

# Virtuozzo Hybrid Cloud Services Terms and Conditions

UPDATED MAY 2021

By executing a Customer Contract (as defined below) that references these Virtuozzo Hybrid Cloud Services Terms and Conditions (“**VHC Terms**”) with **Virtuozzo International GmbH**, Vordergasse 59, 8200 Schaffhausen, Switzerland or any of its Affiliates as identified in the Customer Contract (“**Virtuozzo**”), the entity identified in such Customer Contract (the “**Customer**” or “**You**”) (each of Virtuozzo and the Customer, a “**Party**”, and collectively, the “**Parties**”) agrees to VHC Terms, which together with any other documents incorporated by reference into such Customer Contract and/or these VHC Terms, will exclusively govern such Customer Contract (collectively “**Agreement**”).

By executing a Customer Contract, creating an Account (as defined below), using VHC (as defined below) or otherwise indicating Your acceptance of this Agreement, You expressly acknowledge and agree that You are lawfully able to enter into this Agreement, have properly read this Agreement and are bound by this Agreement. If You are an individual entering into this Agreement on behalf of a company or other legal entity, You hereby represent and warrant to Virtuozzo that You are authorized to enter into this Agreement on behalf of the Customer and bind the Customer to the terms and conditions of this Agreement, in which case, the term the “*Customer or You*” will refer to such entity. Virtuozzo reserves the right, from time to time, to update, revise, supplement, and otherwise modify this Agreement (including the Additional Terms) and to impose new or additional rules, policies, terms, or conditions on Your use of VHC. Virtuozzo will communicate changes to this Agreement by posting the new version of this Agreement on its website <https://www.virtuozzo.com/legal> or as otherwise determined by Virtuozzo in its sole discretion, at which time such updated Agreement will be immediately effective for the Customer and Your continued use of any VHC after such notification of any changes to this Agreement will constitute Your acceptance of all such changes. **DEFINITIONS**  
Certain capitalized terms, if not otherwise defined, shall have the meanings set forth below in this Clause 1.

1.1. “**Access Authorization**” means a unique combination of a user identifier which can be a user name or an email address and a password which is provided by Virtuozzo to the Customer through the Distribution Platform or through the Platform, and, as applicable, updated by the Customer or its Resellers and/or the End User to access the Platform and use VHC.

1.2. “**Account**” means an account to be created by the Customer online, which includes and requires clicking a box indicating the Customer’s acceptance of these VHC Terms.

1.3. **“Additional Terms”** means the Support Policy (as defined below), the Privacy Policy (as defined below) and any other terms and conditions disclosed to the Customer in a Customer Contract in connection with accessing any VHC, each of which are hereby incorporated by reference.

1.4. **“Affiliate(s)”** means any company, partnership or entity that is under the direct or indirect control of the applicable Party or its respective successors and assigns and (ii) any company, partnership, entity or individual or group of individuals that is directly or indirectly controlling the applicable Party or its respective successors and assigns and (iii) any company, partnership or entity that is under the direct or indirect control of the same (other) company, partnership, entity or individual or group of individuals as the applicable Party (or its respective successor or assigns). For purposes of the foregoing, “Control” shall exist whenever there is an ownership, profits, voting or similar interest (including any right or option to obtain such an interest) representing at least 51% of the total interests of the pertinent entity then outstanding.

1.5. **“Applicable Law”** means all applicable laws, regulations, ordinances, rules, codes and orders of governmental authorities having jurisdiction over Virtuozzo and the Customer.

1.6. **“Business Days”** means a day on which banks are open for business in Zurich, Switzerland and which is not a Saturday, Sunday or public holiday in Zurich.

1.7. **“Content Data”** means all applications, files, data, information or other content uploaded to or published, displayed or backed up through VHC by the Customers and Resellers and/or the End Users of the latter, excluding Usage Data.

1.8. **“Customer Contract”** means a contract or sales order in writing executed by an authorized representative of each of Virtuozzo and the Customer or a contract executed by Customer with cloud market space providers – Distribution Platform as defined below, that incorporates these VHC Terms by reference. A Customer Contract will specify inter alia VHC that the Customer is purchasing, the Resources consumption model, payment terms and invoicing scheme for VHC related thereto and the duration of the Service Term.

1.9. **“Distribution Platform”** means a management console of cloud market space providers which provides the Customer the ability to conclude a Customer Contract and to get access to and use VHC.

1.10. **“Documentation”** means written, published information relating to VHC accessible on the website of Virtuozzo <https://www.virtuozzo.com/legal> as updated from time to time.

1.11. **“End User”** means an ultimate end user of VHC, being a legal person who is a Customer itself, or a customer of the Customer or its Reseller(s). The End Users use VHC

through Access Authorization.

1.12. **“Infrastructure”** means set of components provided by VHC which permit to host the End-User’s data including in particular (depending on the circumstance) the Instance, object storage, the network, the bandwidth and/or virtualization or cloud computing technology. Infrastructure is provided as a set of shared CPU, RAM and storage resources.

1.13. **“Infringement Claim”** means any third party claim that the use by the Customer solely of VHC, as used as contemplated in this Agreement, infringes any patent, trademark or copyright of a third party, or misappropriates a trade secret (but only to the extent that the misappropriation is not a result of the Customer’s actions) under the Swiss law.

1.14. **“Instance”** means virtual server, load balancer, storage volume, virtual network, virtual router, security group or any other component created on VHC infrastructure which enables the development and/or use of specific application solutions. The Instance, created using Resources, includes a storage space and a quantity of processor and RAM resources. It is possible to add object storage to an Instance.

1.15. **“Intellectual Property Rights”** means all rights, title, and interest in and to VHC or any part of it, including all patent, copyright, trade secret, trademark, moral rights, mask work rights, right of publicity, authors’ rights, contract and licensing rights, goodwill and all other intellectual property rights as may exist now and/or hereafter come into existence and all renewals and extensions thereof, regardless of whether such rights arise under the law of any state, country or jurisdiction.

1.16. **“Platform”** means a VHC management console which allows the Customer, Reseller of the Customer and the End User to select and configure certain functionality of VHC. The Platform enables Customers to manage the services, configure their Instances and retrieve their usage statements, and to create and manage End Users accounts.

1.17. **“Privacy Policy”** means the policy related to personal data as defined in the section 7.1 herein below.

1.18. **“Resources”** means individual units of consumption for infrastructure-as-a-service which consist of measurable units like number of virtual processor cores, amount of GB of RAM for virtual processors, number of GB of storage for virtual storage or object storage, number of load balancers, number of IP addresses.

1.19. **“Reseller”** means a reseller or value-added reseller which can be the Customer or be appointed by the Customer who purchases VHC for resale to End Users directly.

1.20. **“Service Term”** means the Initial Term (as defined below) plus any Renewal Term(s) (as defined below).

1.21. **“Support”** means the support services provided by or on behalf of Virtuozzo for the applicable VHC purchased by the Customer as provided for in a Customer Contract, which are described in the Support Policy (as defined below)

1.22. **“Support Policy”** means the statement of support, service level agreements and any other support policies for VHC located on the website [www.virtuozzo.com/virtuozzo-hybrid-cloud/](http://www.virtuozzo.com/virtuozzo-hybrid-cloud/).

1.23. **“Term”** and **“Renewal Term”** shall mean the period that this Agreement remains in force and effect in accordance with Clause 10.

1.24. **“Territory”** shall mean the territory specified in the applicable Customer Contract, if a Customer Contract does not specify the territory, then it shall be deemed to be worldwide.

1.25. **“Third Party Infringement”** Virtuozzo reserves the sole and exclusive right at its discretion to assert claims against third parties for infringement or misappropriation of its Intellectual Property Rights.

1.26. **“Third Party Product”** means any non-Virtuozzo-branded products and services (including hardware, storage) and non-Virtuozzo-licensed software products.

1.27. **“Updates”** means any updates, enhancements, modifications, improvements, patches and/or upgrades to any VHC, operating systems and applications pre-installed by Virtuozzo on the Instance, that Virtuozzo generally makes available to its customers, including to the Customer for no additional charge.

1.28. **“Usage Data”** means any and all information reflecting the access or use of VHC by or on behalf of the Customer, its Resellers and End Users, including, but not limited to, visit-, session-, or stream-data and any statistical or other analysis, information or data based on or derived from any of the foregoing.

1.29. **“VHC”/“VIRTUOZZO HYBRID CLOUD SERVICES”** means public cloud services, which may include Infrastructure, Resources, object storage and other services, provided by Virtuozzo to the Customer through the Platform and the Customer to its Resellers and/or End Users. Virtuozzo will provide to the Customer and the Customer will provide to its Resellers and/or End Users with Infrastructure, one or several Resources in form of virtual computing Instance(s) and/or object storage containers.

## 2. ACCESS TO VHC AND ACCEPTABLE USE POLICY

2.1. **EVALUATION.** If You access VHC on an evaluation or beta basis (the “Evaluation Service”), then You may use the Evaluation Service only for evaluation purposes and for a period set forth on Virtuozzo web site, providing Evaluation Service, or as may be additionally agreed, beginning on the date Virtuozzo provides the Customer with Access Authorization, unless otherwise specified in writing by Virtuozzo (the “Evaluation Period”). Notwithstanding any other provision of this Agreement, Virtuozzo provides the Evaluation Service (i) free of charge and without Support and (ii) “AS IS” without indemnification or warranty of any kind. The Support Policy does not apply to the Evaluation Service. Continued use of VHC after the Evaluation Period requires that the Customer (A) executes a Customer Contract and (B) makes applicable payment. Upon expiration of the Evaluation Period, You will not have access to the Evaluation Service or to any Content Data therein.

