

# Vitruvi™ Customer Terms of Service

Updated May 1<sup>st</sup> 2025





## Vitruvi Terms of Service

**THIS VITRUVI TERMS OF SERVICE** shall govern the Agreements between Client and Vitruvi Holdings, Inc. ("Vitruvi"). From time to time, Vitruvi reviews and updates its Terms of Service and will advise Client via electronic mail or notification via the Vitruvi app.

### 1. Definitions

In addition to terms defined within this Vitruvi Terms of Service, the following capitalized terms shall have the meanings set forth below.

- a. **"Agreements"** means, collectively, the Service Order, this Vitruvi Terms of Service, the attached appendices, Statement(s) of Work, and any other documents identified in the Service Order and made a part hereof or incorporated by reference, including any written amendments.
- b. **"Client"** means the entity identified in the Service Order that is the signatory thereto and has been issued a license to access the Software per the terms of the Agreements.
- c. **"Client System"** means Client's information technology resources and systems as well as third-party hardware and software used to operate or interface with such System, as well as the Client Hardware & Technical Specifications set forth in **Appendix B**.
- d. **"Commencement Date"** means the "Commencement Date" indicated in the Service Order.
- e. **"Consulting Services"** means additional services described in a SOW pertaining to set-up, configuration, implementation, integration, onboarding, consulting, training, and/or other technical services.
- f. **"Documentation"** means the operating manuals, including a description of the functions performed by the Software, user instructions, technical literature and all other related materials supplied to Client by Vitruvi to facilitate the use of the Software, which may be revised, updated or supplemented by Vitruvi from time to time.
- g. **"Error"** means a reproducible failure of the Software to materially perform in accordance with the Documentation.
- h. **"Licensed Users"** means an individual licensee authorized by Client or its affiliates, and includes their respective employees, agents, and contractors, to access the Software. The differing Licensed User types and features of each are set forth in the Service Order.
- i. **"Service Order"** means the document executed by the Parties regarding Client's access to the Software, which identifies applicable documents including this Vitruvi Terms of Service, governing such access and associated services.
- j. **"Services"** means, collectively, Client's subscription to access the Software, Support & Maintenance Services set forth in **Appendix A**, additional services described in a SOW or amendment to the Agreements, as well as any other services provided by Vitruvi.
- k. **"Software"** means Vitruvi's hosted software platform, including Updates, accessed by Client as part of the Services.



- l. **"SOW"** means a Statement of Work executed by the Parties and governed by the Agreements.
- m. **"Subscription Fee"** means the license subscription fee paid by Client to access the Software and includes Support & Maintenance Services.
- n. **"Support & Maintenance Services"** means Support & Maintenance Services described in **Appendix A** pertaining to Error reporting, response and resolution procedures, Software maintenance, and Uptime Assurance.
- o. **"Updates"** means new version release, functional enhancements, improvements, modifications, fixes, patches, error corrections, repairs, and/or replacements to the Software made generally available to and implemented by Vitrui on behalf of its clients.

## 2. **Subscription & Services**

- a. Software Access. The Agreements set forth the subscription terms for Client's access to the Software hosted by Vitrui.
- b. Single Sign-On Access. The Software shall be configured to allow Client and its Licensed Users to access it via the Single Sign-On or SSO made available by Vitrui.
- c. Consulting Services Associated with Software Access. Upon Client's request, Vitrui may provide Consulting Services associated with Client accessing the Software such as set-up, configuration, implementation, integration, onboarding, consulting, and/or training. A SOW shall set forth the Consulting Services to be provided by Vitrui and associated with Client's access to the Software.
- d. Support & Maintenance Services. Vitrui will provide Support & Maintenance Services associated with Client accessing the Software including Error reporting, response and resolution procedures, Software maintenance, and Uptime Assurance. **Appendix A** sets forth the Support & Maintenance Services associated with Client accessing the Software during the Term.
- e. Client access to the Software requires Licensed Users to conform with the technical specifications set forth in the **Appendix B**.

## 3. **Invoicing & Payment**

- a. Invoicing & Payment. Vitrui will invoice Client the annual subscription fee and, if applicable additional fees for implementation of the Software, consistent with the payment terms in the Service Order or applicable SOW. For each subsequent annual subscription fee, Vitrui will invoice Client on the anniversary of the Commencement Date. Payment shall be made by as stated in the Service Order or applicable SOW by wire transfer, automated clearing house (ACH), or other manner agreed by Client and Vitrui. If Client does not timely pay Vitrui the entire invoice amount, Client agrees to pay Vitrui one and a half percent (1.5%) interest per month, compounded monthly, of the unpaid balance. Client shall reimburse Vitrui for all reasonable costs and expenses incurred, including attorneys' fees, collecting unpaid invoice amounts. If an invoicing term in the Service Order conflicts with a term herein, the invoicing term in the Service



Order shall control and absent any conflict, the terms herein shall apply to the Service Order.

