



GENERAL TERMS & CONDITIONS

These General Terms & Conditions set out the overarching terms and conditions that are to apply between you (and any Guarantor) and **VirtualX Pty Ltd** (ABN 55 645 032 551), and you agree that by entering into any Schedule or Module, any such Schedule or Module will be subject to these Term and Conditions as follows:

1. Term and Agreement Structure

- 1.1 This Agreement commences on the Commencement Date and continues until expiry of the Term unless terminated or extended in accordance with this Agreement.
- 1.2 We may unilaterally adjust any Commencement Date and any Term within a Schedule or Module on a reasonable basis so as to ensure that the commencement of billing aligns with the activation or commencement of any services or subscription the subject of said Schedule or Module. We will advise you in writing at the time of such adjustment.
- 1.3 In the event of any inconsistency between parts of these General Terms & Conditions and a Schedule or Module, the following order of precedence shall be applied in the event of any inconsistency:
 - (i) the General Terms & Conditions;
 - (ii) the Schedules or Modules
 - (iii) any attachment or addendum to the Schedule or Module.
- 1.4 Unless otherwise stated to the contrary, each Schedule or Module, plus these General Terms & Conditions shall form a separate agreement independent of any other Schedule or Module the parties may execute contemporaneously.
- 1.5 In the event that you wish to acquire additional Equipment, Technology or Services which are not covered under an existing Schedule and/or Module then the parties will negotiate the terms of an additional Schedule and/or Module which shall be added to and be subject to this Agreement automatically upon the execution of said Schedule and/or Module.
- 1.6 You agree that we may appoint any of our Related Bodies Corporate to act on our behalf under this Agreement, without notice to you.

2. Charges

- 2.1. All payments due under this Agreement shall be invoiced and payable monthly in accordance with the terms of the relevant Schedule or Module before the invoice due date.
- 2.2. Where payment is due in respect of Purchased Equipment or a one-off licence or service fee in respect of the provision of Technology or any Services then such payment shall be payable in accordance with the terms of the relevant invoice as issued.
- 2.3. You agree and acknowledge that where you have purchased any telecommunications services, not all calls may be included as part of your chosen tariff. Additional costs applicable will be set out as additional calling charges described in the relevant Schedule and you agree and acknowledge that we reserve the right to invoice you for such additional calling charges.
- 2.4. You agree and acknowledge that in the event that your usage drops below the Total Minimum Charge as specified in any Schedule then you shall be charged the Total Minimum Charge and that there will be no roll-over, credit or set-off in respect of any unused portion.
- 2.5. In the event that additional users or subscribers are added to any Technology Subscription or service offering then we may automatically adjust the Total Minimum Charge without notice to you and wherein the Total Minimum Charge will continue at the increased rate until such time as you advise us in writing that said additional users or subscribers are no longer required but wherein the Total Minimum Charge shall never fall below the amount at the time of signing. You shall be responsible for providing us with updated and accurate user numbers where this is the basis upon which any Monthly Charge or other fees are calculated.
- 2.6. You shall be liable for all reasonable freight and transports costs incurred by us in respect of the delivery of any Equipment & Technology irrespective of whether any freight amount was included within any quote or Schedule.
- 2.7. You must not withhold, deduct from or claim set-off against any payment due under this Agreement for any reason. Where there is any dispute in relation to a payment due under this Agreement, clause 24 (Dispute Resolution) shall apply.
- 2.8. We reserve the right to reasonably vary our charges where our expenses in connection with this Agreement increase including (without limitation) parts, labour, accessories and business expenses, CPI and foreign exchange increases in accordance with any price increase provisions with a Schedule or Module. These variations shall be notified to you thirty (30) days prior to them taking effect and shall only apply to the extent and in proportion to our actual cost increases.
- 2.9. Subject to any particular provision within any Schedule or Module to the contrary, you must pay each invoice in full no later than thirty (30) days from invoice date.
- 2.10. You must pay interest to us on unpaid amounts due under this Agreement at a rate of 12% per annum (or, if lower, the maximum rate allowed by law) which shall be calculated daily and capitalised on a quarterly basis.

3. Services & Customer Care

- 3.1. Subject to clause 3.5, your use and access to Technology and/or Equipment is provided subject to the terms specified in any Schedule or Module and as otherwise specified pursuant to this Agreement including (but not limited to) timely payment.
- 3.2. Any Services provided by us in accordance with this Agreement shall be during the service hours as noted in any Schedule and/or Module and wherein additional fees or charges may be applied for any Services requested outside of specified service hours at the rates as noted within any Schedule.
- 3.3. We shall perform the Services in a proper, professional and workmanlike manner and exercise with the degree of care, skill and diligence which would reasonably and ordinarily be expected from a skilled and experienced operator engaged in Australia in the same type of undertaking under the same or similar circumstances.
- 3.4. Where in our reasonable opinion we deem it necessary to do so, we may elect to replace Equipment and/or Technology with equipment and/or technology of substantially the same type at any time and at our sole discretion provided that you will not suffer any loss of functionality as a result of such replacement.
- 3.5. If at any time you are in default of any of your obligations under this Agreement or any other agreement between you and us, then without prejudice to any of our other rights under this Agreement (including but not limited to our rights under clause 18 (Termination) or otherwise, we may at our option:
 - (a) cease performing the Services until the all defaults are remedied by you; or
 - (b) perform Services as we may in our sole but reasonable discretion deem necessary to remedy a default by you.
- 3.6. We may appoint agents or subcontractors to fulfil any of our obligations under this Agreement and reserve the right to determine which of our personnel will be responsible for the provision of any Services and may re-assign or replace said personnel or subcontractors at any time and without notice to you.
- 3.7. You agree and acknowledge that Services exclude Out of Scope Services and that the performance of Out of Scope Services is subject prior written agreement between us and payment of relevant charges.