2.2. **ACCESS TO VHC.** The Customer acknowledges that VHC are provided by Virtuozzo to Customer, including End Users, for use only for business purposes and that VHC are not intended and must not be used for personal or private purposes.

2.3. The Customer may access and use VHC only in accordance with this Agreement through the Access Authorization. The Customer and the authorized End Users may access VHC where Instances are made available via the internet. The Customer shall have an internet connection in order to log in to the Platform and access VHC, and it is the Customer’s responsibility to particularly ensure for the aforementioned internet connection’s availability, reliability and security.

As a condition to using VHC, the Customer shall set up an authorized Account and the Customer will provide accurate and complete information in its Account and will update its information as necessary to keep it up to date. For the purposes of fraud prevention, Virtuozzo may require the Customer to provide documentation verifying their identity and payment information. Failure to provide accurate information in response to such a request will result in the cancellation of the Customer’s order(s) and immediate termination of the Customer’s Account. The Customer is solely responsible for the security of its and its Resellers’ and End Users’ Access Authorization. The Customer is responsible for any use that occurs under its Access Authorization, including any activities by its Resellers and End Users. The Customer shall pass on its obligations under this Agreement to all of its Resellers and End Users, and will require all of its Resellers to further pass on these obligations to any further Resellers and End Users, and shall ensure that all Resellers and End Users accept the terms and conditions of this Agreement prior to first VHC and Access Authorization usage. If the Customer believes an unauthorized person has gained access to Access Authorization, the Customer shall notify Virtuozzo as soon as possible by contacting Virtuozzo Customer Support via chat, phone or by filling a support request form at <https://support.virtuozzo.com/>. The Customer will ensure that its Resellers and End Users comply with all terms and conditions of this Agreement and the Customer remains

responsible and liable for the acts and omissions of its Resellers and End Users. If the Customer becomes aware of any violation by any Reseller and/or End User, the Customer will immediately terminate that Reseller's and/or End User's access to Content Data. Each Customer acknowledges that as a condition to accessing the Platform and using VHC as a Reseller itself or by another Reseller, Customer or Resellers of the Customer will be required to agree to be bound by and comply with certain written terms as required by Virtuozzo and the Customer. In any case the Resellers' rights in relation to VHC are non-exclusive rights to market and resell VHC only to the End Users within the Territory. Resellers are not authorised to resell VHC to subresellers, unless explicitly approved by Virtuozzo.

**RESTRICTED ACTIVITIES.** The Customer shall not use VHC and shall ensure that its Resellers and End Users are not using VHC to engage in, foster, or promote any illegal, abusive, or irresponsible behavior, including:

- (i) unauthorized access to or use of data, systems, or networks, including any attempts to probe, scan, or test the vulnerability of a system or network or to breach security or authentication measures without the express authorization of the owner of the system or network;
- (ii) monitoring data or traffic on any network or system without the express authorization of the owner of the system or network;
- (iii) interference with service to any Virtuozzo's customer or end user including without limitation, mail bombing, flooding, deliberate attempts to overload a system, and broadcast attacks;
- (iv) collecting or using email addresses, screen names, or other identifiers without the consent of the person identified (including without limitation, phishing, Internet scamming, password robbery, spidering, and harvesting);
- (v) collecting or using information without the consent of the owner of the information;
- (vi) any intrusive activity or any intrusion attempt from the Instance (including, but not limited to: port scans, sniffing, spoofing), and any activity or contentious behavior such as traffic exchanging (Hitleap, Jinglyng), using Black Hat SEO (downloading and uploading videos from and to online gaming platforms), crypto-currency mining, video game bots, etc.;
- (vii) any conduct that is likely to result in retaliation against Virtuozzo or its website, VHC or Virtuozzo's employees, officers, or other agents, including engaging in behavior that that results in any server being the target of a denial of service attack (DoS).

In such events, Virtuozzo reserves the right to suspend Customer's use of VHC, Platform and/or use of Access Authorization and immediately terminate the Agreement, without prejudice to the right to all other remedies (including damages) that Virtuozzo may have under the Agreement and Applicable Law.

**2.4. EXCESSIVE USE OF SYSTEM RESOURCES.** The Customer may not use VHC, Platform and Access Authorization in a way that unnecessary interferes with the normal operation of Virtuozzo Hybrid Cloud Services generally. In such event, Virtuozzo reserves the right to limit access or suspend VHC and/or use of Access Authorization and immediately terminate the Agreement, without prejudice to the right to all other remedies (including damages) that

Virtuozzo may have under the Agreement and Applicable Law.

**2.5. OFFENSIVE CONTENT.** The Customer may not publish, transmit, or store on or via VHC any content of links to any content that Virtuozzo reasonably believes:

- (i) constitutes, depicts, fosters, promotes, or relates in any manner to child pornography, bestiality, or non-consensual sex;
- (ii) is excessively violent, incites violence, threatens violence, or contains harassing content or hate speech;
- (iii) is unfair or deceptive under the consumer protection laws of any jurisdiction, including chain letters and pyramid schemes;
- (iv) is defamatory or violates a person's privacy;
- (v) creates a risk to a person's safety or health, creates a risk to public safety or health, compromises national security, or interferes with an investigation by law enforcement;
- (vi) improperly exposes trade secrets or other confidential or proprietary information of another person or entity;
- (vii) is intended to assist others in defeating technical copyright protection;
- (viii) infringes another person's or entity's copyright, trade or service mark, patent, or other property right;
- (ix) promotes illegal drugs, violates export control laws, relates to illegal gambling or illegal arms trafficking;
- (x) is otherwise illegal or solicits conduct that is illegal under any Applicable Law;
- (xi) is otherwise malicious, is otherwise fraudulent, or may result in retaliation against Virtuozzo by offended viewers.

**2.6. COPYRIGHTED MATERIAL.** The Customer may not use VHC to download, publish, distribute, or otherwise copy or use in any manner any text, music, software, art, image, or other work protected by copyright law unless:

- (i) the Customer has been expressly authorized by the owner of the copyright for the work to copy the work in that manner; or
- (ii) the Customer is otherwise permitted by established copyright law to copy the work in that manner.

The Customer is prohibited from making any files or links that breach third party intellectual property rights publicly available via websites hosted on their Instance (including to Third Party Product).

The Customer is put on notice that serious legal consequences can arise from illicit activities performed on all or part of the Instance provided to the Customer. Virtuozzo accepts no liability, whether sole or joint liability, especially for the use of data or copyrighted material made available to internet users by the Customer.

### **3. ACCESS AUTHORIZATION THROUGH THE PLATFORM**

3.1. Virtuozzo grants the Customer a non-exclusive, revocable, non-transferable, non-sublicensable Access Authorization through the Platform to use VHC.

3.2. Unless the Access Authorization for the Resellers and/or End Users is administered through the Distribution Platform, Virtuozzo will provide Access Authorization for the Platform to the Customer or to Resellers through the Customer to administer access for its respective End Users and assign Resources on the Platform to enable End Users to use VHC.

3.3. The Customer agrees that the Access Authorization through the Platform is a privilege of partnership and will use respective Access Authorization in good faith.

3.4. The Customer agrees that the Access Authorization through the Platform may be suspended and/or revoked by Virtuozzo at any time at Virtuozzo's sole and exclusive discretion in the event Virtuozzo is of the opinion that Customer, its Resellers or End Users are not using the Access Authorization in a proper or responsible manner, or abuse the Platform, VHC and/or the Access Authorization for the purposes to receive VHC without respective payment.

3.5. The Customer is financially responsible for all Access Authorization it creates or administers for itself, its Resellers or its End Users.

3.6. The Customer alone shall bear all the consequences of a malfunction of VHC resulting from the loss, theft, or misuse of the Access Authorization.

3.7. The Customer especially acknowledges and agrees that the Customer is exclusively responsible for the termination of Access Authorization for its Resellers and End Users which are unused. In no event will Virtuozzo be responsible for the management and validation of the Resources consumed by the End Users or the Resellers with respect to VHC provided. Any respective Resources reserved or consumed through the Platform (or the Distribution Platform as applicable) will be billed by Virtuozzo towards the Customer (or billed through the Distribution Platform) and by the Customer to the Resellers on a monthly basis for the previous month.

3.8. The Customer may access its account in the Platform at any time to terminate the Reseller's or End User's Access Authorization. In some cases, Customer Contract may include a minimum subscription period terms and will be billed for the entire subscription period even if Access Authorization is marked as terminated. In the event, Virtuozzo denies the Customer's access to the Platform for any reason, Access Authorization termination requests can be sent to Virtuozzo via email ([billing@virtuozzo.com](mailto:billing@virtuozzo.com)).

