

# Vitruvi Customer Terms of Service

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**vitruvi**<sup>™</sup>

## Vitruvi Customer Terms of Service

**The Customer and Vitruvi acknowledge and agree that the Service Order (and schedules or exhibits thereto) along with the Customer Terms of Service constitute the entire agreement and understanding of the parties, (collectively, the “Agreement”) and both your use of the Software and receipt of Professional Services and will be governed by the Agreement.**

The terms and conditions in the Agreement describe the Professional Services we will provide to you, how we will work with you and your team members, and other aspects of our business relationship, including commercial and service level terms. It is an important legal document, so some of the language is necessarily lengthy, but we have tried to make it as readable as possible. These terms and conditions are so important that we cannot provide our products and services to you unless you agree to them. By executing the Service Order, using our Software, or receiving the Professional Services, you are agreeing to these terms and conditions.

We review and update Customer Terms of Service on a regular basis. If you have an active Vitruvi subscription, we will let you know when we do, via an email or in-app notification.

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## 1 DEFINITIONS

- 1.1 “Active Users”** means a User who has a valid login to access the Software.
- 1.2 “Affiliate”** means any entity controlling, controlled by or under common control with a Party (in each case whether directly or indirectly) where “control” means the ownership of greater than 50% of the voting securities of a corporation, the right to appoint a majority of the board of directors, or otherwise control the governing body of an entity.
- 1.3 “Android®”** means the mobile operating system designed primarily for touchscreen mobile devices such as smartphones and tablets, developed by a consortium of developers known as the Open Handset Alliance and commercially sponsored by Google.
- 1.4 “Annual Pre-Paid License”** means the non-refundable advance payment, equal to a minimum of 12 months (or such equivalent) of License Fees.
- 1.5 “Back-end”** means computer servers and application software running thereon.
- 1.6 “Back-end Administration”** refers to the administration portal used by the Customer to manage certain Workspace settings, and any configuration settings that are not administered on the Front-end. The unique URL(s) for this administration portal will be referenced as **“https://[workspace name].api.vitruvi.cc/admin/”**, where [workspace name] will be a unique name as assigned by the Company.
- 1.7 “Billing Cycle”** means the period from the first day of the month to the last day of the month.
- 1.8 “Company Intellectual Property”** means any and all Intellectual Property that is conceived, invented, developed, improved or acquired by the Company (including by its Affiliates and its and their employees and contractors) prior to or during the term of this Agreement and includes Feedback and Improvements proposed by the Customer and/or the Company, and includes all Intellectual Property related to the Technology.
- 1.9 “Confidential Information”** means any non-public information, data, any proprietary tools, proprietary knowledge, know-how or proprietary methodologies, trade secrets, knowledge, Documents or materials owned, developed or possessed by the disclosing party, or other property, of any kind and in whatever form, that is confidential or proprietary to the disclosing party, or any Affiliate, customer, client, supplier, joint venture or partner of the

disclosing party. Confidential Information includes, but is not limited to, information pertaining to the disclosing party's (or that of any Affiliate, customer, client, supplier, joint venture or partner) business, assets, operations, research, analyses, projections, business relationships (including those with customers, suppliers and others), products (including prices, costs, markets, sales or content), financial information or measures, business methods, future business plans, databases, matters of a technical nature (including know-how, data, formulae, secret processes and designs, methods, processes, models, operating procedures, and schematics), inventions (whether patentable or not), improvements, discoveries, data including technical data, database rights, user data, and documentation relating to any of the foregoing; knowledge of the organization, and other information of any nature whatsoever owned, developed or possessed by the disclosing party. Confidential Information also includes the substance and terms of this Agreement.

Confidential Information does not include data or information that: (a) is within the public domain at the date of disclosure by the disclosing party or which thereafter enters the public domain through no fault of the receiving party or its representatives or Affiliates (but only after it becomes part of the public domain); (b) is already known to the receiving party at the time of its disclosure by the disclosing party, and is not subject to confidentiality restrictions; (c) following its disclosure to the receiving party, is received by the receiving party without obligation of confidence from a third party who the receiving party had no reason to believe was not lawfully in possession of such information free of any obligation of confidence; or (d) is independently developed by the receiving party without reference to or knowledge of the disclosing party's Confidential Information.

- 1.10 “Customer” or “You”** means the person or entity receiving the SaaS through the Software or receiving the Professional Services, as identified in the applicable account record, billing statement or Service Order.
- 1.11 “Customer Address”** means the Customer's physical location or shipping address, as identified on the Service Order.
- 1.12 “Customer Data”** means all information, data and materials that the Customer, or anyone acting on behalf of the Customer, provides or transfers to the Company for any purpose, in connection with the Customer's use of the SaaS, including data entered into the Software. Customer Data also includes the presentation of the aforementioned data in reports and data exports generated by the Software.
- 1.13 “Customer Intellectual Property”** means any and all Intellectual Property that is part of the Customer Data.

- 1.14 "Data Storage"** includes all data storage related to Customer databases and Customer files and is measured to the nearest GB.
- 1.15 "Deliverable"** means any software, equipment consultations, documentation and/or other materials prepared by Vitruvi for the Customer or Partner as described in a Statement of Work.
- 1.16 "Device"** means an IP-enabled, uniquely addressable Personal Computer, Tablet or Mobile Device that accesses the Software through a web browser or the mobile application.
- 1.17 "Documentation"** means the notes, instructions and reference materials pertaining to the use of the Software, as made available to the Customer.
- 1.18 "Environment"** means the Vitruvi infrastructure required to deliver the SaaS to the Customer.
- 1.19 "Extended Working Hours"** are those working hours, outside of standard Working Hours, as defined in the Service Order.
- 1.20 "Feedback"** means feedback or suggestions provided by Customer relating to or regarding the Technology, the Company's Confidential Information or the Company Intellectual Property, which may include suggestions for, or feedback concerning, improvements, modifications, corrections, enhancements, derivatives or extensions, as well as branding ideas, but expressly excludes Customer Data and Customer Confidential Information.
- 1.21 "Front-end"** means the software website as well as the mobile application that is available to the Customer and its Users.
- 1.22 "Implementation Playbook"** see Vitruvi Implementation Playbook.
- 1.23 "Improvements"** means, with respect to the Technology or the Company Intellectual Property or the Company's Confidential Information, any and all improvements, derivative works, variations, updates, modifications, enhancements or adaptations on, to or of such Technology, the Company Intellectual Property or the Company's Confidential information (including for greater certainty, the application of such Improvements to any and all additional products or services).
- 1.24 "Intellectual Property"** means all intellectual property and industrial property of a Party anywhere in the world, whether registered, subject to an application for registration or unregistered, including all: (i) patents, applications for patents and reissues, divisions, continuations, renewals, extensions and continuations-in-part of patents or patent applications; (ii) inventions (whether

patentable or not), invention disclosures, improvements, discoveries, trade secrets, know-how, methods, processes, technology, technical data, database rights, user data, schematics, formulae and customer lists, and documentation relating to any of the foregoing; (iii) copyrights in all works and all other rights of authorship, including moral rights and benefits of waiver of moral rights therein, copyright registrations and applications for copyright registration; (iv) designs, design rights, industrial designs, industrial design registrations, design patent registrations, industrial design registration applications, applications for design patents, and integrated circuit topographies; (v) trade names, business names, corporate names, domain names, social media identities, website names and world wide web addresses, common law trade-marks, trade-mark registrations, trade-mark applications, brand names, slogans, trade dress, logos, and the goodwill associated with any of the foregoing; and (vi) computer software, programs, applications, and customizations thereof (both source code and object code form), interfaces and development tools, including all proprietary rights therein and all documentation and other materials related thereto.

- 1.25 “iOS®”** means the mobile operating system created and developed by Apple Inc. exclusively for its hardware and the operating system that powers many of the company's mobile devices.
- 1.26 “License Fees”** means the fees paid for access to the Software and/or SaaS, where such Software and/or SaaS are billed under a license based pricing structure.
- 1.27 “License Type”** means the unique types of software licenses used across a Customer’s Workspace(s). The capabilities, permissions and costs of these vary and are detailed in the Service Order.
- 1.28 “Minimum License Commitment”** means the minimum billable total, per Billing Cycle, as agreed upon in the Service Order.
- 1.29 “Mission Critical Business Processes”** means those Customer business processes that are absolutely required for the Customer to: carry on production, pay its employees and subcontractors, or collect payment from its clients.
- 1.30 “Mobile Application” or “Mobile App”** means the SaaS application that runs on mobile devices, and is available from both Google Play® and the App Store®, under the product name ‘Vitruvi’.
- 1.31 “Partner”** means a Vitruvi channel partner as defined in Vitruvi’s Partner Terms of Engagement—a copy of which can be provided to all current and prospective Partners.