- b. Taxes. Fees are exclusive of any applicable taxes, levies, duties, or similar governmental assessments of any nature including, but not limited to, value-added, sales, use or withholding taxes, assessable by any local, state, provincial, federal, or foreign jurisdiction ("Taxes"). Client shall be responsible for paying Taxes. If Vitrui has a legal obligation to pay or collect Taxes for which Client is responsible, the appropriate additional amount shall be invoiced to and paid by Client. For clarity, Vitrui is solely responsible for taxes assessable against it based on Vitrui's income, property, employees, subcontractors, and agents.
- c. Licensed Users. Only one individual is permitted to use an account associated with the Licensed User. If the number of Licensed Users who access the Software increases, Vitrui reserves the right to adjust the monthly subscription fee for the remainder of the Term based on the fee structure set forth in the Service Order. Licensed Users may not be shared between two or among multiple individuals, however a Licensed User may be reassigned to new individual to replace a former Licensed User who no longer requires access to the Software. Licensed User types and additional terms pertaining to Licensed Users are set forth in the Service Order.
- d. Annual Increases. After the first year the annual Subscription Fee will increase five percent (5%) based off pricing in the most current Service Order.

#### 4. **Term & Termination**

- a. Term. This Agreement shall begin on the Commencement Date and continue for the term specified in the Service Order (the "Initial Term"). Following the Initial Term, the Agreements shall automatically renew for a successive one-year renewal term ("Renewal Term"), unless either Party gives written notice to the other Party of termination at least sixty (60) days prior to the first day of the Renewal Term. "Term" means the duration of the Initial Term, plus the duration of each Renewal Term (if any). Termination shall not relieve Client of the obligation to pay fees accrued or payable to Vitrui prior to the termination date.
- b. Termination For Cause. Either Party may terminate the Agreements, in whole or in part, by written notice to the other Party upon the occurrence of any of the following events: (i) the other Party's material breach of any other term or provision of the Agreements which, if capable of cure, remains uncured for thirty (30) days following written notice by the terminating Party; (ii) the other Party becomes insolvent or makes any assignment for the benefit of its creditors; (iii) any proceeding is instituted by or against the other Party under any bankruptcy or similar laws for the relief of debtors and which is not dismissed within thirty (30) days of being instigated; or (iv) the appointment of any trustee or receiver for any of the other Party's assets, except if such receiver requests the continuation of the Agreements. In addition, Vitrui may suspend or terminate the Agreements and/or any Services by providing written notice if Client has not tendered payment on an undisputed amount when due within fourteen (14) days after receiving written notice. In the event of a suspension for nonpayment and Services are reinstated, Vitrui will assess Client additional fees for reinstatement.
- c. Effect of Termination. Any provision of the Agreements related to confidentiality or security of Confidential Information, ownership and proprietary rights, indemnification,



limitation of liability, or which by its terms or nature provides for survival shall survive the termination of the Agreements.

5. **Subscription License & Proprietary Rights**

- a. License Grant. Subject to the terms and conditions in the Agreements and receipt of all applicable fees by Vitruvi, Vitruvi grants Client a non-exclusive, non-transferable, non-sublicensable, revocable license to access and use the Software and Documentation solely for Client's business purposes during the Term. Access and use of the Software shall be web-enabled access only, and nothing in the Agreements shall entitle Client or any Licensed Users to the object or source code of the Software.
- b. License Restrictions. Client shall not, nor allow or authorize any third-party, to: (i) reproduce, allow use of, or access the Software, or sell, rent, lease, use in a service bureau, sublicense or otherwise transfer or assign its rights to access and use the Software, in whole or in part, to a third-party; (ii) alter, enhance or otherwise modify or create derivative works of or from the Software; (iii) disassemble, decompile, reverse engineer or otherwise attempt to derive the object or source code of the Software; (iv) remove or destroy any proprietary markings, confidential legends or any trademarks or trade names of Vitruvi or its licensors placed upon or contained within the Software or Documentation; or (v) upload, post or transmit into or via the Software any viruses or unlawful, threatening, abusive, libelous, defamatory, obscene, pornographic, profane or offensive information of any kind.
- c. Use of Client Marks. Client hereby agrees Vitruvi may use and display, and grants Vitruvi the right to use and display, Client's name(s), its products and service offerings names, and its and their service marks, trademarks and other indicia of ownership or use ("Client Marks") as Client may provide from time-to-time for the purpose of providing Services. Vitruvi shall observe any reasonable policies communicated to Vitruvi when using the Client Marks. Client represents, warrants, and covenants that Vitruvi's use of the Client Marks shall not infringe or misappropriate any intellectual property, proprietary, or privacy rights of any person or entity.
- d. Client Data. Client owns all Client data including personal data pertaining to Client's account, products, materials and intellectual property, whether now existing or hereafter created by Client, including what is used with or in the Software or Services ("Client Data"); provided Client Data shall not include the Software or Services or derivative works thereto.
- e. Client Provided Information & Data. Client acknowledges Services do not include—and Vitruvi has no responsibility or liability with respect to—verifying information provided by Client and/or Licensed Users processed through the Software. In providing Services, Vitruvi shall be entitled to rely upon and act in accordance with any specifications, directions, instructions, guidelines, data or information provided by Client and its Licensed Users, and shall incur no liability in doing so. Client shall defend, indemnify, and hold harmless Vitruvi and its third-party vendors, shareholders, directors, officers and employees (collectively, "Vitruvi Indemnitees") from any and all claims, losses, actions, suits, proceedings or judgments, including, without limitation, costs and reasonable attorneys' fees incurred by or assessed against such parties resulting, in whole or in part from: any action or failure to act by an Vitruvi Indemnatee in reliance on any specification, direction, instruction, approval, election, decision, action, inaction, omission or nonperformance by Client, its officers, directors, shareholders, employees and agents relating to Services or any information or data provided to Vitruvi or



processed through the Software which infringes, misappropriates, or otherwise violates privacy or other rights of any third-party or applicable law.

