



## LEASING SUPPLEMENT TO PRODUCTS AND SERVICES AGREEMENT

This Leasing Supplement ("**Leasing Supplement**") applies solely to Quotes and Orders pursuant to which Virtual Instruments Corporation (d/b/a Virtana) ("**Virtana**") agrees to provide hardware Products and associated Firmware or Software on a bundled lease basis as identified with the designation "HS" on the applicable SKUs on Virtana's price list, Quote, or Order (or in the applicable Channel Partner documentation, if purchases are through such Channel Partner") including any replacements issued by Virtana during the Lease Period as defined below ("**Leased Products**"). This Supplement is issued pursuant to the "Products & Services Agreement" (whether Direct or Indirect) located at the URL <https://www.virtana.com/legal-notices/> or such other agreement as may be separately agreed between Virtana and the customer (collectively, as applicable, the "**Agreement**").

1. **Lease Agreement.** Virtana agrees to lease to Customer and Customer hereby agrees to lease from Virtana all of the Leased Products described in a Quote and associated Order which are or may from time to time be executed by Virtana and Customer or between Customer and the Channel Partner, as applicable (in either case, the "**Leasing Order**"). Customer's rights to the Leased Products shall at all times be subject to the terms and conditions in the Agreement, this Leasing Supplement and the Leasing Order itself, with the order of precedence in the event of any conflict among such terms and conditions being, first, the Leasing Order (solely as to pricing, payment, discounts, and units covered by the Leasing Order), then this Leasing Supplement, and finally, the Agreement, but solely with respect to the Leased Products. Leased Products will be shipped pursuant to the shipping and delivery terms in the Agreement.

2. **Lease Period.** Leased Products may be used solely for the periods noted on the Leasing Order ("**Lease Period**"). The Lease Period is subject to early termination (a) by either party, or automatically, in the event the Agreement terminates for any reason, (b) by either party, for the termination reasons set forth in the Agreement and this Leasing Supplement, or (c) automatically, if the parties agree in writing, including but not limited to, in the event of a conversion of Customer's use rights into an alternate use or licensing model pursuant to a separately-issued Order. Except for the foregoing, the Leasing Order will automatically end at the conclusion of the Lease Period.

3. **Lease Payments.** Customer's access, possession and use rights with respect to the Leased Products are subject to and conditioned upon Customer's timely payment of all recurring lease payments as noted on the Leasing Order. Rental payments shall be in the amounts and frequency as set forth on the Leasing Order. Customer shall bear the entire risk of loss, theft, damage or destruction of the Leased Product while in Customer's or an Authorized Third Party's (defined below) possession from any cause whatsoever, and no loss, theft, damage or destruction of the Leased Product shall relieve Customer of the obligation to pay fees for the entirety of the purchased Lease Period or to comply with any other obligation under this Leasing Supplement or a Leasing Order. Customer hereby acknowledges that this Leasing Supplement is non-cancelable for the Lease Period set forth in each Leasing Order. All terms and conditions pertaining to payment, invoicing, taxes, late fees or interest, will be as noted in the Agreement.

4. **Use of Leased Products.** Leased Products are provided solely for Customer's internal business use at Customer's or its designated third-party provider's ("**Authorized Third Party**") premises subject to the applicable use rights and related terms and conditions of the Agreement and this Leasing Supplement. Without granting any additional licenses or access rights hereunder, Customer may permit its Authorized Third Parties to access, use or operate the Leased Products solely on Customer's behalf, provided that (i) Customer obtains any such Authorized Third Party's binding consent to abide by the terms of this Leasing Supplement and the Agreement, and (ii) Customer remains responsible for such Authorized Third Party's use of the Leased Products and compliance with the terms and conditions of this Leasing Supplement and the Agreement, and any breach of this Leasing Supplement or the Agreement by any such Authorized Third Party will be deemed a breach hereunder by Customer. Customer shall use the Leased Product in a careful manner consistent with the Documentation, the Agreement, and this Leasing Supplement, and shall comply with all laws relating to its possession, use, or maintenance, and shall not make any alterations, additions or improvements to the Leased Product without Virtana's prior written consent. Customer's address or the address noted on the Leasing Order and shall not be removed or relocated without Virtana's prior written consent. Customer specifically acknowledges that the Leased Product is leased to Customer solely for commercial or business purposes and not for personal, family, or household purposes.