4. Purchased Equipment:

- 4.1. The terms of clause 5 (Obligations regarding Equipment), clause 7 (Security Interest), clause 8 (Insurance), clause 9 (Loss, Damage & Theft), clause 15 (Essential Terms), clause 16 (Default) and clause 18 (Termination), do not apply to Purchased Equipment once title in the Purchased Equipment passes to you in accordance with clause 4.2.
- 4.2. Title in the Purchased Equipment shall not pass from us to you until we have received payment in full for the Purchased Equipment. All risk in the Purchased Equipment passes to you upon delivery to the delivery address agreed to.
- 4.3. We reserve the right to terminate this Agreement at any time without notice until such time as we have received payment in full for the Purchased Equipment.

5. Obligations regarding Equipment

- 5.1. You must ensure that you have all necessary rights to use the Equipment including any relevant licences or subscriptions (if applicable).
- 5.2. You agree that the Equipment is our property and you have no right to purchase or acquire any interest in it. Moreover, you agree to:
 - (a) Where Equipment is not a portable device, not relocate or move (including within the original property it is installed) such Equipment without our prior written consent (not to be unreasonable withheld);

- (b) reimburse us for expenses incurred by us for relocating or moving non-portable Equipment where consented to and conducted by us (or our appointed agents);
 - (c) ensure the Equipment is used solely in accordance with the manufacturer's instructions and recommendations and for the purpose for which the Equipment was designed;
 - (d) operate the Equipment only in a proper and skilful manner using properly trained and competent personnel;
 - (e) upon our request, produce the Equipment for inspection by a person authorised by us;
 - (f) keep the Equipment under your personal control or supervision at all times;
 - (g) notify us immediately if any Equipment is lost or damaged;
 - (h) if any Equipment is damaged (but not beyond economic repair), pay all costs to restore the Equipment to its original condition and ensure that replacement parts become our property free from any Security Interest (other than those in our favour). Any third party used to repair the Equipment must be subject to our prior written approval;
 - (i) not sell, hire, dispose, sublet, or part with possession of, or create or permit to subsist any Security Interest (other than in our favour), in the Equipment or any interest in the Equipment, or permit any person to do any of the above without our prior written consent;
 - (j) not permit another person, other than us or our servants, agents or authorised representatives, the right to access the Equipment to provide the Service or maintenance;
 - (k) not alter the Equipment; and
 - (l) not use the Equipment for any purpose which is unlawful or which may compromise the safety, condition or our interests in the Equipment.
- 5.3. You warrant that the Equipment will be wholly used for business purposes and in respect of your normal business operations disclosed to us.
- 5.4. You agree to allow us or our servants, agents and representative to enter any place where any Equipment is located (on reasonable notice and at reasonable times) to (i) service or modify any equipment as reasonably required by us (ii) inspect the condition of, and/or (iii) conduct audits in connection with the Equipment and its usage, to ensure compliance with and/or the exercise of our rights under this Agreement.
- 5.5. You warrant that you have satisfied yourself regarding your legal position in respect of this Agreement (including but not limited to taxation) independently and agree that we shall not be liable for any statements made by us or a third party in respect of the foregoing.
- 5.6. To the extent that such an indemnity is not prohibited by statute, you must indemnify us and keep us indemnified against any liability we may incur under any law relating to taxation as a result of any warranties you provide not being correct at any time or for any loss, reduction or disallowance of any depreciation or of any deduction or rebate of any income tax or other tax upon which we have relied in calculating the charges payable under this Agreement. This indemnity will survive the expiry or termination of this Agreement.
- 5.7. You agree that any Equipment Additions will become our property and will be considered part of the Equipment for the purposes of this Agreement. You must ensure that all Equipment Additions are free of any Security Interests (other than in our favour) prior to them being attached to the Equipment.
- 5.8. You must not permit any Equipment:
- (a) to become a fixture or an accession to; or
 - (b) to be manufactured, processed, assembled or commingled with, anything that we do not own or is not subject to a perfected PPS Security Interest in our favour or, and even then only if the priority of that PPS Security Interest is no less favourable than the priority of our PPS Security Interest in the Equipment. If the normal use of the Equipment may require them to become a fixture or an accession then you may request our consent which will not be unreasonably withheld, subject to any conditions reasonably necessary to protect our interest as a secured party under the Security Interest.
- 5.9. You agree to affix Signage, or provide us access to enable us to affix Signage, to the Equipment, at any time upon our request. You must not remove, change, or allow any person to remove or change Signage without our prior written consent.
- 5.10. If you dispose of or otherwise deal with the Equipment or an interest in the Equipment in breach of this clause 5, (other than with our written consent), you acknowledge that our interest (including any Security Interest) continues in the Equipment, despite the disposal or dealing.
- 6. Trustee obligations**
- 6.1. If you enter into this Agreement as trustee of a trust (whether or not disclosed to us):
- (c) you are liable under this Agreement both in your own capacity and as trustee of the trust;
 - (d) you warrant that you have power to enter into this Agreement and perform all of your obligations under it;
 - (e) you must remain as trustee of the trust throughout the currency of this Agreement; and
 - (f) you warrant that you have, and you undertake to retain, a right of indemnity against the trust in relation to all of your obligations under this Agreement.
- 7. Security Interest**
- 7.1. You must:
- (a) do or cause to be done anything which we consider necessary or desirable to perfect and protect any Security Interest; and
 - (b) provide us with all information necessary to ensure that any Security Interest is, and remains, fully effective and with the priority that we require;
 - (c) do everything necessary to protect our title to and our Security Interest, including (without limitation) advising third parties of our ownership of Security Interest. You must refrain from any act or omission the result of which could compromise or give rise to any claim adverse to our ownership of and Security Interest. You must notify us immediately upon obtaining knowledge of any such compromise or claim.
- 7.2. You warrant that your business and personal name as provided in this Agreement has not changed in the five (5) year period prior to the date of this Agreement (or, where your company has been incorporated for less than five (5) years, since incorporation), and you agree to notify us in writing thirty (30) Business Days' prior to any such change.
- 7.3. You agree to notify us immediately in writing of any transfer of or interest in the Equipment, and to provide us with all information we require in relation to the transferee to enable us to perfect our PPS Security Interest as against the transferee.
- 7.4. If you sub-lease or transfer the Equipment to a third party and that third party grants you a Security Interest in the Equipment, you must immediately provide us with all original documents relating to that transfer, sub-lease and/or Security Interest.
- 7.5. If you dispose of the Equipment in a way that gives rise to an account (as defined in the PPSA), you must grant us a PPS Security Interest in that account.
- 7.6. You acknowledge and agree that the failure to comply with clauses 7.3, 7.4 and/or 7.5 comprise material breaches of this Agreement and any subsequent compliance with your obligations described in those clauses, does not cure any breach of your obligations under this Agreement.
- 8. Insurance**
- 8.1. Unless otherwise agreed to by us in writing, you must insure and keep the Equipment insured to the full value of the Equipment, against all usual risks including (without limitation) loss, fire, flood, theft and damage ("Insurance Events"). You must obtain such insurance from a reputable insurer noting us as first loss payee. You must ensure that your insurance provider agrees that any reparative or replacement services in respect of the Equipment, which we in our reasonable determination deem necessary as a result of an Insurance Event, shall be conducted by and reimbursed to us.
- 8.2. You agree to (i) provide to us all insurance policies in respect of the Equipment upon our request, and (ii) not do or permit anything which may prejudice any such insurance.
- 8.3. You indemnify us against any shortfall or lack of insurance coverage in respect of the value of the full repair or replacement of the Equipment by us (in accordance with clause 8.1) in the event of an Insurance Event.
- 9. Loss, Damage & Theft**
- 9.1. You have the option to terminate this Agreement entirely where we agree (at our reasonable discretion) that the Equipment is damaged beyond economic repair, lost or stolen (regardless of whether this is following an Insurance Event).
- 9.2. Should you choose to terminate in accordance with clause 9.1 you must, on the next date for payment of the Monthly Charge, pay to us:
- (a) the full value of the Equipment at the time of such termination, such value to be determined by us in our reasonable opinion;
 - (b) any charges or other amounts due or outstanding on that date under this Agreement; and
 - (c) any shortfall between the value at (a) above and the balance of the Total Minimum Charge payable under this Agreement until the end of the Term.

