

Virtuozzo General Terms And Conditions

UPDATED NOVEMBER 2021

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

1. DEFINITIONS. Certain capitalized terms, if not otherwise defined, shall have the meanings set forth below in this Clause 1.

1.1 “Affiliate(s)” means any corporation, partnership or other entity that is under the direct or indirect control of the applicable Party or its respective successors and 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.

1.2 “Authorized User” shall mean Customer’s employees and other individuals who are permitted to use the Virtuozzo Products as specified in the applicable Sales Order, as well as Customer’s and Customer’s Affiliates’ clients and customers that enter into the Third Party EULA (defined below) for Third Party Software.

1.3 “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.

1.4 “Confidential Information” means structural information about the architecture of the Virtuozzo Products, Third Party Software and any related information; any material or information that a Party considers confidential and that relates to the Party’s past, present and future research, development, business activities, products, software, services, technical knowledge, designs, methodologies, business plans or forecasts, finances, pricing, marketing plans, customers, prospects or other affairs and has not been explicitly identified as “public” or “non-confidential” or would be understood to be confidential by a reasonable person under the circumstances. Confidential Information does not include information (i) previously known to the receiving Party, before it was received from the disclosing Party without an obligation not to disclose such information, (ii) independently developed by the receiving Party without use of Confidential Information, (iii) acquired by the receiving Party from a third party that was not under an obligation to the disclosing Party not to disclose such information, or (iv) that is or becomes publicly available through no breach of this Agreement by the receiving Party.

1.5 “Documentation” shall mean Virtuozzo’s user manuals, technical manuals and/or related documentation relating to the Products that Virtuozzo makes available to Customer including by the means of publishing such manuals and/or related documentation on Virtuozzo’s internet resources.

1.6 “EULA” means applicable Virtuozzo Product End User License Agreement that any Authorized User or end user of the Virtuozzo Product must agree to in order to access and use the applicable Virtuozzo Product. Effective version of EULA can be found at: <https://www.virtuozzo.com/legal/eula/>, and may be amended, supplemented, or modified by Virtuozzo from time to time, and any applicable Third-Party Software End User License Agreement that any Authorized User must agree to in order to access and use the applicable Third-Party Software, as set forth in the Sales Order.

1.7 “Intellectual Property” means all rights, title, and interest in and to the Virtuozzo Product or Third Party Software or any part of it, including all patent, copyright, trade secret, trademark, moral rights, mask work rights, and all other types of intellectual property.

1.8 “License Keys” are the serial numbers, provided by Virtuozzo, required to activate a Virtuozzo Product on Customer’s system. The validity of a license key is directly connected to the granted use right in the respective Virtuozzo Product. If the use right, expires, is waived or terminated for any reason, the respective License Key will be terminated, rendering the Virtuozzo Product unusable immediately. Special rules for Third Party Software License Keys might be set forth in the relevant Sales Order.

1.9 “Licensor” means any third party licensing Third Party Software to Virtuozzo for licensing to Customer.

1.10 “Personnel” means any individual that Virtuozzo currently employs as an employee or independent contractor and with which Customer comes into contact in relation to this Agreement.

1.10 “Products” means the Virtuozzo Products and the Third-Party Software.

1.11 “Sales Order” means an order in writing for purchase of Products concluded between Virtuozzo and Customer.

1.11 “Software” shall mean the executable, object code version of Virtuozzo’s proprietary application software licensed to Customer as specifically identified in a Sales Order.

1.12 “Term” shall mean the period that this Agreement remains in force and effect in accordance with Clause 11.

1.13 “Territory” shall mean the territory specified in the applicable Sales Order, if a Sales Order does not specify the territory then it shall be deemed to be worldwide.

1.14 “Third Party Software” shall mean software products licensed to Virtuozzo by Licensor and made available by Virtuozzo to Customer under license as specified in the Sales Order.

1.15 “Virtuozzo Products” shall mean the Software, the Support Services (as outlined in the Sales Order), and/or other products or services specified in a Sales Order, along with all applicable Documentation. Third Party Software is excluded from Virtuozzo Products.

2. AGREEMENT STRUCTURE

2.1 Customer may request to purchase Products by executing a Sales Order, and after the execution of the Sales Order through the KA System (as defined in Clause 5 herein below), if Customer is provided with an access to KA System. The Sales Order shall only be deemed to be accepted by Virtuozzo when Virtuozzo signs the Sales Order or issue a written acceptance of the Sales Order. Virtuozzo may accept or decline any Sales Order in its own discretion.

