

VIRTUAL FACILITY, INC.

TERMS AND CONDITIONS

Last Updated: October 1, 2022

SECTION A - GENERAL PROVISIONS

- 1) **DEFINITIONS.** Capitalized terms not otherwise defined herein that are used in this Agreement or in any applicable appendix, schedule or exhibit attached hereto shall have the meanings ascribed to them in the Glossary set forth in Section B hereof.
- 2) **PLATFORM AND SERVICES.**
 - a) **General.** Virtual Facility will provide Customer with access to and use of the Platform and Services as provided in one or more Order Form(s) executed by the parties. Each Order Form, together with these Terms and Conditions, make up the “Agreement” between the parties which will be effective as of the effective date set forth on the applicable Order Form. Customer may request additional products or services of Virtual Facility from time to time, and the parties shall include those products or services under this Agreement upon mutual execution of additional Order Form(s).
 - b) **Support Services.** Virtual Facility shall provide Customer with Support Services if set forth in an Order Form.
 - c) **Implementation Services.** Virtual Facility shall provide Customer with certain Implementation Services if set forth in an Order Form. Except as otherwise outlined in an applicable Order Form: (i) all Implementation Services will be on a time and materials basis at Virtual Facility’s then-current rates, and (ii) Customer will reimburse Virtual Facility for reasonable travel and out-of-pocket expenses incurred when rendering on-site Implementation Services.
 - d) **Suspension.** Without limiting any other remedies available to Virtual Facility at law or in equity, Virtual Facility reserves the right to immediately suspend Customer’s and/or any or all of its Authorized Users’ right to access and use of the Platform, without notice, if any of the following events occur: (i) failure of Customer to pay all Fees in full when due, if not cured within fifteen (15) days; (ii) any breach of the terms of the Agreement (ii) if required by any Regulatory Authority; or (iii) if Virtual Facility determines, in its reasonable discretion, that use or access by Customer or an Authorized User to the Platform poses an unusual security risk to Virtual Facility or any Virtual Facility customers or jeopardizes the confidentiality, security, or integrity of the Virtual Facility System.
 - e) **Data Retention and Delivery of Data.** Customer Data received by Virtual Facility in connection with Customer’s use of the Platform shall be stored and retained by Virtual Facility during the Term specified in

the applicable Order Form, after which it will be deleted per Virtual Facility’s Data Management Policy.

3) **ACCESS RIGHTS AND LICENSE GRANT.**

- a) **Access Right.** In consideration for the payment of Fees, Virtual Facility hereby grants to Customer, during the Term set forth in the applicable Order Form, a limited, nonexclusive, non transferable, revocable permission to allow Authorized User(s) to access and use the Platform, solely for Customer’s own internal business purposes in accordance with the terms and conditions of the Agreement. Notwithstanding the foregoing, Virtual Facility has the right to disable the access of any Authorized User for unauthorized use or access, as reasonably determined by Virtual Facility.
- b) **Restrictions.** Customer and its Authorized Users shall not: (i) copy, re-sell, reproduce, distribute, republish, download, post, frame or transmit in any form or by any means or allow third parties to use or access the Platform or Software; (ii) modify, reverse engineer, disassemble or decompile the Platform or Software or any part thereof; (iii) transmit any data that contains software viruses, time bombs, worms, Trojan horses, spyware, disabling devices, malicious code, or other harmful or deleterious computer code, files or programs; (iv) interfere with or disrupt the Connectivity, or the servers or networks connected to the Virtual Facility System or providing the Platform, or violate the regulations, policies or procedures of such networks; or (v) remove or change the copyright, trade secret or other proprietary protection legends or notices that appear on or in the Platform or Software or Documentation. Customer will not access or use, and it will not permit any Authorized Users to access or use, the Platform, Software, Documentation, or any other Virtual Facility systems or proprietary materials disclosed to Customer, including, without limitation any Confidential Information of Virtual Facility, for the purpose of creating in whole, or in part, a system that is functionally competitive with the Platform. Customer shall limit its Authorized Users to those (i) employed directly by the Customer and (ii) contractors engaged by Customer, provided that such contractors will be subject to the terms of this Agreement. Customer shall remain responsible in all cases for all use or misuse of the Platform and Services by all of Customer’s Authorized Users, and anyone else accessing the Platform and Services through any Authorized User account.

