(iii).

"Interim Financial Statements" shall have the meaning specified in Section 3.5(a)(ii).

"Transferred Employee" shall have the meaning specified in Section 6.1.

"Transferred Products and Services" shall mean all products and technology embodied in Seller's Runtime Solutions Product Suite and any products developed after Closing resulting from the combined research and development efforts between persons who were formerly employees of Seller and Precise.

"U.S. GAAP" shall mean United States generally accepted accounting principles and practices in effect from time to time applied consistently throughout the periods involved.

ARTICLE II

PURCHASE AND SALE

SECTION 2.1. Assets to Be Sold.

(a) On the terms and subject to the conditions of this Agreement, Seller and its subsidiaries shall, on the Closing Date, sell, assign, transfer, convey and deliver to Purchaser or cause to be sold, assigned, transferred, conveyed and delivered to Purchaser, and Purchaser shall purchase from Seller and its subsidiaries, on the Closing Date, all the assets, properties and business of every kind and description and wherever located, whether tangible or intangible, real, personal or mixed, directly or indirectly owned by Seller and its subsidiaries or to which it is directly or indirectly entitled and, in any case, belonging to or used or intended to be used in the Business, as set forth below (the assets to be purchased by Purchaser being referred to as the "Assets"):

(i) all Inventories;

(ii) all of Seller's and its subsidiaries' right, title and interest in, to and under the Seller Owned Intellectual Property, and all proprietary rights agreements pursuant to which employees of the Seller and its subsidiaries, including Transferred Employees, have transferred all inventions, proprietary rights and Intellectual Property used in and necessary to the Business to the Seller and its subsidiaries;

(iii) all furniture, equipment, computers, machinery and other tangible personal property set forth on Schedule 2.1(a)(iii);

(iv) all rights of Seller and its subsidiaries under all Contracts and Seller End-User Agreements listed on Schedule 2.1(a)(iv) together with all contracts entered into after the date hereof in accordance with Section 5.1 of this Agreement;

(v) all claims, causes of action, choses in action, rights of recovery and rights of set-off of any kind (including rights to insurance proceeds, rights under and pursuant to all warranties, representations and guarantees made by suppliers of products, materials or equipment, or components thereof, and rights to past, present and future damages for breach, infringement or

(c) Except as disclosed in Section 3.14(c) of the Disclosure Schedule, no other party to any Material Contract is in breach thereof or default thereunder.

(d) Except as disclosed in Section 3.14(d) of the Disclosure Schedule, there is no Contract granting any Person any preferential right to purchase, other than in the ordinary course of the Business consistent with past practice, any of the Assets.

SECTION 3.15. Intellectual Property.

(a) Business Intellectual Property.

(i) **Transferred Products and Services and Seller Products.** Section 3.15(a)(i) of the Disclosure Schedule contains a complete and accurate list of all Transferred Products and Services and such other software products and technology currently existing and owned by Seller or its subsidiaries as of the Closing Date ("**Seller Products**"), including title and most current and version and release number.

(ii) **Registered Intellectual Property.** Section 3.15(a)(ii) of the Disclosure Schedule contains a complete and accurate list of all Seller Registered Intellectual Property, any proceedings or actions before any court, tribunal (including the United States Patent and Trademark Office or equivalent authority anywhere in the world) related to Seller Registered Intellectual Property, and any actions that must be taken within 150 days after the Closing Date for the purposes of obtaining, maintaining, perfecting or preserving or renewing any Seller Registered Intellectual Property, including the payment of any registration, maintenance or renewal fees or the filing of any responses to office actions, documents, applications or certificates.

(iii) **Intellectual Property Contracts.** Section 3.15(a)(iii) of the Disclosure Schedule contains a complete and accurate list of all Contracts to which Seller or any of its subsidiaries is a party (A) with respect to Seller Owned Intellectual Property licensed to any third party (other than Seller End-User Agreements), or (B) pursuant to which a third party has licensed any Business Intellectual Property to Seller or any of its subsidiaries ("**Intellectual Property Contracts**").

