

## VIRSAE TERMS OF USE

These Virsaе Terms of Use ("Terms of Use") govern your use of Virsaе Solutions and form a binding, legal contract between Virsaе Inc. and the entity identified in any Order Form that has purchased access or use of the Virsaе Solution identified in any Order Form.

PLEASE READ THESE TERMS OF USE CAREFULLY. BY ORDERING, PURCHASING, INSTALLING, ACCESSING OR USING ANY VIRSAE SOLUTION, YOU ACKNOWLEDGE YOU HAVE READ, UNDERSTAND AND AGREE TO THESE TERMS OF USE. IF YOU ACCEPT ON BEHALF OF A CUSTOMER (AS DEFINED BELOW), YOU REPRESENT AND WARRANT THAT YOU HAVE THE LEGAL AUTHORITY TO BIND THE CUSTOMER.

If you do not agree to these Terms of Use, you may not register, access or use any Virsaе Solution. For the good and valuable consideration set forth herein, the parties agree as follows:

### 1. DEFINITIONS

1.1 **"Access Protocols"** means login information, passwords, security protocols, and policies through which Authorized Users access the Virsaе Solution.

1.2 **"Aggregation Point"** means hardware device, software program or application that collects data or information from one or more End Points. The following are examples of Aggregation Points: communication servers, contact center reporting systems, application servers, network devices.

1.3 **"Agreement"** means these Terms of Use.

1.4 **"Authorized User"** means each of the Customer's employees, agents and independent contractors who are provided Access Protocols by the Customer or Virsaе.

1.5 **"Collected Data"** means the data or information collected by the Virsaе Solution from End Points.

1.6 **"Confidential Information"** means all written or oral information, disclosed (directly or indirectly) by either Party to the other, related to the business, products, services or operations of either Party that has been identified as confidential or that by the nature of the information or the circumstances surrounding disclosure ought reasonably to be treated as confidential, including, without limitation: (a) trade secrets, inventions, ideas, processes, computer source and object code, formulae, data, programs, other works of authorship, know-how, improvements, discoveries, developments, designs and techniques; (b) information regarding products, plans for research and development, marketing and business plans, budgets, financial statements, contracts, prices, suppliers and agents; (c) information regarding the skills and compensation of the disclosing Party's employees, contractors and other agents; and (d) the existence of any business discussions, negotiations, or agreements between the disclosing Party and the receiving Party or any third party.

1.7 **"Customer"** means the end user customer of the Virsaе Solution, which individual or entity is identified as the Customer in any Order

1.8 **"Customer Client"** has the definition provided within the definition of Managed Service.

1.9 **"Documentation"** means text and/or graphical documentation, whether in electronic or printed format, provided by Virsaе that describes the features, functions and operation of any Virsaе Solution.

1.10 **"End Point"** means any single hardware device, software program or application from which Collected Data is collected by the Virsaе Solution either directly, or indirectly through one or more Aggregation Points. If: (a) several applications reside on a single hardware device or (b) several applications or hardware devices Transport information to the Virsaе Solution through multiple layers of Managers, each application, software program or hardware device is considered an End Point as is each Aggregation Point.

1.11 **"Fees"** means the fees and charges set forth in the applicable Order Form.

1.12 **“Managed Service”** means a service provided to third parties by the Customer exclusively under trademarks owned or exclusively licensed by the Customer where the Virsaе Solution (a) is accessed and operated solely by employees or contractors of the Customer in combination with technology owned or licensed by the Customer; (b) is used for the benefit of a third party (each a **“Customer Client”**) and (c) is not accessible, operable or otherwise under the control of the Customer Client.

1.13 **“Order Form”** means a document assented to by a representative of the Customer and either a representative of Virsaе or representative of a Virsaе Partner identifying the specific Virsaе Solution, or portion of a Virsaе Solution, to be made available to the Customer, the fees to be paid and other relevant terms and conditions. To be effective, the Order Form must be approved by Virsaе.

