

**TRIAL AGREEMENT**  
Last Updated 06/23/2021

**BY ACCESSING OR USING THE VIRTANA SERVICES MADE AVAILABLE FOLLOWING YOUR ACCOUNT OR USER PROFILE REGISTRATION TO WHICH THESE TERMS ARE LINKED, YOU ARE ACCEPTING ALL OF THE TERMS AND CONDITIONS OF THIS TRIAL AGREEMENT. IF YOU DO NOT AGREE TO THESE TERMS AND CONDITIONS, YOU MAY NOT USE THE VIRTANA SERVICES. YOU AGREE THAT THIS TRIAL AGREEMENT IS ENFORCEABLE LIKE ANY WRITTEN AGREEMENT SIGNED BY YOU. IF YOU ARE USING THE VIRTANA SERVICES AS AN EMPLOYEE, CONTRACTOR, OR AGENT OF A CORPORATION, PARTNERSHIP OR SIMILAR BUSINESS OR OTHER ENTITY, THEN YOU MUST BE AUTHORIZED TO SIGN FOR AND BIND SUCH ENTITY IN ORDER TO ACCEPT THE TERMS OF THIS TRIAL AGREEMENT, AND YOU REPRESENT AND WARRANT THAT YOU HAVE THE AUTHORITY TO DO SO. THE RIGHTS GRANTED UNDER THIS AGREEMENT ARE EXPRESSLY CONDITIONED UPON ACCEPTANCE BY SUCH AUTHORIZED PERSONNEL.**

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**AGREEMENT**

This Trial Agreement (“**Trial Agreement**”) is entered into by and between Virtual Instruments Corporation d/b/a Virtana (“**Virtana**”) and the entity executing the Evaluation Order Form with Virtana (“**Customer**” or “**you**”). This Trial Agreement consists of the terms and conditions below and any attachments, addenda or exhibits referenced in this Trial Agreement and any screen, clickthrough box, or signed order form that reference this Trial Agreement. This Trial Agreement is effective as of the date which is the earlier of: (a) Customer’s initial access to any Virtana Services through any online provisioning, registration or order process; and (b) Customer’s consent to the Trial Agreement via clickthrough, checkbox or similar indication of electronic consent, or by signature (physical or electronic) of any written document incorporating by reference the terms of this Trial Agreement (“**Effective Date**”).

**1. Access to the Virtana Services.** Customer may access and use the Virtana Services during the Evaluation Period, but only for its own benefit on an evaluation basis to determine whether to purchase an ongoing subscription to the Virtana Services and in accordance with the terms and conditions of this Trial Agreement. Customer may permit its Contractors and Affiliates to serve as Users provided that any use of the Service by each such Contractor or Affiliate is solely for the benefit of Customer or such Affiliate. Customer will be responsible for each User’s compliance with this Trial Agreement. Customer will ensure that all permitted Users keep their user IDs and passwords for the Virtana Services strictly confidential and will remain responsible for any and all actions taken by such Users using Customer’s account. Customer will be responsible for restricting access by any User who is no longer authorized to access the Virtana Services. To the extent use of the Virtana Services require Customer to install Client Software, Virtana grants to Customer a limited, non-transferable, non-sublicensable, non-exclusive license during the Evaluation Period to use the object code form of the Client Software internally in connection with Customer’s and its Affiliates’ trial use of the Virtana Services, subject to this Trial Agreement.

