

Virtuous Terms and Conditions
Revised Date: September 30, 2021

These Terms and Conditions govern the use of the Services provided by Virtuous Software, Inc., a Delaware corporation (“**Virtuous**”), to the Customer identified on any applicable Subscription Order Form. Capitalized terms in these Terms and Conditions shall have the meaning ascribed to them in Appendix A (Definitions), attached and incorporated herein by reference.

1. DESCRIPTION OF THE SERVICES; AUTHORIZATION

- A. Services; Authorization. Virtuous authorizes Customer and its authorized Users on a subscription basis, subject to payment of the Subscription Fees, to access and use the Services as defined in one or more Subscription Order Forms between Virtuous and Customer, during the Term and subject to the Agreement between Virtuous and Customer, including without limitation these Terms and Conditions and the Service Level Agreement (“**SLA**”), available www.virtuous.org/legal, and any other exhibits or attachments expressly referenced in a Subscription Order Form. Virtuous has and will retain sole control over the operation, provision, maintenance, and management of the Services.
- B. Implementation Services. Virtuous agrees to provide on a one-time basis, and in exchange for the Implementation Fees, the implementation services (“**Implementation Services**”) as defined in any Subscription Order Form.
- C. Additional Services; Changes. Virtuous reserves the right, in its sole discretion, to make any changes to the Services that it deems necessary to maintain or enhance the quality or delivery of the Services to its customers, the competitive strength or market for the Services, the Services’ cost efficiency or performance, or to comply with applicable law; provided that it shall not materially reduce or modify the functionality of the Services provided under this Agreement. Virtuous may offer optional custom development, custom reports, specialized training or other advanced services to Customer (collectively “**Additional Services**”), subject to additional fees and the mutual written agreement of Virtuous and Customer.

2. FEES AND PAYMENT

- A. Fees. In exchange for the Services, Customer shall pay the subscription fees set forth in the applicable Subscription Order Form (the “**Subscription Fee**” or “**Fees**”). Unless otherwise specified in a Subscription Order Form. Implementation Fees are one-time fees due prior to the Service Effective Date, unless otherwise specified in any Subscription Order Form. **Except as may otherwise be set forth herein, all fees are non-refundable.**
- B. Payment. Unless otherwise specified in a Subscription Order Form, Customer agrees to pay all Fees annually in advance on the due date specified in each applicable Subscription Order Form or within fifteen (15) calendar days of the invoice date. Customer shall make all payments in US dollars to the address or account on the Subscription Order Form or such other address or account as Virtuous may specify from time to time. All recurring fees and charges to be paid by automatic means (credit card or bank account/ACH) will be automatically charged at the beginning of Customer’s billing cycle. A receipt for each payment may be provided to Customer upon request and a charge will appear on Customer’s credit card or bank statement. Customer agrees no prior notice will be provided unless the date or amount changes, in which case Customer will receive notice at least 10 days prior to the payment being collected.
- C. Fee Increases. Unless otherwise specified in a Subscription Order Form, Virtuous may, in its sole discretion in accordance with this Section 2, increase Fees annually by providing electronic notice to

Customer of the increased Fees at least sixty (60) calendar days prior to commencement of the subsequent annual period during the Term of Service.

- D. Reimbursable Expenses. To the extent applicable and subject to Customer's prior written approval and any applicable Customer policies, Customer shall reimburse Virtuous for out-of-pocket expenses incurred by Virtuous in connection with performing the Services.
- E. Taxes. All Fees and other amounts payable by Customer under this Agreement are exclusive of taxes and similar assessments. Customer is responsible for all sales, use and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, or local governmental or regulatory authority on any amounts payable by Customer hereunder, other than any taxes imposed on Virtuous' income. If applicable, Customer shall provide a certificate of tax-exempt status.
- F. Suspension of Service. If any Fees are past due, Virtuous may, without limiting Virtuous' other rights and remedies, suspend Services and all other Virtuous services to Customer until such amounts are paid in full.

