

# Virtru Subscription Agreement

## Terms and Conditions

Last Updated: May 19, 2021

### 1. Definitions

For purposes of this Agreement, the following terms shall have the following meanings:

1.1 “Agreement” means these terms and conditions and any Order Form issued in connection therewith.

1.2 “Customer Content” means the unencrypted information and content Customer and Customer Users create and/or distribute using the Virtru Services.

1.3 “Customer User” means any Customer-authorized employee, contractor, or agent who is permitted to use the Virtru Services in accordance with the terms and conditions of this Agreement.

1.4 “Materials” means the Virtru software (including any object code, executable files, or browser plug-ins) or materials related thereto provided by Virtru to Customer hereunder, including without limitation any software downloaded from Virtru’s website or from the Virtru Services and any related materials and documentation therefor.

1.5 “Order Form” means the order documentation pursuant to which Customer purchases a subscription to the Materials and/or Virtru Services.

1.6 “Support Services” means the delivery of front-end support and pre- and post-sale deployment services to Customer Users by telephone, email, in-person meetings, or other methods, and the training of Customer Users, in each case relating to the use of the Materials and Virtru Services.

1.7 “Third-Party Services” means any services used in connection with the Materials that are hosted by a party other than Virtru or Customer.

1.8 “Virtru Application Data” means data related to the interaction (or consequence thereof) of Customer or Customer Users with the Materials and Virtru Services that is necessary to operate, improve, and maintain the Virtru Services, including without limitation key access policies (including updates or revisions to those policies), authorized user email addresses, IP addresses, access requests, error reports, crash reports, platform information, sender email addresses, recipient email addresses, encryption keys, message expiration dates and times, and display names for files and email subject lines.

1.8 “Virtru Services” means the Virtru-hosted services made available by Virtru to Customer in connection with the Materials.

## 2. Rights in Materials and Virtru Services

2.1 Grant of Rights. Subject to the terms and conditions of this Agreement, Virtru grants to Customer a limited, non-exclusive, non-transferable, non-sublicensable, revocable right and license to (a) install the Materials on Customer’s servers and use the Materials, and (b) access and use the Virtru Services in connection with the Materials, in each case during the Term and solely for Customer’s internal business purposes. Customer must adhere to any seat limitation set out in the Order Form. Each seat may only be used by one Customer User.

2.2 Restrictions. Without Virtru’s prior written consent, Customer shall not: (a) create copies of the Materials or Virtru Services; (b) decompile, disassemble, scrape, or reverse engineer the Materials or Virtru Services, or determine or attempt to determine any source code, algorithms, methods or techniques embodied in the Materials or used in the Virtru Services; (c) modify, translate, or create any derivatives based upon the Materials or Virtru Services; (d) distribute, disclose, market, rent, lease, assign, sublicense, pledge, or otherwise transfer the Materials to any third party; (e) engage in any activity that materially interferes with or disrupts the Virtru Services; (f) remove or alter any copyright, trademark, trade name, or other proprietary notices, legends, symbols, or labels appearing on or in copies of the Materials; (g) perform or release the results of benchmark tests or other comparisons of the Materials or Virtru Services with other programs or services; (h) incorporate the Materials or Virtru Services into any other program, product, or service, or use the Materials or Virtru Services to provide similar services or functionality to third parties; (i) provide any third party with access to the Virtru Services, other than as expressly permitted herein; (j) use the Materials or Virtru Services for any unlawful or tortious purpose, including to transmit Customer Content that is illegal or that infringes or misappropriates any third party’s privacy or intellectual property rights; (k) use the Materials or Virtru Services to transmit any viruses, worms, time bombs, Trojan horses, or any other harmful or malicious code; or (l) use the Materials or Virtru Services for any purpose where an accurate

verification of identity has critical or life-threatening consequences. Virtru may disable any Customer User's account that violates the provisions of this Agreement.

**2.3 Customer Users.** Customer shall ensure that all Customer Users comply with this Agreement. Customer shall be liable for any Customer User's failure to comply with this Agreement.