4) **RESPONSIBILITIES OF CUSTOMER.**

- a) **Customer Resources.** The Platform is designed for use in accordance with the operating environment specifications and requirements provided on the

applicable Order Form. Customer is responsible for implementing Customer's and its users' access to the Platform and the Service Web Site(s) in accordance with the specifications and requirements provided in the applicable Order Form, including, without limitation, all Customer Software. Customer is responsible for the physical and technical security and safeguards for Customer Resources and Customer Software. Customer shall be responsible for maintaining sufficient "backup" information and data and a copy of all Customer Data in order to reconstruct any information or data lost due to any malfunction of Customer's systems, the Platform, the Connectivity or any other reason. The Platform relies on the Customer Data being accurate and complete, and neither Virtual Facility nor the Platform verifies accuracy of information or format of any Customer Data. Customer is solely responsible for ensuring that all Customer Data is accurate and complete.

- (1) **Customer Data; Approvals and Consents.** Customer grants to Virtual Facility a non-exclusive, royalty-free right and license to access and use all Customer Data as necessary or appropriate for Virtual Facility to provide the Platform or Services and as otherwise permitted under this Agreement, including, without limitation, releasing such Customer Data to third parties with whom Virtual Facility has sufficient data security and confidentiality agreement(s) in place, in connection with Virtual Facility's performance of the delivery of the Platform or Services, where "to provide the Platform or Services" means to provide the Services to the Customer specifically, and does not mean to provide Services generally to other Virtual Facility customers.
- b) **Reporting; Messaging.** The Platform may include a reporting function that allows Authorized Users to view, transmit and/or receive data, including Customer Data. In connection with viewing and transmission of such data, the Platform may permit Authorized Users to send and receive data to and from third party integrations. Virtual Facility does not regulate or track the viewing, transmittal or receipt of any such data and shall not be liable or responsible for the viewing or use of that data by a third party or any transmission of that data outside of the Virtual Facility System. By using that functionality, Customer (i) warrants and represents that it has the right and authority to transmit that data to each such third party, (ii) assumes sole responsibility and all risk associated with transmitting that data to each such third party, and (iii) agrees that Virtual Facility shall have not responsibility or liability with respect to the transmission of that data to any such third party.
- c) **Authorized Users' Compliance.** Customer is responsible for compliance with the terms of the Agreement by each of its Authorized Users and is solely responsible for all acts or omissions of all Authorized Users.

- d) **Security of Passwords/Access.** Customer is solely responsible for keeping all Platform passwords, user IDs, and other user authentication methods assigned to it and its Authorized Users secret and confidential, as well as for any obligation or liability which may result from unauthorized use of such passwords and user IDs. Customer shall notify Virtual Facility immediately of any unauthorized use of any password or user ID or any other breach of security that is suspected by Customer, including any violation of Virtual Facility's or Customer's data security policies. Customer further acknowledges and agrees that Virtual Facility has no obligation to detect or prevent, and will have no liability for failing to detect or prevent, any unauthorized access to or use of the Platform using any password or user ID assigned to Customer. Password-based user authentication shall be available to Customer by default. Customer's use of alternative user authentication methods, e.g. Single Sign-On ("SSO"), may incur additional charges.