3. TERM AND TERMINATION

- A. Term of Service. Unless otherwise specified in any executed Subscription Order Form, all Services commence on the Service Effective Date and extend for the initial term specified in a Subscription Order Form (the "**Initial Term**") and will thereafter automatically renew for successive one-year periods unless terminated by either party by written notice at least thirty (30) calendar days prior to the end of the current Term (each, a "**Renewal Term**," and collectively, with the Initial Term, the "**Term**").
- B. Termination.
 - (i) For Cause. Either party may terminate a Subscription Order Form effectively upon written notice to the non-breaching party in the event the other party materially breaches its obligations or representations under this Agreement and has failed to cure such breach or to commence commercially reasonable efforts to cure such breach within thirty (30) days following notice from the non-breaching party. Customer's non-payment of fees promptly when due is deemed a material breach of this Agreement under this subsection. In the event of a material breach by Virtuous that Virtuous fails to cure as provided in this subsection, then Customer is entitled to a pro-rata refund of fees prepaid for the year in which termination for cause occurs, pro-rated as of the effective date of termination.
 - (ii) Bankruptcy; Lack of Appropriations/Funding. Either party may terminate this Agreement, effective immediately upon written notice to the other party, if the other party: (i) becomes insolvent; (ii) files or has filed against it, a petition for voluntary or involuntary bankruptcy; (iii) makes or seeks to make a general assignment for the benefit of its creditors; (iv) if funding for this Agreement is allocated from a state or federal agency and such funding is not allocated for subsequent annual terms.
- C. Obligations upon Termination. Upon termination of any Subscription Order Form for any reason: (i) all rights and obligations of the parties under the applicable Subscription Order Form will terminate except for payment obligations and the surviving sections described in Section 12.A of these Terms and Conditions; (ii) Virtuous will return or destroy all Customer Data in accordance with Section 6.A(iii) of these Terms and Conditions; (iii) Virtuous may disable all Customer and User access to the Services; and (iv) Virtuous may retain Customer Data in its backups, archives, and disaster recovery systems until such Customer Data is deleted in ordinary course. Virtuous agrees to use commercially

reasonable efforts to assist Customer with the conversion and transition of Customer Data, subject to payment of applicable and agreed upon fees and the defined Implementation Services.

4. CUSTOMER RESPONSIBILITIES

- A. Compliance. Customer shall (i) require that all Customer Users comply with these Terms and Conditions, (ii) be solely responsible for the accuracy and legality of Customer Data and of the means by which Customer acquired Customer Data, and (iii) use the Services only in accordance with the Documentation and all applicable laws and government regulations and all privacy laws.
- B. Access and Customer Cooperation. Customer will use commercially reasonable efforts to prevent unauthorized access to or use of the Services and notify Virtuous promptly of any such unauthorized access or use. Customer will, and will cause its Customer Users to, take reasonable steps to maintain the confidentiality of the security procedures and the user names and passwords. If Customer believes or suspects that any such information or instructions have been known or accessed by unauthorized persons, or if any activity prohibited by Section 4.C below is occurring or threatened, Customer will immediately (i) take all reasonable and lawful measures within its control to stop the activity or threatened activity and to mitigate its effects, and (ii) promptly notify Virtuous of such actual or threatened activity. Customer shall at all times during the Term of the Agreement provide Virtuous with such access to Customer Data, personnel, information, and systems as is necessary for Virtuous to timely perform the Services in accordance with the Agreement.
- C. Restrictions on Use. Customer shall not, and shall not authorize any other person or User to: (i) copy, modify, create derivative works or improvements of the Services; (ii) make the Services available to anyone other than Users; (iii) reverse engineer, disassemble, decompile, decode, adapt or otherwise attempt to derive or gain access to Virtuous' source code; (iv) sell, resell, rent, lease, or otherwise make available the Services to any third party; (v) use the Services to store or transmit infringing, libelous, or otherwise unlawful material, or to store or transmit material in violation of third-party rights, or otherwise access or use the Services in any manner or for any purpose that infringes or violates Intellectual Property Rights of any third party; (vi) use the Services to store or transmit Malicious Code; (vii) interfere with or disrupt the integrity or performance of the Services; (viii) attempt to gain unauthorized access to the Services or their related systems or networks; or (ix) access or use the Services for purposes of competitive analysis of the Services, or to develop a competing software service or product or for any other purpose that is to the detriment or commercial disadvantage of Virtuous. In the event Customer fails to comply with this section, Virtuous may, without limiting Virtuous' other rights and remedies, suspend the Services to Customer without incurring any obligation or liability, until such breach has been remedied to Virtuous' reasonable satisfaction.
- D. Customer Administrators. Customer will assign at least one Customer Administrator as the primary Customer contact. Each Customer Administrator is responsible to ensure that the Services are used in accordance with the applicable Subscription Order Form, Customer's responsibilities contained therein, and Customer's compliance with all applicable laws and regulations, under federal, state, local laws and regulations in every material respect. The Customer Administrator has the ability to control access to all features and access of any Services for all Users.

