

## SOFTWARE LICENSE AGREEMENT FOR VIRTUSTREAM LICENSED SOFTWARE

This Software License Agreement for Virtustream Licensed Software (the “Agreement”) is a legally binding document between the Virtustream entity identified below (“Virtustream” or “Licensor”) and you (“Licensee”).

- i) If Licensee is located in the United States or Canada and the Software is being installed in the United States or Canada, Virtustream, Inc. shall be the Licensor;
- ii) If Licensee is located outside the United States or Canada and the Software shall not be installed in the United States or Canada, Virtustream Ireland Limited shall be the Licensor.

By downloading the License Key or installing the Software or clicking “Agree”, “Accept” or similar button on the EMC Select website, Licensee is consenting to be bound by the terms of this Agreement. If you do not agree to all of the terms of this Agreement, do not accept or agree to the terms hereof and do not download or install the Software.

The Software identified in the EMC Select Order shall be subject to the terms of this Agreement.

### 1. DEFINITIONS

For the purpose of this Agreement the following terms shall have the corresponding definitions:

“**μVM**” means a unit of measurement designed to measure the actual consumption of the Software based on CPU, memory, storage IOPS, and associated local network bandwidth with the usage of each μVM resource component measured at five minute intervals each month — one unit each for 200MHz of CPU, 768MiB of memory, 40 storage input/output operations per second (IOPS), and 2Mbps of local network bandwidth – and the highest of the four is averaged per hour and the hour values averaged across the month to determine the overall μVM usage for each month.

“**Affiliate**” means an entity that Controls, is Controlled by or is under common Control with a party.

“**Confidential Information**” means all confidential and proprietary information of either party (the “**Disclosing Party**”) that is disclosed to the other party (the “**Receiving Party**”), including but not limited to: (A) Software, pricing proposals, financial and other business information, data processes and plans; (B) research and development information, analytical methods and procedures, hardware design, technology; (C) business practices, know-how, marketing or business plans; (D) this Agreement, Orders, User Materials; and (E) any other information identified in writing as confidential or information that the Receiving Party knew or reasonably should have known was confidential. Confidential Information shall not include information which the Receiving Party can prove: (1) is or becomes public knowledge through no breach of this Agreement by the Receiving Party; (2) is received by Receiving Party from a third party not under a duty of confidence; or (3) is already known or is independently developed by the Receiving Party without use of the Confidential Information.

“**Control**” means the ownership of more than fifty percent (50%) of an entity’s stock or other voting interest.

“**Enhancements**” means the updates, upgrades, modifications and corrective programming to the Software that may be made available to Licensee as part of Maintenance.

“**License Fee**” means the license fee set forth in an Order.

“**License Key**” means the code provided to Licensee by Virtustream that enables the Software to operate on the applicable licensed server in the licensed configuration.

“**Managed Device**” means a computer, mobile device or other physical hardware or virtual machine that will: (a) directly or indirectly access or interact with the Software; (b) be monitored by the Software for security and/or compliance purposes; and (c) access systems that are monitored for security and/or compliance purposes by the Software.

“**Maintenance**” means the services and support made generally available for the Software as set forth in this Agreement and the Maintenance Schedule, for the term set out in an Order, and shall generally include (i) Enhancements made generally available to other licensees of the Software current on Maintenance; and (ii) support as specified in the Maintenance Schedule.



## Software License Agreement

**“Maintenance Schedule”** means the support guidelines for Maintenance set out in Exhibit 1, which guidelines may be updated by Virtustream from time to time.

**“Managed Service Provider”** means Use of the Software by Licensee to provide services to Service Customers as authorized in an Order.

**“Order”** means the applicable EMC Select Order, wherein, Licensee has purchased a license to the Software, subject to the terms of this Agreement.

**“Service Customer”** means a third party for whom Licensee performs certain services.

**“Software”** means the Virtustream software, in object code, licensed to Licensee as specified in an Order, including any Enhancements.

**“Territory”** means the Territory set out in an Order.

**“User Materials”** means the documentation provided by Virtustream with the Software, as such documentation may be modified to incorporate Enhancements.

**“Use”** means to install, access, display, run, copy (to the extent permitted in an Order), or otherwise use the Software as permitted in an Order.