3.9. If the Customer's or Reseller's Access Authorization is or may be compromised, the Customer commits to notify Virtuozzo in writing immediately, in any case within one (1)

Business Day from becoming aware of such fact to change its password accordingly. In all other cases the Customer cannot refer to such circumstances as the ground to dispute number of the active Resource consumption.

3.10. If the Reseller is more than thirty (30) calendar days past due on any outstanding invoices, the Customer may inform Virtuozzo, and Virtuozzo will be authorized to suspend or deny such Reseller's Access Authorization and suspend or terminate respective Resource consumption.

3.11. **REVOCATION.** At any time if in Virtuozzo's sole and exclusive discretion Virtuozzo is of the opinion that the Customer is not using VHC in a proper or responsible manner, or is in breach of any terms of this Agreement and a Customer Contract, including delay of any payment due according to this Agreement and a Customer Contract, Virtuozzo may revoke the Access Authorization.

#### **4. VHC SPECIAL TERMS**

4.1. The Customer acknowledges and accepts that Virtuozzo's obligations and involvement in connection with the Agreement is limited to providing access VHC. Virtuozzo only provides the Customer with access to a specialized infrastructure, without any control whatsoever over the content of the hosted websites or the contractual relationship between the sites' editor and their Web host (i.e., the Customer). The Customer shall therefore be considered as a Web host. As such, the Customer shall comply at all times with the applicable regulations regarding electronic communications and webhosting service.

4.2. The Customer has the right to install software on the Instance. The Customer bears sole responsibility for these installations, and Virtuozzo shall not be liable for any failure of the proper operation of the Instance resulting from such installations.

4.3. Virtuozzo only provides access to VHC to enable the Customer to store Customer's data and their End Users' data.

4.4. Depending on the configuration in the Distribution Platform and the Platform itself Virtuozzo may provide the Customer with various Instance configurations, the Customer may request, select and configure the desired configuration through the Platform from Virtuozzo. In such case, the Customer undertakes to carefully consider every available Instance configuration prior to choosing an Instance. The Customer is responsible for defining the configuration and the operating system that can best meet its expectations and needs.

As part of VHC, the Customer has an option via the Platform to increase and decrease its number of Instances. It may also change the Instance(s) provided by Virtuozzo in order to change the configuration. These changes are made asynchronously upon request of the

Customer. The Customer may create such request in the Platform or VHC's API. Virtuozzo reserves the right to limit or restrict certain functionalities of the Instance in order to ensure the security of VHC. Virtuozzo may inform the Customer of the implementation of these restrictions whenever possible.

Virtuozzo also reserves the right to interrupt VHC if it presents a risk to (i) the stability and/or security of Virtuozzo systems, infrastructures and/or environments, or (ii) VHC and/or the Customer's content.

4.5. The Customer undertakes to take all technical steps available to ensure that it holds and retains connection logs or any data which makes it possible to identify any person who contributes to the creation of content for the services for which the Customer is the provider, according to all Applicable Law.

4.6. In order to maintain the service level of the Customer's Instance and all the servers on the Infrastructure, Virtuozzo reserves the right to request that the Customer updates the operating system running on the Instance and any applications pre-installed by Virtuozzo, where a security vulnerability is identified. If the Customer does not act upon such requests, Virtuozzo reserves the right to disconnect the Instance and Infrastructure from the internet.

4.7. In the event that Virtuozzo finds that the Instance represents a security risk, Virtuozzo may send an e-mail to the Customer to inform the Customer that the Instance will be reinstalled or deleted to maintain the integrity of the Instance and the entire Infrastructure. Virtuozzo reserves the right to disconnect the Instance from the internet pending the Customer's re-installation of its Instance. The Customer is responsible for transferring data from a pirated or failing system to the new system. Virtuozzo may also install a new system.

4.8. The Customer acknowledges that for security reasons, some features and protocols (such as IRC or pair by pair file exchanges) are likely to be restricted under VHC. Anonymization services (Proxy) and cardsharing (CC Cam or equivalent) are prohibited under VHC.

4.9. In no circumstances is Virtuozzo under any obligation, in respect of the cloud computing technologies it uses for the management of the Customer's Instances, to ensure the retention of the Customer's data. All measures to ensure the backup of data are exclusively the responsibility of the Customer.

4.10. Virtuozzo is not responsible for protecting the Customer's instances from DDoS attacks; this is the sole responsibility of the Customer.

4.11. The Customer shall be solely responsible for ensuring it secures its services, implementing security tools (firewall, etc.), periodically updating its system, backing up its data and for ensuring the security of its software (scripts, codes etc.).

4.12. Virtuozzo reserves the right to verify at any time that VHC are being used by the Customer in accordance with this Agreement.

## 5. VHC MAINTENANCE AND SUPPORT

5.1. **UPDATES TO VHC.** Virtuozzo may change VHC at any time, and may add, modify or discontinue references, ranges, options or features, as well as upgrade performance of VHC. Notwithstanding the foregoing, modifications to Third Party Products and urgent changes to VHC in response to security risks, or legal or regulatory compliance updates may result in immediate modifications to VHC.

5.2. **END OF LIFE.** In the event that any VHC reaches its end-of-life (as determined by Virtuozzo), Virtuozzo will attempt to notify You at least thirty (30) calendar days in advance of the end-of-life date determined by Virtuozzo (the "EOL Date"). The Customer is responsible for migrating to a new VHC before the EOL Date or otherwise cease using said VHC before the EOL Date. Following the EOL Date, Virtuozzo will either offer a comparable VHC for You to migrate to for the remainder of your Service Term, a pro-rated credit or a prorated refund, to be determined by Virtuozzo at its sole discretion. Further claims of the Customer are excluded.

5.3. **SUPPORT.** Subject to the terms and conditions of this Agreement, Virtuozzo will provide support to the Customer (but not to the Customer's Resellers and End Users) for VHC in accordance with the then applicable Support Policy and provided at [www.virtuozzo.com/products/virtuozzo-hybrid-cloud](http://www.virtuozzo.com/products/virtuozzo-hybrid-cloud).

Virtuozzo will provide Support for errors in or incidents of VHC's self-service panel, significant delays in or absence of expected actions invoked through VHC self-service panel, unavailability of contracted or provisioned virtual Resources, issues on VHC application programming interface (API) to the Customer. The Customer acknowledges that Virtuozzo is not responsible for technical issues that cannot be identified as being primarily caused by VHC. Virtuozzo may provide the Customer with a unique support ID (the "Support ID") and contact information. The Customer will use the Support ID when contacting Virtuozzo Support organization through the contacts provided. The Customer may report VHC issues via Virtuozzo Support portal located at <https://support.virtuozzo.com/>.

5.4. **SERVICE LEVEL AGREEMENT (SLA).** Virtuozzo will use its reasonable endeavors to meet the service level targets outlined at [www.virtuozzo.com/products/virtuozzo-hybrid-cloud](http://www.virtuozzo.com/products/virtuozzo-hybrid-cloud) under the terms and conditions described there.

The service level targets described above are in place and provided that the Customer works with Virtuozzo to restore VHC service in the event of unavailability and subject to other limitations provided for herein.

The service level targets do not under any circumstances apply to the availability of

components that are under the responsibility of the Customer, in particular the software or applications installed and used by the Customer on the Instance. In the event of a change of Instance, the Customer is responsible for reinstalling or reinitializing their software and application, and restoring the data and information that were stored on it.

## **6. FEES AND PAYMENTS**

**6.1. PRICING MODELS.** The price for the Instances, Resources, Infrastructure and, where necessary, associated components (such as the operating system), depends on the pricing model chosen by the Customer on the Distribution Platform or through the Platform directly and the period during which the Instances, Resources, Infrastructure and associated components are provided to the Customer. The Customer may choose one of two pricing models: (i) an hourly payment plan (Pay-as-you-go) and (ii) a fixed-rate monthly payment plan (Pre-reservation).

6.1.1. For the hourly payment plan, the provided Infrastructure will be charged per full hour increments even if not a full hour is used respectively, i.e. any hour started will be invoiced by Virtuozzo and shall be paid in full by the Customer. This also applies where the Infrastructure is created and/or deleted during the same hour.

6.1.2. The fixed-rate monthly payment plan allows the Customer to use an Infrastructure (and where necessary the associated components) on a monthly basis. The fixed-rate monthly payment plan shall be paid in full by the Customer. This also applies where the Infrastructure is deleted before the end of the calendar month in question. Any component (Instance and associated components) that is invoiced at the fixed-rate monthly payment plan and not deleted shall continue to be invoiced from month to month by Virtuozzo to the Customer at the fixed-rate monthly rate that applies in the above conditions.