5. REPRESENTATIONS AND WARRANTIES

- A. Services Warranty; Compliance with Law. Virtuous represents, covenants and warrants to Customer that Virtuous will (i) perform the Services using personnel of required skill, experience, or qualifications and in accordance with generally recognized industry standards for similar services and will devote adequate resources to meet its obligations under this Agreement; and (ii) comply with all applicable laws and regulations in every material respect. To the extent that such regulations apply to any Services, Virtuous will comply with (i) 16 CFR Part 314, "Standards for Safeguarding Customer Information" and (ii)

handling, processing, security and protection of confidential information which is “non-public personal information” (as defined in the Gramm-Leach-Bliley Act).

- B. Authority. Virtuoso represents, covenants and warrants to Customer it has full power and all necessary permits, licenses, approvals, authorizations, and registrations to perform the Services.
- C. Customer Representations and Warranties. Customer represents, covenants, and warrants to Virtuoso that it has and will have the necessary rights and consents in and relating to the use, transfer, and disclosure of Customer Data that is provided to Virtuoso under this Agreement. Customer represents and warrants to Virtuoso that it will comply with all applicable laws and regulations in every material respect, including without limitation, its obligations under applicable data protection and privacy laws.
- D. Mutual Representations. Each party represents and warrants to the other party that it has the full right, power, and authority to enter into and perform its obligations and grant the rights under this Agreement, and when executed and delivered by both parties, this Agreement will constitute the legal, valid, and binding obligation of such party, enforceable against such party in accordance with its terms.
- E. DISCLAIMER OF WARRANTIES.

- (i) EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN SECTION 5 OF THESE TERMS AND CONDITIONS, VIRTUOSO HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHER, INCLUDING WITHOUT LIMITATION ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. WITHOUT LIMITING THE FOREGOING, VIRTUOSO MAKES NO WARRANTY OF ANY KIND THAT THE SERVICES WILL OPERATE WITHOUT INTERRUPTION, OR BE ERROR-FREE. ALL THIRD- PARTY MATERIALS ARE PROVIDED “AS IS” AND ANY REPRESENTATION OR WARRANTY CONCERNING ANY THIRD-PARTY MATERIALS IS STRICTLY BETWEEN CUSTOMER AND SUCH THIRD PARTY.
- (ii) CUSTOMER FURTHER AGREES AND ACKNOWLEDGES THAT VIRTUOSO MAKES NO GUARANTY OR WARRANTY REGARDING THE ACCURACY, COMPLETENESS, OR SUFFICIENCY FOR ANY PURPOSE OF THE MATERIALS, INFORMATION, CONTENT, OR OTHER DATA PROVIDED VIA THE SERVICES. USE OF THE SERVICES IS NOT A SUBSTITUTE FOR PROFESSIONAL SERVICES, INCLUDING LEGAL, TAX, OR OTHER ADVICE AND VIRTUOSO DOES NOT PROVIDE SUCH ADVICE.

6. DATA

A. Customer Data.

- (i) Ownership. As between Customer and Virtuoso, Customer is and will remain the sole and exclusive owner of all right, title, and interest in and to all Customer Data, subject to the rights and permissions granted herein. Virtuoso’ use and possession of Customer Data is solely as Customer’s agent. Customer hereby grants all such rights and permissions in or relating to Customer Data: (i) to Virtuoso and its authorized personnel and subcontractors solely as necessary to perform the Services; and (ii) to Virtuoso as necessary to enforce this Agreement and perform hereunder.
- (ii) Access and Use of Customer Data. Customer may access and copy any Customer Data provided to Virtuoso for use in the Services at any time and Virtuoso will use commercially reasonable efforts to facilitate such access and copying promptly after Customer’s request. Virtuoso maintains only that information which Customer has asked it to process and processes it only upon, and in accordance with, Customer’s direction and instructions. Unless it receives Customer’s prior written consent, Virtuoso: (i) will not access or use Customer Data other than as necessary to facilitate the applicable Services; and (ii) will not give any third-party

access to Customer Data. Virtuuous will not permit its employees to access Customer Data, except to the extent necessary to provide the Services under the applicable Subscription Order Form. Notwithstanding the foregoing, Virtuuous may disclose Customer Data as required by applicable law or by proper legal or governmental authority. Virtuuous will give Customer prompt notice of any such legal or governmental demand (to the extent legally permissible) and reasonably cooperate with Customer in any effort to seek a protective order or otherwise to contest such required disclosure, at Customer's expense.