- 1.32** **“Party”** means either of the Customer or Vitruvi and **“Parties”** means both the Customer and Vitruvi.
- 1.33** **“PMOaaS”** means those Managed Services as further described on the Service Order and section 5.22 of this document.
- 1.34** **“Priority Contacts”** means those Users, having Super-User or administrator access, who will act as the Customer’s main points of contact for any critical operational and Software issues.
- 1.35** **“Production Workspace”** means a Workspace used by the Customer for active business operations. The unique URL for the workspace’s Front-end, being: **“https://[workspace name].vitruvi.cc”**, where [workspace name] will be a unique name as assigned by the Company.
- 1.36** **“Professional Services”** means the professional services provided to you by us, which may include, but are not limited to training, installation, integration, Software support or other services which may be specified in the Service Order.
- 1.37** **“Record”** in the context of API transactions means a single row or file, in either a result set (GET) or a resource/table update (POST, PUT, DELETE).
- 1.38** **“Related Party”** means any person or entity who is not directly employed by the Customer, but who is related to the Customer’s Work by way of: a client or vendor contract engagement, a permitting engagement/relationship, or other such third-party involvement with the Customer’s Work.
- 1.39** **“Release Notes”** means a summary of any changes applicable to a Software Release, including a description of additions, enhancements or corrections to existing functionality.
- 1.40** **“Renewal Order”** or **“Renewal Service Order”** means the Service Order that renews your Subscription upon the day immediately following the expiration of your current Subscription Term.
- 1.41** **“Reseller”** means an approved partner, under contract with Vitruvi, to resell the Software, SaaS and Professional Services.
- 1.42** **“Server”** means the physical computer servers which store the Customer Data.
- 1.43** **“Service Account”** means a special type of User account intended to represent a non-human user that needs to authenticate and be authorized to access data from Vitruvi APIs.
- 1.44** **“Service Order”** means the Vitruvi approved form by which you agree to subscribe to the SaaS and/or purchase Professional Services. The Service Order



may be referred to as a “Statement of Work” if you are purchasing only Professional Services. The Service Order will further specify and define the Effective Date of our agreement, the Subscription Date for your access to the SaaS and the Due Date for any payments.

- 1.45 “Single Sign-on” or “SSO”** means an authentication scheme that allows a user to log in to the Software using a centralized session and user authentication service.
- 1.46 “Software as a Service” or “SaaS”** consists of system administration, system management and system monitoring activities that the Company provides via the Software, and includes the right to use the Software.
- 1.47 “Software”** means the Vitruvi software platform, including the web applications and API’s and any mobile applications published and maintained by Vitruvi™.
- 1.48 “Software Release”** means any update to the Software to add new functionality, enhance existing functionality or make corrections to existing functionality.
- 1.49 “Software Unavailability”** means, for SaaS and databases, when the Software is not running or not reachable due to the Company’s fault or error. The following are not considered the Company’s fault or error (and therefore not included as Product Unavailability events): Planned Downtime (defined in Section 5.10), Customer scheduled maintenance time, issues with the Customer’s own internet services, Force Majeure (defined in Section 8.16 of the Agreement) events, any systemic internet failures, any failure in the Customer’s own hardware, software or network connection, the Customer’s bandwidth restrictions, the Customer’s acts or omissions, and the “Exclusions” identified in Section 5.20.
- 1.50 “Staging Workspace”** means a Workspace used by the Customer for testing and training purposes only, including user acceptance testing and configuration testing. The unique URL for this Workspace’s Front-end, being: **“https://[workspace name].vitruvi.cc”**, where [workspace name] will be a unique name as assigned by the Company. Note that service level and uptime commitments do not apply to Staging Workspaces.
- 1.51 “Statement of Work”** means the document describing and outlining the work requirements, activities and timelines for Professional Services and related Deliverables.
- 1.52 “Subscription Fees”** means any License Fees and Professional Services fees payable by the Customer as set out in one or more Service Orders.

- 1.53 “Subscription Term”** means the time period detailed in the Service Order for which the SaaS and Professional Services will be provided.
- 1.54 “System Access Fee”** means the basic, or minimum, Customer fee for accessing the Software and maintaining an active Workspace.
- 1.55 “Taxes”** means any local, state, federal or foreign taxes, levies or duties of any nature, including value-added, sales use or withholding taxes.
- 1.56 “Technology”** means the Software and any plans, tools, devices, mechanisms, items, products, processes, techniques, information or methods which are described in or are the Company’s Confidential Information, or which are developed, invented, improved, modified, enhanced or changed in connection with the Software or as a result of Confidential Information, Intellectual Property and any proprietary rights in or to the foregoing, in each case which are developed, invented, discovered, created or conceived by the Customer in the course of the Customer’s engagement pursuant to the Agreement, or by the Company or by other customers, agents or Affiliates, associates or subsidiaries of the Company.
- 1.57 “Timesheet User”** means any User that is registered in the Software for the purposes of recording and/or registering a timesheet entry. Such a User does not have the ability to login to the Software using their own credentials.
- 1.58 “Uptime”** is calculated by subtracting from 100%, the percentage of minutes during Working Hours in the month, in which Product Unavailability occurred.
- 1.59 “User” or “Users”** means an individual licensee of the Software, as authorized by the Customer or its Affiliates, and includes employees, agents, and contractors of the Customer and its Affiliates, where such individual has access to the Software—for any length of time—during the Billing Cycle. The Customer is not permitted to have multiple persons using one User account.
- 1.60 “User Conference”** means an assembly or meeting, typically held on an annual basis, to communicate, train and network with Vitruvi Customers, Users and related industry contacts.
- 1.61 “Vitruvi”, “we”, “us”, and “Company”** means Fresnel Software Corporation.
- 1.62 “Vitruvi Implementation Playbook” or “VIP”** means the document that defines and describes the scope of work for the Customer’s implementation, as agreed to, and signed off by both the Customer and the Company.

- 1.63 “Work” or “Customer’s Work”** refers to the project, construction or other such activities the Customer is engaged in, where the Customer is using the SaaS to manage some or all of these activities.
- 1.64 “Working Hours”** are defined as 8:00AM to 8:00PM Eastern Time (UTC/GMT-5:00), Monday through Friday, excluding statutory holidays in the United States and Canada.
- 1.65 “Workspace”** means all of the application software on both the Back-end and Front-end specific to a particular Customer, where a single Workspace is the proprietary set of data and configurations for a given Customer.

## 2 GENERAL COMMERCIAL TERMS

- 2.1 Invoicing for Software Licensing Fees.** On, or about, the fifth (5th) business day of each month (the **“Current Month”**), an invoice summary (the **“Invoice”** or **“Invoice Summary”**) for the Customer’s prior month’s usage of the Software will be sent via email to the Customer’s billing contact (as identified on the Service Order). The Invoice will be deemed to have been received by the Customer as of the date sent. This Invoice Summary will contain, among other details, the following information regarding the User registrations/use in the Software: (i) Environment name and URL; (ii) usernames; (iii) User classes; (iv) User license fees; (v) license fee adjustments (if any); and (vi) total License Fees owing.
- 2.2 Professional Services.** You may purchase Professional Services by placing a Service Order with us. Fees for these Professional Services are in addition to your License Fees. If you purchase Professional Services that recur, they will be considered part of your subscription and will renew in accordance with your subscription.
- (a) All Professional Services are performed remotely unless you and we otherwise agree.
  - (b) For Professional Services performed on-site, you will reimburse us our reasonable costs for all approved and authorized expenses incurred in connection with the Professional Services.
  - (c) If a specific number of hours are included in the Professional Services purchased, those hours will commence on the earlier of the date of purchase or the Effective Date (the **“Delivery Period”**), and will expire as indicated in the applicable description (the **“Expiration Period”**). If there are deliverables included in the Professional Services purchased, it is anticipated that those deliverables will be completed within the Delivery Period. If there is no Expiration Period or Delivery Period indicated, then

such period (as applicable) will be one hundred and eighty (180) days in length from purchase.