**“Users”** means Licensee’s employees and contractors, as permitted in an Order, who are authorized to access or Use the Software for Licensee’s internal business operations or as otherwise set out in an Order.

**“Warranty Period”** means the ninety (90) period following initial delivery of the Software and delivery shall mean the date the License Key for the Software is made available to Licensee for electronic download.

## 2. LICENSE

### A. *Grant*

For the applicable term set forth in an Order, and subject to the terms of this Agreement and the Order, Virtustream hereby grants to Licensee a non-exclusive, non-transferable license to Use the Software in the Territory. The grant of rights hereunder to the Software is not a sale of the Software and Virtustream and its third party providers reserve all rights not expressly granted by this Agreement or an Order. Licensee has no rights in or to the Software except the right to Use the Software as provided in this Agreement and an Order. Licensee shall not, on behalf of itself and its successors and assigns, assert against Virtustream, any rights in any modifications in or to the Software.

### B. *Use*

Unless otherwise indicated in an Order, the Software is licensed for Use by Users for Licensee’s internal use, operations and management of Licensee’s internal business operations and for up to, as applicable, the number of Managed Devices or  $\mu$ VM’s to manage systems and devices as set forth in an Order. To the extent permitted in an Order, Licensee may use the Software as a Managed Service Provider.

### C. *Evaluation License*

For any Evaluation License or Trial License (as indicated in an Order and/or if the applicable License Key indicates that Licensee is licensing the Software for an initial evaluation period), the license shall only be valid for a period of thirty (30) days (or other period of time set out in an Order) from the date of initial delivery of the Software or License Key, and all Use of the Software shall be limited to evaluation or testing in a non-productive environment. Upon conclusion of the evaluation or trial, Licensee shall cease use of the Software and shall purge any copies of the Software from its computer environment. All Software licensed on a trial or evaluation basis is licensed “AS IS”, without warranty or indemnity of any kind. Licensee’s sole remedy in connection with Software licensed on a trial or evaluation basis shall be to cease use of the Software.

### D. *Copies*

Except as provided in an Order, Licensee shall not copy or reproduce the Software or User Materials. Subject to the license restrictions set forth in this Agreement and an Order, Virtustream grants to Licensee a license to Use copies of the object code of the Software, and to make one (1) copy of the Software in machine-readable form as reasonably required for backup purposes. Licensee shall reproduce all proprietary notices on any copies of the Software and User Materials.

**E. License Restrictions**

Licensee shall only allow Users who are performing work for Licensee's benefit to Use the Software pursuant to this Agreement and an Order. Prior to permitting any contractor or third party to Use the Software, Licensee shall require such contractor or third party to agree in writing to confidentiality obligations at least as protective of confidential information as the provisions set out herein and to only use the Software on behalf of Licensee in accordance with the Agreement and an Order. Except as permitted in an Order, the Software shall not be Used on behalf of a Service Customer nor shall the Software be Used by or on behalf of, accessed by or for the benefit of, re-sold to, rented to, licensed to, sub-licensed to, or distributed to, or otherwise provided, transferred or disclosed to, any other party. In addition, Licensee shall (i) remove/uninstall all components of the Software from any computer or other hardware that Licensee sells or of which Licensee divests itself; (ii) not use the Software, except as permitted in this Agreement or an Order; (iii) not modify; create any derivative works; reverse engineer, reverse translate, reverse compile; or disassemble the Software or any part or copy thereof, or, otherwise attempt to derive the source code or structure of the code; (iv) not disclose the Software in either object code form or source code form to any third party; (v) not merge all or any part of the Software with another program; (vi) not store the Software or any part thereof on any computer, network or server that can be accessed by anyone other than Users who use the Software in the performance of their duties on behalf of Licensee. Licensee shall be responsible for any breach of this Agreement by any Users.

**F. High Risk Activities.** The Software is not intended for Use in connection with any high risk, mission critical or strict liability activity, including, without limitation, air or space travel, power plant operation, life support or medical operations, and Virtustream makes no warranty and shall have no liability in connection with any Use of the Software in such situations to the maximum extent allowed by law.