- (iii) Customer Data Retention and Deletion. Virtuuous will retain any Customer Data in its possession until Erased as defined herein. Virtuuous will Erase: (i) all copies of Customer Data promptly after Customer's written request and (ii) all copies of Customer Data no sooner than 60 days and no longer than 120 days after termination of any applicable Subscription Order Form for Services unless otherwise required by law. Upon Customer's request, Virtuuous will certify such Erasure in writing to Customer. ("**Erase**" and "**Erasure**" refer to the destruction of data so that no copy of the data remains or can be accessed or restored in anyway.)
- (iv) Virtuuous uses US-based service providers for Customer Data storage. Service providers use either Privacy Shield or have executed Standard Contractual Clauses (as approved by the European Commission). When processed in the United States, the personal data of EU citizens processed by Virtuuous has an adequate level of protection within the meaning of Article 46 of Regulation (EU) 2016/679 (General Data Protection Regulation). By agreeing to these Terms, the Customer grants Virtuuous a general authorization in the meaning of Article 28 (2) of Regulation (EU) 2016/679 to engage processors for the purposes of providing the Virtuuous Service. Virtuuous will inform the Customer of changes in such processors in accordance with the procedure of modifying these Terms as stipulated in section 12B of these Terms.

List of processors for Customer Data:

- Amazon Web Services Hosting services in US (Privacy Shield certified)
- Microsoft Azure Hosting services in US (Privacy Shield certified)
- Google Maps (Processes address data in Google Maps. Users are bound by the Google Maps/Google Earth Additional Terms of Service and the Google Privacy Policy)
- FullContact (API to retrieve public social media and personal data. Privacy Policy here: <https://www.fullcontact.com/privacy-center>)
- DonorSearch (API to retrieve public wealth and philanthropic data. Privacy Policy here: <https://www.donorsearch.net/wp-content/uploads/2019/12/DS-Privacy-Policy.pdf>) Note : Only applies to customers with the Signals/Wealth Data add-on.
- MetaBase (Business Intelligence tool that can ingest Virtuuous data for the purpose of customer reporting. Privacy Policy here: <https://www.metabase.com/privacy/>) Note: Only applies to customers with the Metabase/BI add-on.

- (v) 6.7 Data Processing Contract – For the purposes of Article 28 of Regulation (EU) 2016/679, these Terms constitute the data processing contract between the Customer as the data controller and Virtuuous as the data processor. The Customer hereby instructs Virtuuous to process the data as described in these Terms.

- B. De-Identified Data; Statistical Data. Virtuuous may create de-identified and aggregated data (the "**De-Identified Data**") and Customer grants Virtuuous a non-exclusive, irrevocable right and license to use such De-Identified Data in its business, including in its development of products and services; provided that such De-Identified Data does not identify Customer or any of Customer's Users and is aggregated with data from other customers. Virtuuous may use certain data capture and analysis tools to compile and extract statistical information and platform data generated from the use and operation of the Services ("**Statistical Data**"). Such Statistical Data shall be owned exclusively by Virtuuous and Virtuuous shall retain all intellectual property rights in such Statistical Data. Virtuuous shall comply with all applicable privacy laws

and may use such Statistical Data for any lawful purpose, provided such use does not permit the identification of Customer or any User.

- C. Customer Control and Responsibility. Customer has and will retain sole responsibility for (i) all Customer Data, including the legality, accuracy, integrity, and completeness of its content and use, including without limitation all digital accessibility requirements applicable to Customer Data and branding; (ii) all information, instructions, and materials provided by or on behalf of Customer or any User in connection with the Services, or Customer's information technology infrastructure; and (iii) all access to and use of the Services directly or indirectly by Customer or Customer Users. Customer assumes all risk and liability related to any claim arising from the accuracy, quality, integrity, and completeness of such Customer Data, information, and materials, and all access to and use of the Services directly or indirectly by Customer or its Users. Virtuoso is not responsible for Customer's compliance with its data security practices or privacy policies. Customer shall ensure that its Customer Data are being utilized and shared in accordance with all applicable federal and state statutes and regulations including, but not limited to, and the [Privacy Act](#), the CCPA, and the GDPR, and Virtuoso shall not be liable for any violations thereof by Customer not related to the Services.
- D. Sandbox. Virtuoso will grant Customer a non-exclusive, non-transferable, limited right to access and use a training and testing "sandbox" environment (e.g. the applicable software hosted in a secure online environment by Virtuoso), solely for the limited purpose of training authorized users and testing integration capabilities with the Services and for no other purposes. Customer agrees not to use or reproduce the training and testing "sandbox" environment except as provided herein and further agrees not to upload actual donor or customer data into such environment. Virtuoso shall have no responsibility for any actual donor or customer data uploaded to such environment and Customer agrees to be responsible for and hold harmless Virtuoso for any resulting costs, damages, or liability related to or arising out of a breach of this subsection.
- E. Security and Breach Notification. Virtuoso will implement commercially reasonable and appropriate safeguards to protect Customer Data in accordance with applicable laws and regulations. Virtuoso will promptly notify Customer of any unauthorized disclosure of Customer Data following discovery by Virtuoso. Virtuoso will coordinate with Customer and Users in the event of any exposure or break-in of the Services or Virtuoso's security protocols or networks, in the event personally identifiable information (PII) is disclosed, and any notification to the affected Users shall be agreed upon by Virtuoso and Customer. Customer agrees that Virtuoso shall not be liable for claims, loss, damages, or other liability (including reasonable attorneys' fees) arising out of Customer's failure to use recommended security protocols in the Services.
- F. Payment Partners and Your Merchant Account. If Customer executes a Subscription Order Form which includes a subscription to Virtuoso Giving or RaiseDonors ("Payment Services"), Customer must have an account with a payment processor ("Merchant Account") before Customer can use any of these Payment Services. Customer will have the option of selecting Virtuoso Payments to access its Merchant Account or to engage directly with Merchant Accounts without the Virtuoso Payments platform, but in all cases Customer must have a Merchant Account before using any Payment Services. Payment processor(s) and the Merchant Account services that they provide are independent of Virtuoso and its Services or Payment Services. As such, the payment processor has its own eligibility requirements, terms of use, privacy policy, payment schedule, etc., to which Customer will need to agree before using the Payment Services. Virtuoso is not responsible or liable for the acts or omissions of a payment processor and Virtuoso does not endorse any payment processor by making the payment selections available. Virtuoso currently works with WePay, Inc., Stripe, Inc., and Fattmerchant, Inc. (for Virtuoso Payments only). **Customer agrees to the terms of service and any other required terms of the Merchant Account payment processor, in addition to this Agreement, in connection with its use of the Service and governance of any Merchant Account.**