- (d) If the Professional Services provided are not complete at the end of the Delivery Period due to your failure to make the necessary resources available to us (as evidenced in writing by Vitruvi, acting reasonably) or to perform your obligations and you have not cured your failure to make the necessary resources available within five (5) business days from delivery of such notice or fulfilled your payment obligations as set forth in the Agreement, then such Professional Services will be deemed to be complete at the end of the Delivery Period and the Customer shall not be entitled to reimbursement or refund of the applicable Professional Services fees.
- (e) If the Professional Services provided are not complete at the end of the Delivery Period for reasons solely within our reasonable control, the Delivery Period will be extended for as long as necessary to allow us to complete those Professional Services. Such extension shall be no longer than ten (10) business days from the date you notified us of such failure. After 10 business days, you may terminate the Agreement and receive a prorata refund for any Professional Services not completed.
- (f) We reserve the right to provide some or all elements of the Professional Services through third-party service providers, for which we shall be fully responsible. Professional Services are non-cancellable and all fees for Professional Services are non-refundable, except as expressly set out herein for our material breach of the material terms and conditions of the Agreement where we do not cure such breach as further set forth in the Agreement.

### 2.3 Fees and Payments for Subscriptions and Professional Services

- (a) **Payment Due Date.** All amounts owing pursuant to an Invoice Summary are due and payable by the Customer on or before the Due Date.
- (b) **Currency.** Unless otherwise stated on the Service Order, all fees will be billed in United States Dollars.
- (c) **Interest.** Interest on any late payments shall accrue at the rate of 2.0% per month or the highest rate permitted by applicable law, whichever is less, from the date such amount is due until finally paid. The Customer shall reimburse the Company for all reasonable costs and expenses incurred (including legal fees and disbursements) in collecting past due amounts.
- (d) **Fee Adjustment for Billing Cycle.** Monthly billing will be adjusted based upon the Users and their associated License Types, within the Software.

- (e) **Fee Adjustments at Renewal.** If renewal pricing is not included in your Service Order, then Vitruvi’s standard pricing on the date of renewal, will apply.
- (f) **Payment against Invoice.** Payment of invoices is due as per the payment terms listed on the Service Order. There are several options for payment: pre-authorized payments, wire transfer or ACH (automated clearing house) or other electronic fund transfer (EFT). If you wish to pay by cheque, this may require special authorization from Vitruvi.
- (g) **Taxes.** Unless otherwise set forth on the Service Order, Vitruvi License Fees do not include any Taxes. If Vitruvi has a legal obligation to pay or collect Taxes for which Customer is responsible, the appropriate amount shall be invoiced to and paid by Customer unless Customer provides Vitruvi with a valid tax exemption certificate authorized by the appropriate taxing authority.

**2.4 Uptime Commitment.** The Company guarantees that certain items constituting the SaaS will be available to the Company’s Users for a certain percentage of the time, as per the following:

- (a) Software uptime levels are calculated on a monthly basis, using the Company’s automated systems.

Guaranteed Uptime	Penalty
99.5%	0% of license fees
99.5% - 99%	2% of fees
<99%	5% of fees

- (b) If monthly Software uptime during Working Hours drops below the relevant threshold, a penalty, per hour, will be applied in the form of a credit to the Customer’s account. The level of penalty will be calculated as the number of hours for which Software Unavailability occurred (pro-rated to the nearest minute) during Working Hours.
- (c) Software Unavailability begins at the earliest of:
  - (1) When a Customer raises a support issue, identifying Software Unavailability; or
  - (2) When the Company notifies the Customer of Software Unavailability.
- (d) Software Unavailability ends when the Company notifies the Customer that access has been restored, and the Customer can confirm such access has been restored, acting reasonably.
- (e) Uptime penalties in any month are capped at 25% of the Licensing Fees for the month in which the penalties are incurred.

### 3 USE AND LIMITATIONS OF USE

**3.1 Acceptable Use.** You will comply with our [Acceptable Use Policy](#) (“AUP”).

**3.2 Customer Rights.** The Company hereby grants to the Customer and its Affiliates, and to any authorized Users of the foregoing, a limited, revocable, nonexclusive, non-assignable (except as set forth in the Agreement), non-sublicensable, royalty free, worldwide limited right to use the SaaS solely for Customer’s business operations and subject to the terms of the Agreement. Customer may allow individual Users to use the SaaS for this purpose and Customer is responsible for Users’ compliance with the Agreement.

**3.3 Customer shall not:**

- (a) Permit, authorize, recommend or knowingly continue to have multiple persons using one User account;
- (b) Permit, authorize, recommend or knowingly continue to have a single User regularly accessing the Software from more than three (3) separate Devices;
- (c) Remove or modify any program markings or any notice of Company or its licensors’ proprietary rights;
- (d) Make the Software, Documentation or materials resulting from the SaaS available in any manner to any third party for use in the third party’s business operations (unless such access is expressly permitted for the specific program license or materials subscribed for by the Customer;
- (e) Modify, alter, make derivative works of, disassemble, reverse compile, or reverse engineer any part of the Software, SaaS or Documentation (the foregoing prohibition includes, but is not limited to, review of data structures or similar materials produced by programs), or access or use the Software or SaaS in order to build or support, and/or assist a third party in building or supporting, products or services that are competitive to those offered by the Company;
- (f) Disclose results of any SaaS or Software benchmark tests without the Company’s prior written consent;
- (g) License, sell, rent, lease, transfer, assign, distribute, display, host, outsource, disclose, permit timesharing or service bureau use, or otherwise commercially exploit or make the SaaS, Software, Documentation or other Company materials available to any third party other than as expressly permitted under the terms of the Agreement;
- (h) Use or launch any automated system, including, "robots," "spiders," or "offline readers," that send more request messages to our Servers in a given period of time than a human can reasonably produce in the same period by using a conventional browser, except through the use of Service Accounts;

- (i) Use the Software in any manner that damages, disables, overburdens, or produces an appreciable negative impairment of any of our websites or produces an appreciable negative impairment for any other party's use of the Software;
- (j) Attempt to gain unauthorized access to the Software or access the Software other than through our interface; or
- (k) Use the Software for any purpose or in any manner that is in violation of law or prohibited by this Agreement.

**3.4 Notification of Unauthorized Use.** You will notify us right away upon discovery of any unauthorized use of Users' identifications and passwords or your account by contacting our customer support team.

**3.5 No Copy/No Access.** The rights granted to Customer under the Agreement are also conditioned on the following:

- (a) Except as expressly provided herein, no part of the SaaS or Software may be copied, reproduced, distributed, republished, downloaded, displayed, posted or transmitted in any form or by any means, including but not limited to electronic, mechanical, photocopying, recording, or other means without Vitruvi's express prior written consent; and the Customer agrees to make every reasonable effort to prevent unauthorized third parties from accessing the SaaS or Software.

### **3.6 Software and Customer Data**

- (a) The Company will be responsible for provisioning the Software on Company hosted Servers for use by the Customer, and for provisioning all other Professional Services (such as support, backup and recovery) necessary for the Customer's use of the Software in accordance with the terms and conditions in this Agreement.
- (b) The Customer acknowledges and consents to the Company collecting Customer Data and certain personal data/information about the Customer and its Users through the interaction with the Software, including personal data (including but not limited to names, email addresses, phone numbers, addresses, geo-location information, third party data, derivative data, hardware data), for the purposes of providing the SaaS. The Company will not disclose such information unless required by any applicable law, rule or regulation, and only after having provided prior notice to the Customer of such a disclosure.
- (c) The Customer acknowledges and agrees that the Company is the owner of all right, title and interest in and to the Technology, the Software, SaaS, Company Confidential Information and the Company Intellectual Property. The Customer is the owner of all right, title and interest in and to the

Customer Data and Customer Confidential Information. The Customer Data and Customer Confidential Information may not be disclosed, sold, assigned, leased or otherwise disposed of to third parties by the Company, or commercially exploited by or on behalf Company, except as expressly set out herein.