**3. MAINTENANCE****A. General**

Virtustream shall provide Licensee with Maintenance for the initial Maintenance term set out in an Order. Maintenance shall be provided only for the then-current and immediate preceding release of the Software for up to twelve (12) months after the commercial release of the current release of the Software. To the extent that Maintenance Services for the Software are generally made available to other similarly situated licensees in the Territory, Licensee may renew Maintenance. Virtustream may increase the Maintenance fee applicable to the Software annually upon thirty (30) days written notice prior to the renewal of the applicable Maintenance term.

**B. Termination**

Unless otherwise provided in an Order, either party may terminate Maintenance for the Software at the end of an applicable Maintenance term by written notice to the other party at least thirty (30) days before expiration of such Maintenance term. In addition, Virtustream may terminate Maintenance for the Software in the event of a material failure of performance by Licensee under the Agreement, including, without limitation, a delinquency of any payment obligation owed by Licensee to Virtustream under any agreement between the parties which payment obligation remains uncured for a period of thirty (30) days beyond the due date.

**4. FEES AND PAYMENTS****A. Fees**

Licensee shall pay to Virtustream, the License Fees and the applicable initial Maintenance fee set forth in an Order. If Maintenance is renewed as provided in Section 3, above, Licensee shall pay the applicable Maintenance fee for the subsequent term in advance thirty (30) days from the date of Virtustream's invoice.

**B. Taxes**

The fees in an Order are exclusive of any taxes. Licensee shall pay or reimburse Virtustream for all taxes imposed on the Software. Unless otherwise stated in an Order, the location of the Software shall be Licensee's offices at the address identified in this Agreement. The taxes due under this Agreement may be audited by an applicable taxing authority and the parties shall reasonably cooperate with any such audit. In addition to the foregoing:

- i) Unless Licensee provides Virtustream with a valid exemption certificate, Licensee shall be responsible for all applicable taxes. If Licensee provides Virtustream with an exemption certificate that is deemed to be invalid by the applicable taxing authority, Licensee shall be responsible for any applicable taxes, penalties and interest related to such invalid exemption certificate.

- ii) Virtustream shall timely collect and remit such taxes that are required by law to the appropriate taxing jurisdiction. Licensee shall not be liable for any penalties, interest, fees, or other expenses, if any, incurred by Virtustream as the result of Virtustream's failure to remit taxes collected from Licensee. In the event of a subsequent assessment of taxes by the applicable taxing authority, Licensee shall pay or reimburse Virtustream for such assessed taxes.
- iii) If Licensee is required by law to make any deduction or withholding, the fees payable by Licensee upon which the deduction or withholding is based shall be increased to the extent necessary to ensure that after such deduction or withholding Virtustream receives an amount equal to the amount Virtustream would have received in the absence of such deduction or withholding. Licensee shall promptly report and effect payment thereof to the applicable tax authorities. Licensee shall also promptly provide Virtustream with official tax receipts or other evidence issued by the applicable tax authorities sufficient to establish that the taxes have been paid.

### **C. Payments**

All fees and applicable taxes are due thirty (30) days following Licensee's receipt of an invoice from Virtustream. Any amount not received by the due date is past due and subject to interest at the greater of 1.5% per month or the highest rate permitted by applicable law.

## **5. THIRD PARTY SOFTWARE**

The Software may include software or data which has been licensed or provided to Virtustream by third parties ("Third Party Software"), and that the licensor of any Third Party Software embedded in or provided with the Software has a proprietary interest in such software or data. If a separate license agreement for an item of Third Party Software is delivered to Licensee with the Software, included in the download package for the Software, or referenced in any material (including the User Materials) that is included in the download or distribution package for the Software, then such Third Party Software and such separate license agreement shall govern Licensee's Use of that item or version of such Third Party Software. Licensee's right to use any Third Party Software provided with the Software shall be limited to the use necessary to operate the Software as permitted by this Agreement or as provided in such separate third party license agreement.