2.2 Each Agreement shall govern a single Sales Order that forms part of it and shall constitute a distinct contract independent of any other Sales Order and Agreement between Customer and Virtuozzo.

2.3 Any quotation given by Virtuozzo for Products shall not constitute an offer, and is only valid for the period specified in quotation (or if no such period is specified, twenty (20) business days from the date of issue).

2.4 Any documents or terms issued by Customer of which Customer seeks to impose or incorporate, including any purchase order, shall be for Customer's internal administrative purposes only and, regardless of what such documents may state otherwise, will have no contractual force or effect on Virtuozzo and shall not operate to govern Parties' relationship or modify Virtuozzo's Agreement with Customer.

2.5 Customer acknowledges and understands that these GTCs do not, absent execution of a Sales Order, impose any obligation upon Virtuozzo to provide any license, access or services. In the event of a conflict between these GTCs and any Sales Order, these GTCs shall govern unless the provisions of the relevant Sales Order explicitly state that the particular terms of that Sales Order shall govern. Customer shall assist and cooperate with Virtuozzo whenever reasonably necessary including by performing Customer's responsibilities as set forth on any Sales Order. Virtuozzo's performance hereunder is dependent on Customer's timely and effective performance of Customer's responsibilities.

3. LICENSE

3.1 License Grant. Subject to the license terms and restrictions set forth in a Sales Order and the restrictions in Clause 3.2 below, Virtuozzo grants Customer a revocable, limited, non-exclusive, non-transferable, non-sublicensable license to allow Authorized Users in the Territory to use the Products as specified in such Sales Order on physical or virtual machines owned or managed by Customer and its Affiliates during the Term which is specified in such Sales Order. If any Third-Party Software is made available to Customer by Virtuozzo, any additional terms and conditions as well as limitations and additional prohibited uses shall be as set forth in the Sales Order.

3.2 Prohibited Uses. Customer shall not use the Products for any purposes beyond the scope of the applicable EULA and licenses granted in these GTC and the applicable Sales Order. Customer shall require each Authorized User to accept the applicable EULA, which may be embedded in the Products, prior to granting them access to any of the Products. Virtuozzo reserves the right to revoke the license for any Authorized User who does not

comply with the applicable EULA. Customer shall provide documented evidence of such acceptance to Virtuozzo in writing upon first request. Without limiting the generality of the foregoing, Customer shall not, unless specifically allowed in the applicable Sales Order or except with the prior written consent of Virtuozzo:

- (i) market or distribute the Products;
- (ii) assign (except as permitted by Clause 12.4 herein), sublicense (except as permitted in the applicable Sales Order for providing Application Service Provider (“ASP”) and/or hosting services to Customer’s, and Customer’s Affiliates’, clients and customers), sell, lease or otherwise transfer or convey, or pledge as security or otherwise encumber, Customer’s rights under the licenses granted;
- (iii) modify or create any derivative works of the Products (or any component thereof);
- (iv) combine or integrate the Products with hardware, software or technology not provided to Customer by Virtuozzo hereunder; or
- (v) decompile, disassemble, reverse engineer or otherwise attempt to obtain or perceive the source code from which any component of the Products are compiled or interpreted, and Customer hereby acknowledges that nothing in this Agreement shall be construed to grant Customer any right to obtain or use such source code.

3.3 Compliance with Laws. Customer shall ensure that its use of the Products complies in all respects with all applicable laws, statutes, regulations, ordinances or other rules promulgated by governing authorities that the Parties or the Products are subject to, including, without limitation, by means of compliance with Sanction Compliance Terms, which are available at: <https://www.virtuozzo.com/legal/sanction-compliance-terms/>, and may be amended, supplemented, or modified by Virtuozzo from time to time, or by means of obtaining any permits, licenses and/or approvals required with respect to export regulations promulgated by the Bureau of Export Administration or any other agency or department of the federal government of the United States of America, Switzerland or Japan, or any other competent authority. Customer acknowledges that Virtuozzo makes no representation or warranty that the Products may be exported without Customer first affirming appropriate licenses or permits under applicable law, or that any such license or permit has been, shall be or can be obtained. Customer herewith represents and warrants that Customer and its Authorized Users are not subject to any limitations of sanctions regulations (US, EU and any other applicable regulations).