1.14 **“Order Term”** means the term of any Order Form as set forth in the Order Form as such Order Form may renew in accordance with its terms.

1.15 **“Purpose”** has the meaning provided in Section 3 under the subsection headed Purpose.

1.16 **“Services”** means the Virsaе Service Management Software-as-a-Service and any other services to be performed by Virsaе for the benefit of the Customer as set forth in the applicable Order Form.

1.17 **“Transport”** means to access, deliver or otherwise make information or data available to the Virsaе Solution.

1.18 **“Virsaе Client Software”** means the client software intended to be installed within the Customer’s computer network in accordance with the Documentation which are designed to collect Collected Information from Aggregation Points and End Points.

1.19 **“Virsaе Partner”** means any entity that resells the Virsaе Solution, or portion of the Virsaе Solution, to the Customer pursuant to an Order Form between the Customer and the applicable entity.

1.20 **“Virsaе Solution”** means the Virsaе products and / or services purchased or licensed by a Customer in an Order Form and may include one or more of the following: Virsaе Service Management software-as-a-service, Virsaе Turnkey Collector and Virsaе Client Software.

1.21 **“Virsaе Turnkey Collector”** means an appliance consisting of the Virsaе Collector Client Software installed on hardware, both of which are supplied by Virsaе to the Customer directly, or indirectly through a Virsaе Partner.

## 2. SERVICES

Subject to the terms and conditions of this Agreement, Virsaе will provide the Virsaе Solution to the Customer in a workmanlike and professional manner in accordance with industry standards. The Virsaе Solution to be provided by Virsaе under this Agreement will be described and set forth in one or more Order Forms.

## 3. ACCESS, RIGHTS, LICENSES AND RESTRICTIONS

3.1 Software License. Subject to the Customer’s compliance with the terms and conditions contained in this Agreement, including the applicable Documentation, Virsaе hereby grants to the Customer the non-exclusive, non-transferable right and license (without a right to sublicense) to download, install, execute and operate the Virsaе Client Software solely for the Purpose.

3.2 Virsaе Service Management. Subject to the Customer’s compliance with the terms and conditions contained in this Agreement and the applicable Documentation, Virsaе hereby grants to the Customer a non-exclusive, non-transferable, non-sublicensable, revocable right to allow Authorized Users to access the Virsaе Service Management software-as-a-service offering for the Order Term solely for the Purpose.

3.3 Virsaе Turnkey Collector. Subject to the Customer’s compliance with the terms and conditions contained in this Agreement and the applicable Documentation, and solely for the Order Term, Virsaе hereby grants to the Customer a non-exclusive, non-transferable, non-sublicensable, revocable right and license to use the Virsaе Turnkey Collector (including the installed software) solely for the Purpose. For the avoidance of doubt, the hardware made available to the Customer by Virsaе in connection with Virsaе Turnkey Collector is owned by Virsaе and leased to the Customer

solely for use with the Virsaе Solution (or as otherwise contemplated by the Documentation). Upon termination of the applicable Order Form, at the Customer expense, the Customer will destroy, wipe or return any such hardware as reasonably directed by Virsaе. Virsaе warrants that any third-party hardware will perform in material compliance with the applicable Documentation, provided, however, that Virsaе's sole and exclusive remedy for a breach of the foregoing warranty is to replace the hardware with hardware that complies with the applicable warranty.

**3.4 Purpose.** If the Order Form indicates that the Customer is a provider of a Managed Service, "Purpose" means that the Customer may use the Virsaе Solution solely in connection with a Managed Service for the benefit of Customer Clients and solely on the number of End Points indicated in the Order Form during the Order Term. If the Order Form indicates that the Customer is an internal use Customer or does not otherwise indicate that the Customer is the provider of a Managed Service, "Purpose" means for the Customer's internal use only, not for the benefit of any third party and solely on the number of End Points indicated in the Order Form during the Order Term.