## **6. CONFIDENTIAL INFORMATION**

### **A. Obligation**

During the term of this Agreement, each party may have access to Confidential Information of the other party. Confidential Information shall be used solely for each party's performance under this Agreement and the exercise of its rights hereunder. Except as permitted herein, neither party shall, without the prior written consent of the other party, use or disclose the Confidential Information of the other party. Each party will take all reasonable precautions to protect the other party's Confidential Information, using at least the same standard of care as it uses to maintain the confidentiality of its own Confidential Information but in no event less than reasonable care. Notwithstanding the foregoing, a party may disclose Confidential Information: (i) to any consultants, contractors and counsel who have a need to know in connection with this Agreement and have executed a reasonably protective non-disclosure agreement with the Receiving Party that is at least protective of Confidential Information as this Agreement; or (ii) pursuant to legal process; provided that, the Receiving Party shall, unless legally prohibited, provide the Disclosing Party with reasonable prior written notice sufficient to permit it an opportunity to contest such disclosure. Virtustream shall own any ideas, suggestions or other feedback that the Customer may provide to Virtustream with respect to the Software and Licensee hereby assigns all right, title and interest to such feedback to Virtustream.

### **B. Injunctive Relief**

Disclosing Party may be irreparably damaged if the obligations under this Section are not enforced and Disclosing Party may not have an adequate remedy in the event of a breach by Receiving Party of its obligations hereunder. The parties agree, therefore, that Disclosing Party is entitled to seek, in addition to other available remedies, an injunction restraining any actual, threatened or further breaches of the Receiving Party's obligations under this Section or any other appropriate equitable order or decree. In addition, if a party believes that injunctive relief is necessary to preserve the status quo or prevent further harm under this Agreement, then a party may pursue such relief.

## **7. WARRANTY**

### **A. Term**

Virtustream warrants that during the Warranty Period the Software will substantially conform to the functional description(s) set forth in the User Materials. If during the Warranty Period the Software fails to comply with this warranty Licensee must notify Virtustream in writing of any alleged

errors or non-conformities with the Software. Virtustream will have thirty (30) days from receipt of such notice or an additional period of time as reasonably agreed to by the parties to correct such errors or non-conformities in accordance with the User Materials. If Virtustream is unable to timely correct such errors or non-conformities, Licensee may elect to terminate the license to such Software. If Licensee terminates the license to such Software during the Warranty Period in accordance with this Section, Licensee will, as its exclusive remedy, receive a refund of all fees previously paid for such Software.

**B. Exclusions**

EXCEPT FOR THE WARRANTY SET OUT HEREIN AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SOFTWARE IS PROVIDED "AS IS" AND VIRTUSTREAM DISCLAIMS ALL WARRANTIES, EXPRESS, IMPLIED, WITH RESPECT TO THE SOFTWARE AND MAINTENANCE, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE IN TRADE. Virtustream does not represent that the Software is appropriate for Licensee's planned use or that the Software will operate without interruption or be error free.

**C. General**

THE DISCLAIMER OF REPRESENTATIONS, WARRANTIES AND LIMITATION OF LIABILITY CONSTITUTE AN ESSENTIAL PART OF THIS AGREEMENT. LICENSEE ACKNOWLEDGES THAT BUT FOR THE DISCLAIMER OF REPRESENTATIONS, WARRANTIES AND LIMITATION OF LIABILITY, VIRTUSTREAM WOULD NOT GRANT THE RIGHTS GRANTED IN THIS AGREEMENT.

**8. LIMITATION OF LIABILITY**

EXCEPT FOR INDEMNIFICATION CLAIMS UNDER SECTION 12 AND CLAIMS ARISING FROM A BREACH OF A PARTY'S CONFIDENTIALITY OBLIGATIONS UNDER SECTION 6, NEITHER PARTY, NOR ANY OF ITS OFFICERS, DIRECTORS, EMPLOYEES OR OTHER REPRESENTATIVES OR AGENTS, SHALL BE LIABLE UNDER THIS AGREEMENT FOR INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH THIS AGREEMENT, WHETHER OR NOT THE POSSIBILITY OF SUCH DAMAGES WAS DISCLOSED OR COULD HAVE BEEN REASONABLY FORESEEN. EXCEPT FOR INDEMNIFICATION CLAIMS UNDER SECTION 12 AND VIRTUSTREAM'S RIGHT TO COLLECT FEES UNDER THIS AGREEMENT, NEITHER PARTY'S AGGREGATE LIABILITY TO THE OTHER PARTY UNDER THIS AGREEMENT OR ANY ORDER SHALL EXCEED THE FEES ACTUALLY PAID (OR PAYABLE) BY LICENSEE TO VIRTUSTREAM UNDER THE IMPACTED ORDER DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT WHICH IS THE SUBJECT OF THE CLAIM. THIS LIMITATION OF LIABILITY APPLIES REGARDLESS OF WHETHER LIABILITY IS BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, BREACH OF WARRANTIES, FAILURE OF ESSENTIAL PURPOSE OF THIS AGREEMENT OR OTHERWISE OR ANY OTHER LEGAL THEORY.