**2.4 Fees; Payment.** In consideration of the Virtru's provision of the Virtru Services and Materials, Customer shall make payments to Virtru in accordance with the terms set forth on the Order Form. Unless otherwise set forth in the Order Form, Customer shall pre-pay subscription fees identified in the Order Form for each twelve (12) month period after the Effective Date during the Term in full, in advance prior to the beginning of such period. Unless otherwise provided in an Order Form, Customer shall pay each invoice within thirty (30) days of Virtru's issuance thereof. Sales and use tax, VAT, or GST are Customer's sole responsibility; all fees under the Order Form are exclusive of all such taxes. Notwithstanding the foregoing, if Customer purchases a subscription for the Materials and/or Virtru Services from Virtru's authorized reseller, all payment and invoicing terms applicable to such purchase shall be set forth in the Order Form between Customer and the reseller.

**2.5 Third-Party Services.** Unless otherwise agreed to in writing between the parties, Customer shall be solely responsible for procuring any Third-Party Services and for complying with any terms and conditions governing those services. Neither this Agreement nor the Privacy Policy shall apply with respect to data stored on, manipulated by, or transmitted by means of Customer's use of Third-Party Services.

**2.6 Audit.** At any time during the Term and for two (2) years thereafter, Customer shall permit Virtru or its designee to audit, during normal business hours, Customer's books and records relating to Customer's usage of the Materials and Virtru Services. Virtru may not audit Customer under this provision more often than once in any twelve (12) month period and shall perform the audit in a manner designed not to disrupt Customer's business and operations. Customer will reasonably cooperate with the audit. Customer may require Virtru or its third-party designees performing the audit to execute reasonable confidentiality agreements and comply with Customer's reasonable security requirements in connection with such audit.

### **3. Support**

**3.1 General.** Virtru will provide support to Customer and Customer Users through Virtru's generally available online ticketing and support system. Additional support agreements and

capabilities are available for purchase by Customer and may be specified in the Order Form. Virtru Services may be inaccessible from time to time due to planned or unplanned maintenance, or due to unavailability of third-party sites or servers. Virtru's sole support obligations for the Materials and Virtru Services, including obligations to provide modifications, bug fixes, new releases, or other updates (each an "Update") for the Materials and Virtru Services are as provided in this Section 3, an Order Form, or a written support agreement entered into by Virtru and Customer. In the event that Virtru makes an Update available to Customer, such Update shall be deemed to be part of the Materials or Virtru Services and shall be subject to the terms and conditions of this Agreement. During the Term, and, if applicable, the Transition Term, Virtru will provide Customer with copies of each Update for the Materials made generally available by Virtru to its other customers.

**3.2 Support Services.** Virtru will provide Customer Users with the Support Services agreed upon in the Order Form or other written support agreement entered into by Virtru and Customer. Virtru will provide the Support Services during Virtru's normal business hours, Monday to Friday, except holidays, unless otherwise stated in the Order Form or other written support agreement entered into by Virtru and Customer. Virtru will respond to Customer support inquiries or requests within one business day, unless otherwise stated in the Order Form or other written support agreement entered into by Virtru and Customer. Virtru will not be required to provide the Support Services if Customer has failed to pay any amount payable to Virtru under this Agreement and such amount is more than thirty (30) days overdue.

#### **4. Proprietary Rights**

**4.1 General.** As between Virtru and Customer, Virtru retains all right, title, and interest in and to the Materials and Virtru Services, including all copies or derivatives thereof and Updates thereto. Customer agrees to take any action reasonably requested by Virtru to evidence, maintain, enforce, or defend the foregoing. Customer shall not take any action to jeopardize, limit, or interfere in any manner with Virtru's ownership of and rights with respect to the Materials and Virtru Services, including all copies or derivatives thereof and Updates thereto. Customer shall have only those rights in or to the Materials, Virtru Services, and any Derivative Work or Update granted to it pursuant to this Agreement.

**4.2 Feedback.** Customer and Customer Users may provide suggestions, requests, recommendations, and other feedback concerning Customer's use of the Materials and Virtru Services (including without limitation any errors or difficulties discovered with respect thereto) (the "Feedback"). Customer hereby assigns to Virtru all right, title, and interest to the Feedback. Virtru may use the Feedback at its discretion, without the consent of Customer.

## 5. Customer Content

5.1 Responsibility for Customer Content. Virtru does not monitor Customer Content or the content third parties create or distribute using the Virtru Services, nor does Virtru decrypt Customer Content that has been encrypted. Virtru has no responsibility to retain any Customer Content. Following expiration or termination of this Agreement, Customer may no longer have access to Customer Content.