**3.5 Provisions Applicable Solely to Managed Service Providers.** Prior to using the Virsaе Solution in connection with any Managed Service on behalf of any Customer client, the Customer will enter into an agreement with such third party that contains, at a minimum, contractual provisions at least as restrictive as the following:

- (i) Disclaim Virsaе's liability for damages, whether direct or indirect, incidental or consequential, arising from the Customer's use of the Virsaе Solution in connection with the Managed Service and,
- (ii) Protect Virsaе's Confidential Information and intellectual property in the same manner that the Customer Client is required to protect the Confidential Information and intellectual property of the Customer, but in no event less than reasonable care.

**3.6 Access Protocols.** The Customer will safeguard and ensure that all Authorized Users safeguard the Access Protocols. The Customer will be responsible for all acts and omissions of Authorized Users. The Customer will notify Virsaе immediately if it learns of any unauthorized use of any Access Protocols or any other known or suspected breach of security.

**3.7 Customer Restrictions.** The Customer will not: (a) adapt, alter, modify, improve, translate or create derivative works of any Virsaе Solution, (b) reverse engineer, decompile, disassemble or otherwise attempt to reconstruct or obtain the source code to all or any portion of the Virsaе Solution; and (c) except as may be specifically provided in an Order Form (i.e. The Customer is identified as a provider of a Managed Service), or otherwise approved by Virsaе in writing, provide the Customer Client access to the Virsaе Solution or use the Virsaе Solution on behalf of any third party, including as part of a time-sharing, outsourcing or service bureau environment.

**3.8 Collected Data.** The Virsaе Solution will collect certain data and information in connection with End Points. The Customer represents and warrants that it has the right to collect the Collected Data as contemplated herein, that the Customer or the applicable Customer Client (if any) has provided all notices and / or obtained all necessary consents or approvals for the use of the Collected Data (including to the extent necessary, to or from applicable employees) and that the use of the Collected Data will not violate any applicable law or the rights of any third party. The Customer grants Virsaе: (a) during any Order Term, a non-exclusive license to use the Collected Data to perform the Services and provide the Virsaе Solution and (b) on a perpetual basis to combine the Collected Data with the data of other customers and other third party data to compile aggregated data and/or statistics to improve the Virsaе Solution and to provide to customers, potential customers and the general public, provided that such aggregated data and statistics will not enable the Customer, any Customer Client or any living individual to be identified. As between the Customer and Virsaе, the Customer reserves all right, title and interest in the Collected Data. The data protection agreement made available at <https://virsaе.com/legal/DPA> is entered into between the parties and is incorporated herein by reference as if such agreement had been executed by both parties.

**3.9 Virsaе Solutions; Reservation of Rights** Except for the limited licenses and access grant provided to the Customer in this Agreement, Virsaе reserves all right, title and interest in its intellectual property and business including the Virsaе Solutions and any Virsaе trademarks.

**3.10 Feedback** Virsaе in its sole discretion, may utilize, all comments and suggestions, whether written or oral, furnished by the Customer to Virsaе in connection with its access to and use of the Services (all reports, comments and

suggestions provided by the Customer hereunder constitute, collectively, the “Feedback”). The Customer hereby grants Virsaе a worldwide, non-exclusive, irrevocable, perpetual, royalty-free right and license to incorporate the Feedback into Virsaе products and services.

#### **4. CONFIDENTIAL INFORMATION**

**4.1 Use and Disclosure.** During this Agreement, each party will have access to the other Party’s Confidential Information. Except as otherwise expressly permitted, and without limiting each Party’s obligations, under this Agreement, each Party agrees as follows: (a) it will not disclose the Confidential Information of the other Party to anyone except its employees, contractors and advisors who have a need to know, (b) to not use or reproduce the Confidential Information disclosed by the other Party for any purpose other than exercising its rights and performing its obligations as described herein; (c) that each Party will take no less than commercially reasonable measures to protect the secrecy of, and void disclosure and unauthorized use of, the Confidential information; and (d) to restrict access to the Confidential Information disclosed by the other Party to such of its personnel, agents, and/or consultants, if any, and in the situation where a Customer is a provider of a Managed Services, to any employee, contractor or agent of any Customer Client, but solely those who have a need to have access and who have been advised of and have agreed in writing to treat such information in accordance with the terms of this Agreement (each a “Representative”). Each recipient will be liable for the acts and omissions of its Representatives with respect to the discloser’s Confidential Information.