**9. AUDIT RIGHTS**

Licensee will maintain accurate records concerning Use of the Software. To the extent provided in an Order, Licensee shall report actual consumption of the Software on a quarterly basis. Virtustream, or persons designated by Virtustream, will, at any reasonable time upon prior notice to Licensee, be entitled to inspect such records concerning Use and to otherwise inspect or audit Use of the Software in order to verify compliance with the Agreement and any Order. If any audit or inspection reveals any unauthorized Use of the Software, Licensee and Virtustream will enter into an additional Order for the licensing of Software under the Agreement pursuant to which Licensee shall be assessed (and Licensee shall pay) additional License Fees (according to Virtustream's then current official prices list in effect) as reasonably required to bring Licensee's use into compliance with the Agreement, as well as applicable Maintenance fees associated with the period of unauthorized Use. If any such audit reveals unlicensed Use by Licensee of five percent (5%) or more in excess of the actual licensed amounts of Software as set forth in an Order then in such event Licensee shall be responsible for the costs of the audit.

**10. TERMINATION; SURVIVAL****A. Termination**

Virtustream may terminate this Agreement (a) upon 15 days written notice to Licensee in the event of any payment default, if such default is not cured within that period (or immediately, in the discretion of Virtustream, in the event of any breach involving the improper and unauthorized disclosure of Virtustream's Confidential Information, or any other breach arising under Section 2 of this Agreement, to the extent such breach is not reasonably capable of being cured, all of which shall be evaluated in the discretion of Virtustream); or (b) upon 30 days written notice to Licensee in the event of any other material breach of this Agreement, if such breach is not cured within that period. In the event of termination of this Agreement, each party shall destroy or return immediately all Confidential Information of the other party in its possession.

**B. Survival**

Sections 2(c), 2(d), 2(e), 5, 6, 7(b), 7(c), 8, 9, 10 and 13 shall survive any such termination. In the event of any termination hereunder, Licensee shall not be entitled to any refund of any payments made by Licensee.

**11. AUTHORIZED DISTRIBUTORS AND RESELLERS**

Virtustream authorized distributors and resellers do not have any right to make modifications to this Agreement or to make any additional representations, commitments, or warranties. Any such purported modifications shall be null and void and shall not be enforceable against Virtustream and may result in termination of this Agreement or any Order.

**12. INDEMNIFICATION**

Virtustream shall, at its own expense, defend Licensee against any claim by a third party that the Software infringe any patent or trademark in the Territory or infringe or misappropriate any trade secret or copyright and pay the resulting costs and damages finally awarded against Licensee by a court of competent jurisdiction to the extent that such are the result of the third party claim, or pay the amounts stated in a written settlement negotiated and approved by Virtustream. If the Software are subject to a claim of infringement or in Virtustream's opinion are likely to become, the subject of such a claim, Virtustream shall, at Virtustream's option and expense: (A) procure for Licensee the right to continue to use the Software; (B) replace or modify such Software so that it becomes non-infringing while retaining substantially equivalent functionality; or (C) if Virtustream determines that none of the foregoing are commercially reasonable, terminate this Agreement and the applicable Order and refund to Licensee the fees paid for the allegedly infringing Software by Licensee. Virtustream shall have no liability if the alleged infringement is based on: (1) combination of the Software with any products, services, items, or technology not provided by Virtustream, or any non-Virtustream products or services; (2) use of Software for a purpose or in a manner that is not permitted by the Agreement or Order and/or after Virtustream notifies Licensee to cease such use due to a possible or pending claim of infringement; (3) any modification to the Software not made by Virtustream; (4) any modifications made by Virtustream pursuant to Licensee's specific instructions; (5) any intellectual property right owned or licensed by Licensee. This section states Licensee's sole and exclusive remedy and Virtustream's entire liability for infringement claims related to the Software. Licensee shall promptly notify Virtustream of any claim. Virtustream shall have sole control over the defense of any such claim, including the settlement of such claim. Licensee shall reasonably cooperate with Virtustream at Virtustream's request and cost.