5.2 Ownership of Customer Content. As between Virtru and Customer, Customer retains all right, title, and interest in and to the Customer Content.

5.3 License to Use Virtru Application Data. Customer grants to Virtru a worldwide, non-exclusive, transferable, sublicensable, royalty-free, perpetual, irrevocable right and license to use, reproduce, distribute, adapt, create derivative works of, and transmit the Virtru Application Data for the purpose of performing its obligations under this Agreement (e.g., allowing users to continue to have access to encrypted content) and the operation, improvement, and maintenance of the Virtru Services.

## 6. Confidential Information

6.1 Confidential Information. Each party may obtain certain confidential or proprietary information of the other party in connection with this Agreement ("Confidential Information"). Confidential Information includes (a) the existence of and terms of this Agreement, (b) trade secrets, know-how, inventions (whether or not patentable), techniques, processes, programs (whether in source code or object code form), ideas, algorithms, formulas, schematics, testing procedures, software design and architecture, computer code, documentation, design and functional specifications, product requirements, problem reports, performance information, software documents, hardware, devices, designs, drawings, unpublished patent applications, data, plans, strategies, and forecasts, and (c) technical, engineering, manufacturing, product, marketing, servicing, financial, personnel, and other information. Virtru's Confidential Information also includes the Materials. As between Customer and Virtru, Virtru's Confidential Information belongs solely to Virtru, and Customer's Confidential Information shall, as between Customer and Virtru, belong solely to Customer.

6.2 Use and Disclosure Restrictions. Each party shall: (a) protect the other party's Confidential Information from unauthorized dissemination and use; (b) use the other party's Confidential Information only for the performance of this Agreement and the exercise of its rights under this Agreement; (c) not disclose any Confidential Information to any of its employees, agents, contractors, or any other individuals, except to its employees and contractors who are under confidentiality obligations no less restrictive than the requirements of this Section 6; (d) undertake whatever action is reasonably necessary (or authorize the other party to do so in the name of such party) to prevent or remedy any breach of such party's confidentiality obligations herein set forth; and (e) not remove or destroy any proprietary or confidential legends or markings placed upon or contained within the Confidential Information provided to such party by the other party.

6.3 Exclusions. The foregoing restrictions on disclosure and use shall not apply with respect to any Confidential Information that: (a) is or becomes publicly known through no act or omission of the other party; (b) was rightfully known by the receiving party without confidential or proprietary restriction before receipt from the other party, as evidenced by the receiving party's contemporaneous written records; (c) becomes rightfully known to the receiving party without confidential or proprietary restriction from a source other than the disclosing party that does not owe a duty of confidentiality with respect to such Confidential Information; or (d) is independently developed without the use of the Confidential Information as evidenced by the receiving party's written records. In addition, a party may use or disclose Confidential Information to the extent (i) approved in writing by the other party and (ii) a party is legally compelled to disclose such Confidential Information; provided, however, that prior to any such compelled disclosure, such party shall cooperate fully with the other party in protecting against any such disclosure and/or obtaining a protective order narrowing the scope of such disclosure and/or use of the Confidential Information. Further, each party may disclose the terms and conditions of this Agreement: (A) in confidence, to legal counsel; (B) in confidence, to accountants, banks, and financing sources and their advisors; and (C) in connection with the enforcement of this Agreement or any rights hereunder.

6.4 Equitable Relief. Each party agrees that, due to the unique nature of the other party's Confidential Information, the unauthorized disclosure or use of the other party's Confidential Information or any other breach of any provision of this Section 6 will cause irreparable harm and significant injury to the other party, the extent of which will be difficult to ascertain and for which there will be no adequate remedy at law. Accordingly, each party agrees that the other party, in addition to any other available remedies, shall have the right to seek an immediate injunction and other equitable relief enjoining any breach or threatened breach of this Section 6 without the necessity of posting any bond or other security. Each party shall notify the other party in writing immediately upon becoming aware of any such breach or threatened breach.