**2. General Restrictions.** Customer will not (and will not permit any third party to): (a) sell, rent, lease, license, distribute, provide access to, sublicense, or otherwise make available the Virtana Services to a third party (except as expressly set forth in Section 1 with respect to Users); (b) use the Virtana Services to provide, or incorporate the Virtana Services into, any cloud migration or cloud readiness service for the benefit of a third party; (c) reverse engineer, decompile, disassemble, or otherwise seek to obtain the source code or non-public APIs to the Virtana Services, except to the extent expressly permitted by applicable law (and then only upon advance written notice to Virtana); (d) remove or obscure any proprietary or other notices contained in the Virtana Services, or (e) access or use the Virtana Services for benchmarking purposes or to develop or attempt to develop an offering that is competitive with the Virtana Services. If Customer is an authorized channel partner of Virtana’s (“**Channel Partner**”) to whom Virtana is providing access to the Virtana Services/Client Software then (i) the restriction in subsection (b) of this Section will not apply to the extent that Channel Partner is evaluating the Virtana Services and Client Software to provide cloud migration or cloud readiness service for the benefit of its customers, (ii) Channel Partner will be solely responsible for securing all necessary rights, permissions and consents to use and process any Customer Data via the Virtana Services for evaluation purposes, and (iii) Channel Partner will indemnify, defend, and hold Virtana harmless from any claim against Virtana resulting from Channel Partner’s (1) unauthorized collection, supply, use, disclosure or processing of the Customer Data to Virtana in breach of this Agreement, or (2) breach of Channel Partner’s commitments to the Customer pertaining to the Channel Partner’s cloud migration services (excluding any claim to the extent caused by Virtana’s breach of this Agreement).

**3. Data Usage.** The Virtana Services may be provided by Virtana with sample data (“**Sample Data**”). Sample Data is provided by Virtana “AS IS”, without warranty, representation, indemnity or liability of any kind, solely for use with the Virtana Services during the Evaluation Period. If Customer does not wish to use the Sample Data, Customer may upload data of its own (“**Customer Data**”), provided that Customer acknowledges and agrees that: (a) Virtana recommends that Customer Data consist solely of non-production, sample, non-confidential data (“**Dummy Data**”), rather than any production-level data (“**Production Data**”); (b) Virtana assumes no liability to Customer in connection with the integrity, reliability, legality, or security of any Dummy Data or Production Data uploaded by Customer into the Virtana Services during the Evaluation Period (but Virtana will treat any such Customer Data as Customer’s Confidential Information hereunder); (c) Virtana does not undertake to maintain backup copies of any Customer Data uploaded into the Virtana Services and such Customer Data will not be available for download or export by Customer from the Virtana Services (rather, it will be deleted by Virtana at the conclusion of the Evaluation Period, unless a subscription is purchased); (d) Virtana may limit the functionality of the Virtana Services so that not all results of analysis performed using the Virtana Services may be displayed (e.g. some results may be grayed out), and so that reports visible may not be exported,

downloaded, printed or otherwise extracted from the Virtana Services, unless a subscription is purchased. As between the parties, Virtana retains all right, title and interest in and to the Sample Data, and Customer or its licensors retain all right, title and interest (including any and all intellectual property rights) in and to the Customer Data. Subject to the terms of this Trial Agreement, to the extent that Customer elects to upload Customer Data into the Virtana Services, Customer hereby grants to Virtana during the Evaluation Period only, a non-exclusive, worldwide, royalty-free right to process the Customer Data solely on Customer's behalf, to the extent necessary to provide the Virtana Services to Customer, or to prevent or address service or technical problems under this Trial Agreement, or as may be required by law.

**4. Customer Obligations.** Customer will ensure that its use of the Virtana Services, Sample Data, and all Customer Data is at all times compliant with this Trial Agreement, Customer's privacy policies, and all applicable local, state, federal and international laws, regulations and conventions, including, without limitation, those related to data privacy and data transfer, international communications, and the exportation of technical or personal data. Customer is solely responsible for the accuracy, content and legality of all Customer Data. Customer represents that Customer has sufficient rights in the Customer Data to grant the rights granted to Virtana in Section 3 and that the Customer Data does not infringe or violate the intellectual property, publicity, privacy or other rights of any third party. Customer acknowledges and agrees that the Virtana Services are not designed to process any kind of personal data, whether sensitive, highly sensitive or otherwise, or any data that contains or references personally-identifiable information (other than a User's login credentials or business contact information) that consists of: (i) government-issued identification number of any kind, (ii) health, genetic, biometric record or data, (iii) personal financial or bank account number, credit or debit card number, with or without any required security code, access code or any personal identification number or password that would permit access to the individual's financial account, (iv) any human resources records, (v) any consumer or household data of any kind.