3.4 Proprietary Notices. Customer shall duplicate all proprietary notices and legends of Virtuozzo and its suppliers or licensors upon any and all copies of the Products made by Customer. Customer shall not remove, alter or obscure any such proprietary notice or legend.

3.5 Third Party Software. If any Third Party Software is made available to Customer by Virtuozzo on the basis of a Sales Order, the terms regarding Third Party Software in these GTC and any respective Sales Order shall apply. In order to be able to install and use Third Party Software, Customer shall comply with the applicable Third Party Software EULA as specified in the Sales Order.

3.6 Monitoring. Customer understands and acknowledges that Virtuozzo and Licensor may monitor the operation and usage of the Products through a reporting function in the Software. Customer agrees to facilitate such monitoring by ensuring that all firewall ports

are open and to notify Virtuozzo if there are any operational issues that could prevent remote monitoring. Virtuozzo and Licensor have the right to use, and Customer warrants that it has obtained all necessary consents and licenses for such use, any and all data and information related to Customer's use of the Products for any lawful purpose including, without limitation, invoicing, statistical analysis, benchmarking and research purposes.

4. FEES AND PAYMENTS

4.1 Fees Payable. Customer agrees to pay the amounts specified in Virtuozzo invoice based on the Sales Order, monitoring data and KA System (as defined in Clause 5 herein below) account data, provided that billing shall be based on the actual number of running virtual machines. In case of controversy between the Sales Order, monitoring data and KA System data, for the purpose of invoicing information related to the quantity of purchased/generated Products provided by monitoring and KA System shall prevail. If no payment terms are specified in the applicable Sales Order, fees and other charges shall be due and payable by the Customer within thirty (30) calendar days of the date of Virtuozzo' invoice. Virtuozzo may in its own discretion request Customer to pay an advance payment for Products and set forth amounts of advance payments in the Sales Order. Virtuozzo does not refund fees paid by Customer, and once the fee payment is made to Virtuozzo, 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 4.3 in favor of Customer. In case if the payment is conducted by a Customer's credit card according to terms and conditions in the Clause 4.5 herein below, the credit card will be charged immediately upon Virtuozzo invoice issuance. Virtuozzo reserves the right to add or remove Products listed in the respective Sales Order, as well as amend any terms related thereto, including pricing at any time upon written (email) notice to Customer to the Customer's email address identified in the respective Sales Order. The amended list of Products, terms and/or pricing shall become effective in thirty (30) days upon the date of the email notification.

4.2 Customer's Operating Expenses. Customer is responsible for all expenses incurred in performance of its obligations or exercise of its rights under this Agreement.

4.3 Disputed Charges. Customer must duly notify Virtuozzo (as defined in Clause 12.4 herein below) of any dispute with invoiced charges within fifteen (15) calendar days of the date of the invoice to billing@virtuozzo.com . Absent such notice, Customer will be deemed to have agreed to the charges as invoiced. No further disputes will be accepted by Virtuozzo after such timeframe.

4.4 Late Charges. In addition to, and without prejudice to any other remedy available to Virtuozzo, if any payment is not received by Virtuozzo from Customer when it is due, and is not the subject of a good faith dispute, Virtuozzo may, at its sole discretion, terminate this Agreement immediately, and/or:

(i) revoke or limit Customer's KA System access (as defined herein below) and/or terminate any License Keys supplied in connection with this Agreement and respective Sales Order(s), and/or cease provision of any services provided according to respective Sales Order(s); and/or

(ii) assess interest on any unpaid amounts from the due date until paid in full at the rate of

3% above the "LIBOR" rate as published by the Zurich periodical "Finanz und Wirtschaft" or at the maximum rate permitted under applicable law, whichever is less. 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.

4.5 Credit Card Payment. 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. Customer herewith agrees that any fees payable under this Agreement and Sales Order shall be charged to Customer's credit card unless otherwise agreed by the Parties in a Sales Order.

4.6 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. Customer must pay Virtuozzo the total invoice amount without deductions for taxes, assessments, fees, or charges of any kind. Customer is responsible for paying all sales, use, excise, value-added, withholding or other tax or governmental charges imposed on the licensing or use of the Products (collectively "Taxes"). 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 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 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 purpose of applying a double taxation treaty, at Customer's request, Virtuozzo shall provide Customer 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.