7. INTELLECTUAL PROPERTY.

- A. Customer acknowledges that Virtuous is (i) the exclusive owner of the Services, including all features, design, functionality and reports, and (ii) retains all right, title and interest in the Services, including all Intellectual Property Rights therein. Nothing in this Agreement grants any right, title, or interest in or to any Intellectual Property Rights in or relating to, the Services.

8. CONFIDENTIALITY

- A. As used herein, “Confidential Information” means all confidential information disclosed by a party (“**Disclosing Party**”) to the other party (“**Receiving Party**”), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Without limiting the foregoing, all Virtuous Services, data, and materials are the Confidential Information of Virtuous. Except as otherwise permitted in writing by the Disclosing Party, the Receiving Party (i) shall use commercially reasonable efforts to protect the Confidential Information of the Disclosing Party, (ii) shall not use any Confidential Information of the Disclosing Party for any purpose outside the scope of the Agreement; and (iii) the Receiving Party shall limit access to Confidential Information of the Disclosing Party to those of its employees, contractors and agents who need such access for purposes consistent with these Terms and Conditions and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein. The Receiving Party shall ensure its authorized representatives’ compliance with and be responsible for and liable for its authorized representatives’ non-compliance with, the terms of this Section 8.
- B. Confidential Information does not include information that the Receiving Party can demonstrate by written or other documentary records: (i) was rightfully known to the Receiving Party without restriction on use or disclosure prior to such information’s being disclosed or made available to the Receiving Party in connection with this Agreement; (ii) was or becomes generally known by the public other than by the Receiving Party’s or any of its authorized representatives noncompliance with this Agreement; (iii) was or is received by the Receiving Party on a non-confidential basis from a third party; or (iv) was or is independent developed by the Receiving Party without reference to or use of the Confidential Information.
- C. If the Receiving Party or any of its authorized representatives is compelled by applicable law to disclose any Confidential Information then, to the extent permitted by applicable law, the Receiving Party shall: (i) promptly, and prior to such disclosure, notify the Disclosing Party in writing of such requirement so that the Disclosing Party can seek a protective order or other remedy; and (ii) provide reasonable assistance to the Disclosing Party, at the Disclosing Party’s sole cost and expense, in opposing such disclosure or seeking a protective order or other limitations on disclosure. Subject to this subsection, the Receiving Party shall disclose only that portion of the Confidential Information that, on the advice of Receiving Party’s counsel, the Receiving Party is legally obligated to disclose.

9. LIMITATION OF LIABILITY

- A. EXCEPT FOR VIRTUOUS’ MISAPPROPRIATION OR INFRINGEMENT OF THE INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY, IN NO EVENT SHALL VIRTUOUS’ AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO OR IN CONNECTION WITH THE AGREEMENT, INCLUDING WITHOUT LIMITATION ANY SUBSCRIPTION ORDER FORM REFERENCING THESE TERMS AND CONDITIONS, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER HEREUNDER FOR THE TWELVE (12) MONTH PERIOD PRECEDING THE OCCURRENCE OF THE FIRST EVENT GIVING RISE TO A CLAIM UNDER THE AGREEMENT. THE FOREGOING

SHALL NOT LIMIT CUSTOMER'S PAYMENT OBLIGATIONS.