- f. Software Ownership. All trademarks, service marks, patents, copyrights, trade secrets and other proprietary rights in the Software, Documentation, Services, any third-party software or any other contents within the Software (other than Client Marks and Client Data), and/or copies or portions of any of the foregoing (collectively the "Delivered Solution") are and will remain the exclusive property of Vitrui or its licensors, whether or not specifically recognized or perfected under applicable law. If Client or its Licensed Users make any comments, suggestions, designs, features or other ideas for improving the Delivered Solution submitted by Client or its Licensed Users ("Submissions"), Vitrui shall own all rights to the Submissions and Vitrui shall be entitled to use such Submissions for any commercial or other purpose whatsoever without compensation to Client or anyone else. Client will not take any action that jeopardizes Vitrui's or its licensor's proprietary rights or acquire any right in the Delivered Solution, except the limited license rights specified herein. Vitrui or its licensor will own all rights in any copy, translation, modification, adaptation or derivation of the Delivered Solution, including any improvement or development thereof and/or any ideas first reduced to practice. If Client or any third-party engaged by Client is deemed to have any ownership interest or rights in the Delivered Solution, Client shall assign and/or cause such third-party to assign, and Client does hereby irrevocably assign, without royalty, all of such ownership interest and rights to Vitrui.
- g. Vitrui Privacy & Acceptable Use Policies. Access to the Software is subject to the Vitrui Privacy Policy, which is accessible at <https://vitruisoftware.com/privacy-policy>, as well as its Acceptable Use Policy, which is accessible at <https://vitruisoftware.com/acceptable-use>, as may be updated from time to time.

## 6. **Warranty**

- a. Warranty. Vitrui warrants during the Term of the Agreement that: (i) the Software will materially perform in accordance with the Documentation; (ii) Support & Maintenance Services shall be available and includes Error reporting, response and resolution procedures, Software maintenance, and Uptime Assurance; (iii) Consulting Services shall be performed in a competent and workmanlike manner in accordance with industry-best practice standards; (iv) it has sufficient right, title and interest in and to the Software to license such Software to Client free and clear of all restrictions, liens, and encumbrances that may conflict with or adversely affect Client's rights under the Agreement; and (v) it will materially comply with all applicable laws in performing its obligations hereunder.
- b. Warranty Exceptions. Vitrui shall have no warranty obligations with respect to any failures suffered by the Software to the extent caused by (i) interfacing third-party hardware or software or Client System with the Software unless such is explicitly identified in a SOW as compatible with the Software or (ii) computer programs or code that are not provided by Vitrui (including, without limitation, any computer viruses and other malicious code). Vitrui shall be entitled to payment at its current rates for personnel time spent attempting to identify or correct failures reported by Client for which Vitrui has no obligation under this subsection. In addition, Vitrui shall have no warranty obligations if Client fails to use the Software in accordance with the Documentation, modifies or alters the Software in any way, or is in arrears with respect to its payment obligations.



- c. Warranty Remedy. Vitrui's sole liability and Client's sole remedy with respect to the foregoing warranties shall be for Vitrui, at its sole option, to either (i) correct any Error (subject to the other Warranty terms herein) and/or provide a Service Credit as provided in **Appendix A** or (ii) terminate the Agreements and refund to Client a pro rata amount of the prepaid Subscription Fee paid to Vitrui.
  - d. Warranty Exclusions. EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION, VITRUI MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, WITH RESPECT TO THE SOFTWARE, DOCUMENTATION, AND SERVICES, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. WITHOUT LIMITING THE FOREGOING, VITRUI HEREBY DISCLAIMS ANY WARRANTY THAT THE SOFTWARE, DOCUMENTATION, AND SERVICES PROVIDED HEREUNDER WILL MEET CLIENT'S REQUIREMENTS OR THAT THE SOFTWARE WILL OPERATE UNINTERRUPTED OR ERROR FREE OR THAT ALL ERRORS CAN OR WILL BE CORRECTED.
7. **Confidentiality**
- a. Confidential Information. "Confidential Information" is (a) any non-public or proprietary information, including any business or technical information of Client or Vitrui as well as any sensitive information relating to either Party's products, services, finances, product pricing, marketing plans, business opportunities, trade secrets or personnel, including personally identifiable information or PII; (b) any information of Client or Vitrui that is specifically designated by the disclosing party as confidential or proprietary; (c) any information that is known to the receiving party, or should be known to a reasonable person given the facts and circumstances of the disclosure as being treated as confidential or proprietary by the disclosing party; and (d) the terms and conditions of the Agreements; provided, however, Confidential Information excludes information that: (i) is in or enters the public domain without breach of the Agreements; (ii) the receiving party was demonstrably in possession of prior to first receiving it from the disclosing party; (iii) the receiving party can demonstrate was developed independently and without use of or reference to the disclosing party's Confidential Information; or (iv) the receiving party receives from a third-party without restriction on disclosure and without breach of a nondisclosure obligation.
  - b. Confidential Designation. Vitrui hereby designates the Software, Documentation and Services as Confidential Information. In addition, trade secret information of a Party shall also be designated as Confidential Information for as long as such Information remains a trade secret.
  - c. Maintaining Confidentiality. Except as expressly permitted under the Agreements and for the duration of the Agreements and a period of two (2) years from the termination or expiration of the Agreements, the recipient of Confidential Information shall, and shall cause its personnel to, treat Confidential Information received as confidential and secret, and not use, disclose or otherwise make available the Confidential Information or any portion thereof to others. Each Party shall exercise no less than reasonable care with respect to the handling and protection of Confidential Information by limiting the use and access of Confidential Information to only those who need access, and such access directly pertains to a business purpose contemplated under the Agreements. Either Party may disclose the terms of the Agreements (1) in confidence, to a Party's accountants, legal counsel, tax advisors, and other financial and legal advisors, or (2) with obligations of confidentiality comparable to those contained herein, to another entity or person or their legal or financial advisors in connection with a proposed