5) **FEES AND PAYMENT.**

- a) **Fees.** Customer agrees to pay Virtual Facility the Fees as detailed in the Order Form. All Fees are non-refundable.
- b) **Payment Terms.** All Fees shall be due and payable as set forth herein and in the Order Form and payable in U.S. dollars, within thirty (30) days from the date of the invoice. If Customer fails to pay any Fees in full when due and payable, then, in addition to all other rights and remedies at law or otherwise, Virtual Facility shall have the right to charge Customer, and Customer shall have the obligation to pay, late payment charges equal to one percent (1.0%) per month on the unpaid amount for the period starting with the date payment was due and ending on the date when the full payment is received by Virtual Facility. In addition, Virtual Facility will be entitled to recover from Customer all reasonable costs incurred to obtain full payment, including reasonable attorneys' fees.
- c) **Changes.** The Fees and Scope set forth in each Order Form will remain fixed for the initial term set forth in the Order Form. Thereafter, Virtual Facility shall have the ability to increase Fees on an annual basis at a rate agreed to by both parties.
- d) **Taxes.** The Fees do not include sales, use, excise, property, value added, gross receipts, or any other taxes or import or export duties. In the event foreign, federal, state or local taxes or duties are assessed on the Platform or Services, Customer is obligated to pay those taxes and duties. If Customer is a tax-exempt entity, Customer will provide Virtual Facility with appropriate proof of tax exemption.

6) **OWNERSHIP AND RESERVATION OF RIGHTS.**

- a) **Rights of Virtual Facility.** Virtual Facility retains all right, title and interest, including, without limitation, all Intellectual Property Rights, in and to the Platform, Services, Software, Virtual Facility System, Documentation, Virtual Facility Confidential Information and all Updates, as well as all modifications and improvements thereto and derivative works thereof. All rights not expressly granted herein are reserved by Virtual Facility.
- b) **Customer Data.** As between Customer and Virtual Facility, Customer shall own the Customer Data. Virtual Facility does not obtain any rights in the Customer Data, except as expressly set forth herein. Customer acknowledges and agrees that Virtual Facility may use, retain, distribute and disclose derivative data based on Customer Data or Service Reports that has been compiled and/or aggregated with other data ("Aggregated Data"), for research and development purposes, so long as such Aggregated Data does not identify Customer as the source of such data or include protected information concerning Customer's customers, Authorized Users, or other persons.
- c) **Exclusions.** The confidentiality obligations herein do not apply to any data or information which (i) is already known to the Receiving Party prior to disclosure by the Disclosing Party, (ii) has become generally known to the public through no act of the Receiving Party; (ii) has been rightfully received by the Receiving Party from a third party without restriction on disclosure and without, to the knowledge of the Receiving Party, a breach of an obligation of confidentiality running directly or indirectly to the Disclosing Party; or (iii) is independently developed by the Receiving Party without use, directly or indirectly, of the Confidential Information received from the Disclosing Party. The Receiving Party shall have the right to disclose information which is required to be disclosed pursuant to court order or by law or regulation; provided, however, that in the event disclosure is required by law, regulation or court order, the Receiving Party will: (a) notify the Disclosing Party of the obligation to make such disclosure promptly and sufficiently in advance of the time required to disclose to allow the Disclosing Party the opportunity to seek a protective order, (b) cooperate with the Disclosing Party in seeking the protective order, and (c) make disclosure only to the extent required to comply with the law, regulation or court order.

7) CONFIDENTIALITY.

- a) **Confidential Information.** "Confidential Information" means confidential and proprietary business or technical information of a party (the "Disclosing Party") that is received by the other party (the "Receiving Party"), regardless of the form or media, and that is reasonably identified as confidential or proprietary at the time of disclosure or which under the circumstances surrounding disclosure ought to be reasonably considered as confidential or proprietary, including, without limitation, technical information, drawings, engineering data, performance specifications, cost and price information, and other information, data and reports, and the terms and conditions of this Agreement.
- b) **Non-Disclosure Obligations.** The Receiving Party shall protect the Disclosing Party's Confidential Information from unauthorized disclosure, publication, or dissemination with the same standard of care and discretion it employs with similar information of its own, but in no event less than reasonable care, and shall not use, reproduce, distribute, disclose, or otherwise disseminate the Disclosing Party's Confidential Information, except in connection with the performance of its obligations or exercise of its rights under this Agreement. The obligations of non-disclosure provided hereunder shall continue during the Term of the Agreement and (i) with respect to Confidential Information that does not constitute a trade secret, for a period of three (3) years thereafter, and (ii) with respect to Confidential Information that rises to the level of a trade secret under applicable law, for such period of time thereafter as the information shall retain its status as a trade secret under applicable law.