- 9.3. Should you not wish to terminate this Agreement in accordance with this clause 9, you agree that we will arrange for the repair or replacement of the Equipment (as necessary) and you agree to pay our costs/fees of such repair or replacement in full should your insurance policy not fully cover such costs.

10. Conduct

- 10.1. You agree to use the Equipment and Technology in compliance with all applicable local, state, federal, and international law and in compliance with all regulations, policies and procedures of networks connected to the Technology and you agree to not use the Technology for illegal purposes.
- 10.2. You shall not use the Equipment and Technology to (i) make any are unlawful, harassing, libellous, abusive, threatening, harmful, vulgar, obscene or include otherwise objectionable communications, (ii) encourage criminal conduct, conduct that could give rise to civil liability, or otherwise violate any applicable local, state, national or international law or regulation, (iii) gain or attempt to gain unauthorised access to other computer systems, or (iv) interfere with any other person's use and enjoyment of the Equipment and Technology.
- 10.3. You shall not employ any of our staff during the period of this Agreement or for a period of six (6) months thereafter without written approval from us. This clause shall not apply wither such staff respond to genuine public advertisements to employment with you.
- 10.4. You indemnify us for any loss, liability, damage, cost, expense or claim suffered by us as a result of any breach by you of clauses 10.1 or 10.2.

11. Technology

- 11.1. We will arrange for the delivery and installation of the Technology at the installation address provided by you and agreed to by us (remotely or physically, as appropriate).
- 11.2. You shall provide us (or our authorised representatives) such reasonable assistance and access as we require to ensure satisfactory installation of the Technology.
- 11.3. Before delivery of the Technology, you will ensure that all space and technical requirements (including but not limited to electrical, minimum hardware, operating system or carrier requirements) necessary to install and accommodate the Technology have been complied with, and you agree that such compliance will be at your own expense.
- 11.4. We reserve the right to levy Additional Technology Fees. Unless otherwise agreed to by us, any such Additional Technology Fees shall be payable by the due date of your first invoice.
- 11.5. You acknowledge that there is no transfer of title or ownership to you of the Technology or any derivations of it.
- 11.6. You shall be solely responsible for the use, supervision, management and control of the Technology and ensure that the Technology is protected at all times from misuse, damage, destruction or any form of unauthorised use.
- 11.7. You must immediately notify us of any malfunction with respect to any Technology;
- 11.8. We reserve the right to cease the provision of any Technology, or replace the Technology with that of an alternative third-party provider's similar technology, at any time upon thirty (30) days' notice to you. You have the right not to accept the provision of the replacement technology. Where you do not accept provision of the replacement technology, or we cease provision of the Technology, the terms of this Agreement in respect of any other Technology and/or Equipment shall continue to apply.