(iv) **Intellectual Property Indemnities.** Section 3.15(a)(iv) of the Disclosure Schedule contains a complete and accurate list of all Contracts whereby Seller or any of its direct or indirect subsidiaries has agreed to, or assumed, any obligation or duty to indemnify, reimburse, hold harmless, defend or otherwise assume or incur any obligation or liability with respect to the infringement or misappropriation of any Intellectual Property Rights.

(b) **Validity.** Each item of Seller Registered Intellectual Property is valid and subsisting, all necessary registration, maintenance and renewal fees currently due in connection with such Seller Registered Intellectual Property have been made and all necessary documents, recordations and certificates in connection with such Seller Registered Intellectual Property have been filed with the relevant patent, copyright, trademark or other authorities in the United States or foreign jurisdictions, as the case may be, for the purposes of prosecuting, perfecting and maintaining

IN WITNESS WHEREOF, Seller and Purchaser have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

GEODESIC SYSTEMS, INC.

By Michael Spertus
Name: Michael Spertus
Title: Chairman & CEO
Address: 414 N. Orleans Street
Suite 410
Chicago, IL 60610
Attn: Philip Spertus
Telecopy: (312) 832-1230

VERITAS SOFTWARE CORPORATION

By _____
Name: _____
Title: _____
Address: 350 Ellis Street
Mountain View, CA 94043
Attention: _____
Telecopy: _____

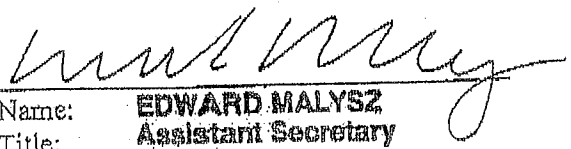
[Signature Page to Asset Purchase Agreement]

IN WITNESS WHEREOF, Seller and Purchaser have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

GEODESIC SYSTEMS, INC.

By _____
Name:
Title:
Address: 414 N. Orleans Street
Suite 410
Chicago, IL 60610
Attn: Philip Spertus
Telecopy: (312) 832-1230

VERITAS SOFTWARE CORPORATION

By 
Name: **EDWARD MALYSZ**
Title: **Assistant Secretary**
Address: 350 Ellis Street
Mountain View, CA 94043
Attention: General Counsel
Telecopy: 650.527.2581

[Signature Page to Asset Purchase Agreement]

Section 3.2 - Subsidiaries

Seller has the following wholly-owned subsidiaries:

InCert Software Corporation, a Delaware corporation ("InCert").

Seller's interest in InCert is subject to a security interest in favor of Precise Software Corporation, a Delaware corporation ("Precise").

Seller had a wholly-owned subsidiary in the United Kingdom called "Geodesic Systems Limited" that was stricken from the Company House records. Seller is awaiting word from its UK attorneys for an official date that such subsidiary will be considered to be dissolved. The attorney working on this matter is:

Bill Annan
Clifton Ingram
22-24 Broad Street
Wokingham
Berkshire
RG40 1BA
DX 33500 Wokingham
United Kingdom
+44 (0118) 9780099

InCert had a wholly-owned subsidiary in the United Kingdom called "InCert Software Ltd." that was dissolved as of June 18, 2002.

Section 3.15 – Intellectual Property

Products commercially available for sale consist of the following and “Seller Products” include the technology therein:

Product Name	Version	SPARC: Solaris 2.6: Vw4.2/Vw5/Vw6	SPARC: Solaris 7: Vw4.2/Vw5/Vw6	SPARC: Solaris 8: Vw4.2/Vw5/Vw6	PPC: AIX 4.3.3: VA 5	PPC: AIX 5.1: VA 5	PA-RISC: HP-UX 11: HPa1/HpaC++	PA-RISC: HP-UX 11i: HPa1/HpaC++	X86: Linux 2.4: GCC 2.95	X86: Linux 2.2: GCC 2.95	X86: Win NT 4.0: MSVC6	X86: Win 2000: MSVC6	X86: Win XP: MSVC6
Runtime Solutions	7.0	x	x	x	x	x	x	x	x	x	x	x	x
HA Runtime	7.0	x	x	x	x	x	x	x	x	x	x	x	x
Great Circle	7.0	x	x	x	x	x	x	x	x	x	x	x	x
TraceBack for Java	7.0	x	x	x	x	x	x	x	x	x	x	x	x
TraceBack for C/C++	7.0	x	x	x							x	x	x
Runtime Analyzer	2.0	x	x	x	x	x			x	x	x	x	x