- (d) Notwithstanding the foregoing, the Customer hereby grants to the Company a non-exclusive, non-transferable, royalty-free perpetual license to use the Customer Data in an anonymized manner for the purposes of system administration, technical support, research and development, product and services enhancements, and to perform the services described herein in accordance with this Agreement. The confidentiality requirements as set out in this Agreement shall be strictly adhered to by the Company in any use of the Customer Data pursuant to the license of use granted hereby and any use of anonymized data shall not disclose any Customer identifying information or otherwise. FOR GREATER CLARITY, THIS USES CUSTOMER DATA IN AN ANONOMYZED FASHION ONLY AND IS REQUIRED FOR VITRUVI TO BE ABLE TO CONTINUOUSLY OPTIMIZE AND IMPROVE PLATFORM PERFORMANCE.

- 3.7 Software Performance and API Limits.** Vitruvi closely monitors usage of our Software and our APIs to ensure a quality experience for every User. All Users and integration developers must comply with Vitruvi's [Acceptable Use Policy](#). While Vitruvi reserves the right to change or deprecate our APIs over time, we will always let Customers and Users know in advance through our Release Notes. We can provide specific performance and technical limits for the Software and our API's upon request.

## 4 SUBSCRIPTION TERM, RENEWALS & TERMINATION

### 4.1 Term

- (a) The Agreement shall commence as of the earlier of the Effective Date or the Commencement Date specified in a Service Order and continue for the specified Subscription Term, both as identified in your Service Order.
- (b) Your subscription for SaaS will automatically renew for one (1) year at the end of your Subscription Term. To prevent automatic renewal of the subscription, the Customer shall provide the Company advance written notice of its desire to cancel a renewal not less than thirty (30) days prior to the end of any applicable Subscription Term. We will provide you with the minimum notice required prior to any renewal term, in accordance with the applicable laws of the governing jurisdiction as set forth in your Service Order.



## 4.2 Renewals

- (a) **Renewal Package.** When you are within sixty (60) days of the end of your Subscription Term, we will provide you with a Renewal Package, outlining our recommended renewal subscription based on our historical and forecasted use of the Software and SaaS. We will work collaboratively with you to ensure that your renewal Service Order meets your needs.
- (b) **Renewal Service Order.** A Renewal Service Order reflecting Vitruvi's recommended renewal subscription terms identified in Section 4.2(a) will be issued and delivered to you thirty (30) days prior to the end of your Subscription Term. In an effort to maintain continuity of your SaaS, unless you sign and return the Renewal Service Order prior to the expiration of your Subscription Term, your existing Subscription reflecting your current Subscriber Fees will be automatically renewed. Automatic renewals will be subject to the non-payment penalties, access restrictions and/or termination of access remedies as per the existing terms of our Agreement.

## 4.3 Termination

- (a) In the event that either Party commits a material breach of a material obligation under this Agreement, and such material breach continues for a period of thirty (30) days after written notice from the non-breaching Party (except for a breach regarding failure to pay amounts due, in which case the period to cure shall be five (5) business days), the non-breaching Party may thereafter terminate this Agreement immediately upon written notice.
- (b) The Customer may terminate this Agreement without material breach upon thirty (30) days' advance written notice to the Company.
- (c) Either Party may terminate this Agreement immediately if the other Party
  - (i) becomes subject to any bankruptcy, insolvency, winding-up, debt-protection, liquidation, dissolution proceedings;
  - (ii) attempts to appoint a receiver, liquidator or trustee over its business or assets; or
  - (iii) makes a general assignment for the benefit of its creditors.

- 4.4 **Suspension for Non-Payment.** We will provide you with written notice of non-payment of any amount due. Unless the full amount has been paid, we may suspend your access to any or all of the SaaS, ten (10) days after such written notice is provided to the Customer. We will not suspend the SaaS while you are *bona fide* disputing applicable charges, provided you are acting reasonably and in good faith and are cooperating diligently with us to resolve the dispute. If SaaS are suspended for non-payment, we may charge you a re-activation fee to reinstate the Services as per [Data Restoration & Recovery Pricing](#).

## 4.5 Effect of Termination or Expiration

- (a) In the event the Company terminates the Agreement for breach then all amounts owed to the Company under this Agreement as specified in a Service Order shall be immediately due and payable.
- (b) In the event the Customer terminates the Agreement for breach or pursuant to section 4.3(c), then the Customer shall receive a *prorata* refund of the amounts pre-paid by the Customer to the Company, less any discounts, for the period following the date of the Customer's notice of breach to Company.
- (c) Termination of this Agreement shall not limit either Party from pursuing any other remedies available to it, including injunctive relief, nor shall such termination relieve the Customer's obligation to pay all amounts due to the Company hereunder that accrued prior to such termination, except as set forth herein.

#### 4.6 Data Retention Policy:

- (a) Upon the termination of this Agreement, the Customer shall: (a) cease using the Software and Documentation; and (b) certify to the Company within one (1) month after termination that the Customer has destroyed or has returned to the Company the Software, if any, and all copies thereof. This requirement applies to copies in all forms, partial and complete, whether or not executable, in all types of media and computer memory, and whether or not modified or merged into other materials.
- (b) Upon termination of this Agreement, the Company agrees to make available to the Customer for their download certain Customer Data (in an Excel format) for a period of 30 days from the termination of this Agreement (the "**Customer Data Retention Period**"). Subject to the Customer notifying the Company in writing prior to the end of the initial Customer Data Retention Period, the Customer Data Retention Period may be extended by the Customer for a fee of \$2,500.00 per month. The Company shall certify to the Customer that all of the Customer's Data has been destroyed within 30 days of the end of the Customer Data Retention Period.

## 5 SOFTWARE SUPPORT AND MAINTENANCE

- 5.1 Access.** During the Term, the Company will provide to the Customer access to the Software, twenty-four hours a day, seven days a week, 365 days per year, subject to the Uptime Commitment noted in section 2.4, and will host all the Customer Data and information input in connection with the Software and the SaaS. The Company will provide access to the hosted Software and the Customer Data in the Production Environment. To obtain access, the Company will require that Users provide a user name (email address) and a user-selected password.

## 5.2 User Types

- (a) **Standard User:** Any User with login access to the platform and without Administration rights.
- (b) **Super-User:** The primary User(s) for a Customer, having Administrator access for their Workspace. This User will receive additional training over and above Standard Users, is responsible for overseeing their workspace, including adding/removing Users, configuration changes, and is usually the Priority Contact for the account. Super-User's will receive complimentary invitations to User Conferences.
- (c) **Partner User:** The primary User(s) for a Partner, having full administration access for the Partner Workspace as well as any associated Customer Workspaces, and is usually the Priority Contact for the account.

## 5.3 User Access Definitions

Program Area	Sub Area	User Type		
		Standard	Super-User	Partner
<b>Back-end Administration</b>	All areas of the back-end administration, see 5.2(b)	NA	NA	RW
<b>Web</b>	Administration	NA	RW	RW
	Work Management	RW	RW	RW
	Engineering	RW	RW	RW
	Inventory	RW	RW	RW
	Invoicing	RW	RW	RW
	Field Reporting	RW	RW	RW
	Tickets	RW	RW	RW

Program Area	Sub Area	User Type		
		Standard	Super-User	Partner
<b>Mobile</b>	Mobile application	RW	RW	RW
<b>Dashboards</b>	Configuration and Setup	NA	NA	RW
	Viewing	R	R	RW
<b>Scripting Engine</b>	Configure Scripts	NA	NA	NA
	Load and Run Scripts	NA	NA	RW
<b>Training</b>	Dedicated One-on-One User Training	No	Yes	Yes
<b>Priority Support</b>	Direct contact with Customer Success team	No	Yes	Yes

(a) The abbreviations in the table above are explained below:

- (1) RW = read and write access
- (2) R = read-only access
- (3) NA = no access

(b) Back-end Administration access is optional and will be provided on an as needed basis, as determined by the Company.

(c) Some Program Areas and Sub Areas will require subscription to additional products and/or services.

(d) Access to Program Areas will also be subject to the terms of the Service Order, which will specify to which Program Areas the Customer has subscribed.

**5.4 Training.** The Company will provide training for the Customer’s Users utilizing one or more of the following methods: in person, remote, web-based and Documentation. The Company will also provide additional training support and materials, as further described and specified in the Service Order.

**5.5 Support Help Center.** On-line help and support resources are available to each User through the Vitruvi web application and are included in the License Fees.