12. Compliance with Third Party Terms

- 12.1. Technology may be subject Third Party Terms. By using the Technology, you agree that you have read, agreed to and shall comply with such Third Party Terms. You agree that you will not use any Technology in a manner that would infringe or violate any Third Party Terms or third party rights and to the extent to which our liability or responsibility cannot be excluded by law, that we are not in any way responsible for any such use by you. You agree to indemnify us in respect of any claims arising out of your breach of the foregoing.
- 12.2. Without limiting any other remedies available to us under this Agreement or otherwise, or any rights of Technology Licensors against you, any use of the Technology which breaches the Third Party Terms or the intellectual property of the Technology Licensor will entitle us to any available remedy against you.

13. Out of Scope Services

- 13.1. You agree that Services provided under this Agreement exclude the following unless otherwise specifically included within any Schedule or Module:
- (a) any technical scoping, consulting and/or preparatory work necessary to advise you in respect of a suitable Equipment, Technology or Service solution and to install such solution, such services to be notified to you prior to execution of this Agreement;
 - (b) data backup, recovery, intrusion prevention, provision of services necessary to overcome third party/ransomware attack unless otherwise agreed in writing;
 - (c) failures in the Equipment, Technology or your network system, including but not limited to a reduction in the quality of service, which may be due to alterations to the network, operating environment and/or carrier initiated by you or a third party, such as changes to the data files, network and/or computing platforms;
 - (d) failures in the Equipment or Technology due to faults in the computer and/or operating system on which the Technology resides or your Equipment is connected;
 - (e) failures in the Equipment or Technology or your network systems, devices or data resulting from electro-magnetic interference, power surges and software viruses or third-party actions;
 - (f) problems arising from your use of the Equipment or Technology or your own network system or infrastructure, other than in accordance with any relevant operating manuals or documentation, misuse, neglect, damage or modification of the Equipment or Technology;
 - (g) legacy versions of the Technology which are no longer supported by the Technology Licensor or any Technology in respect of which you are not a licensee or subscriber;
 - (h) unless otherwise agreed to in writing, any training, including the set up and operation of the Equipment or Technology;
 - (i) any repair or maintenance required in respect of devices or technology not supplied under this Agreement which may be necessary in order for us to continue to fulfil our obligations under this Agreement;
 - (j) on-site service calls in respect of Technology or Equipment, which will be charged over and above the payments due as specified in the relevant Schedule;
 - (k) any Services necessary outside Service Hours as specified in any Schedule or Module specifying the Services.
- and wherein these shall be considered **Out of Scope Services**.
- 13.2. Unless otherwise agreed by us in writing, you agree that any Out of Scope Services required in respect of the Equipment and/or Technology shall be conducted by us or by our appointed agents and shall be charged to you in accordance with our standard Out of Scope Services rates, which may be set out in this Agreement or may otherwise be agreed between you and us from time to time.
- 13.3. You must notify us at least sixty (60) days prior to initiating any change in carrier or third party network provider.
- 13.4. We may appoint any of our Related Bodies Corporate, agents, related entities or subcontractors to fulfil any of our obligations under this Agreement including (without limitation) our rights under this clause 13.

14. Our Equipment

- 14.1. In order to fulfil our obligations pursuant to this Agreement, we may from time to time, leave at the installation site tools, test equipment, remote diagnostic equipment, spare parts and various other items and pieces of equipment. You acknowledge that these will remain our property and that you have no right, title or interest to such property.
- 14.2. You agree to exercise all due care and take all necessary precautions to ensure that the property under this section is not damaged in any way and you agree that you shall be responsible for and shall immediately make good at its cost, any damage to property under this section, howsoever caused due to your negligence.

15. Essential Terms

- 15.1. You agree and acknowledge that time is of the essence with respect to your obligations pursuant to this Agreement.
- 15.2. The following terms are deemed Essential Terms to this Agreement:
- (a) you must make all payments due to us under this Agreement within 2 Business Days of the due date unless otherwise stated pursuant to a Schedule or Module;
 - (b) you must comply with all Third Party Terms;

- (c) you must comply with all laws and regulations applicable to this Agreement;
- (d) you must maintain adequate insurance in respect of the Equipment during the Term;
- (e) if you are a trustee you must fully comply with clauses 4 and 5;
- (f) your Guarantor(s) under this Agreement must not become Insolvent;
- (g) any representation or warranty made by you in connection with this Agreement must be correct, not misleading and must remain so during the Term;
- (h) you must comply with any obligation, condition or requirement specified in any Schedule and/or Module.

16. Default

- 16.1. Any breach of any term of this Agreement (including but not limited to clause 15) or any Schedule or Module is an event of default under this Agreement and you will be taken to have repudiated this Agreement.