8) REPRESENTATIONS AND WARRANTIES.

- a) **Mutual.** Each party represents and warrants to the other party that: (i) it is duly organized, validly existing and in good standing as a corporation or other entity under the laws of the jurisdiction of its incorporation or other organization; (ii) it has the full right, power and authority to enter into this Agreement; (iii) the execution of this Agreement by its representative whose signature is set forth at the end of this Agreement has been duly authorized by all necessary corporate or organizational action of such party; (iv) when executed and delivered by both parties, this Agreement will constitute the legal, valid and binding obligation of such party, enforceable against such party in accordance with its terms.
- b) **By Virtual Facility.** Virtual Facility represents and warrants that the Platform will operate substantially in accordance with the Documentation; and all Services will be performed in a professional and workmanlike manner. If Virtual Facility fails to perform any Services as warranted and Customer reports such failure within ten (10) days after the completion of such Services, then Virtual Facility will, at its expense, re-perform such Services. The foregoing is Customer's sole and exclusive remedy and Virtual Facility's sole liability for breach of the foregoing warranty.
- c) **By Customer.** Customer represents and warrants that: (i) Customer is responsible for the operation,

maintenance and security of its own computer systems, and to ensure that they operate in a manner which allows Virtual Facility to provide the Platform and Services; and Virtual Facility shall have no liability whatsoever for any failure or nonperformance of such systems; (ii) Customer is in and shall maintain compliance with industry data security best-practices applicable to Customer Data and other information provided to Virtual Facility under this Agreement; (iii) Customer agrees to comply with the terms and conditions of the U.S. Commerce Department's Export Administration Regulations and shall not export, re-export, directly or indirectly, any Software, Documentation, or Confidential Information of Virtual Facility, or component thereof, in violation of any applicable United States laws or regulations; (iv) Customer shall not permit any Authorized Users to access or use the Platform from outside the United States; and (v) Customer has the right to provide all Customer Data without violation of any third party rights or any applicable law, rule or regulation.

9) **DISCLAIMER.** EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 8, VIRTUAL FACILITY DOES NOT MAKE ANY REPRESENTATIONS OR WARRANTIES RELATING TO OR CONCERNING THE PLATFORM, SOFTWARE, SERVICES, VIRTUAL FACILITY SYSTEM, CONNECTIVITY, DOCUMENTATION, THIRD PARTY SOFTWARE, OR OTHERWISE RELATING TO THIS AGREEMENT, AND VIRTUAL FACILITY HEREBY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, ACCURACY, TITLE, SECURITY, NONINFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE, OR ANY IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, USAGE OR TRADE. WITHOUT LIMITING THE FOREGOING, VIRTUAL FACILITY MAKES NO WARRANTY OR REPRESENTATION THAT THE SERVICES, PLATFORM, VIRTUAL FACILITY SYSTEM, SOFTWARE OR CONNECTIVITY WILL BE CONTINUOUS, UNINTERRUPTED, OR ERROR-FREE. CUSTOMER FURTHER ACKNOWLEDGES THAT THE INTERNET IS NOT A SECURE MEDIUM AND IS SUBJECT TO INTERRUPTION AND DISRUPTION. TRANSMISSION OF INFORMATION AND DATA VIA THE INTERNET IS OUT OF VIRTUAL FACILITY'S CONTROL. VIRTUAL FACILITY IS NOT RESPONSIBLE FOR ANY INTERCEPTION OR CORRUPTION OF INFORMATION OR DATA DURING ANY TRANSMISSION OVER THE INTERNET OR ANY RELATED TELECOMMUNICATIONS NETWORK OR AT ANY

CUSTOMER NETWORK ACCESS POINT OR ANY PART OF CUSTOMER'S SYSTEMS.