**5.6 Support Level Definitions.** Vitruvi will provide the following levels of User support. If a given level of support is unable to resolve the issue, the support ticket will be escalated to the next level of support:

- (a) **“Tier 1 Support”** means the initial technical support level that is provided for basic User assistance, which involves troubleshooting and resolving basic problems, including, but not limited to: problems with usernames and

passwords, verification of hardware and software setup, login issues, and changes to users and permissions;

- (b) **“Tier 2 Support”** means the next level of support after Tier 1 support, which may include technical experts in both Software and development and deals with problems related, but not limited to: configuration issues, performance issues and workflow exceptions; and
- (c) **“Tier 3 Support”** means the highest level of support, this support is handled by the senior technical team members with the ability to troubleshoot issues related to databases and cloud infrastructure.

**5.7 Backup and Recovery of the Customer Data.** The Company represents, covenants and warrants that it implements industry best practices in back-up and recovery practices and procedures and shall be responsible for maintaining a backup of the Customer Data and for providing an orderly and timely recovery of such data in the event that the SaaS may be interrupted. Backups are maintained up to a maximum 30 days. Customer requests for the recovery, restoration or migration of data can be made as per [Data Restoration & Recovery Pricing](#).

**5.8 Maintenance.** The Company will provide industry best practices in providing bug fixes, corrections, modifications, enhancements, upgrades, and releases to the Software as per the Vitruvi Update & Release Policy (see section 5.9) to ensure the functionality of the Software is available to the Customer and the functionality of the Software is in accordance with the representations and warranties set forth herein.

**5.9 Upgrades and Software Releases.** The Company will make available to the Customer all upgrades and releases at the same time that the Company generally makes such upgrades and releases available to its other licensees and customers. Upgrades and releases will be managed as per the Company's published Update Release Policy, see [Vitruvi Update & Release Policy](#).

**5.10 Planned Downtime.** The Company reserves the right to schedule downtime of the Software and the SaaS (**“Planned Downtime”**) inside and outside of Working Hours. The Company will use reasonable efforts to schedule any Planned Downtime outside of Working Hours, where permitted, and will only schedule Planned Downtime inside of Working Hours where required to maintain data security and uptime commitments. Any Planned Downtime will be communicated to Users at least seven (7) calendar days in advance, unless otherwise approved by the Customer.

**5.11 Service Outage.** If the Customer experiences Software Unavailability within Working Hours, the Company will take all steps necessary to inform the Customer and keep them up to date on the status. This includes:

- (a) The Company will notify Priority Contacts (defined in Section 5.15) if downtime occurs.
- (b) The Company will provide status updates every thirty (30) minutes to Priority Contacts.
- (c) Upon resolution of issue, the Company will issue an email within four (4) hours to all Priority Contacts, with a resolution report.

**5.12 Technical Support.** The Company will provide technical support to Users via the methods outlined below. The Customer will make all reasonable attempts to resolve support issues and assign priority before contacting Company support.

- (a) Vitruvi Assistant: requests submitted through the Product's in application support request window;
- (b) Email: emails sent to [support@vitruvisoftware.com](mailto:support@vitruvisoftware.com);
- (c) Phone: telephone numbers by jurisdiction listed on our [website](#); and
- (d) Note that support calls and interactions may be monitored or recorded for training and quality purposes.

**5.13 Technical Support Hours.** Technical support will also be available to all Users during Working Hours.

**5.14 Extended Support.** If required, we will provide support for Extended Working Hours, for an additional monthly charge, as defined on the Service Order.

**5.15 Customer Responsibilities.** The Company will require the following from the Customer:

- (a) A list of at least two (2) Super-Users having administrator access, and their contact information (including emails and phone numbers). These Users will be listed as the Customer's main points of contact between the Company and the Customer for any service requests or critical issues, and will be designated as the Priority Contacts; and
- (b) If submitting a ticket, a User will provide a detailed description of the issue as well as screenshots where possible.

**5.16 Response Time.** If the Customer raises a support issue with the Company, the Company will respond in a timely fashion, based on the response time measures outlined below. The Company is deemed to have responded when the Company has replied to the Customer's initial support request and provided either a solution or a request for further information. Response times are measured based on elapsed time, from the moment the Customer submits a support request.

(a) Response Times are dependent upon the severity of the issue (as defined in section 5.17) as shown in the table below:

Severity Level	Initial Response Time	Update Frequency	Resolution
<b>Critical</b>	1 hour	Every 4 hours	Services are restored
<b>High</b>	4 hours	1 day	Critical function is restored, or workaround is provided
<b>Medium</b>	1 day	On status change	Instruction or workaround provided
<b>Low</b>	1 day	On status change	Question is answered

(b) Where Extended Working Hours **have** been defined on the Service Order:

- (1) Response times for requests related to Severity Critical, will be measured **outside of** Extended Working Hours for all issues identified **inside of** Extended Working Hours, and updates will be delivered to Priority Contacts through a phone call and through email;
- (2) Response times for all other issues will be measured **inside of** Extended Working Hours; and
- (3) Where Extended Working Hours **have not** been defined on the Service Order:
  - (i) Response times for requests related to Severity Critical, will be measured **outside of** Working Hours for all issues identified **inside of** Working Hours, and updates will be delivered to Priority Contacts through a phone call and through email and
  - (ii) Response times for all other issues will be measured **inside of** Working Hours.

**5.17 Severity Levels.** Severity levels are defined as follows:

- (a) **Critical:** The Software is unavailable or Mission Critical Business Processes are unavailable;
- (b) **High:** The Software is still available, but one or more business processes are interrupted or blocked;
- (c) **Medium:** Business processes are affected but the reported issue has a reasonable workaround and does not pose a serious impact to the Customer’s productivity;
- (d) **Low:** Business processes can continue, no workaround is required, but the quality of the User experience may be impacted. (E.g. questions about usage of the Software, Documentation, or training.)

**5.18 Escalation Management.** Support tickets will be escalated based on the following criteria:

- (a) Recommendation by the owner of the support ticket;
- (b) A ticket has not had a first response within the timelines outlined in Section 5.16; and
- (c) Automatically for severity levels High and Critical.

**5.19 Hardware and Technical Specifications.** To access the SaaS, the Customer will require Users to have access to laptops, desktops, tablets, phones or other hardware in accordance with the specifications below (collectively, the “**Access Hardware**”). The Customer acknowledges the risk of the Customer Data loss that may occur as a result of loss of or damage to a User’s Access Hardware that accesses the Software after entry of the Customer Data by a User and prior to connecting the Access Hardware to the internet to allow the Customer Data to sync with the Servers. The Customer releases the Company for claims arising therefrom. The Company is not responsible for reconstruction, replacement, repair or recreation of lost Customer Data on an individual User’s Access Hardware if such data has not synced with the Servers.

(a) **Web Access Requirements.** It is recommended that the latest release of these browsers are used:

- (1) Google Chrome: one of the three (3) most recent versions; or
- (2) Microsoft Edge: one of the three (3) most recent versions of the Stable Channel or Extended Stable Channel;

(b) **Web Display Resolution Requirements**

- (1) The minimum supported effective display resolution for web access is 1366 x 768; and
- (2) The minimum recommended effective display resolution for web access is 1920 x 1080.

(c) **Mobile Access Requirements: for iOS® devices**

- (1) Current or supported iOS operating systems, where those operating systems are up-to-date. For a listing of versions and statuses, You may use this [link](#) as a reference;
- (2) No vintage or obsolete phone technologies (as classified by Apple - <https://support.apple.com/en-ca/HT201624>); and
- (3) The Software will not operate properly on any device with less than 4GB of RAM.

(d) **Mobile Access Requirements: for Android® devices**



- (1) Current or supported Android operating systems, where those operating systems are up-to-date and continue to receive [security updates](#). For a listing of versions and statuses, You may use this [link](#) as a reference;
- (2) Standard Android fonts and sizing;
- (3) No vintage or obsolete phone technologies;
- (4) The Software will not operate properly on an Android Go device or on any Device with less than 4GB of RAM.