5. **No Ownership.** Except for the limited possession and use rights granted in or to the Leased Products hereunder during the Lease Period, the Leased Products are, and shall remain, the property of Virtana, and Customer shall have no right, title, or interest therein or thereto except as expressly set forth in this Leasing Supplement. The Leased Product shall remain personal property even though installed in or attached to real property. All additions, repairs, or improvements made to the Leased Product (whether made with Virtana's permission or otherwise) shall belong to Virtana. The Leased Product shall be kept at the location specified in the Leasing Order. By this Leasing Supplement, Customer acquires no ownership rights in the Leased Product and has no option to purchase the same. Upon the expiration or termination of any Leasing Order, or in the event of a default pursuant hereof, Customer, at its expense, shall return the Leased Product in good repair, ordinary wear and tear resulting from proper use thereof alone excepted, by delivering it, packed and ready for shipment, to such place as Virtana may specify. Customer will not remove any serial numbers, markings or other identifiers of the Leased Products and hereby authorizes Virtana to insert these serial numbers or other identifying data with respect to the Leased Products as necessary for Virtana to track or identify its location.

6. **Support.** All Leased Products must be covered by a Technical Support plan during the entirety of the applicable Lease Period. Leased Products are subject to the policies as described at the URL <https://www.virtana.com/legal-notices/> or any successor URL designated by Virtana. As of the Effective Date, the "Essential" maintenance and support plan applies to the Leased Products and is included in the leasing fees charged under the Leasing Order. Virtana may update its Technical Support documentation at any time during the Lease Period as part of general changes, clarifications or consolidation of its support program offerings for all customers in the normal course of its business.



**7. Warranties.** Leased Products are subject to the applicable warranties in the Agreement, which warranties commence on the date of original shipment by Virtana or issuance by Virtana of a license key or login information, as applicable, of the applicable Leased Product and continuing (i) for 1 year with respect to Leased Products that are hardware, (ii) for 90 days with respect to Software. Shipment of a replacement Leased Product or provision of any updates or upgrades will not extend the Warranty Period. The foregoing warranty does not extend to any Leased Product that while in Customer's possession (a) is modified or altered, (b) is not maintained and stored in accordance with Virtana's maintenance recommendations and instructions, (c) has its serial number removed or altered, (d) is damaged (including by electrical power surges), mishandled, or treated with abuse, negligence or other improper treatment (including use outside the recommended environment or in violation of the Agreement or this Leasing Supplement), or (e) is not used in accordance with the applicable Virtana published specifications and/or Documentation. Hardware will be new (other than Leased Products that were previously used in an evaluation or replacement Leased Products provided as part of Support or warranty) on original shipment from Virtana unless otherwise designated by Virtana at the time of the Leasing Order or on its then-current price list (e.g., all Product SKUs designated with a "-R" are refurbished Products). Where Virtana provides a replacement Leased Product, or if Virtana and Customer agree that Customer will scrap or otherwise dispose of the Leased Products if declared obsolete by Virtana pursuant to Virtana's lifecycle policy, Virtana may require Customer's provision of a certificate of destruction. The form of such certificate and associated instructions will be provided by Virtana to Customer.

**8. Restrictions.** In addition to the restrictions in the Agreement, Customer shall not, and shall not authorize or permit any other person or entity to, directly or indirectly: (i) copy, modify, distribute, or create derivative works of any Leased Product, (ii) disassemble, decompile or reverse engineer any of the Leased Products, or otherwise attempt to discover any source code, structure, algorithms, sequence, organization or ideas underlying any of the Leased Products (except where the foregoing is expressly prohibited by applicable local law, and then only to the extent so prohibited), (iii) sell or resell any Leased Products, (iv) sublicense, rent, lease, use for timesharing or service bureau purposes for third parties or otherwise provide temporary access to any Leased Product or use any Leased Product for the benefit of any third party, (v) provide Leased Product or support passwords or other Leased Product log-in information to any unauthorized third party, (vi) publish or disclose any information or results relating to performance, performance comparisons or other "benchmarking" activities relating to any Leased Product, (vii) obscure, alter, remove, or destroy any proprietary markings, restrictive legends, or intellectual property notices on any Leased Product, (viii) access or use any Leased Product for purposes of designing or developing a competing product or service.

**9. Right of Inspection.** Virtana may, upon at least two (2) weeks' advance written notice, inspect, or have a representative third-party auditor inspect, Customer's premises where the Leased Products are located as necessary to confirm or verify Customer's compliance with the terms and conditions of this Leasing Supplement.

**10. Statutory Finance Lease.** Customer agrees and acknowledges that it is the intent of both parties to this Lease that it qualifies as a statutory finance lease under Article 2A of the Uniform Commercial Code as adopted in California. Customer authorizes Virtana or its designee to file a Uniform Commercial Code financing statement without Customer's signature, in form and content and from time to time as Virtana deems proper, listing Customer as customer or debtor. Customer further grants to Virtana a specific power of attorney for Virtana to sign, endorse or negotiate for Virtana's benefit any instrument representing proceeds from any policy of insurance covering the Leased Product.