change in control, corporate reorganization, consolidation, merger, acquisition, or sale or transfer of all or substantially all of the assets of such Party.

- d. Required Disclosure. Notwithstanding the foregoing, the receiving party may disclose Confidential Information of the disclosing party pursuant to a valid order or requirement of a court, provided the receiving party first gives reasonable written notice to the disclosing party in order to timely contest such order or requirement. Any such disclosure by the receiving party of the Confidential Information of the disclosing party shall, in no way, be deemed to change, affect or diminish the confidential and proprietary status of such Confidential Information.
- e. Return or Destruction of Confidential Information. Upon written request at any time, Confidential Information will be returned to the disclosing party by the receiving party or destroyed by the receiving party. And if requested by the disclosing party, an authorized representative of the receiving party shall certify in writing on behalf of the receiving party that all such Confidential Information has been returned or destroyed, as applicable. Notwithstanding, the receiving party may retain one (1) copy of the Confidential Information for archival purposes or to defend its work product, provided however, such Confidential Information indefinitely remains subject to the terms herein.

## 8. **Security Protocols**

- a. Security Safeguards. Vitruvi shall maintain technical, organizational, and physical safeguards to protect Client Confidential Information processed through the Software from unauthorized or accidental disclosure, access, acquisition, destruction, alteration, misuse, loss, or damage in a manner that meets or exceeds applicable laws and globally recognized industry practices. Vitruvi shall also require that such safeguards, including the manner in which Client Confidential Information is accessed, received, used, stored, transmitted, processed, and disclosed, comply with applicable federal and state privacy and data protection laws, as well as applicable regulations and directives. The safeguards implemented by Vitruvi shall include: (1) limiting access of Client Confidential Information to individuals that have a need to know and demonstrable basis for such access in order to provide Services; (2) securing business facilities, data centers, servers, backup systems, and computing equipment including, but not limited to, mobile devices and other equipment with information storage capability; (3) implementing network, application, database, and platform security, including firewall protection, antivirus protection, and security patch management; (4) securing information transmission, storage, and disposal; (5) implementing authentication and access controls within media, applications, operating systems, and equipment, including logging of access to or use or disclosure of Client Confidential Information and intrusion detection; (6) using protocols to encrypt Client Confidential Information in transit and at rest, or as otherwise required by applicable law or regulation, and safeguard the security and confidentiality of all encryption keys; (7) implementing ongoing personnel training and awareness regarding industry-best security safeguard practices; and (8) conducting risk assessments, penetration testing, and vulnerability scans and promptly implementing, at Vitruvi's sole cost and expense, a corrective action plan to correct any issues reported as a result of the testing.
- b. Subprocessors. The Software will process Client Confidential Information as necessary to perform the Services, and as further instructed by Client in using the Services. Client acknowledges Vitruvi uses third-party subprocessors ("Subprocessors") to process Client Confidential Information. Vitruvi has undertaken due diligence measures to





ensure Subprocessors have the capability to safeguard Client Confidential Information consistent with the confidentiality provisions herein. Vitrui shall also ensure its Subprocessors properly perform its processing obligations and, to the extent a Subprocessor fails to properly perform its obligations or breaches the terms of the Agreements, Vitrui shall be responsible and liable to Client.