**5.20 Access and Uptime Exclusions.** The Company will endeavor to use commercially reasonable practices to rectify issues in a timely manner, however there are several circumstances under which the Agreement does not apply:

- (a) Force Majeure (defined in Section 8.16) events; and
- (b) the Agreement does not apply when the problem has been caused by: (i) the Customer using the Software in a way that is not recommended or supported; (ii) the Customer making unauthorised changes to the configuration or setup of the Software; or (iii) the Customer prevents the Company from performing required maintenance and update tasks.

**5.21 Product Requests.** Requests for additional functionality in Vitruvi can be submitted through the [Vitruvi Support website](#). If additional functionality is required on a Customer defined schedule, a formal request will need to be submitted and may incur a cost at the Company's discretion.

**5.22 Managed Services (PMOaaS) and Professional Services.** The Company will endeavor to provide the following levels of Professional Services for services requests related to Managed Services and Professional Services (where such services are defined on the Service Order) received from Priority Contacts:

- (a) All requests will receive a response or reply within 48 hours.
- (b) The monthly average time to initiate work or service delivery related to a request, or mean-time-to-work (MTTW), will not exceed 72 hours.
- (c) The Customer and/or Users may assign and adjust priority for service requests, as required.
- (d) Throughput of Professional Services related to these service requests will be based on the capacity of a single resource responding to requests in series.

## 6 JURISDICTION

**6.1 Applicable Laws/Jurisdiction.** This Agreement will be construed and interpreted in accordance with the applicable laws of the Province of Alberta and will be treated in all respects as a contract of the Province of Alberta. The

Customer and the Company attorn to exclusive jurisdiction of the Alberta Courts in Calgary except insofar as a court of another jurisdiction is requested to enforce the restrictive covenants in this Agreement.

## 7 PROFESSIONAL SERVICES

### 7.1 General Terms & Conditions

- (a) Vitruvi is willing to provide Professional Services (including the development of Deliverables) on a time and materials or fixed price basis according to the terms and conditions set forth in this section and the applicable Statement of Work. Such Professional Services may include: instruction and training on the use of Vitruvi products and services; installation, configuration, maintenance and testing of Vitruvi products and services; evaluation, design and implementation of system architectures; business and network planning; and custom software development.
- (b) All Professional Services to be performed and Deliverables to be developed by Vitruvi at Customer's request will be described in a Statement of Work. Upon execution by authorized representatives of each party, each Statement of Work will become a part of the Agreement. Each Statement of Work will incorporate the terms and conditions of this document. In the event of a conflict between the Statement of Work and this document, the Statement of Work will prevail.

**7.2 Vitruvi's Obligations.** Vitruvi will perform Professional Services and develop Deliverables for Customer as described in the Statement(s) of Work agreed to by the parties. Vitruvi will be entitled, in its sole discretion, to determine the method and means for performing the Professional Services and developing the Deliverables. Customer acknowledges and agrees that Vitruvi may retain the services of independent consultants ("Subcontractors") from time to time to perform, or to assist Vitruvi in performing the Professional Services and developing the Deliverables under this document or a Statement of Work. Vitruvi personnel or Subcontractors will remain under the direction and control of Vitruvi and will in the performance of any Professional Services and development of any Deliverables use reasonable efforts to comply with all Customer procedures and rules which have been communicated to Vitruvi in writing.

### 7.3 Customer Obligations

- (a) Customer acknowledges and agrees that performance of Professional Services is heavily dependent upon information and responses to be provided by Customer. Accordingly, in addition to any specific responsibilities set out in the SOW, Customer will: (i) provide the appropriate

- and necessary resources, and timely and accurate information and documentation, as reasonably required by Vitruvi, to allow Vitruvi to perform the Professional Services and develop the Deliverables; (ii) carry out reviews and respond to requests for approval and information on a timely basis; (iii) ensure that Vitruvi has available to them personnel familiar with Customer's requirements and with the expertise necessary to permit Vitruvi to undertake and complete the Professional Services; and (iv) Customer will make available to Vitruvi all equipment, material, information, data, network access and/or facilities that Vitruvi may reasonably require to carry out its obligations. Customer acknowledges that any delay on its part in the performance of its obligations may have an impact on Vitruvi's performance of its activities under this Agreement or under any Statement of Work and Vitruvi will not be liable for any delay to the extent caused by Customer's failure to fulfill any of its requirements under the Agreement, this document and/or any SOW. If the Professional Services are performed on Customer premises or if Vitruvi needs to attend at Customer premises for the development of the Deliverables, Customer will provide to Vitruvi such workspace, computers, equipment and software as is reasonably required by Vitruvi for the performance of the Professional Services and the development of the Deliverables.
- (b) Both the Customer and Vitruvi each will designate a Project Management Contact for the purposes of communication with Vitruvi. The Project Management Contact will be the primary point of contact for Customer with Vitruvi for matters relating to the provision of Professional Services and development of Deliverables.

#### **7.4 Price and Payment.**

- (a) Customer will pay Vitruvi the fees set forth in the Statement of Work. Customer will reimburse Vitruvi for all reasonable out of pocket expenses (including travel, lodging and related expenses) incurred by Vitruvi in the performance of any Professional Services or development of any Deliverables, provided that such expenses are approved in advance in writing by Customer. The fees for Professional Services and development of Deliverables will be exclusive of applicable federal, state, provincial, or local sales, use or value-added taxes on, goods and services, harmonized and local taxes.
- (b) Unless otherwise specified in the Statement of Work, Vitruvi will invoice Customer for fees for Professional Services and development of Deliverables provided pursuant to this Agreement or a Statement of Work on a monthly basis. Unless otherwise stipulated in the SOW, all such fees will be due upon receipt of invoice.

#### **7.5 Term and Termination**

- (a) Unless provided otherwise in a Statement of Work, Customer may terminate a Statement of Work without cause (for convenience) upon thirty (30) days prior written notice to Vitruvi. Unless provided otherwise in a Statement of Work, if Customer terminates a Statement of Work for convenience, Customer will pay Vitruvi the full fee for any Professional Services performed (including all other costs for which Vitruvi has the right to reimbursement) up to the effective date of termination of such Statement of Work, provided that if the fee for any Deliverables are based on identified milestones being achieved by Vitruvi, Customer will pay Vitruvi the pro-rated fee for the next scheduled milestone with such pro-rated fee to be determined based on the percentage of time between the commencement of work on such milestone and the effective date of termination. For illustrative purposes, if the time from the commencement of work on the next milestone to the scheduled achievement date for that milestone is three (3) months, and if the effective date of termination occurs at the two (2) month point in such timeframe, then Customer will pay Vitruvi two-thirds of the fee for such milestone.
- (b) Each party will be entitled to immediately terminate a Statement of Work for cause in the event of: (i) the material breach by the other party of its obligations under this document or a Statement of Work, provided that such material breach is notified to such party and is not cured within ten (10) days of the date of such notice, (ii) the filing of a bankruptcy petition by or against a party, the filing of an assignment for the benefit of creditors, the appointment of a receiver or trustee, (iii) the assignment or attempt to assign the Agreement to a third party (except as permitted in the Agreement). In the event of termination for cause, the non-defaulting party may terminate any Statements of Work hereunder. The non-defaulting party's right to terminate will be in addition to any other rights that it may have in law or in equity.

**7.6 Intellectual Property Rights.** Except as set forth in the Agreement or otherwise set forth in the relevant Statement of Work, Vitruvi will own all right, title and interest and all intellectual property rights to any Deliverables created by Vitruvi pursuant to this Agreement or any Statement of Work hereunder. Vitruvi will retain all right, title and interest and all intellectual property rights to any and all Vitruvi proprietary information and Vitruvi software (including, without limitation, any modifications to the Services and/or the User Guide). Subject to payment of the applicable fees set forth in the Statement of Work, Vitruvi grants to Customer a perpetual, worldwide, fully-paid, royalty-free, limited, non-exclusive, non-sublicensable, non-transferable license to access and use and reproduce (for internal purposes) the Deliverables created pursuant to this Agreement or any Statement of Work. Customer grants to Vitruvi a perpetual, worldwide, fully-paid, royalty-free, limited, non-exclusive license to use,

reproduce and create derivative works of any information and documentation provided by Customer to Vitruvi, as required for Vitruvi to carry out the Statement of Work.

- 7.7 Non-Solicitation.** Neither party will enter into a contract with any employee of the other party who has been involved with, directly or indirectly, any of the Professional Services or development of any Deliverables hereunder within twelve (12) months of such employee's last involvement with such Professional Services or Deliverables. Each party will be permitted to make generalized employment searches, by advertisements or by engaging firms to conduct searches which are not focused on the employees of the other party.