**6.2. FEES PAYABLE.** The Customer agrees to pay the amounts specified in Virtuozzo's invoices based on the Customer Contract or based on the invoices issued through the Distribution Platform, provided that billing shall be based on the actual number of Resources consumed or pre-reserved, as applicable by the Customer, its Resellers and End Users. In case of controversy between the Customer Contract and monitoring account data, for the purposes of invoicing information related to the quantity of purchased Resources provided by monitoring account data shall prevail. Payment shall be made by the Customer without set-off, withholding or counterclaim. If no payment terms are specified in the applicable Customer Contract, fees and other charges shall be due and payable by the Customer within thirty (30) calendar days of the date of Virtuozzo's invoice. Virtuozzo may in its own discretion or subject to specific VHC plans request the Customer to pay an advance payment for VHC and set forth amounts of advance payments in the Customer Contract. Unless otherwise specified in this Agreement, Virtuozzo does not refund fees paid by the Customer, and once the fee payment is made to Virtuozzo, the Customer shall have no

recourse for receiving a refund of any part of the fees and all such fees shall be deemed to have been fully earned, unless Virtuozzo resolve the dispute of the invoice in accordance with the procedure described in the Clause 6.4 in favor of the Customer. In case if the payment is conducted by a Customer's credit card according to terms and conditions in the Clause 6.6 herein below, the credit card will be charged immediately upon Virtuozzo's invoice issuance. Virtuozzo reserves the right to add or remove any VHC services listed in the respective Customer Contract, as well as amend any terms related thereto, including pricing at any time upon written (e-mail is sufficient) notice to the Customer to the Customer's email address identified in the respective Customer Contract. The amended list of VHC, terms and/or pricing shall become effective in thirty (30) days upon the date of the email notification.

**6.3. CUSTOMER'S OPERATING EXPENSES.** The Customer is responsible for all expenses incurred in performance of its obligations or exercise of its rights under this Agreement.

**6.4. DISPUTED CHARGES.** Unless agreed otherwise in the Customer Contract the Customer shall duly notify Virtuozzo of any dispute with invoiced charges within fifteen (15) calendar days of the date of the invoice to [billing@virtuozzo.com](mailto:billing@virtuozzo.com). Absent such notice, the Customer will be deemed to have agreed to the charges as invoiced. No further disputes will be accepted by Virtuozzo after such timeframe.

**6.5. LATE CHARGES.** In addition to, and without prejudice to any other remedy available to Virtuozzo, if any payment is not received by Virtuozzo or by the Distribution Platform from the Customer when it is due, Virtuozzo may, at its sole discretion, terminate this Agreement immediately, and/or:

(i) revoke or limit the Customer's or any of its Resellers' or End Users' access to VHC and/or terminate any Access Authorization provided in connection with this Agreement and respective Customer Contract(s), and/or cease provision of any services provided according to respective Customer Contract(s); and/or

(ii) claim interest on any unpaid amounts from the due date until paid in full at the annual rate of five percent 5%. The payment of such interest will be in addition to and not in substitution for any and all other remedies available to Virtuozzo in respect of such non-payment.

**6.6. CREDIT CARD PAYMENT.** The Customer herewith agrees to provide its credit card details to a third party credit card processing provider as requested by Virtuozzo, and authorizes Virtuozzo to charge the Customer's credit card through such third party provider monthly according to the amounts of Virtuozzo invoices. The Customer herewith agrees that any fees payable under this Agreement and the Customer Contract may be charged to the Customer's credit card unless otherwise agreed by the Parties in the Customer Contract.

6.7. **TAXES.** All amounts payable under this Agreement shall exclude all applicable sales, use and value added taxes, other taxes and all applicable export and import fees, customs duties and similar charges. The Customer shall pay Virtuozzo the total invoice amount without deductions for taxes, assessments, fees, or charges of any kind. The Customer is responsible for paying all sales, use, excise, value-added, withholding or other tax or governmental charges imposed on use of VHC (collectively "Taxes"). The Customer shall be responsible for payment of all Taxes resulting from this Agreement (other than taxes based on Virtuozzo income). In the event that such Taxes are imposed and the Customer is required to deduct such amounts from the fees payable hereunder, the Parties agree that the original amount invoiced by Virtuozzo will be increased by the amount of such Taxes such that the Customer pays Virtuozzo the amount of fees as originally invoiced. The Customer shall apply the provisions of the applicable double taxation treaty to decrease the applicable tax rate or to avoid to the extent possible levying of taxes on Virtuozzo's profit (fees). For the purposes of applying a double taxation treaty, at the Customer's request, Virtuozzo shall provide the Customer with a certificate of tax residency or other documentation that may be required to confirm the domicile (tax residency) of Virtuozzo pursuant to the laws of country of incorporation of Virtuozzo.

6.8. **AUDIT RIGHTS AND RECORDS.** During the Term and for a period of two (2) years following termination or expiration of this Agreement, the Customer agrees to properly keep all usual books and records relating to its performance of and compliance with this Agreement. During that period, upon at least five (5) Business Days' prior notice, Virtuozzo shall have the right, at its own expense, to periodically audit the records of the Customer with respect to matters covered by this Agreement either by physically visiting the Customer's premises or by remote access (as determined by Virtuozzo). If such audit reveals that the Customer has underpaid Virtuozzo, the Customer shall promptly pay such amounts as are necessary to rectify such underpayment, together with interest at the rate in Clause 6.5.(iii). If the amount of an underpayment equals or exceeds five percent (5%) of the total amounts due during the applicable period, the Customer will reimburse Virtuozzo for the cost of such audit.

## 7. CONFIDENTIALITY

7.1. As used in this Agreement, "**Confidential Information**" means, subject to the exceptions set forth in the following sentence, any information or data, regardless of whether it is in tangible form, disclosed by either Virtuozzo or the Customer (the "**Disclosing Party**") that the Disclosing Party has either marked as confidential or proprietary, or has identified in writing as confidential or proprietary within thirty (30) calendar days of disclosure to the other party (the "**Receiving Party**"); provided, however, that a Disclosing Party's business plans, strategies, technology, research and development, current and prospective customers, billing records, and products or services will be deemed Confidential Information of the Disclosing Party even if not so marked or identified.

7.2. Virtuozzo's Confidential Information includes, without limitation, information related to VHC, which is not publicly available and may include trade secrets related to VHC, other Virtuozzo products or Access Authorization. Information will not be deemed Confidential Information if such information: (a) is known to the Receiving Party prior to receipt from the Disclosing Party directly or indirectly from a source other than one having an obligation of confidentiality to the Disclosing Party; (b) becomes known (independently of disclosure by the Disclosing Party) to the Receiving Party directly or indirectly from a source other than one having an obligation of confidentiality to the Disclosing Party; (c) becomes publicly known or otherwise ceases to be secret or confidential, except through a breach of this Agreement by the Receiving Party; or (d) is developed independently by the Receiving Party without use of any Confidential Information of the Disclosing Party.

7.3. Each Party agrees that it will use the Confidential Information of the other Party solely to perform its obligations or exercise its rights under this Agreement. Neither Virtuozzo nor the Customer will disclose, or permit to be disclosed, the other Party's Confidential Information directly or indirectly, to any third party without the other Party's prior written consent.

7.4. Both Virtuozzo and the Customer will use commercially reasonable measures to protect the confidentiality and value of the other Party's Confidential Information.

7.5. Notwithstanding any provision of this Agreement, either Party may disclose the other Party's Confidential Information, in whole or in part: (i) to its employees, officers, directors, consultants and professional advisers (e.g., attorneys, auditors, financial advisors, accountants and other professional representatives) who have a need to know and are legally bound to keep such Confidential Information confidential by confidentiality obligations or, in the case of professional advisers, are bound by ethical duties to keep such Confidential Information confidential consistent with the terms of this Agreement; and (ii) as required by Applicable Law (in which case each Party will, if permitted by Applicable Law, provide the other with prior written notification thereof and use its reasonable efforts to minimize such disclosure to the extent permitted by Applicable Law).

7.6. Both Virtuozzo and the Customer agree to exercise due care in protecting the Confidential Information from unauthorized use and disclosure. In the event of actual or threatened breach of the provisions of this Clause, the non-breaching Party will be entitled to seek immediate injunctive and other equitable relief, without waiving any other rights or remedies available to it. Both Virtuozzo and the Customer will promptly notify the other in writing if it becomes aware of any violations of the confidentiality obligations set forth in this Agreement.

## **8. INTELLECTUAL PROPERTY**

**8.1. OWNERSHIP.** This Agreement contains a limited right to access and use VHC during the Term of the Agreement. The Customer acknowledges that all Intellectual Property Rights to VHC and other Virtuozzo software or Products belong exclusively to Virtuozzo and its licensors. This Agreement does not constitute an assignment or transfer of any Intellectual Property Rights to the Customer and the Customer is not granted any kind of licenses to any Intellectual Property Rights other than the license expressly granted herein. The Customer will not do, or cause to be done, any acts or things contesting or in any way impairing or tending to impair any portion of the right, title and interest of Virtuozzo in and to the Intellectual Property Rights. The Customer will not delete or in any manner alter the copyright, trademark, or other proprietary rights notices or markings that appear on VHC as delivered to the Customer. Except as expressly authorized in this Agreement, You will not make any copies or duplicates of any component of any product or service within VHC without the prior written consent of Virtuozzo. To the extent the Customer provides any suggestions, comments or other feedback related to VHC to Virtuozzo or its authorized third party agent(s) ("Feedback"), the Customer hereby grants Virtuozzo a worldwide, non-exclusive, perpetual, irrevocable, royalty-free, sublicensable, transferable license to copy, display, distribute, perform, modify and otherwise use such Feedback or subject matter thereof in any way and without limitation.