- c. International Transfers of Client Confidential Information. If Client Confidential Information is transferred, stored, or processed internationally, Vitrui shall use generally accepted industry data transfer protocols and encryption methodologies in compliance with applicable laws.
- d. Security Breach Procedures. In the event of a security breach of the Software that compromises Client Confidential Information, Vitrui will provide notice to Client of a confirmed breach as soon as practicable, but in no event more than seventy-two (72) hours upon becoming aware of the same. The notice will state the nature of the breach and what, if any, Client Confidential Information was compromised. Vitrui shall promptly provide any additional information to Client as Vitrui gains additional information regarding the breach, including relevant investigative or forensic reports. Unless otherwise required by law or a governmental entity, Vitrui shall not notify or otherwise publicly disclose the breach unless such notice or public disclosure is approved by Client.
- e. Client Security Responsibilities. Client is responsible for ensuring (1) the Software is only accessed by Licensed Users authorized by Client and (2) its information transmitted to the Software, including Confidential Information, is done in a manner consistent with generally accepted industry practices. Client shall report suspicious activity, suspected security concerns, or unauthorized use of passwords or access to the Software to the Vitrui Support & Maintenance Services team at support@vitruisoftware.com.

9. **Insurance**

Vitrui shall carry and keep in full force and effect during the term of the Agreement the following minimum insurance coverages: (i) commercial general liability insurance: each occurrence—two million dollars (\$2,000,000), damage to rented premises—one million dollars (\$1,000,000), personal and advertising injury—two million dollars (\$2,000,000), general aggregate—four million dollars (\$4,000,000), and products and completed operations subject to the general aggregate limit—four million dollars (\$4,000,000); (ii) automobile liability insurance for hired and non-owned vehicles, combined single limit—one million dollars (\$1,000,000); (iii) statutory workers compensation and employer's liability insurance—one million dollars (\$1,000,000); (iv) umbrella liability insurance over (i), (ii), and (iii): each occurrence and aggregate—three million dollars (\$3,000,000); (v) professional and cyber liability insurance, combined single limit—each occurrence and aggregate three million dollars (\$3,000,000); and (vi) employee crime insurance—each occurrence and aggregate two million dollars (\$2,000,000). Upon written request, Vitrui shall furnish Client with a certificate from its insurance carrier or carriers showing its compliance with the foregoing insurance requirements.

10. **Infringement Indemnity**

- a. Infringement Indemnity. Vitrui agrees, at its own expense, to defend or, at its option, to settle, any claim or action brought against Client to the extent it is based on a claim Client's use of the Software or Services within the scope of the Agreements infringes or



violates any U.S. patent or copyright, and will indemnify Client from any losses, damages, or expenses resulting from settlement or judicial award from such claim; provided, however, this Section does not cover, and Vitrui shall have no obligation hereunder for, infringement claims arising from: (i) Client's failure to use the Software in accordance with the Documentation; (ii) Client's failure to use the Software in its current version; (iii) Client's failure to use any Updates required by Vitrui; (iv) use of the Software in conjunction with third-party software or equipment or Client System where such combination is the cause for infringement; (v) modification to the Software made in accordance with Client's instructions provided the infringement would not have occurred but for such modification; (vi) modification of the Software without Vitrui's approval provided the infringement would not have occurred but for such modification; (vii) use of the Software or Services after a non-infringing, replacement version has been made available without additional charges by Vitrui to Client; or (viii) if Client has not adhered to its obligations under the Agreements. THIS SECTION STATES VITRUI'S ENTIRE LIABILITY AND CLIENT'S SOLE REMEDY FOR INFRINGEMENT CLAIMS.

- b. Opportunity to Rectify. If a claim or suit under this Section for which Vitrui is required to indemnify Client or is likely to be brought, Vitrui may be required to suspend Client's and its Licensed Users' access to the Software and Client shall comply with such requirement, and Vitrui will, at its sole option, either (i) procure for Client the right to use the Software, Services, or affected part thereof; (ii) replace the Software, Services, or affected part thereof with other non-infringing products or modify the Software, Services or affected part thereof to make such not infringing and functionally equivalent; or (iii) if the remedies set forth in clauses (i) and (ii) are not commercially feasible, as determined by Vitrui, terminate the Agreements and the rights granted hereunder and refund to Client a pro rata amount of any prepaid Subscription Fee. Vitrui will not be liable for any costs or expenses incurred without its prior written authorization.
- c. Indemnification Procedure. As conditions to Vitrui's obligations in this Section: (i) Client shall provide Vitrui with prompt notice of the claim or suit giving rise to such obligation; provided, however, that any failure or delay in giving such notice shall only relieve Vitrui of its obligations under this Section if Vitrui reasonably demonstrates that its defense or settlement of the claim or suit was adversely affected thereby; (ii) Vitrui shall have sole control of the defense and of all negotiations for settlement of such claim or suit; and (iii) Client shall cooperate with Vitrui in the defense or settlement of any such claim or suit, provided Client shall be reimbursed for all reasonable out-of-pocket expenses incurred in providing any cooperation requested by Vitrui. Subject to clause (ii) above, Client may participate in the defense of any such claim or suit at its own expense.