- B. EXCEPT FOR A PARTY'S MISAPPROPRIATION OR INFRINGEMENT OF THE INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY, IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS OR LOST REVENUES OR ANY BUSINESS INTERRUPTION OR DELAY OR LOSS OF DATA OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES HOWEVER CAUSED, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR UNDER ANY OTHER THEORY OF LIABILITY, AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- C. THE FOREGOING LIMITATIONS IN THIS SECTION 9 APPLY NOTWITHSTANDING ANY OTHER PROVISION OR TERM OF THIS AGREEMENT OR THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE (INCLUDING THE RISKS THAT A CONTRACT REMEDY MAY FAIL OF ITS ESSENTIAL PURPOSE AND CAUSE A CONSEQUENTIAL LOSS). CUSTOMER ACKNOWLEDGES THAT VIRTUOUS HAS ENTERED INTO THIS AGREEMENT IN RELIANCE UPON THE LIMITATIONS OF LIABILITY IN THIS SECTION 9 AND THAT SUCH LIMITATIONS OF LIABILITY FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES.

10. MUTUAL INDEMNIFICATION

- A. Indemnification by Virtuous. Virtuous shall indemnify Customer, and Customer's officers, directors, and employees (each, a "**Customer Indemnitee**") and pay any resulting costs and damages arising out of any claim, demand, suit, loss cost, damages, or proceeding ("Claim") made or brought against a Customer Indemnitee by a third party (i) arising out of Virtuous' negligence or willful misconduct or a material breach of Virtuous' obligations under Section 6 (Data) or Section 8 (Confidentiality); or (ii) alleging that the use of the Services infringes or misappropriates the intellectual property rights of a third party. Such indemnification obligations are limited solely to the extent such Claim does not arise from any modification of the Services by Customer, or access to or use of the Services in combination with any hardware, system, software, network, or other materials not provided or authorized by Virtuous, or access to or use of the Services in violation of any applicable laws and regulations, or for a purpose not contemplated by the Documentation. Virtuous shall indemnify Customer for any damages to the extent based upon such a claim, and for reasonable attorney's fees incurred thereby; provided, that Customer (a) promptly gives Virtuous written notice of the Claim; (b) gives Virtuous sole control of the defense and settlement of the Claim (provided that Virtuous may not settle any Claim unless the settlement unconditionally releases Customer of all liability); and (c) provides to Virtuous all reasonable assistance, at Virtuous' expense.

If the Services violate any third-party Intellectual Property Rights, or if Customer's or Users' use of the Services is threatened to be enjoined, Virtuous may, at its sole cost and expense, obtain the right for Customer to continue to use the Services as contemplated by the Agreement; modify or replace the Services to make the Services non-infringing; or by written notice to Customer, terminate this Agreement and provide Customer with a pro-rated refund of prepaid and unused fees for the then-current annual term. THIS SECTION SETS FORTH CUSTOMER'S SOLE REMEDY AND VIRTUOUS' SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED, OR ALLEGED CLAIM THAT THE SERVICES INFRINGE OR OTHERWISE VIOLATE ANY THIRD-PARTY INTELLECTUAL PROPERTY RIGHTS.

- B. Indemnification by Customer. To the extent not precluded by applicable state law, Customer shall indemnify, defend and hold Virtuous, and Virtuous' officers, directors, employees, and agents (each, a "**Virtuous Indemnitee**") harmless against any Claim made or brought against a Virtuous Indemnitee by third party alleging that or arising out of (i) the Customer Data or Customer's use of the Services as permitted hereunder infringes or misappropriates the intellectual property rights of a third party or (ii) Customer's violation of applicable law, or accessibility requirements applicable to Customer Data or branding, or (iii) Customer's failure to use Virtuous' recommended security protocols in the Services. Customer shall indemnify Virtuous for any damages to the extent based upon such a claim, and for

reasonable attorney's fees incurred thereby; provided, that Virtuous (a) promptly gives Customer written notice of the Claim, (b) gives Customer sole control of the defense and settlement of the Claim (provided that Customer may not settle any Claim unless the settlement unconditionally releases Virtuous of all liability); and (c) provides to Customer all reasonable assistance, at Customer's expense.

