

## SUPPLIER END USER LICENSE AGREEMENT(EULA) AND WARRANTIES

### VIRSAE TERMS OF USE

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

If you do not agree to these Terms of Use, you may not register, access or use any Virsae 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 Virsae 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 centre reporting systems, application servers, network devices.

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

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

**1.5 "Collected Data"** means the data or information collected by the Virsae 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 Virsae Solution, which individual or entity is identified as Customer in any Order Form.

**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 Virsae that describes the features, functions and operation of any Virsae Solution.

**1.10 "End Point"** means any single hardware device, software program or application from which Collected Data is collected by the Virsae 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 Virsae 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 Customer exclusively under trademarks owned or exclusively licensed by Customer where the Virsae Solution (a) is accessed and operated solely by employees or contractors of Customer in combination with technology owned or licensed by 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 Customer and either a representative of Virsae or representative of a Virsae Partner identifying the specific Virsae Solution, or portion of a Virsae Solution, to be made available to Customer, the fees to be paid and other relevant terms and conditions. To be effective, the Order Form must be approved by Virsae.

**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 Virsae Service Management software-as-a-service and any other services to be performed by Virsae for the benefit of 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 Virsae Solution.

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

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

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

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

**2. SERVICES.** Subject to the terms and conditions of this Agreement, Virsa will provide the Virsa Solution to Customer in a workmanlike and professional manner in accordance with industry standards. The Virsa Solution to be provided by Virsa 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 Customer’s compliance with the terms and conditions contained in this Agreement, including the applicable Documentation, Virsa hereby grants to Customer the non-exclusive, non-transferable right and license (without a right to sublicense) to download, install, execute and operate the Virsa Client Software solely for the Purpose.

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

**3.3 Virsa Turnkey Collector.** Subject to Customer’s compliance with the terms and conditions contained in this Agreement and the applicable Documentation, and solely for the Order Term, Virsa hereby grants to Customer a non-exclusive, non-transferable, non-sublicenseable, revocable right and license to use the Virsa Turnkey Collector (including the installed software) solely for the Purpose. For the avoidance of doubt, the hardware made available to Customer by Virsa in connection with Virsa Turnkey Collector is owned by Virsa and leased to Customer solely for use with the Virsa Solution [or as otherwise contemplated by the Documentation. Upon termination of the applicable Order Form, at Customer expense, Customer will destroy, wipe or return any such hardware as reasonably directed by Virsa. Virsa warrants that any third party hardware will perform in material compliance with the applicable Documentation, provided, however, that Virsa’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 Virsa 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 Customer is an internal use Customer or does not otherwise indicate that the Customer is the provider of a Managed Service,

“Purpose” means for 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 Virsa Solution in connection with any Managed Service on behalf of any Customer client, 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 Virsa’s liability for damages, whether direct or indirect, incidental or consequential, arising from Customer’s use of the Virsa Solution in connection with the Managed Service and

(ii) Protect Virsa’s Confidential Information and intellectual property in the same manner that Customer Client is required to protect the Confidential Information and intellectual property of Customer, but in no event less than reasonable care.

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

**3.8 Collected Data.** The Virsa Solution will collect certain data and information in connection with End Points. Customer represents and warrants that it has the right to collect the Collected Data as contemplated herein, that 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. Customer grants Virsa: (a) during any Order Term, a non-exclusive license to use the Collected Data to perform the Services and provide the Virsa 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 Virsa Solution and to provide to customers, potential customers and the general public, provided that such aggregated data and statistics will not enable Customer, any Customer Client or any living individual to be identified. As between Customer and Virsa, Customer reserves all right, title and interest in the Collected Data. The data protection agreement made available at <https://marketing.virsa.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 Virsa Solutions; Reservation of Rights.** Except for the limited licenses and access grant provided to Customer in this Agreement, Virsa reserves all right, title and interest in its intellectual property and business including the Virsa Solutions and any Virsa trademarks.