## 11. **Liability Exclusions & Limitation**

- a. Liability Exclusions. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER PARTY SHALL BE LIABLE OR RESPONSIBLE FOR ANY CONSEQUENTIAL, SPECIAL, INCIDENTAL, EXEMPLARY, ENHANCED, PUNITIVE, INDIRECT OR SIMILAR DAMAGES, INCLUDING DAMAGE TO REPUTATION OR ANY DAMAGES ON ACCOUNT OF BUSINESS INTERRUPTIONS, LOST PROFITS, LOST DATA, LOSS OF USE OF DATA, LOST OPPORTUNITY, THE INABILITY TO USE THE SOFTWARE OR SERVICES, OR ANY OTHER THEORY (INCLUDING NEGLIGENCE OR STRICT LIABILITY) WHETHER OR NOT PLACED ON NOTICE OF ANY SUCH ALLEGED DAMAGES AND REGARDLESS OF THE



FORM OF ACTION IN WHICH SUCH DAMAGES MAY BE SOUGHT, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, THE SOFTWARE, OR SERVICES.

- b. Liability Limitation. NEITHER PARTY'S CUMULATIVE LIABILITY, IF ANY, HEREUNDER FOR DAMAGES RELATING TO THIS AGREEMENT, THE SOFTWARE, OR SERVICES, WHETHER CAUSED BY FAILURE TO DELIVER, NONPERFORMANCE, ERRORS, BREACH OF WARRANTY OR OTHERWISE, SHALL EXCEED THE FEES PAID BY CLIENT TO VITRUVI FOR THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE OF THE EVENT GIVING RISE TO SUCH LIABILITY. THE LIMITATION IN THE PRECEDING SENTENCE MAY BE INCREASED TO (BUT SHALL NOT EXCEED) ONE MILLION DOLLARS (\$1,000,000) FOR DAMAGES ARISING FROM OR RELATING TO A CONFIDENTIALITY OR SECURITY BREACH, INTELLECTUAL PROPERTY INDEMNIFICATION OBLIGATION, OR LOSSES ARISING FROM GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT. THE EXISTENCE OF ONE OR MORE CLAIMS WILL NOT ENLARGE THIS LIMITATION.

12. **Miscellaneous**

- a. Currency. All sums and amounts payable or to be paid by Client to Vitruvi shall be in United States currency (USD) unless otherwise stated in the Service Order.
- b. Notice. Any formal notice or other communication given pursuant to the Agreements shall be in writing and delivered by certified mail, overnight express delivery service (such as Federal Express), or by priority mail by a recognized express mail vendor to the attention of "Legal Department" and at the Party's address set forth in the Service Order. Either Party may designate a different address by notice to the other in accordance herewith. Notice will be deemed served when delivered or, if delivery is not accomplished by reason or some fault of the addressee, when tendered. Any notice to Vitruvi shall also be sent electronically to legal@vitruvisoftware.com.
- c. Assignment. If a Party wishes to assign the Agreements to another entity, that Party must obtain the other's prior written consent, which shall not be unreasonably withheld; provided it shall be reasonable to withhold consent if the assignee is a competitor of the non-assigning Party. Notwithstanding the foregoing, the Agreements may be assigned to a successor in interest in the context of a change in control, corporate reorganization, consolidation, merger, acquisition, or sale or transfer of all or substantially all of the assets of the assigning Party, provided: (i) such assignee is not a direct competitor of the other Party; (ii) such assignment does not interfere with the performance of obligations under the Agreements; or (iii) such assignment does not change the scope of usage and the intent contemplated by the Parties under the Agreements. An assignment of the Agreements will be binding on the Parties and their successors and permitted assigns.
- d. Mediation. In the event of a dispute, one Party will promptly notify the other in writing. Each Party shall sponsor a representative with authority to settle the dispute, who will attempt in good faith to resolve the dispute within seven (7) days following the receipt of the written notice. If mediation is unsuccessful, a Party may seek final resolution through arbitration or court as provided herein.
- e. Governing Law & Formal Dispute Resolution. The validity, interpretation, and enforceability of the Agreement shall be governed by the laws of the State of Delaware. The Parties agree should any dispute arise relating to the Agreement, they will first undertake mediation as provided herein. If mediation is unsuccessful and the dispute is monetary in nature, the dispute must be resolved through final and binding



arbitration in Wilmington, Delaware, before the American Arbitration Association under its Commercial Arbitration Rules with one arbitrator. Either Party may seek non-monetary, equitable relief such as an injunction or specific performance in any competent court, wherever located, to enforce the Agreement.