11. CUSTOMER SUPPORT

- A. Scope. Customer Support will consist of: (i) in-app chat and email support; (ii) pre-scheduled phone support, (iii) correction of errors to keep the Services in conformance with the user Documentation included in the Services; and (iv) updated versions of the Services provided by Virtuous Customer Support to its general customer base of subscribers at no additional charge. Support will not include: (i) set-up, training, installation, or configuration of hardware and/or software required for the Customer to access the Online Service; or (ii) custom report creation through external business intelligence tools.
- B. Virtuous will provide customer support pursuant to its Customer Support Guide then in effect, which may be located here: www.virtuous.org/legal. Virtuous agrees that it will not materially decrease the levels of support currently provided in its Customer Support Guide. Customer agrees and acknowledges that Virtuous may modify its Customer Support Guide at any time and that such modifications will be posted on the Virtuous website.
- C. A designated Customer Administrator or Virtuous approved Administrative user shall initiate all requests for Support. The Customer Administrator must be trained, qualified and authorized to communicate all necessary information, perform diagnostic testing under the direction of a Virtuous customer support representative and be available during the performance of any support if required.

12. GENERAL PROVISIONS

- A. Surviving Sections. Sections 2 (Fees), 5 (Representations and Warranties), 6 (Data), 7 (Intellectual Property), 8 (Confidentiality), 9 (Limitation of Liability), 10 (Mutual Indemnification), and 12 (General Provisions) shall survive termination of this Agreement.
- B. Modifications. Virtuous reserves the right to modify these Terms and Conditions, at any time, by providing notice of such modified Terms and Conditions to Customer as set forth herein. Virtuous will post the modified Terms and Conditions on the Virtuous website www.virtuous.org/legal and Customer will be notified via email or other notification through the Site or Services of the modified Terms and Conditions at least thirty (30) days prior to the effective date of the modified Terms and Conditions. Unless otherwise expressly set forth in a Subscription Order Form, the modified Terms and Conditions will be deemed accepted and become effective thirty (30) days after the effective date of such notice unless Customer provides Virtuous written notice of rejection of the modifications during such thirty (30) day period. Customer's continued use of the Service following the effective date of the modified Terms and Conditions and silence during the notice period will constitute Customer's consent and approval to the modified Terms and Conditions, which are incorporated into the Customer's Agreement with Virtuous and replace the prior version of the Terms and Conditions in its entirety.
- C. Successors and Assigns. Neither party will assign its rights or delegate its obligations under this Agreement without the other party's prior written consent, and absent such consent, any purported assignment or delegation will be null, void, and of no effect. Notwithstanding the foregoing, either party may, without the written consent of the other party, assign this Agreement and its rights and obligations hereunder in connection with the transfer or sale of all or substantially all of its assets or in connection with a merger, change in control, stock sale or other similar transaction. The Agreement is binding upon, and will inure to the benefit of, the parties hereto and their respective permitted successors and assigns.

- D. Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of the Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.
- E. No Third-Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective permitted assigns and nothing herein, express or implied, is intend to or shall confer upon any other person any legal or equitable right.
- F. Relationship of the Parties. The parties are independent contractors. The Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the parties, and neither party shall have the authority to contract for or bind the other party in any matter whatsoever.
- G. Subcontractors. Virtuuous may from time to time in its discretion engage subcontractors to perform certain services and shall be responsible for the services provided by such subcontractors in connection with the terms of this Agreement.
- H. Force Majeure. Whenever performance of the Services is substantially prevented beyond Virtuuous' reasonable control, including without limitation, acts of God, acts of government, pandemics, epidemics, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems, or Internet service provider failures or delays (subject to the Virtuuous Service Level Agreement), such performance shall be excused and these Terms and Conditions deemed suspended during the continuation of such circumstance.
- I. Notices. All notices, requests, and other communications hereunder have binding legal effect only if in writing and addressed to a party at the contact information specified in the applicable Subscription Order Form. Notices sent in compliance with this section will be deemed effectively given (i) when received, if sent by a nationally recognized overnight courier, or (ii) when sent, if by email, in each case with confirmation of transmission.
- J. Equitable Relief. Each party acknowledges and agrees that a breach of such party's obligations under Section 8 (Confidentiality) would cause the other party irreparable harm for which monetary damages would not be an adequate remedy and agrees that, in the event of such breach, the other party will be entitled to seek equitable relief that may be available from any court, without any requirement to post a bond or security. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity or otherwise.
- K. Publicity and Feedback. Customer agrees Virtuuous may use Customer's name, logo and profile for marketing programs, including, but not limited to, collateral, advertising and website references, provided that Customer may revoke such authorization at any time in writing to Virtuuous. To the extent Customer responds to Virtuuous' reasonable requests for feedback and case studies related to use of the Services, then Customer grants Virtuuous an irrevocable, perpetual, non-exclusive, royalty free license to use, exploit, and make derivative works from such feedback and information for any lawful purpose.
- L. Conflicts. If any provision of a Subscription Order Form conflicts with any provision in these Terms and Conditions, the provisions of the Subscription Order Form shall take precedence.
- M. Entire Agreement. The Subscription Order Form(s) executed by the parties, these Terms and Conditions and the Virtuuous Service Level Agreement (both available at www.virtuuous.org/legal), together with all schedules and addenda hereto or incorporated by reference constitute the entire Agreement between the parties and supersedes all prior proposals or representations, contracts or agreements, whether written or oral, regarding the Services. Notwithstanding any prior agreements, these Terms and Conditions and the Service Level Agreement shall supersede and replace in their entirety all prior versions