**5. Support.** Virtana will use reasonable efforts to answer Customer's questions regarding use of the Virtana Services, but is not obligated to provide any other support for the Virtana Services during the Evaluation Period.

**6. Confidentiality.** Each party (as "**Receiving Party**") will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care) to (i) not use any Confidential Information of the other party (the "**Disclosing Party**") for any purpose outside the scope of this Trial Agreement, and (ii) except as otherwise authorized by the Disclosing Party in writing, limit access to Confidential Information of the Disclosing Party to those of its and its Affiliates' employees and contractors who need that access for purposes consistent with this Trial Agreement and who have signed confidentiality agreements with the Receiving Party containing protections not materially less protective of the Confidential Information than those herein. If the Receiving Party is required by law or court order to disclose Confidential Information, then Receiving Party shall, to the extent legally permitted, provide Disclosing Party with advance written notification and cooperate in any effort to obtain confidential treatment of the Confidential Information. The Receiving Party acknowledges that disclosure of Confidential Information would cause substantial harm for which damages alone would not be a sufficient remedy, and therefore that upon any such disclosure by the Receiving Party, the Disclosing Party will be entitled to seek appropriate equitable relief in addition to whatever other remedies it might have at law.

**7. Intellectual Property Rights.** This is an agreement for access to and use of the Virtana Service. Customer acknowledges that it is obtaining only a limited right to the Virtana Service and that irrespective of any use of the words "purchase", "sale" or like terms in this Trial Agreement no ownership rights are being conveyed to Customer under this Trial Agreement. Customer agrees that Virtana and its suppliers retain all right, title and interest (including all patent, copyright, trademark, trade secret and other intellectual property rights) in and to the Virtana Services, all Documentation and Client Software, and any and all related and underlying technology and documentation; and any derivative works, modifications, or improvements of any of the foregoing, including any Feedback that may be incorporated (collectively, "**Virtana Technology**"). Except for the express limited rights set forth in this Trial Agreement, no right, title or interest in any Virtana Technology is granted to Customer. Customer acknowledges that the Virtana Services are offered as an online, hosted solution, and that Customer has no right to obtain a copy of the underlying computer code for any Service, except (if applicable) for the Client Software in object code format. Notwithstanding anything to the contrary herein, Virtana may freely use and incorporate into Virtana's products and services any suggestions, enhancement requests, recommendations, corrections, or other feedback provided by Customer or by any Users of the Virtana Services relating to Virtana's products or services ("**Feedback**"). Notwithstanding anything to the contrary in this Trial Agreement, Virtana has the right to collect and use Usage Data to develop, improve, support, and operate its products and services during and after the term of this Trial Agreement. "**Usage Data**" means query or other logs, and any data (other than Customer Data) relating to the operation, development or support of the Virtana Services, and/or about Customer's use of the Virtana Service.

**8. Term and Termination.** The Evaluation Period will end at midnight on the last day of the Evaluation Period. At the end of the Evaluation Period (a) Customer's access to the Virtana Services and license rights to the Client Software will expire unless Customer purchases an ongoing subscription to the Virtana Service and Client Software on mutually agreed terms; and (b) each party will return or destroy the other party's Confidential Information. Customer acknowledges that following termination it will have no further access to any Customer Data within the Virtana Services and must cease all use of, uninstall, and delete any Client Software in its possession. Within thirty (30) days following the end of the Evaluation Period, Virtana will delete the Customer Data (unless Customer purchases a subscription to the Virtana Services). Either party may terminate this Trial Agreement (and the Evaluation Period) at any time for any or no reason upon written notice to the other party. Customer may send such notice via email to [dl-accounting@virtualinstruments.com](mailto:dl-accounting@virtualinstruments.com) (or such other email as Virtana may hereafter provide), using the subject line "notice of non-renewal". Nothing herein obligates either party to enter into any further agreement with the other party. This Section 8 and Sections 2 (General Restrictions), 4 (Customer Obligations), 6 (Confidentiality), 7 (Intellectual Property