4.7 Audit Rights and Records. During the Term and for a period of two (2) years following termination or expiration of this Agreement, Customer agrees to keep all usual and proper books and records relating to its performance of and compliance with this Agreement. During that period, upon at least five (5) Business Days' notice, Virtuozzo shall have the right, at its own expense, to periodically audit the records of Customer with respect to matters covered by this Agreement either by physically visiting Customer's premises or by remote access (as determined by Virtuozzo). If such audit reveals that Customer has underpaid Virtuozzo, Customer shall promptly pay such amounts as are necessary to rectify such underpayment, together with interest at the rate in Clause 4.4. If the amount of an underpayment equals or exceeds five percent (5%) of the total amounts due during the applicable period, Customer will reimburse Virtuozzo for the cost of such audit.

5. KEY ADMINISTRATOR ("KA") SYSTEM LICENSE

5.1 Virtuozzo grants Customer a non-exclusive, revocable, non-transferable, non-sublicenseable license to use its KA System to generate, manage, update and terminate Authorised User licenses on demand.

(a) Privilege. Customer agrees that KA access is a privilege of customership and will use KA in good faith.

(b) Revocation. At any time if in Virtuozzo's sole and exclusive discretion Virtuozzo is of the opinion that Customer is not using KA in a proper or responsible manner, or in case of reasonable suspicion of any fraudulent activities, including, but not limited to abusing billing system, implementing unauthorized changes to Products, as well as in cases, where incorrect order was created due to use of unlicensed software, computer virus, programming bug, abusing KA functionality, or is in breach of any terms of this Agreement and Sales Order, including delay of any payment due according to this Agreement and Sales Order, Virtuozzo may revoke the KA System license.

(c) License Key Responsibility. Customer is financially responsible for all License Keys created in its KA System account. Customer acknowledges and agrees that it is exclusively responsible for the termination of unused License Keys in its KA System account. Customer can access its KA System account at any time to terminate keys. Customer acknowledges that Virtuozzo is not responsible for the maintenance or termination of any License Keys in Customer's KA System account whatsoever and that any active License Key in Customer's KA System account will be billed toward Customer in the following monthly invoice. Active License Keys are considered as any License Key that is not marked for termination. For the avoidance of doubt, some License Keys carry a minimum subscription period and will be billed for the entire subscription period even if marked as terminated. If, in accordance with Clause 5(b) above, Virtuozzo revokes Customer's license to the KA System, Customer may send License Key termination requests to Virtuozzo via email to billing@virtuozzo.com.

(d) Password Change. If Customer's KA System account information is or may be compromised, Customer shall notify Virtuozzo within one (1) Business Day from becoming aware of such fact to change its password accordingly.

5.2 Virtuozzo Product Ordering Procedure. Customer shall order License Keys for its Authorised Users by using its KA System account. All orders are subject to the terms and conditions of this Agreement and Sales Order. If there is any conflict between this Agreement and the terms of an order or any other correspondence transmitted to Virtuozzo by Customer, the terms and conditions of this Agreement shall prevail. Upon receipt of orders from Customer, Virtuozzo shall ensure that the requested Virtuozzo Products are made available to Customer by download, accompanied by corresponding invoices. Customer shall not accept, alter, enlarge, limit, or accept the return of any License Keys on behalf of Virtuozzo, or in any manner assume or create any obligation, express or implied, on behalf of or in the name of Virtuozzo, or act for or bind Virtuozzo in any other matter. Virtuozzo may in its ultimate and sole discretion accept, reject, or cancel any order submitted by Customer through KA System. Virtuozzo shall promptly notify Customer (as defined in Clause 12.4 herein below) if it decides to reject or cancel any orders submitted by Customer through KA System. Virtuozzo is not liable for damages to Customer or to any third party caused by Virtuozzo's delay or error in filling, or failure to fill, any orders for any reason.

5.3 Support. Unless otherwise agreed between the Parties in a Sales Order or in a separate written agreement, Virtuozzo shall provide to Customer only basic support services, according to the terms and conditions of support services provided at <https://www.virtuozzo.com/all-supported-products/>. Virtuozzo shall not provide support for Third Party Products unless otherwise agreed by the Parties in the Sales Order.

6. CONFIDENTIALITY

6.1 Ownership of Confidential Information. The Parties acknowledge that during the performance of this Agreement, each Party shall have access to Confidential Information of the other Party. Both Parties agree that, as between the Parties, Confidential Information is owned by the disclosing Party.