**11. ASSIGNMENT BY CUSTOMER PROHIBITED. NOTWITHSTANDING ANY OTHER TERM IN THE AGREEMENT, WITHOUT VIRTANA'S PRIOR WRITTEN CONSENT, CUSTOMER SHALL NOT ASSIGN THIS LEASE OR SUBLEASE THE LEASED PRODUCT OR ANY INTEREST THEREIN, OR PLEDGE OR TRANSFER THIS LEASE, OR OTHERWISE DISPOSE OF THE LEASED PRODUCT COVERED HEREBY.**

**12. Leased Product Return; Obligation to Purchase.** At the expiration of the term set forth in each Leasing Order, Customer shall return the Leased Product subject to said Leasing Order in accordance with this Lease Supplement. If the Leased Products are not returned within a thirty (30) day period following termination of the Lease Period (unless Virtana has agreed to a different return period), or if any item of Leased Product is lost, stolen, destroyed or damaged beyond repair through as a result of Customer's acts or omissions (excluding issues for which Virtana provides support pursuant to Virtana's policies and procedures for a covered Leased Product), then Virtana may invoice, and Customer will pay, for all retained Lease Period for the then-current fair market value of such Leased Products, including associated Technical Support, in which case upon payment, Customer shall be entitled to the Leased Product, without any warranties for further on-premise, perpetual use subject to the applicable terms of the Agreement.

**13. Insurance.** Customer shall provide and maintain Property insurance against loss, theft, damage or destruction of the Leased Product in an amount not less than the full replacement value of the Leased Product, with Virtana named as the loss Payee. ~~payable~~. Customer shall also provide and maintain comprehensive general all-risk liability insurance, including but not limited to product liability coverage, insuring Virtana and Customer with a severability of interest endorsement or its equivalent, against any and all loss or liability for damages either to persons or property or otherwise, which might result from or happen in connection with the condition, use or operation of the Leased Product, with such limits and with an insurer as are satisfactory to Virtana. Each policy shall expressly provide that said insurance as to Virtana and its assigns shall not be invalidated by any act, omission, or neglect of Customer and cannot be canceled without 30 days written notice to Virtana. As to each policy, Customer shall furnish to Virtana a certificate of insurance from the insurer, which certificate shall evidence the insurance coverage required by this Paragraph and shall designate Virtana as loss payee and/or additional insured. Virtana shall have no obligation to ascertain the existence or adequacy of insurance, or to provide any insurance coverage for the Leased Product or for Customer's benefit. If Customer fails to procure or maintain said insurance, Virtana shall have the right, but shall not be obligated, to effect such insurance. In that event, Virtana shall notify Customer of such payment and Customer shall repay to Virtana the cost thereof within 15 days after such notice is mailed to Customer.



14. **Liens.** Customer shall keep the Leased Products free and clear of all levies, liens, and encumbrances.

15. **Default.** In addition to the other terms and conditions in the Agreement, Customer shall be in default of this Leasing Supplement if: (a) Customer has made any misleading or false statement, or representation in connection with application for or performance of this Leasing Supplement or any financing arrangement related to this Leasing Supplement; or (b) the Leased Product or any part thereof is subject to any lien, levy, seizure, assignment, transfer, bulk transfer, encumbrance, application, attachment, execution, sublease, or sale without prior written consent of Virtana, or if Customer abandons the Leased Product or permits any other entity or person to use the Leased Product without the prior written consent of Virtana; or (c) Customer ceases to exist; or (d) Customer changes its name, state of incorporation, chief executive office and/or place of residence without providing Virtana with 30 days written notice of such change; (e) Customer defaults on any other agreement it has with Virtana; or (f) any guarantor of this Leasing Supplement or a Leasing Order defaults on any obligation to Virtana, or any to the above-listed events of default occur with respect to any guarantor, or any such guarantor files or has filed against it a petition under the bankruptcy laws.

16. **Remedies.** In addition to all other rights and remedies under the Agreement, if Customer is in default, Virtana, with or without notice to Customer, shall have the right to exercise any one or more of the following remedies, concurrently or separately and without any election of remedies being deemed to have been made: (a) Virtana may enter upon Customer's premises and without any court order or other process of law may repossess and remove the Leased Product, or render the Leased Product unusable without removal, either with or without notice to Customer. Customer hereby waives any trespass or right of action for damages by reason of such entry, removal or disabling. Any such repossession shall not constitute a termination of this Leasing Supplement or a Leasing Order; (b) Virtana may require Customer, at its expense, to return the Leased Product in good repair, ordinary wear and tear resulting from proper use thereof alone excepted, by delivering it, packed and ready for shipment, to such place as Virtana may specify; (c) Virtana may cancel or terminate (or direct the Channel Partner to cancel or terminate) this Leasing Supplement and any Leasing Order and may retain any and all prior payments made in connection therewith; (d) Virtana may sue for and recover from Customer the sum of all unpaid rents and other payments due under this Leasing Supplement then accrued, plus all accelerated future payments due under this Leasing Supplement; or (e) pursue any other remedy available at law, by statute or equity.