**8.2. RESTRICTIONS.** Except as otherwise expressly provided under this Agreement, the Customer will have no right, and the Customer specifically agrees not to, and will take commercially reasonable steps to ensure that each of its Resellers and End Users does not: (i) transfer, assign or sublicense VHC to another person or entity, and the Customer acknowledges that any such attempted transfer, assignment or sublicense will be void; (ii) make error corrections to, or otherwise modify or adapt VHC or create derivative works based upon VHC, or permit third parties to do the same; (iii) reverse engineer or decompile, decrypt, disassemble or otherwise reduce VHC to human-readable form, except to the extent otherwise expressly permitted under Applicable Law notwithstanding this restriction; (iv) disclose, provide or otherwise make available trade secrets contained within VHC in any form, to any third party without the prior written consent of Virtuozzo; or (v) use or access VHC (A) to develop any similar software applications, products or services, (B) to spam, distribute malware or conduct other malicious, abusive, intrusive or illegal activities, (C) in a way that could harm VHC or impair anyone else's use of it, (D) in a way intended to work around VHC's technical limitations, recurring fees or usage limits, (E) to violate any rights of others, (F) to try to gain unauthorized access to, test the vulnerability of, or disrupt VHC or any other service, device, data account or network or (G) in any application or situation where failure of VHC could lead to the death or serious bodily injury of any person or to severe physical or environmental damage. In particular, the Customer will not make VHC available to any Resellers and End Users unless they have agreed to adhere to this Clause 8.2 and the Customer will take reasonable steps to enforce such agreements.

## 9. DATA SECURITY

9.1. **PRIVACY AND DATA STORAGE.** Virtuozzo's privacy and data storage practices are described in Virtuozzo's privacy policy available on the website <https://www.virtuozzo.com/legal> (the "Privacy Policy"), which is hereby incorporated by reference.

9.2. **MONITORING.** Virtuozzo shall have the right to verify Your compliance with this Agreement. If Virtuozzo requests the Customer to verify compliance, the Customer shall be obliged to provide information or other materials reasonably requested to assist in the verification. Virtuozzo shall be entitled to monitor the overall performance and stability of the infrastructure of VHC. The Customer shall not block or interfere with that monitoring. If Virtuozzo reasonably believes, a problem with VHC may be attributable to the Content Data or the Customer's and/or its Resellers and/or End Users use of VHC, the Customer shall cooperate with Virtuozzo to identify the source of such problem and resolve that problem.

9.3. You represent and warrant that You will not submit any **special categories of personal data** (particularly, as defined in Art. 3 of the Swiss Data Protection Act and Art.9 of GDPR) or any other sensitive information (including health data and social data) to be particularly processed in accordance with any Applicable Law, to Virtuozzo, whether as part of VHC or otherwise, unless we have entered into a separate written agreement. In the event You wish to submit any of such sensitive information in conjunction with Your use of VHC, You shall contact Virtuozzo at [privacy@virtuozzo.com](mailto:privacy@virtuozzo.com) to request entering into a separate written agreement regarding the processing of such data. Notwithstanding anything to the contrary in this Agreement, You recognize and agree that Virtuozzo will have no liability whatsoever under this Agreement or otherwise for any special categories of personal data and sensitive information You provide in violation of this Clause, and You agree to fully indemnify and hold harmless Virtuozzo from any third party claims resulting from a violation or alleged violation of this Clause.

## 10. CONTENT DATA

10.1. **CONTENT DATA RIGHTS.** As between the Customer and Virtuozzo, the Customer retains all right, title, and interest in the Content Data, except for the limited license expressly granted by the Customer to Virtuozzo in this Clause 10. The Customer hereby grants to Virtuozzo a royalty-free, fully paid up, worldwide, sublicensable, non-transferable (except as set forth in Clause 19.9.) right and license to copy, display, distribute, modify and otherwise use the Content Data, solely as necessary to provide VHC to the Customer. The Customer further acknowledges that Virtuozzo may collect the Usage Data and may aggregate and/or anonymize the Usage Data to use for statistical purposes and share samples of such aggregated and/or anonymized the Usage Data with other third parties. In case Usage Data contains any personal data, Customer represents and warrants that is has

obtained all necessary consents from the respective data subjects for such use of Usage Data by Virtuozzo.

**10.2. CERTAIN CUSTOMER'S REPRESENTATIONS AND OBLIGATIONS.** The Customer will only use VHC with the Content Data to which it has full right, title or license. The Customer represents, warrants and covenants that its use of VHC and related backup to and storage of the Content Data complies and will comply with all Applicable Law and terms of the Agreement, including those related to data privacy, data security, international communication and the exportation of technical, personal or sensitive data. The Customer will not, and will take commercially reasonable steps to ensure that each of its Resellers and End User does not distribute, publish, store or transmit content that: (i) may create a risk of harm, loss, physical or mental injury, emotional distress, death, disability, disfigurement, or physical or mental illness to anyone; (ii) may create a risk of any other loss or damage to any person or property; (iii) may constitute or contribute to a crime or tort; (iv) contains any information or content that is illegal, unlawful, harmful, abusive, racially or ethnically offensive, defamatory, infringing, invasive of personal privacy or publicity rights, harassing, humiliating to other people (publicly or otherwise), libelous, threatening, or otherwise objectionable; or (v) contains any information or content that You do not have a right to make available under any law or under contractual or fiduciary relationships. The Customer represents and warrants that the Content Data does not and will not violate any third-party rights, including any Intellectual Property Rights, and rights of publicity and privacy. If the Customer becomes aware that any of the Content Data or any End User's access to or use of the Content Data violates this Agreement, the Customer will take immediate action to remove the applicable part of the Content Data or suspend the End User's access. The Customer shall ensure that the Customer's use of VHC complies at all times with the Customer's privacy policies and all Applicable Law, including any encryption requirements. The Customer is solely responsible for the Content Data. The Customer is responsible for protecting the security of the Content Data, including any access to the Content Data that the Customer provides to its employees, customers or other third parties, and when it is in transit to and from VHC. The Customer shall take and maintain commercially reasonable steps regarding the security, protection and backup of the Content Data, which might include the use of encryption technology to protect the Content Data from unauthorized access. The Customer is responsible for providing any necessary notices to the End Users and for obtaining any legally-required consents from the End Users concerning their use of VHC. The Customer is responsible for any losses or other consequences arising from the Customer's failure to encrypt or back up the Content Data. The Customer will have and maintain appropriate policies and procedures for cybersecurity and to ensure compliance with its regulatory or legal obligations.

## **11. THIRD PARTY PRODUCTS**

11.1. The Customer is responsible for any Third Party Products that a third party licenses, sells or makes available to the Customer that the Customer installs or uses with VHC. The Customer's use of such Third Party Products is governed by separate terms between Customer and that third party. Virtuozzo is not a party to and is not bound by any of those separate terms. Certain Third Party Products may carry a limited warranty from the third-party provider of such Third Party Products. To the extent required or allowed, if Virtuozzo makes available to the Customer a Third Party Product in connection with the Customer's use of VHC, Virtuozzo will pass through to the Customer any such manufacturer warranties related to such Third Party Products. Notwithstanding the foregoing, the Customer acknowledges that Virtuozzo is not responsible for the availability or for the fulfillment of any Third Party Product warranty or for problems attributable to use of Third Party Products. All Third Party Products are provided by Virtuozzo on an "As Is" basis. You are responsible for reviewing, accepting, and complying with any Third Party terms of use or other restrictions applicable to the Third Party Product. Virtuozzo reserves the right to suspend or terminate any Third Party Products at any time. If applicable, the third party terms applicable to Third Party Products made available by Virtuozzo are available <https://www.virtuozzo.com/legal> as may be modified from time to time (the "**Third Party Terms**").

## **12. TERM AND TERMINATION**

12.1. **TERM.** This Agreement will be effective upon the Customer's execution of the Customer Contract and, unless earlier terminated as set forth in this Agreement, continue in effect for the initial term specified in the Customer Contract (the "Initial Term"). Unless otherwise provided for in the Customer Contract, after the Initial Term this Agreement shall be automatically renewed for successive periods (equal to the Initial Term) (each such term a "Renewal Term"), unless either Party gives a due notice to the other Party that it does not intend to renew this Agreement at least thirty (30) days before the end of the Initial Term or any Renewal Term. Notwithstanding the foregoing, this Agreement shall remain in full force and effect until the expiration or termination of any and all Customer Contracts executed prior to the end of the Term. The Term of the individual Customer Contract shall be as set forth therein.

12.2. **TERMINATION FOR BREACH.** In addition to any other termination right set forth in this Agreement, Virtuozzo shall be entitled to terminate this Agreement with immediate effect by written notice to the Customer if the Customer breaches any provisions hereof and fails to cure such breach within ten (10) days of receipt of written notice thereof.

12.3. **TERMINATION FOR INSOLVENCY.** Either Party may terminate this Agreement with immediate effect by a due notice after the other Party has executed an assignment for the benefit of creditors or filed for relief under any applicable bankruptcy, reorganization, moratorium, or similar debtor relief laws, or in the event that a receiver has been appointed

for the other Party or any of its assets or properties, or an involuntary petition in bankruptcy has been filed against such Party, that has not been dismissed, vacated, or stayed within thirty (30) calendar days.