**4.2 Exceptions.** The provisions of Section 4 will not apply to Confidential Information that: (a) is or becomes publicly available or enters the public domain through no fault of the recipient; (b) is in the recipient’s possession without knowledge of any confidentiality obligations, or (c) is independently developed by the recipient without use of or reference to the disclosing Party’s Confidential Information. Notwithstanding the foregoing, each Party may disclose Confidential Information to the limited extent required: (1) by securities laws, (2) in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the Party making the disclosure pursuant to the order will first have given written notice to the other Party and made a reasonable effort to obtain a protective order; or (3) to establish a Party’s rights under this Agreement, including to make such court filings as it may be required to do.

#### **5. CONSIDERATION**

**5.1 Fees.** The Customer will pay the Fees to Virsaе or, to the extent set forth in the applicable Order Form, to the applicable Virsaе Partner, in accordance with the payment schedule set forth in this Agreement, including any Order Form. Unless otherwise specified in any Order Form, all invoices issued will be in arrears and will be due and payable thirty (30) days after receipt. Unless otherwise indicated in any Order Form, all Fees will be paid in US dollars and exclude all applicable sales, use, and other taxes. Any portion of the Fees that is not paid when due will accrue interest at one and one-half percent (1.5%) per month or the maximum rate permitted by applicable law, whichever is less, from the due date until paid.

#### **6. MARKETING**

Virsaе may publicly refer to the Customer, including on Virsaе’s website and in sales presentations, as a Virsaе customer and may use the Customer’s logo for such purposes. Similarly, the Customer may publicly refer to itself as a Virsaе customer, including on the Customer’s website and in sales presentations. Each party hereby grants the other a limited, worldwide, license to use the other’s logo in conformance with such party’s trademark usage guidelines and solely for the purpose set forth in this Section 6. In no event will either party issue a press release publicly announcing this relationship without the approval of the other party, such approval not to be unreasonably withheld.

#### **7. WARRANTY DISCLAIMER; LIMITATIONS ON LIABILITY**

**7.1 General Representations.** Each Party hereby represents and warrants: (a) that it is duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation or organization; (b) that the execution and performance of the Agreement will not conflict with or violate any provision of any law having applicability to such Party; and (c) that the Agreement, when executed and delivered, will constitute a valid and binding obligation of such Party and will be enforceable against such Party in accordance with its terms.

**7.2 Virsaе Representation.** Virsaе further represents and warrants that the Virsaе Solution will perform or be performed in material compliance with the Documentation, provided, however, that the Customer’s sole and exclusive

remedy for a breach of the foregoing representation and warranty is that the Virsaе Solution will re-perform or be re-performed in a manner that conforms with the foregoing warranty.

**7.3 Warranty Disclaimer.** Except as expressly provided in the agreement, including any schedule, neither party makes any warranties of any kind, whether express or implied, statutory or otherwise, including but not limited to any implied warranty of merchantability, fitness for a particular purpose, title, non-infringement, quiet enjoyment or from a course of course of performance, or usage in trade. Virsaе does not warrant, and specifically disclaims, that the Virsaе Solution will be accurate, without interruption, or error-free.

**7.4 Disclaimer of Indirect Damages.** In no event shall Virsaе be liable for any indirect, incidental, consequential, special, punitive or exemplary damages, including but not limited to loss of profits, loss of data, interruption of service, or loss of business or business opportunity, even if such damages are foreseeable and whether or not such party has been advised of the possibility thereof. In no event will Virsaе be liable for the procurement of substitute services.