Rights), 9 (No Warranty), 10 (Limitation of Liability) 12 (General) and 13 (Definitions) will survive any expiration or termination of this Trial Agreement.

**9. No Warranty.** EXCEPT AS EXPRESSLY SET FORTH IN THIS TRIAL AGREEMENT, THE VIRTANA SERVICES AND THE CLIENT SOFTWARE ARE PROVIDED "AS IS" AND VIRTANA MAKES NO WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT PERTAINING TO THE SAME. VIRTANA DOES NOT WARRANT THAT THE USE OF THE VIRTANA SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE. VIRTANA WILL NOT BE LIABLE FOR DELAYS, INTERRUPTIONS, SERVICE FAILURES OR OTHER PROBLEMS INHERENT IN USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS OR FOR ISSUES RELATED TO THIRD-PARTY APPLICATIONS, SERVICES, OR HOSTING PROVIDERS WITH WHOM CUSTOMER SEPARATELY CONTRACTS. CUSTOMER MAY HAVE OTHER STATUTORY RIGHTS, BUT THE DURATION OF STATUTORILY REQUIRED WARRANTIES, IF ANY, WILL BE LIMITED TO THE SHORTEST PERIOD PERMITTED BY LAW.

**10. Limitation of Liability.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, NEITHER PARTY NOR ITS AFFILIATES WILL BE LIABLE TO THE OTHER PARTY OR ITS AFFILIATES FOR ANY INDIRECT, SPECIAL, INCIDENTAL, RELIANCE, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES OF ANY KIND, EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE. TO THE MAXIMUM EXTENT PERMITTED BY LAW, AND EXCEPT FOR EITHER PARTY'S OBLIGATIONS UNDER SECTION 6 (CONFIDENTIALITY) (BUT EXCLUDING OBLIGATIONS AND/OR CLAIMS RELATING TO CUSTOMER DATA, WHICH SHALL BE SUBJECT TO THE CAP BELOW), AND NOTWITHSTANDING ANY OTHER PROVISION OF THIS TRIAL AGREEMENT, EACH PARTY'S AND ITS AFFILIATES' ENTIRE LIABILITY TO THE OTHER PARTY OR ITS AFFILIATES (FOR DAMAGES OR LIABILITY OF ANY TYPE) WILL NOT EXCEED FIVE THOUSAND DOLLARS (USD \$5,000). THE PARTIES AGREE THAT THE WAIVERS AND LIMITATIONS SPECIFIED IN THIS SECTION 10 WILL SURVIVE AND APPLY REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE AND WILL SURVIVE AND APPLY EVEN IF ANY LIMITED REMEDY SPECIFIED IN THIS TRIAL AGREEMENT IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

**11. Export Control.** Each party agrees to comply with all applicable export and import laws and regulations of the United States and other applicable jurisdictions pertaining to its access and use of the Virtana Services. Without limiting the foregoing, (i) each party represents and warrants that it is not listed on any U.S. government list of prohibited or restricted parties or located in (or a national of) a country that is subject to a U.S. government embargo or that has been designated by the U.S. government as a "terrorist supporting" country, (ii) Customer will not (and will not permit any third parties to) access or use the Virtana Services in violation of any U.S. export embargo, prohibition or restriction, and (iii) Customer will not submit to the Virtana Services any information that is controlled under the U.S. International Traffic in Arms Regulations.