**12.4. EFFECTS OF TERMINATION. THE TERMINATION OF VHC WILL CAUSE SUCH VHC TO CEASE FUNCTIONING AND RESULT IN THE CUSTOMER NOT BEING ABLE TO ACCESS ANY CONTENT DATA. FOLLOWING TERMINATION OF THIS AGREEMENT, VIRTUOZZO WILL DESTROY ALL CONTENT DATA (WITHOUT PREJUDICE TO CLAUSE 12.5. BELOW).** The termination of this Agreement for any reason will not affect: (i) the obligations of the Customer and Virtuozzo to account for and pay to one another any amounts for which they are obligated by virtue of transactions or events which occurred prior to the effective date of termination; and (ii) any other obligation or liability which either the Customer or Virtuozzo has vis-à-vis the other under this Agreement and which, by its nature, would reasonably be expected to survive termination. The following Clauses will survive any expiration or termination of this Agreement: 1, 4, 6, 7, 8, 12, 14, 15, 17, 19.1, 19.3, 19.4 and 19.13.

**12.5. CONTENT DATA POST EXPIRATION OR TERMINATION.** Before expiration or termination of the applicable Service Term, Virtuozzo recommends that the Customer ensures to place a copy of its Content Data in a place that can be accessed without VHC. Provided that the Customer is in compliance with all of the terms and conditions of this Agreement, Virtuozzo will extend the Customer's ability to access VHC for fifteen (15) calendar days following the end of the Service Term if the Customer notifies Virtuozzo via email (directed to [billing@virtuozzo.com](mailto:billing@virtuozzo.com)) prior to the end of the Service Term. In such event, (i) Virtuozzo will enable the Customer's access to VHC for a maximum of fifteen (15) calendar days following the end of the Service Term for the sole purpose of enabling the Customer's retrieval of its Content Data, and (ii) the Customer's use of VHC during such complimentary period is subject to the terms and conditions of this Agreement. Virtuozzo is not responsible for the availability or accessibility of the Content Data following the later of (A) the expiration of the complimentary period should the Customer make such request or (B) the end of the Service Term.

### **13. SUSPENSION**

**13.1. GENERALLY.** Virtuozzo may suspend Your use of VHC and/or the Platform if Virtuozzo reasonably determines in addition to the reasons described herein above for the following reasons: (i) the Customer, or the Customer's use of VHC, is in breach of this Agreement; (ii) the Customer fails to address Virtuozzo's request to take action as specified in this Agreement; (iii) the Customer's use of VHC poses a security risk to VHC or other users of VHC; (iv) suspension is warranted pursuant to Virtuozzo's receipt of a subpoena, court order, or a request by a law enforcement agency; or (v) as otherwise expressly set forth in this Agreement. Virtuozzo will give You notice before Virtuozzo suspends You, subject to Applicable Law, and unless Virtuozzo reasonably determines that providing the notice

presents risk of harm to VHC or any person or property. Virtuozzo is entitled to obtain injunctive relief if the Customer's use of VHC is in violation of any restrictions set forth in this Agreement.

13.2. **EFFECT OF SUSPENSION.** You will remain responsible for all payments incurred before or during any suspension. You will not be entitled to any service credits under any agreement that You might have otherwise accrued during the period of suspension.

13.3. **ALLOCATION OF RISK.** The Customer acknowledges and agrees that Virtuozzo has set its prices and entered into this Agreement and permitted Customer's access to VHC in reliance upon the disclaimers of warranty and the limitations of liability in this Agreement, that the same reflects an allocation of risk between Virtuozzo and the Customer (including the risk that a contract remedy may fail of its essential purpose and cause consequential loss), and that the same forms an essential basis of the bargain between Virtuozzo and the Customer. If the Customer is subject to Applicable Law that prohibits the Customer from indemnifying Virtuozzo as set forth herein or prohibits the Customer from entering into the risk allocation arrangement set forth herein, then the terms of such provisions of this Agreement will apply to the Customer only to the fullest extent permitted by Applicable Law, it being understood that the Customer and Virtuozzo each wish to enforce the provisions of this Agreement to the maximum extent permitted by Applicable Law.

14. **DISCLAIMER.** EXCEPT AS EXPRESSLY PROVIDED HEREIN AND TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, VHC SERVICES ARE PROVIDED ON AN "AS IS" BASIS WITHOUT ANY WARRANTY, TERMS OR CONDITIONS WHATSOEVER. ALL OTHER WARRANTIES, TERMS OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF NON-INFRINGEMENT, TITLE, SATISFACTORY QUALITY, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, ARE SPECIFICALLY EXCLUDED AND DISCLAIMED BY VIRTUOZZO AND ITS LICENSORS, TO THE EXTENT PERMITTED BY APPLICABLE LAW. NEITHER VIRTUOZZO NOR ITS LICENSORS WARRANT THAT VHC WILL MEET THE CUSTOMER'S REQUIREMENTS, THAT VHC WILL BE COMPATIBLE WITH THE CUSTOMER'S DEVICES, OR THAT VHC WILL BE UNINTERRUPTED OR ERROR FREE. EXCEPT AS EXPRESSLY PROVIDED HEREIN AND SAVE TO THE EXTENT SUCH ALLOCATION OF RISK IS NOT PERMITTED BY APPLICABLE LAW, THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF VHC IS WITH THE CUSTOMER. IN NO EVENT WILL VIRTUOZZO OR ITS LICENSORS BE LIABLE FOR ANY LOSS, LIABILITY, DAMAGES OR CLAIMS RELATED TO ANY REGULATORY OBLIGATIONS THE CUSTOMER MAY HAVE RELATED TO ITS CONTENT DATA.

## **15. LIMITATION OF VIRTUOZZO LIABILITY**

15.1. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL VIRTUOZZO BE LIABLE TO CUSTOMER OR ANY OTHER PARTY FOR ANY LOST PROFITS, LOST SAVINGS, LOST OR CORRUPTED CONTENT DATA, UNAUTHORIZED ACCESS TO OR

ALTERATION OF YOUR TRANSMISSIONS OF CONTENT DATA, LOST REVENUE, BUSINESS INTERRUPTION, OR LOSS OF CAPITAL (IN EACH CASE, WHETHER DIRECT OR INDIRECT) OR FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY VHC FURNISHED OR TO BE FURNISHED UNDER THIS AGREEMENT OR THE USE THEREOF, EVEN IF VIRTUOZZO HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE. EXCEPT FOR LIABILITY ARISING OUT OF VIRTUOZZO'S INDEMNIFICATION OBLIGATIONS UNDER CLAUSE 16.1., AND TO THE EXTENT PERMITTED BY APPLICABLE LAW THE AGGREGATE LIABILITY OF VIRTUOZZO IN CONNECTION WITH ANY AND ALL CLAIMS HOWSOEVER ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY VHC FURNISHED OR TO BE FURNISHED UNDER THIS AGREEMENT WILL IN ANY EVENT BE ABSOLUTELY LIMITED TO: (i) THE AMOUNT PAID BY CUSTOMER TO VIRTUOZZO FOR VHC UNDER THIS AGREEMENT DURING THE 6 (SIX) MONTHS IMMEDIATELY PRECEDING THE DATE THE DAMAGED PARTY NOTIFIES THE OTHER PARTY IN WRITING OF THE CLAIM FOR DAMAGES; OR (ii) IF GREATER, SUCH AMOUNT AS IS THE MINIMUM AMOUNT FOR WHICH VIRTUOZZO WOULD BE LIABLE UNDER APPLICABLE LAW.

15.2. **FURTHER LIMITATIONS.** Virtuozzo's licensors and Resellers will have no liability of any kind under this Agreement. To the extent permitted by Applicable Law, the Customer may not bring a claim under this Agreement more than eighteen (18) months after the cause of action arises.

## 16. COPYRIGHT, PATENT, TRADE SECRET, AND TRADEMARK INDEMNITY

16.1. **INDEMNITY FOR VHC.** Subject to the remainder of this Clause 16, Virtuozzo will defend the Customer against an Infringement Claim and indemnify the Customer from the resulting costs and damages finally awarded against the Customer to that third party by a court of competent jurisdiction or agreed to in settlement; provided that the Customer: (i) promptly provides Virtuozzo with notice of any Infringement Claim; (ii) grants Virtuozzo sole control over the claim's defense and settlement, and any related action challenging the validity of the allegedly infringed patent, trademark or copyright; and (iii) reasonably cooperates in response to Virtuozzo's requests for assistance. The Customer may not settle or compromise any Infringement Claim without Virtuozzo's prior written consent. Notwithstanding the foregoing, Virtuozzo will have no obligation under this Clause or otherwise with respect to any claim or award based on: (i) a combination of VHC with non-Virtuozzo data, products, business processes or content, including the Content Data; (ii) use of VHC for a purpose or in a manner not specified in this Agreement, or otherwise in a manner for which VHC were not designed; (iii) any modification of VHC made without Virtuozzo's express written approval; or (iv) any Evaluation Service. This Clause 16.1. states Your exclusive remedy for any Infringement Claims to the extent permitted by Applicable Law.

16.2. **INDEMNITY FOR THIRD PARTY PRODUCTS.** To the extent required or allowed, Virtuozzo will use reasonable efforts to pass through to Customer any indemnities related to Third Party Products, if any, after deduction of any costs incurred by Virtuozzo. Notwithstanding the foregoing, Customer acknowledges that Virtuozzo is not responsible for the fulfillment of any Third Party Product indemnities or for problems attributable to the use of Third Party Products.