17. Exclusion of Warranty and Liability

- 17.1. We exclude all implied warranties other than those which cannot be excluded by law or those which have otherwise been expressly provided by us pursuant to this Agreement.
- 17.2. You acknowledge and agree that:
- (a) before signing this Agreement, you have satisfied yourself as to the suitability and specifications of the Equipment, Technology and/or Services and its fitness for your purposes and on delivery will satisfy yourself of its condition and agree that you have not relied on any representation or warranty provided by us or a third party relating to the same;
 - (b) you have relied solely upon your own judgment in all matters relating to the selection of the Equipment, Technology and/or Services and the entering into this Agreement; and
 - (c) your obligations under this Agreement, including (without limitation) the obligation to pay charges, will continue despite any defect in, malfunction or breakdown of the Equipment or Technology or any other matter concerning the Equipment, Technology and/or Services
- 17.3. Except to the extent that such liability cannot be excluded by law, we are not liable for any damage, injury or loss to any person or property arising from the possession, operation or use of the Equipment or Technology or performance of the Services including (without limitation) loss of profits, loss of data, or special, punitive, incidental or consequential damage that you or any third party may suffer, provided that such loss is not due to our negligence or breach of this Agreement.
- 17.4. To the full extent permitted by law, we limit our liability for anything in relation to the Equipment, Technology and/or Services and their use (however arising whether in tort, negligence, contract or otherwise), including damage or economic loss, at our option, to:
- (a) the replacement or cost of replacement of the relevant Equipment or Technology with the same or equivalent Equipment or Technology; or
 - (b) the repair or cost of repair of the relevant Equipment or Technology;
- 17.5. To the full extent permitted by law, we limit our liability for anything in relation to the provision of the Services and Out of Scope Services (howsoever arising whether in tort, negligence, contract or otherwise), include damage or economic loss, at our option, to the resupply or cost of resupply of the relevant Services or Out of Scope Services.

18. Termination

- 18.1. If there is a breach of any term of this Agreement (including but not limited to any Essential Term) we may terminate or suspend this Agreement or any relevant Schedule and/or Module to which the breach applies. We reserve the right to terminate this Agreement entirely where your breach of an Essential Term or a default under this clause is in respect of only part (not all) of the Equipment, Technology or Services provided under this Agreement with respect to any Schedule and/or Module.
- 18.2. You may terminate this Agreement for convenience at any time upon ninety (90) days written notice.
- 18.3. If either party's right to terminate under clause 18.1 or 18.2 is exercised, upon termination you must immediately, in respect of the Equipment, Technology and/or Services the provision of which is terminated:
- (a) at our option, deliver up the Equipment in good working order and condition to such place as we may reasonably direct in writing, remove or delete any Technology which is installed onsite (and provide written confirmation of such), or provide us with access and reasonable assistance at our request for us to remove the Equipment and Technology;
 - (b) if you do not provide us with the access or assistance requested under (a) above, you agree that we may enter any premises where we believe the Equipment and Technology may be located. In such event you release and indemnify us from any liability or damage incurred in retaking or attempting to retake possession of the Equipment and Technology.
 - (c) pay us all amounts (including without limitation all charges) payable but unpaid under this Agreement or as otherwise specified pursuant to any Schedule and/or Module; and
 - (d) pay the Termination Value to us in liquidated damages.
- 18.4. You agree that the Termination Value is specifically calculated as a genuine pre-estimate of our loss and damage caused by your breach or early termination of this Agreement;
- 18.5. Neither termination nor payments made under this clause affect any other rights we have under this Agreement or at law or in equity.

19. Holding Over

- 19.1. If you do not return the Equipment and/or remove the Technology upon the expiration of the Term, the Term will be extended on the same terms on a Month to Month basis. In such case you must continue to pay charges as if the Term had not come to an end.
- 19.2. Any such extension will continue until the Equipment and Technology is returned to us (which you may only do so at the end of a Month).
- 19.3. Payment of additional charges by you under clauses 19.1 and 19.2 will not affect our ownership of or our PPS Security Interest in the Equipment or any of our rights under this Agreement.

20. Costs, Duties, Charges

- 20.1. You must immediately on demand by us pay or reimburse us for:
- (a) all taxes (excluding income tax), stamp duties and other duties, any payment, receipt or other transaction arising under or in connection with this Agreement;
 - (b) any expenses which we may reasonably incur in retaking or attempting to retake possession of the Equipment;
 - (c) any moneys we deem reasonable to make good any breach of this Agreement by you;
 - (d) any reasonable costs or expenses (including legal costs and other expenses on a full indemnity basis) reasonably incurred by us in connection with the protection of the Equipment or the enforcement of our rights under this Agreement; and
 - (e) any fees or charges reasonably incurred by us as a result of action taken by us under or in relation to the PPSA, including any registration, or any response to an amendment demand or a request under section 275 of the PPSA, or any search of the PPS Register, excluding any costs, charges and liabilities caused by our fraud, negligence or wilful misconduct.
- 20.2. Where we are obliged to pay GST under this Agreement, the payments due will be increased to cover the amount of that GST (only to the extent that GST has not already been expressly included). Further, if we are not entitled to an input tax credit for an acquisition made by us under or in relation to this Agreement, then we may increase the amounts payable by you under this Agreement on account of such amount. If we incur expenses for which you must indemnify or reimburse us, we will not pass on to you any GST included in those expenses to the extent that we are entitled to an input tax credit for that GST.

21. Indemnities and Release

- 21.1. You indemnify us against and must immediately pay us on demand in respect of any amount payable under the following:
- (a) any loss of or damage to the Equipment, however arising including (without limitation) lawful confiscation;
 - (b) liability for any death, injury or damage to any person or property arising directly or indirectly from the Equipment and/or Technology, or their use;
 - (c) any Security Interest not having its required priority, failing to attach to the Equipment, not being perfected, being void, illegal, invalid, unenforceable or of limited force and effect; and
 - (d) any loss or liability incurred by us arising from your default or early termination of this Agreement, or possession, use or operation of the Equipment where such loss or liability is not caused by our gross negligence, wilful misconduct or breach of the Agreement.