of the Terms and Conditions referenced in a Subscription Order Form between the parties subject to Section 12(B) above. No additional terms, modifications, edits (whether hand-marked or set forth in an addendum or PO) will be valid or accepted or form part of this Agreement unless accepted in writing by both parties hereto.

- N. Attorneys' Fees. To the extent not precluded by applicable state law, in the event that any action, suit, or other legal or administrative proceeding is instituted or commenced by either party hereto against the other party arising out of or related to this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and court costs from the non-prevailing party.
- O. Waiver of Jury Trial. TO THE EXTENT NOT PRECLUDED BY APPLICABLE STATE LAW, EACH PARTY HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY PROCEEDING (WHETHER BASED IN CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY TRANSACTION OR AGREEMENT CONTEMPLATED HEREBY OR THE ACTIONS OF ANY PARTY HERETO IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE, OR ENFORCEMENT HEREOF.
- P. No delay or failure by either party to exercise any right or remedy under the Agreement will constitute a waiver of such right or remedy. All waivers must be in writing and signed by an authorized representative of the party waiving its rights. A waiver by any party of any breach or covenant shall not be construed as a waiver of any succeeding breach of any other covenant.
- Q. Both parties acknowledge and agree that the Agreement will not be construed more strictly against either party as a result of its participation in preparation of the Agreement. Each party acknowledges and represents that, in executing the Agreement, it has had the opportunity to seek advice from legal counsel and that the person signing on its behalf has read and understood all of the terms and provisions of the Agreement.

APPENDIX A - DEFINITIONS

“Agreement” means collectively these Terms and Conditions, the Virtuous Service Level Agreement, one or more Subscription Order Forms executed on behalf of Customer and Virtuous, each incorporated herein by reference, and any other addendum or exhibits expressly agreed upon in writing by the parties hereto, and solely to the extent the Customer has entered into an agreement or Subscription Order Form that includes the Virtuous RaiseDonors Service, this Agreement shall include the Additional Virtuous RaiseDonors Terms and Conditions, available at www.virtuous.org/legal and incorporated herein by this reference.

“Customer Administrators” means the primary Customer contact(s) for communicating with Virtuous concerning Support or making any other request or providing any notice.

“Customer Data” means all electronic data or information provided to Virtuous in connection with the Services by Customer, and third parties on behalf of or pertaining to Customer.

“Customer Users” may include but are not limited to Users who are Customer employees or third parties with which Customer transacts business.

“Documentation” means Virtuous’ published guides, manuals, configuration documents, online help system, and other User and system materials made available to Customer. Virtuous reserves the right to add, delete, or modify the Documentation at any time.

“Intellectual Property Rights” means any and all registered and unregistered rights granted, applied for or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.

“Malicious Code” means any virus, sniffer, back door, worm, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents, or programs.

“Merchant Account” shall have the meaning attributed to it in Section 6(F).

“Payment Services” shall have the meaning attributed to it in Section 6(F).

“Services” means the right to use, on a subscription basis, the Virtuous products, programs, features, and services as specified in all Subscription Order Forms between Virtuous and a Customer and as described in the Virtuous Services descriptions available at www.virtuous.org/legal. Services shall include the Implementation Services and Additional Services, if any.

“Service Effective Date” means the date specified on any Subscription Order Form whereby Virtuous agrees to provide the Services to which the Customer has subscribed.

“Subscription Order Form” shall mean the document by which Customer orders any Services; each Subscription Order Form will incorporate these Terms and Conditions and the Virtuous Service Level Agreement by reference, each of which is incorporated into the Agreement.

“Users” means individuals who are authorized by Customer to use the Services on behalf of and for the benefit of Customer only, and who have created an account in the Services or have been supplied user identifications and passwords by Customer (or by Virtuous at Customer’s request).