6.2 Mutual Confidentiality Obligations. Each Party agrees: (i) to use the Confidential Information only for the purposes described herein; (ii) that such Party shall not reproduce the Confidential Information except as necessary to comply with this Agreement and shall hold in confidence and protect the Confidential Information from dissemination to, and use by, any third party and such Party shall treat the Confidential Information and keep it confidential with the same duty of care as it uses with regard to its own Confidential Information, but at least the duty of care of a reasonable professional in the same circumstances; (iii) that neither Party shall create any derivative work from the other Party's Confidential Information; (iv) to restrict access to the Confidential Information to such of its personnel, agents, and/or consultants, if any, who have a need to have access and who have been advised of and have agreed in writing to treat such information in accordance with the terms of this Agreement; and (v) to return or destroy all Confidential Information of the other Party in its possession upon termination or expiration of this Agreement.

7. OWNERSHIP

Customer acknowledges that Virtuozzo owns all right, title, and interest, including all Intellectual Property in and to the Virtuozzo Products and all work products, derivative works, developments, inventions, technology or materials provided under or otherwise in connection with a Sales Order(s), (including all related components) and Customer hereby assigns all such rights, if any, to Virtuozzo. Virtuozzo expressly reserves all rights not expressly granted to Customer in this Agreement. In relation to Third Party Software, Customer acknowledges that the third party specified by the Parties in the respective Sales Order owns all right, title and interest, including all Intellectual Property in and to Third Party Software and all work products, derivative works, developments, inventions, technology or materials provided under or otherwise in connection with the Sales Order (including all related components). Customer shall obey Third Party Software EULA.

8. WARRANTIES

8.1 Representations and Warranties. Each Party represents and warrants to the other that the execution and performance of this Agreement does not and shall not violate any other contract, obligation, or instrument and that it has the legal power and authority to enter into the Agreement and each applicable Sales Order. Virtuozzo's obligations with respect to any warranties specified in this Agreement are contingent on Customer's use of the Products in accordance with this Agreement and in accordance with the applicable EULA.

8.2 No Other Warranties. Except as otherwise expressly warranted in this Agreement, the Virtuozzo Products and any other materials, software, data and/or services provided by

Virtuozzo in accordance with this Agreement are provided "AS IS" and Virtuozzo expressly disclaims all other warranties of any kind or nature, whether express, implied or statutory, including, but not limited to, any warranties of operability, condition, title, non-infringement, accuracy of data or quality, as well as any warranties of merchantability, system integration, workmanship, suitability, fitness for a particular purpose, or the absence of any defects therein. No warranty is made by Virtuozzo on the basis of trade usage, course of dealing or course of trade. Virtuozzo does not warrant that the Virtuozzo Products or any other materials, Software, data and/or services provided under this Agreement shall meet Customer's requirements or the requirements of Authorized Users or that the operation thereof shall be uninterrupted or error-free, or that errors shall be corrected. Virtuozzo does not provide any warranties in relation to the Third Party Software. Any warranties are provided by the Licensor to Customer as set forth in the applicable EULA.

9. LIMITATION OF LIABILITY

9.1 LIMITATIONS. The cumulative liability of Virtuozzo to Customer for all claims arising from or relating to this Agreement and any Sales Order(s) shall be a maximum of the fees paid to Virtuozzo by Customer under this Agreement during the three months period immediately preceding the event which gave rise to the claim. In no event shall Virtuozzo or its licensors or suppliers be liable to Customer for any incidental, indirect, special, consequential or punitive damages, regardless of the nature of the claim, including, without limitation, lost profits, costs of delay, any failure of delivery, business interruption, costs of lost or damaged data or documentation or liabilities to third parties arising from any source, even if Virtuozzo has been advised of the possibility of such damages.

9.2 Essential Basis. The disclaimers, exclusions and limitations of liability set forth in this Agreement form an essential basis of the bargain between the Parties, and, absent any of such disclaimers, exclusions or limitations of liability, the provisions of this Agreement and Sales Order(s), including, without limitation, the economic terms, would be substantially different.