## 8 GENERAL LEGAL TERMS

### 8.1 Responsibilities of the Company over Data

- (a) Without limiting the Company's obligations under Section 8.5 [Trademarks], the Company shall use commercially reasonable efforts to ensure the security, integrity and confidentiality of any Customer Data and Customer Confidential Information and other proprietary information transmitted or stored on the Servers, including, without limitation: (i) maintenance of independent archival and backup copies of the Customer's Data (backups maintained up to a maximum 30 days); and (ii) protection from any network attack and other malicious, harmful or disabling data, work, code or program. The Company shall also use commercially reasonable efforts to protect against any anticipated threats or hazards to the security or integrity of the Customer Data and Customer Confidential Information; protect against unauthorized access to or use of the Customer Data and Customer Confidential Information; ensure the proper disposal of the Customer Data and Customer Confidential Information; and ensure that all employees, agents and contractors of the Company, if any, comply with all of the foregoing.
- (b) Notwithstanding the foregoing, Customer understands and acknowledges that from time to time, the Servers may be inaccessible or inoperable for various reasons, including, but not limited to, equipment malfunctions, upgrades or modifications, or other causes beyond the reasonable control of the Company, including but not limited to interruption or failure of telecommunication or digital transmission links, hostile network attacks or network congestion (other than within the Company's Servers) or other failures (collectively "**Downtime**"). The Company shall use commercially reasonable efforts to minimize any disruption, inaccessibility and/or inoperability. For purposes of these Customer Terms of Service, Downtime shall not be deemed an event subject to Software Unavailability.

- (c) The Company's safeguards for the protection of Customer Data shall include: limiting access of Customer Data to authorized Users; securing business facilities, data centers, paper files, servers, back-up systems and computing equipment, including, but not limited to, all mobile devices and other equipment with information storage capability; implementing network, device application, database and platform security; securing information transmission, storage and disposal; implementing authentication and access controls within media, applications, operating systems and equipment; securing information transmission, storage and disposal; encrypting Customer Data stored on any mobile media; encrypting Customer Data transmitted over public or wireless networks; segregating Customer Data from information of the Company or its other customers so that Customer Data is not commingled with any other types of information; and providing appropriate privacy and information security training to the Company's employees.
- (d) **SOC 1 Audit Report.** The Company endeavours to maintain a SOC 1 Audit report that can be made available to Customers on an as needed basis.
- (e) **Disaster Recovery.** Company shall have in place a comprehensive disaster recovery plan, which shall provide for the recovery of all core systems operations, within (twenty-four) 24 hours from a declared disaster.
- (f) **Technology.** Customer Data will be hosted on Servers as noted in the Order.

**8.2 Responsibilities of the Customer.** Customer will:

- (a) adhere to Section 3 [Use and Limitations of Use] of this Agreement;
- (b) use the Software as authorized, in accordance with Company's written operating instructions and the Documentation;
- (c) to the best of their ability, make available to the Company, all information, facilities and services reasonably required by the Company to enable it to deliver the SaaS and perform the Services, as outlined in the Service Order or otherwise requested and documented by the Company; and
- (d) equip its Users with computers, web browsers and mobile devices that meet the minimum technical specifications as set out in section 5.19.

**8.3 Service and Modifications.** The Customer will not allow anyone other than the Company to modify, repair or alter the Software. If required, the Customer will co-operate with the Company in the diagnosis, investigation, correction, maintenance or replacement of the Software (including providing the Company reasonable access to the Customer's facilities and hardware).

**8.4 Intellectual Property Rights**

- (a) The Company shall retain all title, copyright, trade secrets, patents, trademarks and other proprietary rights in the Company Intellectual Property, Technology, Software, Documentation and all modifications, enhancements, and other works derivative of the Company Intellectual Property, Technology, Software or Documentation, including, without limitation, any enhancements or customizations. The Customer does not acquire any rights, express or implied, in the Company Intellectual Property, Technology, Software or Documentation, other than those specified in this Agreement. The Customer agrees not to create derivative works of the Software or Documentation.
- (b) **Feedback.** The Parties agree and acknowledge that any Feedback is provided voluntarily by the Customer. In the event the Customer provides the Company with Feedback, the Customer hereby grants to the Company a perpetual, royalty-free, worldwide right to use such Feedback for the limited purpose of improving and creating derivative works of the Company's Software or Saas (notwithstanding the foregoing, the foregoing right shall not apply or extend to any portion of Feedback provided by the Customer which is the Customer's Confidential Information), and the obligations of confidentiality set forth in this Agreement shall supersede and have priority over any Feedback usage rights.

## 8.5 Trademarks

- (a) We reserve the right to use and display your trademarks or logos in accordance with the usage requirements in this section. We will: (i) only use your trademarks in connection with this Agreement; (ii) only use the images of the trademarks that you make available, without altering them in any way, and in accordance with the guidelines supplied by you; and (iii) immediately comply if you request that use of the a trademark be discontinued. We agree not to use your trademarks: (i) in a misleading or disparaging way; (ii) outside the scope of the Agreement; (iii) in a way that implies misleading endorsement, sponsorship or approval of our services or products; or (iv) in violation of applicable law or in connection with an obscene, indecent, or unlawful topic or material.

## 8.6 Confidential Information

- (a) Each Party shall receive and hold, and shall cause its employees, agents, contractors or representatives to receive and hold, all Confidential Information of the other Party absolutely secret, undisclosed, in trust and in confidence, with efforts no less than the degree of care that the receiving party exercises in protecting its own Confidential Information and in any event with a reasonable degree of care. All originals, copies and other forms of Confidential Information, however and whenever produced, shall be and remain the sole property of the disclosing party.

- (b) The receiving party, except as expressly set out herein: (a) shall not, directly or indirectly, deal with, use, exploit or disclose Confidential Information of the disclosing party, or any part thereof, to any person or entity or for any purpose whatsoever (including, but not limited to, in any manner that would benefit any competitor of the disclosing party) except as expressly permitted hereunder or unless and until expressly authorized in writing to do so by the disclosing party; (b) shall not reveal or disclose Confidential Information of the disclosing party to any person within or outside the receiving party's organization, except for those representatives of the receiving party or its Affiliates who have a need to know in order to fulfil the obligations or exercise the rights granted herein and who have signed written confidentiality agreements or otherwise assumed confidentiality obligations no less restrictive than the obligations of the receiving party provided herein with respect to the Confidential Information; (c) shall use Confidential Information of the disclosing party only to the extent necessary to fulfill the receiving party's obligations or exercise its rights under this Agreement, and otherwise only with the disclosing party's express written authorization or except as required by applicable law provided however, that prior to any unauthorized use or disclosure of Confidential Information that is required by law, the receiving party shall provide the disclosing party with reasonable prior notice of any disclosure of Confidential Information required by law and, if requested by the disclosing party, shall permit and cooperate with the disclosing party to obtain a protective order or similar protection for the disclosing party.
- (c) The receiving party shall upon termination or expiry of the Agreement or at any time if the disclosing party so requests, at the option of the disclosing party either return or destroy all Confidential Information and shall confirm to the disclosing party in writing that the receiving party has done so.
- (d) In the event of a breach of this Section 8.6, monetary damages may not be an adequate remedy, and therefore, in addition to any other legal or equitable remedies, either Party shall be entitled to seek injunctive or other equitable relief against such breach.
- (e) The obligations in this Section 8.6 will survive termination or expiry of this Agreement. Disclosure by a Party of its Intellectual Property or the Confidential Information shall not constitute the loss of the disclosing Party's ownership in or to such Intellectual Property and Confidential Information. Each Party acknowledges that all disclosures made by a disclosing Party relating to the Intellectual Property and the Confidential Information of the disclosing Party are communicated to the receiving Party solely on a confidential basis and as trade secrets, in which the disclosing Party has a substantial investment and a legitimate right to protect against unlawful disclosure.