- 21.2. Each indemnity in clause 21.1 is a separate and independent obligation and continues after termination of this Agreement.
- 21.3. To the extent permitted by law, you unconditionally release us from any loss, damage, claim or liability incurred in relation to the condition, quality and fitness of the Equipment, and the use of the Equipment, unless caused by our gross negligence or breach of the Agreement.
- 22. Severance**
- 22.1. If any provision of this Agreement is or becomes illegal, invalid or unenforceable, it shall be severed and the remaining provisions shall continue unaffected.
- 23. Governing Law**
- 23.1. This Agreement is governed by the laws of New South Wales and you agree to submit to the jurisdiction of the court system of New South Wales.
- 24. Dispute Resolution**
- 24.1. In the event of a dispute with respect to any aspect of this Agreement, the parties will discuss in good-faith to reach an amicable resolution, and to escalate such resolution process to the appropriate members of their respective management organisation who have the power and authority to achieve a successful resolution. Before either party commences an action against the other party, it shall give written notice to the other party of its intention to file such action, and the senior management of the parties then shall meet in good faith to resolve the dispute by an alternative dispute resolution method such as mediation. Nothing in this Agreement will prevent a party from seeking interlocutory relief through courts of appropriate jurisdiction.
- 24.2. We may, in our absolute discretion, elect to suspend invoicing in whole or in part during a period of any dispute and in such an event it is agreed and acknowledged that any such suspension shall not be taken as any admission or liability or responsibility on our part and wherein we may elect to resume invoicing at any time in our absolute discretion irrespective of your position or view with respect to any dispute.
- 24.3. In the event that you dispute any item within an invoice then you must do so within ten (10) days of the date of receipt of said invoice and whereupon the process as set out in clause 24.1 shall apply and you must pay all amounts not in dispute.
- 25. Waiver**
- 25.1. No waiver by us of any default, breach or repudiation by you will affect any of our other rights under this Agreement.
- 25.2. No variation to this Agreement is legally binding unless made via a separate amendment or Schedule D: Variation Agreement, agreed to between the parties.
- 26. Assignment and dealing with rights**
- 26.1. We may sell, novate, assign, grant a security interest or declare a trust over, in whole or in part, any of our rights under this Agreement or in the Equipment.
- 26.2. You may not sell, novate or assign either absolutely or by way of security your rights under this Agreement or in the Equipment.
- 27. Notices**
- 27.1. You must notify us in writing if you change any of your details in the Cover Page.
- 27.2. Notices from us to you are deemed validly served where delivered to you, posted to the last address we have on record, or sent to you via email.
- 28. Blanks and Corrections**
- 28.1. You irrevocably authorise us to complete or correct any incomplete or incorrect sections or descriptions within the Agreement, including (without limitation) the serial or registration numbers and/or other identifying details of the Equipment or Services but wherein such completions or corrections shall not materially affect the terms and conditions of this Agreement.
- 29. Guarantee and Indemnity**
- 29.1. In consideration of us entering into this Agreement, all Guarantors unconditionally and irrevocably guarantee to us (i) the due and punctual payment of all monies and damages payable by you under this Agreement and any Schedule and/or Module, and (ii) the due and punctual observance and performance of all your obligations under this Agreement.
- 29.2. Each Guarantor also unconditionally and irrevocably indemnifies us against all damages, liabilities, losses and expenses which we may suffer or incur by reason of:
- (a) any liability being unenforceable against you in whole or in part for any reason;
- (b) any amount not being recoverable from you for any reason; or (c) any payment made to us being void or voidable.
- 29.3. The Guarantor must pay any amount claimed under this clause 29 on demand. Interest will accrue daily on any such amount unpaid at the rate referred to in clause 2.10.
- 29.4. All obligations of the Guarantor under this Agreement are principal and continuing obligations and will not be affected by any act, matter or circumstance of any nature relating to, including but not limited to: (i) this Agreement, (ii) your legal status, (iii) any security interest, or (iv) any act, omission or waiver.
- 29.5. The Guarantor is not entitled to be subrogated to or be entitled to the benefit of a dividend or payment which we may receive in relation to you.
- 29.6. In the event of your liquidation, the Guarantor will only lodge a proof of debt or claim with our consent, and only to enable us to receive the benefit of that debt or claim.
- 29.7. The Guarantor warrants to having:
- (a) received a commercial benefit under this Agreement; and
- (b) obtained or had the opportunity to obtain legal advice in relation to the effect of this guarantee and indemnity.
- 29.8. Multiple Guarantors are jointly and severally liable.
- 29.9. The Guarantor must not exercise any right of set-off or counterclaim which reduces or extinguishes your or the Guarantor's obligations under this guarantee and indemnity.
- 29.10. If any transaction or payment relating to the monies payable under this guarantee and indemnity is unenforceable or refundable:
- (a) we will be entitled against the Guarantor to all rights under this guarantee and indemnity we would have had if the transaction had not occurred or if the payment had not been received by us; and
- (b) the Guarantor must do all things and sign all documents necessary or convenient to restore to us our rights under this guarantee and indemnity immediately before that transaction or payment.
- 29.11. The Guarantor must pay to us on demand our costs and expenses relating to the enforcement of, and the preservation of our rights under, this guarantee and indemnity including (without limitation) legal costs and other expenses on a full indemnity basis.
- 30. Information**
- 30.1. During the term of this Agreement you must provide to us from time to time upon request copies of your financial statements and such other information in relation to you or your business or any Guarantor, related body corporate, related person or associate as we may reasonably request.
- 31. Personal Information**
- 31.1. By entering into this Agreement, you agree to the collection and processing of your personal data. You also agree to the sharing of your personal data between our Related Bodies Corporate and third parties (including credit providers and third-party service providers) solely where necessary pursuant to this Agreement. You also agree to your personal information being transferred and stored overseas.
- 32. Capacity**
- 32.1. You and each Guarantor acknowledge that we may enter into this Agreement as principal or agent.
- 32.2. You acknowledge that any failure by us to perform the Services will not in any way affect your obligations to us including without limitation in relation to the possession and use of the Equipment and/or Technology and the payment of any amounts payable by you under this Agreement.
- 33. Authority to Register & Waiver of right to receive notice**
- 33.1. You acknowledge that we may register one or more financing statements in relation to any PPS Security Interest granted by you in our favour created under this Agreement. If permitted by the PPSA, you waive your right under section 157 of the PPSA to receive notice of any verification statement.
- 34. PPSA confidentiality [all section references are to the PPSA]**
- 34.1. You and we agree with each other not to disclose information of the kind mentioned in section 275(1), except in the circumstances required by sections 275(7)(b) to (e). You agree that you will only authorise the disclosure of information under section 275(7)(c) or request information under section 275(7)(d) if we approve. Nothing in this clause will prevent any disclosure by us that we believe is necessary to comply with our other obligations under the PPSA, or to any assignee or