- f. Waiver of Jury Trial. To the fullest extent permissible under applicable law, each Party hereby knowingly and voluntarily waives any and all rights to a jury trial, to the fullest extent any such right will now or hereafter exist, in any proceeding, claim, counter-claim, or other action involving any dispute or matter arising under the Agreement.
- g. Waiver. The delay or failure of either Party to enforce any of its rights hereunder will not be deemed to constitute a waiver of its future enforcement of such rights or any other rights. No waiver of any provision of the Agreement will be binding upon the Parties, unless evidenced by a writing signed by an authorized representative from each Party.
- h. Relationship of the Parties. The Parties are independent contractors, and nothing in the Agreement will be deemed to place the Parties in the relationship of employer-employee, principal-agent, "borrowed servant," partners, or joint venture. Neither Party will have any authority to bind or make commitments on behalf of the other Party for any purpose, nor will any such Party hold itself out as having such authority.
- i. Publicity. In consideration of granting Client a license to access the Software, Vitruvi may publish Client's name, logo, trade, and/or service marks in any Vitruvi customer list, sales activity, advertising, marketing, or any other form or manner of publicity for the limited purpose of indicating Client accesses the Software hosted by Vitruvi.
- j. Force Majeure. If by reason of a labor dispute, strike, lockout, pandemic, riot, war, earthquake, fire or other action of the elements, accidents, internet service provider or hosting facility failures or delays involving hardware, software or power systems, governmental restriction, appropriation, or other cause beyond the reasonable control of a Party ("Force Majeure Event") and that Party is unable to perform in whole or in part its obligations in the Agreements, then the affected Party shall provide notice to the other Party as soon as practical and the Parties commit to use best efforts to work toward a mutually agreeable solution. Neither Party will be liable for any losses, injury, delay, or damages suffered or incurred by the other Party due to a Force Majeure Event.
- k. Entire Agreement & Precedence. The Service Order, this Vitruvi Terms of Service, the attached appendices, Statement(s) of Work, and any other documents identified in the Service Order and made a part hereof or incorporated by reference, including any written amendments, contain the complete and final understanding of the Parties with respect to the subject matter hereof and supersedes all prior or contemporaneous communications between the Parties, whether written or oral. In the event of a conflict or inconsistency between or among terms in the Service Order, this Vitruvi Terms of Service, a SOW, or the Vitruvi Privacy & Acceptable Use Policies, the conflict will be resolved in favor of (1) this Vitruvi Terms of Service including the Appendices, (2) the Service Order, (3) the SOW, and (4) the Vitruvi Privacy & Acceptable Use Policies, unless it is expressly stated that a provision is superseded. Moreover, nothing herein shall affect or terminate ongoing rights from non-disclosure agreements entered into by the Parties prior to the execution of the Agreement; provided, however, any Confidential Information exchanged between the Parties following the execution of the Agreement shall be governed solely by the confidentiality obligations set forth herein.



- l. Construction & Interpretation. The Agreements shall, in all cases, be construed simply, as a whole, and in accordance with its fair meaning and not strictly for or against any Party. The Parties acknowledge the Agreements have been negotiated between them at 'arm's length' with the opportunity to independently review the Agreements with legal counsel and each Party has the requisite experience and sophistication to understand, interpret, and agree to the particular language of the provisions hereof. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of the Agreements, the Agreements shall not be interpreted or construed against the Party preparing it. The captions of sections and subsections are inserted solely for convenience and under no circumstances are they to be used to construe or interpret any particular provision.
- m. Severability. If any particular provision of the Agreements are found to be invalid or unenforceable, then such provision will be stricken and it shall not affect the validity or continuing effect of any other provision, and to the extent practical the invalid or unenforceable provision shall be reformed so it aligns with the Parties' intent.
- n. Export Controls. The Software and associated services are subject to export controls under the U.S. Export Administration Regulations and other applicable laws.
- o. Execution. Any document pertaining to the Agreements, in particular the Service Order, that requires signature by the Parties may be executed in two or more counterparts, each of which will be deemed an original and all of which when taken together, will constitute one and the same instrument. A document signed and transmitted by .pdf or other electronic means (such as DocuSign) shall have the same binding effect as an original "wet-ink" signature.



## Appendix A: Support & Maintenance Services

1. Support & Maintenance Services. During the Term, Client may request Support & Maintenance Services by reporting Errors to Vitruvi via <https://vitruvi.zendesk.com/>, electronic mail ([support@vitruvisoftware.com](mailto:support@vitruvisoftware.com)), or telephone [+1 855.565.0458 (US), +1 833.693.0757 (Canada); +44 7723.615600 (UK)]. Support & Maintenance Services include intake of inquiries regarding Software functionality/capabilities, incident reporting and resolution following the Support Procedures below, and intake of Software feature requests.

2. Support Procedures. Procedures for Support & Maintenance Services are as follows:

Vitruvi will respond to Support & Maintenance Services requests based on the Severity Level assigned by Vitruvi, which is set forth in Table 1. Vitruvi will provide Client an initial response for each reported Error (indicating the support query has been received) within the timeframe set forth in Table 2 upon Vitruvi being notified of the Error. Vitruvi will assign Client an incident ticket number to be used for communications going-forward regarding the Error and provide the timeframe to rectify the Error after conducting an assessment. Client shall maintain current and accurate contact information for Client's administrators to receive information and notifications. 'Screen captures' or a specific data reference may be necessary to replicate or effectively communicate the incident.

**Table 1 – Severity Level**

Severity Level	Description
<b>Severity I –</b> Critical Service Impact	The Software is inaccessible due to an outage or defect that causes the Software to fail to operate in a material manner and severely impacts Client's business operations, thereby requiring immediate attention.
<b>Severity II –</b> Major Service Impact	An Error or response time of the Software significantly impacts Client's business operations. Despite the defect, Client can still conduct business and there is often a work around available to continue operations.
<b>Severity III –</b> Minor Service Impact	The Error is minor or cosmetic in nature, has little to moderate impact on Client's business operations, and a work around is available.