**7.5 Limitations on Liability.** Virsaе's maximum aggregate liability under any order form will not exceed the total amount of fees received by Virsaе in connection with such order form during the twelve (12) month period prior to the first date on which the liability arose.

**7.6 Exceptions.** Because some jurisdictions do not allow the exclusion or limitation of certain liability, in such jurisdictions the liability of Virsaе will be limited to the maximum extent permitted by law. The provisions of this Section 7 will apply without regard to whether other provisions of this agreement have been breached, any limited remedy herein is held to fail of its essential purpose or the form of the claim or cause of action, whether in contract, warranty, statute, tort (including but not limited to negligence).

## **8. INDEMNIFICATION**

**8.1 Virsaе Indemnity.** Virsaе will indemnify, defend and hold the Customer, its directors, officers, employees and representatives (each a "Customer Indemnified Party"), harmless from and against any and all losses, damages, liability, costs and expenses awarded by a court or agreed upon in settlement, as well as all reasonable and related attorneys' fees and court costs, (collectively "Losses") arising out of any third-party claim alleging that the Virsaе Solution infringe any patent or copyright.

**8.2 Exclusions.** Section 8.1 will not apply if the alleged claim arises, in whole or in part, from (a) a use or modification of the Virsaе Solution by any Customer or any Authorized User in a manner outside the scope of any right granted or in breach of this Agreement, (b) a combination, operation or use of the Virsaе Solution with other software, hardware or technology not provided or authorized by Virsaе if the claim would not have arisen but for the combination, operation or use, or (c) the Collected Data (any of the foregoing circumstances under clauses (a), (b) or (c) will be collectively referred to as a "Customer Indemnity Responsibility").

**8.3 Customer Indemnity.** The Customer will indemnify, defend and hold harmless Virsaе, its directors, officers, employees and representatives (each a "Virsaе Indemnified Party"), from and against any and all Losses arising out of any Customer Indemnity Responsibility.

**8.4 Indemnification Process.** The foregoing indemnification obligations are conditioned on the indemnified party: (a) notifying the indemnifying party promptly in writing of such action, (b) reasonably cooperating and assisting in such defense and (c) giving sole control of the defense and any related settlement negotiations to the indemnifying party with the understanding that the indemnifying party may not settle any claim in a manner that admits guilt or otherwise prejudices the indemnified party, without consent.

**8.5 Infringement.** If any Virsaе Solution is, or in Virsaе's opinion, is likely to become the subject of any infringement-related claim, then Virsaе will, at its expense and in its discretion: (a) procure for the Customer the right to continue using the Virsaе Solution; (b) replace or modify the infringing technology or material so that the Virsaе Solution becomes non-infringing and remains materially functionally equivalent; or (c) terminate the Order Form pursuant to which the Virsaе Solution is provided and give the Customer a refund for any pre-paid but unused fees.

8.6 Exclusive remedies. The provisions of this Section 8 state Virsaе's entire liability and the Customer's exclusive remedies for any claim that the Virsaе solution infringe a third party's intellectual property right.

## 9. TERM AND TERMINATION

9.1 Term. The term of this Agreement will commence on the date that the initial Order Form is fully executed and will continue for as long as any Order Form is in effect, unless terminated in accordance with this Section 9 or as otherwise expressly provided in this Agreement (the "Term").

9.2 Termination. Either party may terminate this Agreement or any Order Form, at its discretion, effective immediately upon written notice to the other if the other party materially breaches any provision of this Agreement and does not substantially cure the breach within thirty (30) days after receiving written notice.

9.3 Suspension of Virsaе Solution. At any time during the Term, Virsaе may, immediately upon notice to the Customer, suspend access to the Virsaе Solution, or any part there, at its discretion including for the following reasons: (a) a threat to the technical security or technical integrity of the Services or (b) any amount due under this Agreement, including in the case where the Customer purchased the Virsaе Solution through a Virsaе Partner, is not received by Virsaе within fifteen (15) days after it was due.