16.3. **REMEDIES.** If any component of VHC becomes, or in Virtuozzo's opinion is likely to become, the subject of an Infringement Claim, Virtuozzo will at Virtuozzo's option and expense: (i) procure the rights necessary for the Customer to keep using such component; (ii) modify or replace such component to make it non-infringing; or (iii) terminate this Agreement and refund any pre-paid fees for any VHC pro-rated for its remaining term.

## **17. INDEMNITY BY THE CUSTOMER**

17.1. The Customer will, to the fullest extent permitted by Applicable Law, indemnify Virtuozzo and its officers, directors, shareholders, employees and agents and their respective successors and assigns (collectively, the "**Virtuozzo Indemnified Parties**") against and hold the Virtuozzo Indemnified Parties harmless from any and all claims, liabilities, damages, costs and expenses, including reasonable attorneys' fees in connection with investigating, defending, or settling any claim relating to or arising out of any acts or omissions on the part of the Customer which give rise to claims against the Virtuozzo Indemnified Parties by third parties (not Affiliates of Virtuozzo), provided any final settlement will require Virtuozzo's consent (which will not be unreasonably withheld) if the final settlement or compromise does not provide for the unconditional and full release of the Virtuozzo Indemnified Parties or if the final settlement or compromise requires the specific performance of the Virtuozzo Indemnified Parties. In all events, Virtuozzo will have the right to participate in the defense of any such suit or proceeding through counsel of its own choosing at Virtuozzo's own cost. The Customer will also indemnify and hold harmless the Virtuozzo Indemnified Parties for any costs and expenses, including reasonable attorneys' fees, incurred in responding to any subpoena, search warrant, or court order requiring production of information or documents related to Customer ("**Requests**"). Unless prohibited by court order or Applicable Law, Virtuozzo will notify the Customer of any Requests received by Virtuozzo.

## **18. ANTI-CORRUPTION, ACCEPTABLE USE AND COMPLIANCE WITH LAWS**

18.1. The Parties acknowledge that the giving and taking of bribes can lead to criminal proceedings in accordance with art. 102 para. 2, art. 322ter to art. 322decies of the Swiss Federal Criminal Code. In this context, Virtuozzo is entitled to solicit information from the Customer.

18.2. The Customer shall not, and shall not permit any of its subsidiaries and Affiliates, or any of its or their respective directors, officers, managers, employees, independent contractors, representatives or agents to, promise, authorize or make any payment to, or otherwise contribute any item of value to, directly or indirectly, any non-U.S. government official, in each case, in violation of the U.S. Foreign Corrupt Practices Act ("**FCPA**") or any other applicable anti-bribery or anti-corruption law of any other jurisdiction. The Customer shall, and shall cause each of its subsidiaries and Affiliates and the Customer to, cease all of its or their respective activities, as well as remediate any actions taken by the Customer, its subsidiaries or Affiliates or the Customer, or any of its or their respective representatives in violation of the FCPA or any other applicable anti-bribery or anti-corruption law of any jurisdiction. The Customer shall, and shall cause each of its Affiliates and subsidiaries and the Customer to, maintain systems or internal controls (including, but not limited to, accounting systems, purchasing systems and billing systems) to ensure compliance with the FCPA or any other applicable anti-bribery or anti-corruption law of any jurisdiction.

18.3. **LAWFUL USE.** By registering for, by using and/or enabling another to use VHC and the Access Authorization, you represent and warrant that you have the legal capacity and authority to enter into a binding agreement and to adhere to this Agreement, and that you will use VHC and the Access Authorization only in accordance with this Agreement. If an individual is registering or using VHC and the Access Authorization on behalf of an entity or organization, that individual warrants, represents, and covenants to Virtuozzo that such individual is duly authorized to agree to this Agreement on behalf of the Customer and to bind the Customer to them. VHC and the Access Authorization are intended, and offered, only for lawful use by individuals or organizations with the legal capacity and authority under Applicable Law to enter into a contract for such products and services. Virtuozzo does not offer VHC and the Access Authorization to minors or where otherwise prohibited by law.

18.4. **COMPLIANCE.** The Customer and all of its owners, directors, officers, employees, agents, Affiliates or contractors (collectively "**Customer**" for the purposes of this Clause 18.4.) will use VHC and the Access Authorization only in accordance with this Agreement and with all Applicable Law. Without limiting the foregoing:

i. The Customer acknowledges and agrees that VHC may be subject to economic sanctions and export controls of the United States of America ("**US**"), European Union ("**EU**"), and Switzerland. The Customer agrees not to engage in any transaction or activity that would result in liability to Virtuozzo under EU, US or Swiss sanctions or export control laws or regulations. The Customer agrees to comply with all US, EU and Swiss economic sanctions and export control laws and regulations as if it were a US, EU and a Swiss company and a US, EU and Swiss exporter, and with all otherwise applicable export or import regulations of other countries, and will not allow any third-party to remove or export from the US, EU or Switzerland or allow the export or re-export of any part of VHC or any direct product thereof (I) into (or to a resident or entity incorporated under the laws of) any country subject to a comprehensive US, EU or Swiss embargo, (II) to anyone on the US Commerce Department's

Denied Persons List, Entities List or Unverified List, the US Treasury Department's Specially Designated Nationals and Blocked Persons List, Foreign Sanctions Evaders List or the Sectoral Sanctions Identifications List, the US Department of State's List of Statutorily Debarred Parties, the EU's Consolidated Sanctions List, or the Swiss Secretariat of Economic Affairs Overall list of sanctioned individuals, entities and organizations (collectively, the "Lists"), or (III) to any country, entity or person to which such export or re-export is restricted or prohibited, or as to whom the US, EU or Switzerland requires an export license or other governmental approval at the time of export from the US, EU or Switzerland, respectively, or re-export without first obtaining such license or approval. The Customer assumes sole responsibility for any required export approval and/or licenses and all related costs and for the violation of any export law or regulation.

ii. The Customer represents and warrants that the Customer, its Resellers and End Users are not included on any of the Lists. The Customer will immediately inform Virtuozzo of any inclusion of the Customer on any of the Lists and will cooperate with Virtuozzo's investigation and/or reporting of such action to appropriate US, EU or Swiss authorities, which may occur at Virtuozzo's sole discretion.

iii. The Customer may not use or enable the use of VHC and the Access Authorization by any Reseller, End User or any other third party whose rights are derivative of any of them who is a resident of, entity incorporated under the laws of, or under control of any of the governments of any country subject to a comprehensive US, EU or Swiss embargo, which as of the date hereof includes: Cuba, Iran, North Korea, Syria and the Crimea region of the Ukraine (which for the purpose of this paragraph may be referred to as a country). Each time the Customer uses or enables the use of VHC, the Customer represents, warrants, and covenants that none of the Customer, its End Users, or any other third party whose rights are derivative of any of them (I) is a resident of, an entity incorporated under the laws of, or under the control of the government of any country subject to a comprehensive US, EU or Swiss embargo; (II) will download or otherwise export or re-export any VHC, directly or indirectly, to the above mentioned countries or to residents or entities incorporated under the laws of those countries, or permit any third party to do so; (III) are listed in any of the Lists or subject to US, EU or Swiss sanctions; or (IV) will use or allow the use of VHC for any purposes prohibited by US, EU or Swiss law, including, without limitation, for the development, design, manufacture, or production of nuclear, chemical, or biological weapons, weapons of mass destruction or their proliferation; or (V) are using or permitting others to use VHC to create, store, backup, resell, or provide access to child pornography or any other content or data which is illegal under the Applicable Law, including that where the Customer is domiciled.

iv. Virtuozzo will not be liable to the Customer or any of its officers, directors, employees, agents, contractors, designees, customers and/or any other party, for any refusal or failure to provide goods, software, services or technical data as a result of any action taken as a result of any inclusion of the Customer on any of the Lists.

v. If Virtuozzo has a good faith belief that the Customer, or any third party acting on the Customer's behalf, intends to violate, has violated, or causes Virtuozzo to violate, any EU, US

or Swiss export controls or sanctions law or regulation, Virtuozzo may terminate this Agreement immediately, notwithstanding any other provision of this Agreement to the contrary. In the event of such termination, Virtuozzo will be relieved of all liability and obligations of any kind under this Agreement.

vi. The Customer will indemnify and hold Virtuozzo harmless for any and all claims, losses, damages, liabilities, expenses and costs of whatever nature, including reasonable attorneys' fees and expenses, arising out of the Customer's non-compliance with US, EU or Swiss export controls or sanctions laws or regulations or the Customer's inclusion on any of the Lists. Virtuozzo will be relieved of all claims and liabilities arising from (I) termination of this Agreement pursuant to this Clause 18.4., and (II) Virtuozzo's failure to perform, or inability to perform, as a result of the Customer's inclusion on any of the Lists.

vii. The Customer will, at its own cost and expense, screen against the Lists all new End Users and all third parties whose rights to use VHC are derivative of any of them, and will not contract with anyone who is included on one of the Lists.