**13. CHOICE OF LAW**

The laws of the state of New York, United States, excluding its choice of law rules shall govern this Agreement. The United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act shall not apply to this Agreement. Any dispute arising under this Agreement shall be brought in a state or federal court located in New York County. Neither party shall be entitled to bring any claim under this Agreement more than twenty-four (24) months after the cause of action upon which the claim is based arose.

**14. EXPORT; GOVERNMENT REQUIREMENTS****A. Government Restricted Rights.**

This provision applies to Software acquired/licensed directly or indirectly by or on behalf of the United States government. The Software, and any accompanying documentation are deemed to be "commercial computer software" and "commercial computer software documentation," respectively, pursuant to DFAR Section 227.7202 and FAR Section 12.212(b), as applicable, and are commercial products, licensed on the open market at market prices, and were developed entirely at private expense and without the use of any United States government funds. Any use modification, reproduction, release, performance, display, or disclosure of the Software by any government shall be governed solely by the terms of this Agreement and shall be prohibited except to the extent expressly permitted by the terms of this Agreement. No license to the Software is granted to any government requiring different terms. Except as permitted in an Order, Licensee shall not use, nor permit the use of, the Software to provide services to any public sector or government end user.

**B. Export.**

The Software is only licensed for Use in the Territory. Except as provided in an Order, Licensee shall not export or re-export the Software outside the Territory. If Licensee is authorized in an Order to export the Software, Licensee shall comply with the United States Export Administration Act and the related rules and regulations and similar non-U.S. government restrictions, if applicable. The U.S. Department of Commerce prohibits export or diversion of certain products and technology to certain countries. Any and all of Licensee's obligations with respect to the Software shall be



subject in all respects to such United States laws and regulations as shall from time to time govern the license and delivery of technology and products abroad by persons subject to the jurisdiction of the United States, including the Export Administration Act of 1979, as amended, any successor legislation, and the Export Administration Regulations ("EAR") issued by the Department of Commerce, International Trade Administration, and Bureau of Export Administration. Licensee will comply in all respects with the export and re-export restrictions applicable to the Software and will otherwise comply with the EAR or other United States laws and regulations in effect from time to time.

**C. *Denied Persons List.***

Licensee represents that it is not, and if Licensee is a Managed Service Provider, that its Service Customers are not and will not be on the U.S. Treasury Department list of Specially Designated Nationals, or the U.S. Commerce Departments Table of Deny Orders list, or on any other applicable government list designating/defining a category or group of individuals/entities/persons/business entities with whom which it would be unlawful to do/transact business. The Software will at all times be limited to Use that is in compliance with applicable law.

**D. *Foreign Corrupt Practices Act.***

Each party shall: (i) comply with all applicable country laws relating to anti-corruption or anti-bribery, including but not limited to the requirements of the Foreign Corrupt Practices Act, as amended, ("**FCPA**") (15 U.S.C. §§78dd-1, et. seq.), the UK Bribery Act ("**UKBA**") and any legislation implementing the Organization for Economic Co-operation and Development "Convention on Combating Bribery of Foreign Public Officials in International Business Transactions" (the "**OECD Convention**") or other anti-corruption/anti-bribery convention; (ii) neither directly nor indirectly, pay, offer, give, or promise to pay or give, any portion of monies or anything of value received from the other party to a non-U.S. public official or any person in violation of the FCPA, UKBA and/or in violation of any applicable country laws relating to anti-corruption or anti-bribery. Neither party will (1) give, offer, promise or give a national of the U.K., U.S. or elsewhere, with the intention of inducing or rewarding a person to perform certain functions improperly, where there is an expectation that those functions are to be performed in good faith, impartially, or in a position of trust; or (2) request, agree to receive, or accept a financial or other advantage from another person whether a national of the U.K., U.S. or elsewhere, intending that, in consequence, a relevant function or activity (as explained above) should be performed improperly or as a reward for the improper performance of a relevant function.

**15. GENERAL**

**A. *Notices***

All legal notices required to be given hereunder shall be in writing and deemed given if sent to the address set forth in the Order: (i) by prepaid registered or certified U.S. mail, return receipt requested, three days after such mailing; or (ii) by national overnight courier service, the next business day. All other notices (e.g., notice reminder of non-payment) may be sent via facsimile or email and will be deemed given on the day such notice is delivered.