transferee or potential assignee or transferee of our rights and their respective financiers or potential financiers under this Agreement, or as required by any stock exchange or by law.

- 34.2. To the extent that it is not inconsistent with clause 34 constituting a "**confidentiality agreement**" for the purposes of section 275(6)(a), you agree that we may disclose information of the kind mentioned in section 275(1) to the extent that we are not doing so in response to a request made by an "**interested person**" (as defined in section 275(9)) pursuant to section 275(1).

35. Contracting Out of the PPSA [all section references are to the PPSA]

- 35.1. To the extent that Chapter 4 of the PPSA would otherwise apply to any enforcement by us of any PPS Security Interest in our favour created under this Agreement, we and you agree with each other that the following sections do not apply:
- (a) to the extent that section 115(1) allows them to be excluded: sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4), 135, 138B(4), 142 and 143; and
 - (b) in addition, to the extent that section 115(7) allows them to be excluded: sections 127, 129(2) and (3), 132, 134(2), 135, 136(3), 136(4), 136(5) and 137.
- 35.2. If section 115(1) does not allow section 125 to be excluded, you agree that at any time after any PPS Security Interest in our favour created under this Agreement has become enforceable, we may delay disposing of, or taking action to retain, the whole or part of the collateral to the extent permitted by law.

36. Acknowledgment of no subordination

- 36.1. You acknowledge that we have not agreed to subordinate any PPS Security Interest in our favour created under this Agreement in favour of any third party.

37. Confidentiality and Intellectual Property

- 37.1 No right, title or interest in any deliverable or service outcome arising as a result of the provision any Services by us shall pass to you until such time as the corresponding payment is made by you in full.
- 37.2 You shall keep the terms of this Agreement confidential and shall not disclose its terms to any third party without our prior written consent; 37.3 Both parties shall keep the Confidential Information of the other party confidential and shall not disclose it to any third party other than as permitted by this Agreement;

38. Definitions and Interpretation

- 38.1. In this Agreement, unless the context otherwise requires:

- (a) **you or Customer** means the customer described in the Cover Page and any of its officers, employees, agents and/or sub-contractors; and
- (b) **we or us** means VirtualX Pty Ltd and/or any of our Related Bodies Corporate acting as agent on our behalf;
- (c) the singular includes the plural and vice versa;
- (d) "**person**" includes a firm, body corporate or any other body, entity or association;
- (e) a reference to a party includes that party's successors, legal personal representatives and permitted assigns;
- (f) a reference to any legislation or to any section or provision includes any statutory modification, re-enactment or substitution and all ordinances, bylaws, regulations and other statutory instruments; and

- 38.2. the following terms have the meaning given to them in the PPSA: "**amendment demand**", "**collateral**", "**financing change statement**", "**financing statement**", "**perfected**", "**registration**", "**serial number**" and "**verification statement**"

- 38.3. Furthermore, unless the context otherwise requires, the following defined terms used in this Agreement have the following meanings prescribed to them:

- (a) **Additional Technology Fees** means reasonable fees to cover the cost of installing the Technology and any training required in respect of usage of the Technology by you;
- (b) **Agreement** means these Terms & Conditions as amended by any Schedule or Module;
- (c) **Business Day** means a day on which we are open for business in your State or Territory;
- (d) **Commencement Date** is the date from which charges under this Agreement will begin to apply, to be agreed between you and us in writing or as otherwise specified within any Schedule or Module;
- (e) **Confidential Information** of a party means all information (regardless of the form of disclosure or the medium used to store it) treated by a disclosing party as confidential and of which the recipient first becomes aware either:
 - (a) through disclosure by the disclosing party to the recipient; or
 - (b) otherwise through the recipient's involvement with the disclosing party, and, in the case of the you, includes all Data.
- (f) "**Data**" means:
 - (a) data, information and other materials provided to, or obtained or generated by us relating to the you or any of your operations, administration, facilities, suppliers, customers, personnel, strategic or marketing plans, assets and programs (including Personal Information as defined in the *Privacy Act 1988* (Cth)) (**Raw Data**); and
 - (b) data, information and other materials in any format whatever generated, stored, processed, retrieved, printed or produced by or on behalf of us utilising the Raw Data.
- (g) **Equipment** means all tangible equipment and devices provided to you under this Agreement and as specified in any Schedule;
- (h) **Equipment Additions** means any alteration, addition or replacement of accessories, tools or other goods supplied with, installed in, or attached to the Equipment;
- (i) **Essential Term** has the meaning in clause 15.1;
- (j) **Good Working Order** means being of such condition and operating to such standard as we determine to be satisfactory in light of the age and level of usage of the Equipment and any published manufacturer guidelines;
- (k) **GST** means goods and services tax levied under A New Tax System (Goods and Services Tax) Act 1999 (Cth) and related legislation;
- (l) **Guarantor** means the person(s) named as guarantor(s) on the Cover Page;
- (m) **Insolvent** means unable to pay debts when they fall due; in receivership and/or management; in liquidation; in provisional liquidation; under official management or administration; wound up; subject to any arrangement, assignment or composition with creditors or protected from any creditors under any legislation; or if you are a corporation, an application or order is made, or a resolution is passed, for your winding up or the appointment of an administrator; or if you are an individual, you commit an act of bankruptcy, become bankrupt, die or are sentenced to imprisonment; you fail to comply with a demand under any applicable legislation and as a result are taken to be insolvent or must in any proceedings be presumed to be so; if you make a composition, arrangement or compromise with, or an assignment for the benefit of, your creditors or any class of them; if any distress or execution is threatened or levied against the Equipment or the Equipment is lawfully seized or impounded; if you cease or threaten to cease to carry on your business; if any insurance proposal made by you in relation to the Equipment is declined or any insurance policy in relation to the Equipment is cancelled; an event of default occurs under any leasing, hiring or financing arrangement to which you are a party or you repudiate any such arrangement; or if an event or series of events (whether related or not) occurs, including (without limitation) any change in your financial condition which has, or is likely to have, a material adverse effect upon either the enforceability of this Agreement or your ability to comply with your obligations under it;
- (n) **Month** means each period of one (1) calendar month commencing on the Commencement Date;
- (o) **Monthly Charge** means the charge payable each Month in respect of the leasing of Equipment, Technology licences or subscriptions and any other Services provided pursuant to this Agreement
- (p) **PPSA** means the Personal Property Securities Act 2009 (Cth);
- (q) **PPS Register** means the Personal Property Securities Register established under Part 5.2 of the PPSA;
- (r) **PPS Security Interest** means a security interest under the PPSA;
- (s) **Purchased Equipment** means any Equipment which is purchased by you via a one-off payment as set out in a Schedule;
- (t) **Related Bodies Corporate** has the meaning prescribed to it in the Corporations Act 2001 (Cth);
- (u) **Security Interest** means any security interest created under this Agreement, including but not limited to:
 - (i) a PPS Security Interest;
 - (ii) any other mortgage, pledge, lien or charge; and
 - (iii) any other interest or arrangement of any kind that in substance secures the payment of money or the performance of an obligation under this Agreement, or that gives us priority over unsecured creditors in relation to any property;
- (v) **Service Hours** means between 8.30am and 5pm on a Business Day.

- (w) **Services** means the services described in any Schedule to this Agreement;
- (x) **Signage** means identifying plates or marks which are informative of (i) our ownership of the Equipment, or (ii) our PPS Security Interest in the Equipment;
- (y) **Technology** means any software and services (including cloud services), data services and/or professional services, (excluding any Equipment), which is provided to you under this Agreement as specified in any Schedule, which may or may not form an incorporated part of Equipment or may be sold as a standalone offering;
- (z) **Technology Subscription** means the licence or subscription for the Technology that the customer is provided in accordance with this Agreement;
- (aa) **Term** means the maximum duration, in months, of this Agreement, as set out in a Schedule or Module.
- (bb) **Termination Value** means any and all of the following:
 - (i) all payments (in respect of Equipment, Technology, Services and Out of Scope Services) which are due and owing under this Agreement up to the date of termination including interest at the interest rate stipulated in clause 2.10 of this Agreement; and
 - (ii) in respect of Equipment (excluding Purchased Equipment), the Total Minimum Charge plus the Equipment collection fee less the Monthly Charge already paid by you as at termination as determined by us; and
 - (iii) in respect of Technology, the Total Minimum Charge less the Monthly Charge paid by you as at the termination date as determined by us;
 - (iv) in respect of Services, the Total Minimum Charge less the Monthly Charge paid by you as at the termination date as determined by us and
 - (v) any and all costs and expenses that we have incurred in relation to early termination of Agreement, including debt recovery costs, legal costs, repossession costs, repairing, storing and selling costs;
 - (vi) de-installation fee for any onsite Technology of \$500 (excl. GST);
 - (vii) Equipment collection fee of \$750 (excl. GST) per item of Equipment
 - (viii) all GST or other taxes relating to the payments provided for herein
- (cc) **Third Party Terms** means any third party terms and conditions which are applicable to any of the Equipment or Services as included and provided to you in Schedule E: Third Party Terms attached to this Agreement;
- (dd) **Total Minimum Charge** is the minimum amount payable by you and calculated as the (i) current Monthly Charge multiplied by the total number of Months in the Term

[End of Document]