Business Intellectual Property

Status of Seller’s patents and applications:

See attached schedule entitled “Schedule 3.15(a)(ii) – IP Status.xls” for additional patent information, including items to be completed in the next 150 days, which items appear under the heading “Status/Next Steps/Comments” in such schedule for those patents with dates set forth under the heading “USPTO Deadline” in such schedule.

(a)(ii) Registered Intellectual Property:

Issued Patents - Seller:

- U.S. Patent 6,055,612, Spertus, et al., *Incremental garbage collector with decommit barrier*, issued April 25, 2000. An incremental garbage collector in which a memory allocator can decommit memory without affecting operation of the incremental garbage collector.

- U.S. Patent 6,518,979, Michael Spertus et al., *Automatically-maintained customizable user interfaces*, filed 4/29/98 (priority date 4/30/97). This

application contains much material from Braid; currently being claimed: a programming construct user interface generator which generates a plurality of interactive user interfaces for a programming construct. PCT Chapter II Demand for an international preliminary examination made 11/24/98; all claims found to satisfy the requirements for novelty, inventive step, and industrial applicability under PCT Article 33(2-4). This application has entered the National Stage in the following countries:

- a. US: USSN 09/402814, entered national stage 10/8/99. – issued
 - b. Canada: Canadian patent application 2,287,303, entered national stage 10/20/99. abandoned 2/17/03
 - c. EPC: European Patent Application 98919994.8, entered national stage 10/29/99, designated countries: UK, France, Germany. abandoned 2/17/03
- U.S. Patent 6,584,478, Michael Spertus, *Transparent garbage collection of resources*, filed 3/2/99 (priority date 3/3/98), designating EPC, Canada, Japan, US. A technique for automatically releasing a resource no longer needed by an execution of a program. A program's behavior is automatically modified to register the resource in a registry; when the program's execution is finished with the resource, the registry is consulted to determine whether the resource should be released. PCT Chapter II demand for international preliminary examination made 9/23/99, all 47 claims found to satisfy the requirements for novelty, inventive step, and industrial applicability under PCT Article 33(2-4). PCT National stage applications
- a. Canada: 2,321,787, entered national stage 8/22/00. Awaiting examination.
 - b. EPO: 99908619.2, entered national stage 9/19/00. Abandoned.
 - c. Japan: 2000-534995, entered national stage 9/4/00. Abandoned.

Pending Patent Applications - Seller

- PCT/US98/22923, Michael Spertus, Gustavo Rodriguez-Rivera, Charles Fiterman, *Interactive debugging system with debug database system*, filed 10/28/98 (priority date 10/29/97), designating EPC, Canada, Japan, US. An interactive debugging system with a debug database system. The debugging system makes update queries indicating the state of a program being executed on the debug data base and an interactive interface reads the program state from the debug database. PCT Chapter II demand for international preliminary examination made 5/21/99, all claims found to satisfy the requirements for novelty, inventive step, and industrial applicability under PCT Article 33(2-4). National stage applications:

- a. US: 09/529760, entered national stage 4/18/00, Non-final Office Action written 4/16/03. Awaiting response.
 - b. Canada: 2,307,297, entered national stage 4/17/00. Awaiting examination. Maintenance fee due 10/28/03
 - c. EPO: 98957409.0, filed 4/12/00. Awaiting examination. Maintenance fee due 10/28/03
- PCT/US01/28787, Gustavo Rodriguez-Rivera, et al., *Conservative garbage collections that can be used with general memory allocators*, filed 09/13/01, (priority date 9/13/00), designating the US, Canada, the European Patent Office, and Japan. A technique that permits a conservative garbage collector to be used with the heap management functions provided by an allocator which is independent of the garbage collector. The allocator and the garbage collector employ a malloc table to exchange information about the heap. PCT Chapter II demand for international preliminary application made 3/28/02, response to Written Opinion filed 9/16/02.
- a. US: 10/362,252, entered national stage 2/20/03
 - b. Canada: new application, entered national stage 3/3/03

Other:

- US provisional application 60/357,774, Michael Spertus, *Automatic XML enhancement*, filed 2/19/02 was abandoned. A decision was made on 11/18/02 not to pursue this provisional application.

InCert Patents and Patent Applications:

- Dr. Anant Agarwal filed a US patent application entitled "Test, Protection, and Repair Through Binary Code Augmentation" with the PTO on December 4, 1997 (Serial No. 08/985,052). On December 10, 1997, Dr. Agarwal assigned all intellectual property in connection with this invention to InCert. On March 2, 1998, the assignment of this patent application to InCert was recorded with the PTO. On October 12, 1999, InCert was granted U.S. Patent No. 5,966,541. On October 16, 2001, InCert was granted U.S. Patent No. 6,305,010.
- Richard Schooler filed a US patent application entitled "A Method for Determining Program Control Flow" with the PTO on December 11, 1998 (Application No. 09/210,138). In connection with the patent application, Mr. Schooler assigned all intellectual property in connection with this invention to InCert. On December 11, 1998, the assignment of this patent application to InCert was recorded with the PTO. On December 8, 1999, an international patent application was filed: PCT/US99/29190 and

Canada 2353442*. On October 23, 2001, InCert was granted U.S. Patent No. 6,308,321.

- Andrew Ayers, Anant Agarwal and Richard Schooler filed a US patent application entitled "A Method for Back Tracing Program Execution" with the PTO on February 8, 1999 (Application No. 09/246,619). In connection with the patent application, the inventors assigned all intellectual property in connection with this invention to InCert. On February 8, 1999, the assignment of this patent application to InCert was recorded with the PTO. On December 9, 1999, an international patent application was filed: PCT/US99/29231.* On March 5, 2002, InCert was granted U.S. Patent No. 6,353,924.
- Emmett Witchel, Christopher Metcalf and Andrew Ayers filed a US patent application entitled "Method for Determining the Degree to Which Changed Code has Been Exercised" with the PTO on December 29, 1999 (Application No. 09/474,389). In connection with the patent application, the inventors assigned all intellectual property in connection with this invention to InCert. On March 23, 2000, the assignment of this patent application to InCert was recorded with the PTO. On December 20, 2000, an international patent application was filed. On December 20, 2000, an international patent application was filed: PCT/US00/34827.*
- Andrew Ayers, Richard Schooler and Anant Agarwal filed a US patent application entitled "Method for Simulating Back Program Execution from a Traceback Sequence" with the PTO on December 29, 1999 (Application No. 09/474,680). In connection with the patent application, the inventors assigned all intellectual property in connection with this invention to InCert. On March 27, 2000, the assignment of this patent application to InCert was recorded with the PTO. On December 20, 2000, an international patent application was filed.* (Application No. PCT/US00/34697).
- Anant Agarwal, Andrew Ayers and Richard Schooler filed a US patent application entitled "Early Warning Mechanism for Enhancing Enterprise Availability" with the PTO on December 29, 1999 (Application No. 09/474,679). In connection with the patent application, the inventors assigned all intellectual property in connection with this invention to InCert. On March 20, 2000, the assignment of this patent application to InCert was recorded with the PTO. On December 20, 2000, an international patent application was filed.* (Application No. PCT/US00/34825).
- **Andrew Ayers, Thomas Soranno and Chris Metcalf filed a US patent provisional application entitled "A Policy-Based Method for Controlling the Production of Traces at Application Failure Points" with the PTO on

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