**B. *Assignment***

Licensee shall not assign all or any part of this Agreement or an Order without the prior written consent of Virtustream, which consent will not be unreasonably withheld or delayed. Virtustream may, upon notice to Licensee, assign this Agreement to an Affiliate or to a third party that acquires all or substantially all of its assets or voting securities.

**C. *Waiver***

No waiver of any breach of any provision of this Agreement by either party or the failure of either party to insist on the exact performance of any provision of this Agreement will constitute a waiver of any prior, concurrent or subsequent breach of performance of the same or any other provisions hereof, and no waiver will be effective unless made in writing.

**D. *Severability***

If any provision is adjudged by a court of competent jurisdiction to be unenforceable, invalid or otherwise contrary to law, such provision shall be interpreted so as to best accomplish its intended objectives and the remaining provisions shall remain in full force and effect.

**E. *Independent Contractors***

The parties hereto are and shall remain independent contractors and nothing herein shall be deemed to create any agency, partnership, or joint venture relationship between the parties. Neither party shall be deemed to be an employee or legal representative of the other nor shall either party have any right or authority to create any obligation on behalf of the other party.

**F. *Force Majeure***

Neither party shall be liable for failing or delaying performance of its obligations (except for the payment of money) resulting from any condition beyond its reasonable control; provided that such excusal from performance shall last only so long as such condition exists or so long as the excused party has had a reasonable opportunity to mitigate and/or eliminate the effect of such condition, whichever period is shorter.

**G. *Miscellaneous***

This Agreement shall be binding on and inure to the benefit of each of the parties and their respective permitted successors and assigns; may be executed in counterparts, each of which will be deemed an original and all of which when taken together will constitute one and the same instrument; and shall be construed as if both parties jointly wrote it. Any amendments or modifications to this Agreement must be in writing, refer to this Agreement and be executed by an authorized representative of each party. The various section headings are inserted for convenience only and shall not affect the meaning or interpretation of this Agreement or any section thereof. This Agreement is not intended to benefit, nor shall it be deemed to give rise to, any rights in any third party.

**H. *Delivery; Risk of Loss***

Delivery of Software and risk of loss passes to Licensee FOB Origin if shipped, or upon delivery by Virtustream to Licensee of the download link and/or a License Key, as applicable.

**I. *Entire Agreement.***

This Agreement and any Order(s) are a complete statement of the agreement between Licensee and Virtustream with respect to the Software and Maintenance, and there are no other prior or contemporaneous understandings, promises, representations, or descriptions with respect to the Software. This Agreement and any Order sets forth Virtustream's entire liability and Licensee's exclusive remedy with respect to the Software and Maintenance and supersedes the terms of any purchase orders and any other communications or advertising with respect to the Software and Maintenance. Purchase Orders, if any, issued in conjunction with this Agreement or any payment obligation arising hereunder, are for the administrative convenience of the parties and shall not be alleged or argued to amend, revise, supersede, or in any way effect the terms of this Agreement or any associated Order or Schedule to the Agreement.



## EXHIBIT 1

### MAINTENANCE SERVICE SUPPORT SCHEDULE

#### 1. DEFINITIONS

**"Designated Representative"** means a representative(s) designated by Licensee in writing who is authorized to contact Virtustream for Maintenance. A Designated Representative shall be trained in the operation of the Software or have sufficient technical knowledge and experience to interact with Virtustream's technical personnel providing Maintenance. Maintenance shall only be provided by Virtustream to such Designated Representative.

**"Software"** means Virtustream's xStream and/or ViewTrust software as set out in an Order.

**"Ticket Response Time"** means the amount of time it will take Virtustream to initially respond to a request for technical support for the Software.

#### 2. MAINTENANCE SUPPORT SERVICES.

This Exhibit 1 sets out the service support schedule for the Software. Subject to the foregoing, Virtustream will provide to Licensee (through Licensee's Designated Representative(s)) the following technical support services for the Software during the term of Maintenance:

- (a) Telephone support.
- (b) Access to the Virtustream support group monitored by Virtustream technical support staff; and
- (c) An online update containing then-current generally available technical notes and bulletins.