## 7. Disclaimer

The Materials and Virtru Services are provided "AS IS" and Virtru disclaims all implied warranties relating to the Materials and Virtru Services, including, without limitation, any warranties of design, merchantability, fitness for a particular purpose, title, or noninfringement of third party rights, or warranties arising from a course of dealing, course of performance, usage, or trade practice. Virtru does not guarantee the accuracy of the information included in, transmitted through, or made available by the Materials or Virtru Services, which may include inaccuracies or errors. For the avoidance of doubt, Virtru makes no warranties or representations and will have no liability or responsibility for any Third-Party Services or third-party materials. Virtru does not represent or imply that it endorses any Third-Party Services or third party materials, or that it believes the operation of any Third-Party Services or third party materials will be accurate, useful, or non-harmful. Third-Party Services or third-party materials may have technical inaccuracies, may cause mistakes or errors, and may transmit, store, or otherwise manipulate data in a manner that is objectionable to Customer. Customer is responsible for taking precautions to protect itself and Customer's computer systems in connection with the use of Third-Party Services or third party materials.

## 8. Virtru's Entire Liability

TO THE EXTENT ALLOWED BY APPLICABLE LAW AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY OR LIMITATION OF LIABILITY: (a) IN NO EVENT SHALL VIRTRU OR ITS SUPPLIERS BE LIABLE FOR ANY DAMAGES FOR LOSS OF PROFITS, LOSS OF BUSINESS, LOSS OF USE OR DATA, INADVERTENT DISCLOSURE OF DATA, OR INTERRUPTION OF BUSINESS, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND, OR OTHER ECONOMIC LOSS ARISING FROM OR RELATING TO THIS AGREEMENT OR THE SUBJECT HEREOF, EVEN IF VIRTRU HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, HOWEVER CAUSED, AND (b) NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, VIRTRU'S ENTIRE LIABILITY ARISING FROM OR RELATING TO THIS AGREEMENT OR THE SUBJECT HEREOF, UNDER ANY LEGAL THEORY (WHETHER IN CONTRACT, TORT, INDEMNITY OR OTHERWISE), IF ANY, SHALL NOT EXCEED TEN THOUSAND DOLLARS (US\$10,000).

## 9. Term and Termination

9.1 Term. This Agreement shall commence on the effective date set forth in the Order Form ("Effective Date") and, shall remain in effect while Customer retains an active Virtru Services subscription under this Agreement unless earlier terminated in accordance with this Agreement (the "Term"). Upon expiration of the subscription term set forth in the Order Form, the subscription shall automatically renew for successive one (1) year terms on the conditions set forth in the Order Form, unless either party provides the other party with written notice of its intent not to renew at least thirty (30) days prior to the expiration of the subscription.

9.2 Termination. Either party may terminate this Agreement with written notice to the other party if the other party materially breaches this Agreement and fails to cure such breach within thirty (30) days of notice thereof by the non-breaching party. Customer shall notify Virtru within twenty-four (24) hours of Customer becoming aware of any breach (other than by Virtru) of the terms and conditions of this Agreement.

9.3 Effect of Termination. Upon the expiration or termination of this Agreement, the rights granted to Customer hereunder shall terminate, Customer will cease all use of the Materials and the Virtru Services, return to Virtru or destroy the Materials in

its possession, and, upon Virtru's request, so certify such actions to Virtru. Any costs incurred in returning or destroying the Materials upon termination shall be borne by Customer. The provisions of Sections 2.2, 4.2, 5, 6, 7, 8, 9.3, and 10, and those provisions of the Order Form that by their nature should survive expiration or termination of this Agreement shall survive the expiration or any termination of this Agreement. Termination of this Agreement by either party shall not act as a waiver of any breach of this Agreement and shall not act as a release of either party from any liability for breach of such party's obligations under this Agreement. Neither party shall be liable to the other for damages of any kind solely as a result of terminating this Agreement in accordance with its terms, and termination of this Agreement by a party shall be without prejudice to any other right or remedy of such party under this Agreement or applicable law.

## 10. General Provisions

10.1 Notices. Any notice, request, demand, or other communication required or permitted hereunder shall be in writing, shall reference this Agreement, and shall be deemed to be properly given: (a) when delivered personally; (b) seven (7) days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (c) two (2) business days after deposit with a private industry express courier, with written confirmation of receipt. All notices shall be sent to the address set forth on the cover page of this Agreement and to the notice of the person executing this Agreement (or to such other address as may be designated by a party by giving written notice to the other party pursuant to this Section 10.1).