**12. General.** This Trial Agreement will be governed by the laws of the State of California and the United States without regard to conflicts of laws provisions thereof, and without regard to the United Nations Convention on the International Sale of Goods. The jurisdiction and venue for actions related to the subject matter hereof will be the state and federal courts located in San Jose, California, and both parties hereby submit to the personal jurisdiction of such courts. The parties are independent contractors and no employment, agency, or joint venture is created hereunder. All notices, requests and other communications under this Trial Agreement must be in writing, and must be mailed by registered or certified mail, postage prepaid and return receipt requested, or delivered by hand to the party to whom such notice is required or permitted to be given. All amendments must be in writing and signed by both parties. Waivers must be in writing and no waivers will be implied. This Trial Agreement may not be assigned by Customer, and any purported assignment or amendment in violation of the foregoing will be void. Virtana may assign this Trial Agreement to any Affiliate or in connection with a merger, reorganization, acquisition or other transfer of all or substantially all of Virtana's assets or voting securities. If any provision of this Trial Agreement is held by a court of competent jurisdiction to be unenforceable for any reason, the remaining provisions hereof will be unaffected and remain in full force and effect. This Trial Agreement is the final, complete and exclusive agreement between the parties relating to the subject matter hereof, and supersedes all prior or contemporaneous understandings and agreements relating to such subject matter, whether oral or written. Elements of the Virtana Services are commercial computer software. Virtana provides the Virtana Services, including all related software and, to the extent applicable the Virtana Technology, for ultimate federal government end use solely in accordance with the following: Government technical data and software rights related to the Service include only those rights customarily provided to the public as defined in this Trial Agreement. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If a government agency has a need for rights not granted under these terms, it must negotiate with Virtana to determine if there are acceptable terms for granting those rights, and a mutually acceptable written addendum specifically granting those rights must be included in any applicable agreement.

### **13. Definitions.**

**"Affiliate"** means an entity that, directly or indirectly, owns or controls, is owned or is controlled by, or is under common ownership or control with a party. As used herein, "control" means the power to direct the management or affairs of an entity and "ownership" means the beneficial ownership of more than fifty percent (50%) of the voting equity securities or other equivalent voting interests of an entity.

**"Client Software"** means any downloadable client software made available to Customer by Virtana that is installed on end user computers to enable the upload of data to the Virtana Services.

**“Confidential Information”** means all information that is identified as confidential at the time of disclosure by the Disclosing Party or should be reasonably known by the Receiving Party to be confidential or proprietary due to the nature of the information disclosed and the circumstances surrounding the disclosure. All Customer Data will be deemed Confidential Information of Customer without any marking or further designation. All Virtana Technology and the terms and conditions of this Trial Agreement will be deemed Confidential Information of Virtana without any marking or further designation. Confidential Information will not include information that the Receiving Party can demonstrate: (i) was rightfully in its possession or known to it prior to receipt of the Confidential Information; (ii) is or has become public knowledge through no fault of the Receiving Party; (iii) is rightfully obtained by the Receiving Party from a third party without breach of any confidentiality obligation; or (iv) is independently developed by employees of the Receiving Party who had no access to such information. •

**“Contractor”** means the independent contractors and consultants permitted by Customer to serve as Users of the Service.

**“Documentation”** means Virtana’s then-current technical documentation and usage guides for the applicable Virtana Service.

**“Evaluation Period”** means the evaluation period approved by Virtana via email or other communication with Customer, or, if no such communication applies or is agreed, thirty (30) days from the date of first access to the specific Virtana Service.

**“Virtana Services”** means the Virtana software-as-a-service offering provisioned by Virtana for trial use subject to the terms of this Agreement as noted on Customer’s account or company profile, or in a signed writing between the parties.

**“User”** means the persons designated and granted access to the Service by or on behalf of Customer, including its and its Affiliates’ Contractors, but excluding anyone acting on behalf of or that is employed by a Virtana competitor.