**Table 2 – Response Timeframe**

<b>Description</b>	<b>Severity I</b>	<b>Severity II</b>	<b>Severity III</b>
Response Timeframe	within one (1) business hour if reported during regular business hours or within four (4) business hours if reported outside of regular business hours	within two (2) business days	within (5) business days
Includes Third-Party Vendor Coordination	yes	as needed	as needed
Involves Vitruvi Management Escalation	yes	as needed	as needed
Generates Resolution Report Identifying Cause	yes	yes	as needed

The failure to resolve an Error does not constitute a material breach of the Agreement.

3. Exclusions. Vitruvi does not provide Support & Maintenance Services to address failures suffered by the Software to the extent caused by (a) interfacing third-party hardware or software or Client System with the Software unless such is provided by or on behalf of Vitruvi or explicitly identified in a SOW as compatible with the Software, (b) configuring an Update to the Software for Client, or (c) computer programs or code that are not provided by Vitruvi (including, without limitation, any computer viruses and other malicious code). Notwithstanding subsection (a), Support & Maintenance Services shall be provided for Errors relating to the Software interfacing with Vitruvi's third-party vendors. Support & Maintenance Services will not be provided to (x) accommodate Client customizations, modifications, or manipulation of data, (y) accommodate requests for new functionality/capabilities, reporting, additional training, troubleshooting/resolving issues with third-party hardware or software or Client System, Client specific scenario testing, or database backup and/or restoration, or (z) Client's third-party vendors. Vitruvi will determine, in its sole discretion, whether a failure or request is covered by Support & Maintenance Services. Upon request, Vitruvi will attempt to resolve an issue not covered by Support & Maintenance Services at Vitruvi's current hourly rates.
4. Updates. Vitruvi performs regular Updates, which typically will not affect Software downtime. If Updates will affect Software downtime, Vitruvi will perform the Updates outside regular business hours ("Scheduled Updates") unless exigent circumstances warrant otherwise. Scheduled Updates are excluded from Vitruvi's Uptime Assurance.
5. Software Availability / Service Level Agreement.





- a. Uptime Assurance. Vitruvi will use commercially reasonable efforts to make the Software accessible to Client twenty-four (24) hours a day, seven (7) days a week with an average of 99.5% availability, except for time when the system is down during Scheduled Updates, Force Majeure Events or interruptions or failures caused by Client or Licensed Users, their equipment or networks. "Uptime Assurance" is calculated on a monthly basis as (i) the total minutes in the month minus the number of minutes during such month the Software was not accessible by Client or its Licensed Users divided by (ii) the total minutes in the month (excluding from the calculation of (i) and (ii) any time the Software was inaccessible during Scheduled Updates, Force Majeure Events, interruptions or failures caused by Client or Licensed Users, or suspension or termination of Services permitted under the Agreements). Uptime Assurance applies only to a Client's production instance, not test or development instances.
- b. Service Level Agreement. Notwithstanding any other provision in the Agreement or remedies which may otherwise be available, Client's sole and exclusive remedy for a breach of Uptime Assurance and Vitruvi's sole and exclusive liability is Client shall be entitled to a refund for the month in which Vitruvi failed to achieve the Uptime Assurance ("Service Credit"). The Service Credit shall equal two percent (2%) of the prorated monthly Subscription Fee for every 60-minute increment of downtime that exceeds Uptime Assurance.
- c. Service Credit. In order to receive a Service Credit, Client must notify Vitruvi in writing it believes it is entitled to such credit within thirty (30) days of the end of the month in which the failure at issue occurred. Client agrees it is not entitled to the credit or any other remedy if such notice is not timely provided. Following Client's notice in accordance with this Section, and Vitruvi's verification that Client is entitled to a Service Credit (which verification Vitruvi will confirm within thirty (30) days of Client's notice), Vitruvi shall provide a credit against future amounts due to Vitruvi. Client shall not offset any amounts or payments under the Agreements, except for amounts credited pursuant to the terms of this Appendix.



## Appendix B: Client Hardware & Technical Specifications

1. Access Hardware. Client access to the Software will require Licensed Users to have access to laptops, desktops, tablets, phones, or other hardware in accordance with the specifications below (collectively, "Access Hardware"). Client acknowledges Client Data loss may occur as a result of loss of or damage to a Licensed User's Access Hardware used to access the Software after entry of the Client Data by a Licensed User and prior to connecting the Access Hardware to the internet to allow Client Data to sync with the Software. Client releases Vitruvi for claims arising therefrom and is not responsible for reconstruction, replacement, repair, or recreation of lost Client Data that has not synced with the Software.
2. Web Access Requirements. Software access requires Licensed Users to utilize one of the three (3) most recent versions of Google Chrome or Microsoft Edge (of the stable or extended stable channel).
3. Web Display Resolution Requirements. The minimum supported effective display resolution for web access is 1366 x 768 and the minimum recommended effective display resolution for web access is 1920 x 1080.
4. Mobile Access Requirements for Apple iOS® & Android® Devices. Software access requires Licensed Users to utilize the most current and supported Apple iOS operating systems and Android OS. (Reference this [link](#) to determine whether an Apple iOS operating system is the most current and this [link](#) to determine whether an Android OS is the most current). In addition, the Software will not operate properly on a device with less than 4GB of RAM.

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