10.2 Assignment. This Agreement may not be assigned, in whole or part, whether voluntarily, by operation of law or otherwise, by Customer without the prior written consent of Virtru. Subject to the preceding sentence, the rights and liabilities of the parties hereto shall bind, and inure to the benefit of, their respective assignees and successors and is binding on the parties and their successors and assigns. Any attempted assignment other than in accordance with this Section 10.2 shall be null and void. Virtru may assign this Agreement, including in connection with a merger, consolidation, corporate reorganization, or sale of all or substantially all of its business, without Customer's consent.

10.3 Governing Law, Jurisdiction and Venue. This Agreement is to be construed in accordance with and governed by the internal laws of the Commonwealth of Virginia (but expressly excluding the Uniform Computer Information Transactions Act ("UCITA") as enacted in Virginia) without giving effect to any choice of law rule that would cause the application of the laws of any jurisdiction other than the internal laws of the Commonwealth of Virginia (excluding UCITA) to the rights and duties of the parties. Any legal suit, action, or proceeding arising out of or relating to this Agreement shall be commenced in a federal court in the Eastern District of Virginia or in state courts with jurisdiction over Fairfax County, Virginia, and each party hereto irrevocably submits to the exclusive jurisdiction and venue of any such court in any such suit, action, or proceeding.

10.4 Attorneys' Fees. If any legal action, including, without limitation, an action for arbitration or injunctive relief, is brought relating to this Agreement or the breach hereof, the prevailing party in any final judgment or arbitration award, or the non-dismissing party in the event of a dismissal without prejudice, shall be entitled to the full amount of all reasonable expenses, including all court costs, arbitration fees, and actual attorneys' fees paid or incurred in good faith.

10.5 Waiver. The waiver by either party of a breach of or a default under any provision of this Agreement, shall be in writing and shall not be construed as a waiver of any subsequent breach of or default under the same or any other provision of this Agreement, nor shall any delay or omission on the part of either party to exercise or avail itself of any right or remedy that it has or may have hereunder operate as a waiver of any right or remedy.

10.6 Severability. If the application of any provision of this Agreement to any particular facts or circumstances shall be held to be invalid or unenforceable by an arbitration panel or a court of competent jurisdiction, then (a) the validity and enforceability of such provision as applied to any other particular facts or circumstances and the validity of other provisions of this Agreement shall not in any way be affected or impaired thereby and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

10.7 Relationship of the Parties. Nothing contained in this Agreement shall be deemed or construed as creating a joint venture, partnership, agency, employment, or fiduciary relationship between the parties. Neither party nor its agents have any authority of any kind to bind the other party in any respect whatsoever, and the relationship of the parties is, and at all times shall continue to be, that of independent contractors.

10.8 Restricted Rights. If Customer is an agency or instrumentality of the United States Government, the Materials are “commercial computer software” and “commercial computer software documentation,” and, pursuant to FAR 12.212 or DFARS 227.7202, and their successors, as applicable, use, reproduction, and disclosure of the Materials are governed by the terms of this Agreement.

10.9 HIPAA Protected Entities. Customers protected by the Health Insurance Portability and Accountability Act (“HIPAA”) agree to request a Business Associate Agreement (“HIPAA BAA”) by emailing [baa@virtru.com](mailto:baa@virtru.com) in order to enter into an agreement with Virtru to support the requirements of HIPAA and the parties’ compliance requirements thereunder. Together with this Agreement, a fully-executed HIPAA BAA will govern each party’s respective obligations regarding Protected Health Information (“PHI”), as defined in the HIPAA BAA.

10.10 Reference. Customer agrees to serve as a “reference customer” that may be disclosed by Virtru to third parties (including by displaying Customer’s name, logo, and/or a link to Customer’s web site on Virtru’s website) and, upon reasonable notice from Virtru, shall serve as a reference to potential customers, vendors, investors, or other third parties designated by Virtru; provided, however, that Virtru shall provide Customer with reasonable prior notice of its need to have Customer serve as a reference and will provide Customer with a reasonable opportunity to review any public references to Customer.

11. Hosted Gateway. If Customer purchased a subscription to Virtru’s Hosted Gateway functionality as part of the Virtru Services, the [Hosted Gateway terms](#) apply, which terms will control over any conflict with this Agreement.