10. INDEMNIFICATION

10.1 Indemnification by Virtuozzo.

(a) Virtuozzo shall indemnify, hold harmless, and, at Virtuozzo's option, defend Customer from and against all costs, expenses (including reasonable attorneys' fees), damages, and liabilities resulting from any claim by any third party that any use of, or access to, the Virtuozzo Products expressly authorized under this Agreement infringes any Intellectual Property under applicable laws of any jurisdiction. Notwithstanding the foregoing, Virtuozzo shall have no obligation or liability to Customer to the extent that the alleged infringement arises from (i) the combination, operation, or use of the Virtuozzo Products with products, services, information, materials, technologies, business methods or processes not furnished by Virtuozzo; (ii) modifications to the Virtuozzo Products not made by Virtuozzo; (iii) failure to use updates to the Virtuozzo Products provided by Virtuozzo; or (iv) use of the Virtuozzo Products in violation of any applicable user documentation or specifications (circumstances under the foregoing clauses (i), (ii), (iii) and (iv), are collectively referred to as, "**Customer Indemnity Responsibilities**").

(b) Upon the occurrence of a claim that indemnity is or may be due under this Clause 10.1, or in the event that Virtuozzo believes that such a claim is likely, Virtuozzo may, at its option (i) appropriately modify the applicable Virtuozzo Products so that it becomes non-infringing without a material loss of functionality, or substitute functionally equivalent software or services; (ii) obtain a license to the applicable third-party Intellectual Property to allow for Customer's continued use of the applicable Virtuozzo Products as contemplated by this Agreement; or (iii) if the options in both Clause 10.1(b)(i) and Clause 10.1(b)(ii) are not commercially practicable, terminate the applicable Sales Order on a due notice (as defined in Clause 12.4 herein below) to Customer and refund any amounts paid in advance for services not yet received. The obligations set forth in this Clause 10 shall constitute Virtuozzo's entire liability and Customer's sole remedy for any actual or alleged infringement.

10.2 Indemnification by Customer. Customer shall indemnify, hold harmless, and, at Virtuozzo's option, defend Virtuozzo from and against all costs, expenses (including reasonable attorneys' fees), damages, and liabilities resulting from any claim by any third party arising from or in connection with Customer Indemnity Responsibilities or Customer's breach of this Agreement.

10.3 Indemnification Process. The Party seeking indemnification agrees to give the indemnifying Party (i) prompt a due notice (as defined in Clause 12.4 herein below) of such claim; (ii) authority to control and direct the defense and/or settlement of such claim (directly or indirectly as permitted by the relevant procedural rules); and (iii) such information and assistance as the indemnifying Party may reasonably request, at indemnifying Party's expense, in connection with such defense and/or settlement. Notwithstanding the foregoing, the indemnifying Party shall not settle any third-party claim against the indemnified Party unless such settlement completely and forever releases the indemnified Party with respect thereto or unless the indemnified Party provides its prior written consent to such settlement. Indemnified Party has the right but no obligation to participate in any action controlled by indemnifying Party pursuant to Section 9.3(ii), at Indemnified Party's own expense and by counsel of its choice.

11. TERM AND TERMINATION

11.1 Term. This Agreement shall become effective upon the Effective Date and shall continue for one (1) year from the Effective Date ("**Initial Term**") unless terminated earlier in accordance with this Clause 11. After the Initial Term, it shall renew for successive one (1) year periods ("**Renewal Term**") unless either Party gives a due notice (as defined in Clause 12.4 herein below) 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 Sales Orders executed prior to the end of the Term. The Term of individual Sales Orders shall be as set forth therein.

11.2 Termination for Breach. Either Party may terminate this Agreement or a Sales Order immediately upon a due notice (as defined in Clause 12.4 herein below) if the other Party breaches a material term of this Agreement or the applicable Sales Order and thereafter (i) in the case of a breach resulting from non-payment of amounts due hereunder, has failed

to pay such amounts within three (3) calendar days after receiving a due notice thereof (as defined in Clause 12.4 herein below); or (ii) has failed to cure any other breach (or fails to commence diligent efforts to cure such breach that are reasonably acceptable to the non-breaching Party) within ten (10) calendar days after receiving a due notice (as defined in Clause 12.4 herein below) thereof.

11.3 Termination for Insolvency. Either Party may terminate this Agreement immediately upon a due notice (as defined in Clause 12.4 herein below) 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.

11.4 Accrued Obligations. Termination of this Agreement and/or any particular Sales Order shall not release the Parties from any liability that, at the time of termination, has already accrued or that thereafter may accrue with respect to any act or omission before termination, or from any obligation that is expressly stated in this Agreement and/or any applicable Sales Order to survive termination. Notwithstanding the foregoing, the Party terminating this Agreement or any Sales Order as permitted by any provision in this Clause 11 or in such Sales Order shall incur no additional liability merely by virtue of such termination.