## 8.7 Representations and Warranties

- (a) Company represents and warrants that: (a) it has sufficient right, title and interest in and to the Software and Documentation to license such Software and Documentation to the Customer free and clear of all restrictions, liens and encumbrances that may conflict with or adversely affect the Customer's rights under this Agreement; (b) all reasonable precautions have been and will be taken to ensure that the Software will not contain any virus, worm, Trojan horse malicious device or other disabling or damaging computer code, (collectively, "**Viruses**") that may damage, harm, detrimentally interfere with, or otherwise adversely affect the Software or Customer's use of the Software, SaaS or any system, hardware, software or equipment with which the Software may be operated or any related data, or facilitate unauthorized access to or use of any of those items; (c) it will exercise in performing its obligations hereunder that standard of care and skill normally exercised by suppliers expert in the provision of services similar to the services provided under this Agreement; (d) it will comply with all applicable laws in performing its obligations hereunder; (e) all services provided hereunder will be provided in a competent and professional manner, conforming to recognized industry standards, by individuals with suitable training, experience, and skill.
- (b) Except as set out in this Agreement, the Company does not represent that the Customer's use of the Technology will be secure, timely, uninterrupted or error-free or that the Technology will meet the Customer's requirements or that all errors in the SaaS or Documentation will be corrected or that the overall system that makes the Technology available will be free of Viruses or other harmful components. Except as set out in the Agreement, the Company makes no warranties or conditions, express or implied, including without limitation, those of merchantability, satisfactory quality, course of performance, course of dealing or usage of trade, fitness for a particular purpose or non-infringement of third party rights. The Technology is provided to the Customer on an "as is" and "as available" basis and is for the Customer's internal business use only.

## 8.8 Indemnification and Limitation of Liability

- (a) To the fullest extent permitted by applicable law, each party's aggregate liability to the other in respect of all claims (whether in contract, delict or tort) shall not exceed an amount equal to the total fees paid by the Customer within the twelve (12) month period immediately preceding the occurrence of the event that is the subject of the claim. The foregoing limitation of liability shall not apply to the following: (i) Customer's payment obligations; and (ii) damages arising from personal injury or death due to site visitations at the Customer's premises or work sites.

- (b) To the fullest extent permitted by applicable law, and except as specifically provided for in Section 2.4, neither party (nor its employees, agents, suppliers and licensors) shall be liable for any indirect, incidental or special damages, including without limitation, loss of profit (anticipated or demonstrated), lost revenue, pure economic loss, loss of operation time, loss of goodwill, lost productivity, lost opportunity costs or any loss of or corruption of data (excluding Customer data), the cost of procuring substitute goods, services or technology, or any consequential loss, damage, cost or expenses of any kind whatever and however caused, whether incurred by a Party or a third party, whether arising in law or equity, under contract, tort, delict (including negligence) strict or statutory liability (to the extent not inconsistent with such legislation), or otherwise even if such party has been advised, knew or should have known of their possibility. This limitation will apply even if any remedy fails of its essential purpose. For the purposes of this article, loss includes a partial loss or reduction in value as well as a complete or total loss. The provisions of the Customer Terms of Service allocate the risks between the company and the Customer and the Parties hereby agree to their reasonableness.
- (c) The Company shall defend and indemnify the Customer and its Affiliates against a claim that the Software furnished and used within the scope of the Agreement infringes any Canadian or U.S. copyright or patent provided that: (a) the Customer and its Affiliates notifies the Company in writing within 15 days of its notification of the claim; (b) the Company has sole control of the defense and all related settlement negotiations; and (c) the Customer and its Affiliates provide the Company with the assistance, information and authority necessary to perform the Company's obligations under this Section. Reasonable out-of-pocket expenses actually incurred by the Customer and its Affiliates in providing such assistance shall be reimbursed by the Company. The Company shall have no liability for any claim of infringement based on: (a) use of a superseded or altered release of the Software if the infringement would have been avoided by the use of a current unaltered release of the Software that the Company provides to the Customer and its Affiliates but only in so far as the Customer was aware that there was a more current release available; or (b) the combination, operation or use of any Software furnished under this Agreement with software, hardware or other materials not furnished by the Company (including without limitation integration add-ons) if such infringement would have been avoided by the use of the Software without such software, hardware or other materials. In the event the Software is legally held or are believed by the Company to infringe, the Company shall have the option, at its expense, to: (a) modify the infringing Software to be non-infringing, without a material degradation of service; (b) obtain for the Customer and its Affiliates a license to continue using the infringing Software; or (c) terminate

the license for the infringing Software and refund the fees paid for Software for the affected monthly license period beginning from the date of the notice of infringement. This Section 8.8 states the Company's entire liability and the Customer and its Affiliate's exclusive remedy for Software infringement.

**8.9 Notices.** Any notice required or permitted to be given under this Agreement shall be in writing and shall be properly given if delivered personally, by electronic mail, or by prepaid courier service or certified or prepaid registered mail, addressed as follows (or to such other address as provided by one Party to the other Party in writing):

**To the Company:**

Fresnel Software Corporation  
Suite #340 – 734 7th Ave. SW  
Calgary, AB T2P 3P8  
Canada

Attention: Customer Contracts  
E-mail: [customercontracts@vitruvisoftware.com](mailto:customercontracts@vitruvisoftware.com)

**To the Customer:**

Your address as provided on the Service Order, or as recorded and updated in our Vitruvi subscription account information for you. We may give electronic notices by general notice via the SaaS and may give electronic notices specific to you by email to your e-mail address(es) on record in our account information for you or through the notifications center of the Services. You must keep all of your account information current.

Any such notice shall be deemed to have been received: (i) on the date of delivery if delivered by hand; (ii) one (1) business day after delivery if delivered by courier; (iii) one (1) business day after delivery if delivered by electronic mail or electronically through the SaaS; (iii) one (1) business day following receipt of confirmation of delivery if sent by certified or prepaid registered mail.

**8.10 Amendment or Waiver.** All modifications, amendments and supplements to the Agreement (including the Service Order and the Customer Terms of Service) must be made in writing and signed by authorized representatives of both the Customer and the Company. No waiver by either the Customer or the Company of any provision of the Agreement or of any breach of this Agreement shall be effective or binding unless such waiver is in writing, and any such waiver shall not limit or affect such party's rights with respect to any future breach.

- 8.11 Assignment and Enurement.** The Customer may not assign this Agreement without the prior written consent of the Company, and the Company shall not unreasonably withhold such consent. Except in the event of the sale of all or substantially all of Customer's assets or its securities by way of a merger or acquisition, in which case Company consent shall not be required. The Company may assign this Agreement upon written notice to the Customer. This Agreement shall enure to the benefit of and be binding upon the Company and the Customer and their successors, assigns, and representatives.
- 8.12 Entire Agreement.** the Service Order and the Customer Terms of Service along with the appended schedules and or referenced hyperlinks in these Customer Terms of Service , constitutes the entire agreement between the Customer and the Company in respect of the matters addressed in the Agreement.
- 8.13 Severability.** The provisions of this Agreement shall be deemed severable. If any provision of this Agreement shall be held unenforceable by any court of competent jurisdiction, the remaining provisions shall remain in full force and effect.
- 8.14 Further Assurances.** The Parties will from time to time sign and deliver all such further documents as the Company may reasonably require in order to effectively carry out the full intent and meaning of this Agreement.
- 8.15 Taxes.** Each Party shall pay its own federal, state, county or local sales, property, investment, use and/or other applicable taxes arising out of this Agreement and each Party shall defend and indemnify the other for all claims for tax liabilities.
- 8.16 Force Majeure.** In the event that either party hereto shall be delayed or hindered or prevented from the performance of any act required hereunder, other than a payment obligation, by reason of strikes, lock-outs, labor troubles, inability to procure materials or services, failure of power, riots, insurrection, war or other reasons of a like nature not the fault of the party delayed in performing work or doing acts required under the terms of this Agreement (collectively, "**Force Majeure**"), such party shall immediately provide notice to the other party of such delay, and performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay.
- 8.17 Survival.** The provisions of Sections 8.4 [**Intellectual Property Rights**], 8.5 [**Trademarks**], and 8.8 [**Indemnification and Limitation of Liability**] of this Agreement shall remain in full force and effect and survive the termination of this Agreement, for any reason.

**8.18 Independent Contractors.** The relationship of the parties hereunder shall be that of independent contractors. Nothing in the Agreement shall be construed to create a partnership, joint venture or agency relationship or have the right to bind the other party in any way without the prior written consent of such party, except as specifically provided in the Agreement.