viii. Virtuozzo may at Virtuozzo's option, by notice to the Customer at any time (the "**Pre-Screen Notice**"), direct the Customer not to authorize or permit the use of VHC by any Reseller, End User or any third party whose rights to use VHC would be derivative of any of them unless Virtuozzo will have first approved such use in writing, including by email. After the Customer receives the Pre-Screen Notice, the Customer will give Virtuozzo advance written notice, including by email, of the identity of any such Reseller, End User or third party, with such accompanying detail and additional information as Virtuozzo may request. Virtuozzo will use this information to determine whether any such person is on any of the Lists. Virtuozzo will give notice to the Customer of its approval of any such person not being on any of the Lists. Any such person who is, or who appears to be on any of the Lists will not be approved and Virtuozzo will not deal with them regarding VHC.

ix. Virtuozzo may audit the Customer's compliance with this Clause 18.4. on such terms as Virtuozzo determines reasonable. The Customer will also, upon request of Virtuozzo, provide to Virtuozzo the names of all End Users and all third parties whose rights to use VHC are derivative of any of them.

x. Virtuozzo may at any time suspend the Customer's access to VHC, in whole or in part, for the following reasons:

a. In order to comply with any contractual, statutory, and/or regulatory obligation, a request or order from law enforcement, or a competent judicial, governmental, supervisory or regulatory body;

b. If Virtuozzo has reasonable grounds to suspect that the Customer, End Users or other third parties have acted or will act fraudulently, unlawfully, in a criminal way or in a way which could prejudice Virtuozzo, any End User or any other third party; or

c. If the Customer, any End Users or other third parties violates any contractual, legal, regulatory, statutory, or administrative obligation, or if any End User or other third party is subject to US, EU or Swiss sanctions.

xi. **CERTIFICATION.** The Customer will certify to Virtuozzo in writing compliance with its obligations under this Clause, at least annually on or before March 31 of each calendar year,

and at such other times as Virtuozzo will request.

## **19. GENERAL PROVISIONS**

19.1. **PUBLICITY.** The Customer agrees and confirms that Virtuozzo may use the Customer's name and corporate logo (if applicable) on the website of Virtuozzo or in promotional materials (in any presentation, marketing materials, and/or customer lists, etc.). Virtuozzo may also verbally reference the Customer as a customer of VHC.

19.2. **SEVERABILITY.** Every provision of this Agreement will be construed to the extent possible, so as to be valid and enforceable. If any provision, or portion thereof, of the Agreement is held unenforceable, illegal or invalid by a court of competent jurisdiction, the enforceability of the remaining provisions shall not be affected and all other provisions will remain in full force and effect.

19.3. **GOVERNING LAW AND DISPUTE RESOLUTION.** This Agreement shall be governed by and construed in accordance with substantive Swiss law without giving effect to conflict of law rules and with the Vienna Convention on the Sale of Goods being expressly excluded. Any dispute arising out of or in connection with these VHC Terms shall be subject to the exclusive jurisdiction of the courts of Zurich, canton of Zurich, Switzerland. The prevailing Party in any action under this Agreement is entitled to recover reasonable attorneys' fees and related costs.

19.4. **OTHER APPLICABLE LAW.** If You are otherwise subject to laws that prohibit the Customer from agreeing to the foregoing governing law provisions, then (i) the terms of such provisions of this Agreement will be deemed to be modified to reflect the governing law required by Applicable Law; and (ii) the Customer shall, within thirty (30) calendar days of the commencement of its Service Term, notify Virtuozzo (directed to [billing@virtuozzo.com](mailto:billing@virtuozzo.com)) to identify the Applicable Law that applies to the Customer and the resulting modifications to the governing law and/or venue provisions of this Agreement, without prejudice to the statutory rights of consumers based in the EU.

19.5. **ELECTRONIC SIGNATURE.** The Customer agrees that Virtuozzo may provide the Customer with information regarding this Agreement by sending the Customer an email and that doing so satisfies any obligation Virtuozzo may have to provide the information in writing. The Customer may have the right to withdraw consent and, when required by law, Virtuozzo will provide the Customer with paper copies upon request. To receive, access, and retain the notices, the Customer shall have Internet access and a computer or device with a compatible browser; software capable of viewing PDF files; and the ability to print and download and store PDF files. The Customer confirms that the Customer is able to receive, access, and retain information on the website. The Customer may withdraw consent or update contact information by notifying Virtuozzo through available support channels,

including chat (if any).

19.6. **ENTIRE AGREEMENT.** This Agreement (including all Customer Contracts) sets forth the entire agreement and understanding between the Parties hereto with respect to the subject matter hereof and supersedes any previous or contemporaneous communications, representations, proposals, commitments, understandings, negotiations, discussions, understandings, or agreements (including non-disclosure or confidentiality agreements), whether oral or written, regarding the same subject matter. In the event of any conflict between these VHC Terms and a Customer Contract, if applicable, the terms and conditions set forth in these VHC Terms will govern unless expressly agreed between the Parties in such Customer Contract.

19.7. **WAIVER.** Failure by either Party to enforce the provisions of this Agreement or any right or remedy available hereunder or at law or in equity, or to exercise any option herein provided, will not constitute a waiver of such provisions, right, remedy or option, and will not affect the validity of this Agreement nor affect that Party's rights to take subsequent action. The waiver of any Customer's default by Virtuozzo will not be deemed a continuing waiver but will apply solely to the instance to which such waiver is directed.

19.8. **HEADINGS.** The headings in this Agreement are inserted merely for the purposes of convenience and shall not affect and/or limit the meaning or interpretation of this Agreement.

19.9. **ASSIGNMENT.** The Customer shall not assign, transfer and/or delegate any of its rights and obligations under this Agreement without Virtuozzo's prior written consent, any such consent shall not be unreasonably withheld. Any attempted assignment or transfer in violation of this Clause will be void. Virtuozzo may assign this Agreement or any Customer Contract without changes of contractual contents in its totality to any of its subsidiaries and/or Affiliate(s) upon ten (10) calendar days' prior due notice to the Customer. Subject to limitations provided for in this Clause, this Agreement will be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns.

19.10. **INDEPENDENT CONTRACTORS.** The Customer and Virtuozzo acknowledge and agree that the relationship arising from this Agreement does not constitute or create any joint venture, partnership, employment relationship or franchise between them, and the Parties are acting as independent contractors in making and performing this Agreement.

19.11. **NON-SOLICITATION.** The Customer will not, without the prior written consent of Virtuozzo solicit, offer work to, employ, or contract with, directly or indirectly, on its own behalf or on behalf of its Affiliates, any of Virtuozzo's Personnel or the Personnel of its Affiliates during the Term of this Agreement or during the twelve (12) months following termination of this Agreement. For the purposes of this Clause, "Personnel" includes any

individual that Virtuozzo employs or has employed as a partner, employee or independent contractor and with which the Customer comes into direct contact in relation to this Agreement. If the Customer breaches this Clause, the Customer shall pay to Virtuozzo EUR 1,500,000.00 (One million five hundred thousand Euro), payable net thirty (30) calendar days from the date of invoice, as liquidated damages for breach of this Clause.

19.12. **NOTICES.** Any notice to be given pursuant to this Agreement shall be sent on email addresses provided by the Parties in the Customer Contract in English. If one Party change its email addresses, new email addresses shall be communicated by such Party to the other Party by an email notification. Notice will be deemed duly given in writing when delivered to an email address provided by the Party in the Customer Contract, or sent by confirmed facsimile transmission, or sent by certified or registered mail or nationally-recognized express courier, return receipt requested, to the address shown on the Customer Contract. To be effective, all notices to Virtuozzo: (i) if other than by email, shall be sent to Virtuozzo International GmbH, Vordergasse 59, 8200 Schaffhausen, Switzerland; (ii) if by email, shall be sent to [billing@virtuozzo.com](mailto:billing@virtuozzo.com), if another email is not provided in the Customer Contract.

19.13. **FORCE MAJEURE.** Virtuozzo shall not be liable for any delay or failure to perform any of its obligations under this Agreement if such a delay or non-performance results from compliance with any requirement of Applicable Law, acts of god, fire, earthquakes, storms or other elements of nature, strike, labor disputes or other industrial disturbances, embargo, terrorist attack, war, systemic electrical, telecommunications or other utility failures, insurrection, blockages or riot, or other causes beyond the reasonable control of Virtuozzo. Any delay resulting from any of such causes shall extend performance accordingly or excuse performance, in whole or in part, as may be reasonable under the circumstances. However, the Customer shall be entitled to terminate this Agreement when such delay lasts for ninety (90) calendar days consecutively.

19.14. **EXPORT COMPLIANCE.** The Customer may not use or otherwise export or re-export VHC or any related software or technology except as authorized by the Applicable Law of the jurisdiction in which VHC were obtained. In particular, but without limitation, VHC may not be exported or re-exported (i) into any U.S. embargoed country or region, or (ii) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce Denied Person's List, Entity List or Unverified List. By using VHC, the Customer represents and warrants that the Customer is not located in any such country or on any such list. The Customer also agrees that it will not use these products for any purposes prohibited by Applicable Law (including United States law). The Customer is solely responsible for complying with all import, export, and re-export control laws, and The Customer is also solely responsible for any applicable license requirements in connection with VHC.