**3.10 Feedback.** Virsae in its sole discretion, may utilize, all comments and suggestions, whether written or oral, furnished by Customer to Virsae in connection with its access to and use of the Services (all reports, comments and suggestions provided by Customer hereunder constitute, collectively, the “**Feedback**”). Customer hereby grants Virsae a worldwide, non-exclusive, irrevocable, perpetual, royalty-free right and license to incorporate the Feedback into Virsae products and services.

**4. Confidential Information.**

**(a) Confidential Information.**

(a) 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.

(ii) 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. Fees.** Customer will pay the Fees to Virsae or, to the extent set forth in the applicable Order Form, to the applicable Virsae 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 U.S. 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.** Virsae may publicly refer to Customer, including on Virsae’s website and in sales presentations, as a Virsae customer and may use Customer’s logo for such purposes. Similarly,

Customer may publicly refer to itself as a Virsae customer, including on 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 Virsae Representation.** Virsae further represents and warrants that the Virsae Solution will perform or be performed in material compliance with the Documentation, provided, however, that Customer’s sole and exclusive remedy for a breach of the foregoing representation and warranty is that the Virsae 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 DEALING. COURSE OF PERFORMANCE, OR USAGE IN TRADE. VIRSAE DOES NOT WARRANT, AND SPECIFICALLY DISCLAIMS, THAT THE VIRSAE SOLUTION WILL BE ACCURATE, WITHOUT INTERRUPTION, OR ERROR-FREE.

**7.4 Disclaimer of Indirect Damages.** IN NO EVENT SHALL VIRSAE 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 VIRSAE BE LIABLE FOR THE PROCUREMENT OF SUBSTITUTE SERVICES.

**7.5 Limitations on Liability.** VIRSAE’S MAXIMUM AGGREGATE LIABILITY UNDER ANY ORDER FORM WILL NOT EXCEED THE TOTAL AMOUNT OF FEES RECEIVED BY VIRSAE 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 VIRSAE 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 Virsae Indemnity.** Virsae will indemnify, defend and hold 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 Virsae 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 Virsae 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 Virsae Solution with other software, hardware or technology not provided or authorized by Virsae 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.** Customer will indemnify, defend and hold harmless Virsae, its directors, officers, employees and representatives (each a “**Virsae 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 Virsae Solution is, or in Virsae’s opinion, is likely to become the subject of any infringement-related claim, then Virsae will, at its expense and in its discretion: (a) procure for Customer the right to continue using the Virsae Solution; (b) replace or modify the infringing technology or material so that the Virsae Solution becomes non-infringing and remains materially functionally equivalent; or (c) terminate the Order Form pursuant to which the Virsae Solution is provided and give Customer a refund for any pre-paid but unused fees.

**8.6 EXCLUSIVE REMEDIES.** THE PROVISIONS OF THIS SECTION 8 STATE VIRSAE’S ENTIRE LIABILITY AND CUSTOMER’S EXCLUSIVE REMEDIES FOR ANY CLAIM THAT THE VIRSAE 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 Virsae Solution.** At any time during the Term, Virsae may, immediately upon notice to Customer, suspend access to the Virsae 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 Customer purchased the Virsae Solution through a Virsae Partner, is not received by Virsae within fifteen (15) days after it was due.

**9.4 Termination upon Bankruptcy or Insolvency.** Virsae may, at its option, terminate this Agreement immediately upon written notice to Customer, in the event (a) that Customer becomes insolvent or unable to pay its debts when due; (b) 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) Customer discontinues its business; or (d) a receiver is appointed or there is an assignment for the benefit of Customer’s creditors.

**9.5 Effects of Termination.** Upon termination or expiration of this Agreement for any reason, (a) any amounts owed to Virsae (or the applicable Virsae 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 possession. 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 Customer or Virsae without the prior written consent of the other; provided, however, that Virsae 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.

**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.** Customer acknowledges that any actual or threatened breach of Section 2 will constitute immediate, irreparable harm to Virsae 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.

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