#### 3. EXCLUSIONS FROM MAINTENANCE SUPPORT SERVICES

- (a) Maintenance does not include:
  - (i) training in the use of the Software;
  - (ii) developing new enhancements for Licensee pursuant to a Licensee request;
  - (iii) assistance with third party software, hardware and communication networks required to operate and to access the Software;
  - (iv) direct assistance and support to any person that is not identified by Licensee as a Designated Representative (as hereinafter defined);
  - (v) maintenance services for any third party hardware;
  - (vi) any new release of the Software which is not described in the definition of "Maintenance" in the Agreement; and
  - (vii) any other services that are not specifically stated herein.
- (b) Virtustream will have no obligations to provide technical support for the Software with respect to the following:
  - (i) any Software or other computer system failures caused by:
    - (1) operator error or hardware failure; or
    - (2) failure to follow the procedures outlined in the User Materials ;
  - (ii) modifications made to the Software by Licensee or under Licensee's direction;

- (iii) failure by Licensee to maintain hardware and any third party software application in accordance with the guidelines provided by Virtustream or such third party; or
- (iv) Maintenance shall be provided only for the then current release of the Software and for the immediate preceding release of the Software for up to twelve (12) months after the commercial release of the current release of the Software.
- (c) Virtustream reserves the right to charge Licensee Virtustream's then-current fee for support requests logged via its support ticketing system that are outside the parameters of included services of this Maintenance Services Support Schedule.

#### 4. DESIGNATED REPRESENTATIVE.

Licensee may have up to the number of Designated Representatives set out in an Order obtain Maintenance Support Services. If no Designated Representatives are identified in an Order, the number of Designated Representatives shall be 5.

#### 5. OPENING A SERVICE LEVEL REQUEST.

If Licensee requires technical support for the Software during an applicable term of Maintenance, Licensee shall contact Virtustream and a ticket will be submitted as set out herein. Upon submission of a ticket, Licensee shall provide Virtustream with sufficient information to enable Virtustream to reproduce the error. If Virtustream is unable to replicate the error, Virtustream will notify Licensee that the ticket will be closed. Licensee may submit additional information to enable Virtustream to replicate the error. Licensee must provide appropriate and timely assistance to Virtustream while a ticket is open.

	xStream Software	ViewTrust Software
<i>Help Desk Access</i>	877 303-9524 Email:	877 303-9524 Email:
<i>Critical Support Hours</i>	24 hours x 7 days x 52 weeks	
<i>Business Hours</i>	<u>Monday – Friday: 8:00 am – 8:00 pm EST</u>	<u>Monday – Friday: 8:00 am – 8:00 pm EST</u>

#### 6. SEVERITY LEVEL/TICKET RESPONSE TIME

The following sets out Virtustream's service levels based on the severity level of a reported error and subject to Virtustream being able to re-create the problem and determining that the problem is due to the Software (and not due to :

Severity Level Description	Description	Ticket Response Time/Action
<i>Severity Level 1 - Production Emergency</i>	The Software does not produce usable output or new installation of Software is unsuccessful. No workaround available. Updates hourly thereafter	Initial response by Virtustream via phone or email is expected within 15-minutes during Critical Support Hours. Immediate and continued support until the problem is resolved with a fix or workaround. The fix (or workaround) will be distributed to all affected licensees.
<i>Severity Level 2 - Serious</i>	Results show that a feature of the Software does not function as documented. However, a workaround is available and the Software can continue to be used.	Initial response by Virtustream via phone or email is expected within 1 hour during Critical Support Hours. Updates will be provided every four (4) Business Hours. Immediate resolution is not guaranteed, but the ticket is prioritized and Licensee is notified within three (3) business days of the intended action. The fix (or workaround) will be distributed to all affected licensees.

Severity Level 3 – Moderate/Low	Non-critical problem; workaround is available.	Initial response by Virtustream via phone or email is expected within 4 Business Hours. Immediate resolution is not guaranteed, but the workaround (if one is found) is made available to all affected licensees.
Severity Level 4 - Cosmetic	Error in, or information missing from, the Documentation.	Initial response by Virtustream via phone or email is expected within 8 Business Hours. Action is dependent on the severity of the problem - high impact problems are distributed via the support site or email; other problems are fixed and distributed with the next general release of Software or Documentation.