9.4 Termination upon Bankruptcy or Insolvency. Virsaе may, at its option, terminate this Agreement immediately upon written notice to the Customer, in the event (a) that the Customer becomes insolvent or unable to pay its debts when due; (b) the Customer files a petition in bankruptcy, reorganization or similar proceeding, or, if filed against, such petition is not removed within ninety (90) days after such filing; (c) the Customer discontinues its business; or (d) a receiver is appointed or there is an assignment for the benefit of the Customer's creditors.

9.5 Effects of Termination. Upon termination or expiration of this Agreement for any reason, (a) any amounts owed to Virsaе (or the applicable Virsaе Partner) before such termination or expiration will be immediately due and payable; (b) all licensed and access rights granted will immediately cease to exist; and (c) each party will promptly destroy the Confidential Information of the other party that it has in its Sections 1, 4 and 6 through 10 will survive any expiration or termination of this Agreement.

## 10. GENERAL

10.1 Assignment. This Agreement cannot be assigned by either the Customer or Virsaе without the prior written consent of the other; provided, however, that Virsaе may assign this Agreement to any person or entity that is an affiliate, or acquires by sale, merger or otherwise, all or substantially all of its assets, stock or business. Any attempted assignment or delegation in violation of this Section 10.1 will be null, void and of no effect.

10.2 Notices. All notices, consents, and approvals under this Agreement must be delivered in writing by courier, by electronic facsimile (fax), or by certified or registered mail, (postage prepaid and return receipt requested) to the other party at that party's registered address and will be effective upon receipt. Either party may change its address by giving notice of the new address to the other party.

10.3 Governing Law; Disputes. This Agreement will be governed by the laws of the State of New York, without reference to its conflicts of law principles. The United Nations Convention for the International Sale of Goods will not apply to this Agreement. Any dispute, controversy or claim arising out of or relating to this Agreement, will be made exclusively in the state or federal courts located in New York County and both parties hereby submit to the jurisdiction and venue of such courts.

10.4 Remedies. The Customer acknowledges that any actual or threatened breach of Section 2. will constitute immediate, irreparable harm to Virsaе for which monetary damages would be an inadequate remedy, and that injunctive relief is an appropriate remedy for such breach. If any legal action is brought to enforce this Agreement, the prevailing party will be entitled to receive its attorneys' fees, court costs, and other collection expenses, in addition to any other relief it may receive.

10.5 Waivers. All waivers must be in writing. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

10.6 Severability. If any provision of this Agreement is unenforceable, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions will continue in full force and effect.

10.7 No Third-Party Beneficiaries. The Parties acknowledge that the covenants set forth in this Agreement are intended solely for the benefit of the Parties, their successors and permitted assigns. Nothing herein, whether express or implied, will confer upon any person or entity, other than the Parties, their successors and permitted assigns, any legal or equitable right whatsoever to enforce any provision of this Agreement.

10.8 Construction. The parties negotiated this Agreement with the opportunity to receive the aid of counsel and, accordingly, intend this Agreement to be construed fairly, according to its terms, in plain English, without constructive presumptions against the drafting party. The headings of Sections of this Agreement are for convenience and are not to be used in interpreting this Agreement. As used in this Agreement, the word “including” means “including but not limited to.”

10.9 Force Majeure. Any delay in the performance of any duties or obligations of either party (except the payment of money owed) will not be considered a breach of this Agreement if such delay is caused by a labor dispute, shortage of materials, fire, earthquake, flood, or any other event beyond the control of such party. The affected party will use reasonable efforts, under the circumstances, to notify the other party of the circumstances causing the delay and to resume performance as soon as possible.

10.10 Entire Agreement. This Agreement constitutes the entire agreement between the parties regarding the subject hereof and supersedes all prior or contemporaneous agreements, understandings, and communication, whether written or oral. This Agreement may be amended only by a written document signed by both parties.