11.5 Effect of Termination. Upon any termination of this Agreement or any Sales Order, Customer shall (i) immediately discontinue all use of the Products licensed under the applicable Sales Order (unless otherwise specified in such terminated Sales Order); (ii) promptly pay to Virtuozzo all amounts due and remaining payable; and (iii) if applicable pursuant to a terminated Sales Order, pay any applicable termination fee.

11.6 Survival. The provisions of Clauses 1, 3.2, 4, 5, 6, 8.2, 9, 10, 11.4, 11.5, 11.6 and 12 shall survive any termination of this Agreement.

12. MISCELLANEOUS

12.1 Applicable Law. This Agreement shall be governed by and construed in accordance with Swiss law without giving effect to conflict of law rules and with the Vienna Convention on the Sale of Goods being expressly excluded. The Parties agree that any and all disputes between the Parties arising out of or in relation to this Agreement shall be resolved amicably between the Parties. Should the Parties fail to resolve the dispute amicably within thirty (30) calendar days upon written request by one Party to the other Party, such dispute shall be exclusively submitted to 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.

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

12.3 Force Majeure. Virtuozzo shall be excused from any delays in performance of its obligations under this Agreement if such a delay results from compliance with any requirement of applicable law, acts of god, fire, strike, embargo, terrorist attack, war, insurrection 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.

12.4 Notices. Any notice to be given pursuant to this Agreement must be sent on email addresses provided by the Parties in the Sales Order in English. If the Party change its email addresses, new email addresses shall be communicated by such Party to another Party by an email notification. Notice will be deemed duly given in writing when delivered to an email provided by the Party in the Sales Order, 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 Sales Order. 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, if another email is not provided in the Sales Order.

12.5 Assignment. Customer shall not assign its rights or delegate its obligations under this Agreement without Virtuozzo's prior written consent; any such consent shall not be unreasonably withheld. This Agreement shall be binding upon and inure to the benefit of Virtuozzo and Customer and their successors and permitted assigns. Virtuozzo may assign this Agreement or any Sales Order without changes of contractual contents in its totality to any subsidiary or Affiliate of either Virtuozzo or PHL Ltd.* with ten (10) calendar days' prior due notice (as defined in Clause 12.4 herein above) to Customer.

12.6 Independent Contractors. 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.

12.7 Amendment. Virtuozzo may modify and/or amend this Agreement and any or all documents incorporated by reference including EULA from time to time. Any such amendment or modification will become effective immediately from when it is uploaded to <https://www.virtuozzo.com/legal/eula/> and Customer continued use of Virtuozzo Products shall constitute acceptance of such amendment and/or modification.

12.8 Waiver. Failure by either Party to enforce the provisions of this Agreement will not represent a waiver of such rights and will not affect the validity of this Agreement nor affect that Party's rights to take subsequent action.

12.9 Severability. If any provision, or portion thereof, of the Agreement is held unenforceable or invalid by a court of competent jurisdiction, the enforceability of the remaining provisions shall not be affected.

12.10 No Third Party Beneficiaries. Except for those third parties that have licensed software or other intellectual property to Virtuozzo and that is included as part of the Virtuozzo Products, no person or entity shall be a third party beneficiary of these GTCs or have any right or cause of action hereunder.

12.11 U.S. Government End-Users. The Virtuozzo Products include commercial technical data and/or computer licensed databases and/or commercial computer software and/or commercial computer software documentation, as such terms are used in 48 C.F.R. 12.212, that were developed exclusively at private expense by Virtuozzo and/or its licensors. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4 all U.S. Government end users acquire the Virtuozzo Products with only those rights set forth herein.

12.12 Non-Solicitation. 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 purposes of this Clause, "Personnel" includes any individual that Virtuozzo employs or has employed as a partner, employee or independent contractor and with which Customer comes into direct contact in the course of the Services. If Customer breaches this Clause, Customer will pay 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.

12.13 Headings. The headings in this Agreement are inserted merely for the purpose of convenience and shall not affect the meaning or interpretation of this Agreement.

12.14 Publicity. Virtuozzo may include Customer's name and corporate logo (if applicable) in any presentation, marketing materials, and/or customer lists (including, without limitation, customer lists posted on Virtuozzo web sites).

12.15 Entire Agreement. This Agreement (including all Sales Orders) sets forth the entire agreement and understanding between the Parties hereto with respect to the subject matter hereof.