10) **LIMITATION OF LIABILITY.**

IN NO EVENT WILL VIRTUAL FACILITY BE LIABLE TO CUSTOMER OR ANY AUTHORIZED USER OR ANY THIRD PARTY FOR ANY INDIRECT, PUNITIVE, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES OR LOST PROFITS, LOST REVENUE OR GOODWILL ARISING OUT OF OR RELATING TO THE PLATFORM, THE SERVICES, THE VIRTUAL FACILITY SYSTEM, THE CONNECTIVITY, THE DOCUMENTATION OR THE SOFTWARE (INCLUDING ANY THIRD PARTY SOFTWARE), OR USE THEREOF BY CUSTOMER, OR ANY AUTHORIZED USER, OR OTHERWISE ARISING UNDER THIS AGREEMENT, UNDER ANY THEORY OF LAW OR EQUITY (WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR BY STATUTE OR OTHERWISE) EVEN IF VIRTUAL FACILITY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

IN NO EVENT SHALL VIRTUAL FACILITY'S AGGREGATE LIABILITY FOR ANY DAMAGES (DIRECT OR OTHERWISE) OR PENALTIES OR LOSS, ARISING OUT OF OR RELATING TO THE PLATFORM, THE SERVICES, THE VIRTUAL FACILITY SYSTEM, THE CONNECTIVITY, THE DOCUMENTATION OR THE SOFTWARE (INCLUDING ANY THIRD PARTY SOFTWARE), OR USE THEREOF BY CUSTOMER, OR ANY AUTHORIZED USER, OR OTHERWISE ARISING UNDER THIS AGREEMENT, UNDER ANY THEORY OF LAW OR EQUITY (WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR BY STATUTE OR OTHERWISE) EXCEED THE FEES PAID TO VIRTUAL FACILITY BY CUSTOMER UNDER THE ORDER FORM GIVING RISE TO SUCH CLAIM DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE CLAIM, ANY CLAIM FOR SUCH DAMAGES OR PENALTIES BEING HEREBY WAIVED BY CUSTOMER.

EACH OF THE PARTIES AGREES THAT THE LIMITATIONS OF LIABILITY SET OUT IN THIS AGREEMENT ARE FAIR AND REASONABLE IN THE COMMERCIAL CIRCUMSTANCES OF THE AGREEMENT AND THAT IT WOULD NOT HAVE ENTERED INTO THE AGREEMENT BUT FOR THE OTHER PARTY'S AGREEMENT TO

THESE LIMITATIONS OF LIABILITY IN THE MANNER, AND TO THE EXTENT, PROVIDED UNDER THE AGREEMENT. THIS SECTION SHALL APPLY EVEN IN THE EVENT OF A BREACH OF A CONDITION OR ESSENTIAL TERM OF THIS AGREEMENT AND IF OTHER REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE. ANY CLAIM BY CUSTOMER MUST BE INITIATED WITHIN TWO (2) YEARS AFTER THE CAUSE OF ACTION GIVING RISE TO THAT CLAIM ARISES.

11) **FORCE MAJEURE.** Except for payment of Fees due by Customer, no party shall be responsible for, or be considered to be in breach hereunder, nor shall any party be responsible for failure or delay in receiving such Platform or Services, if caused by an act of God or public enemy, war, government acts or regulations, fire, flood, embargo, quarantine, epidemic, labor stoppages, unusually severe weather, malicious acts of third parties (including, without limitation, the introduction of computer viruses), interruption of telecommunications service, or other cause beyond its reasonable control. If a force majeure event interrupts Virtual Facility's provision of the Platform and any Services, Customer shall continue to pay Virtual Facility's fees and Virtual Facility shall make all reasonable efforts to restore such Platform or Services. If the force majeure event continues for a period of more than sixty (60) days, then Customer may, upon notice to Virtual Facility, as its sole and exclusive remedy, abate payment to Virtual Facility to the extent Services are not performed, and terminate this Agreement.

12) **TERM AND TERMINATION.**

a) **Term.** Agreement will be effective from the Effective Date set forth in the applicable Order Form and will continue in full force and effect until expiration of the Term set forth in the applicable Order Form, unless terminated earlier pursuant to the termination provisions herein. The initial term of each Order Form shall be set forth therein. Upon expiration of the initial term of each Order Form, the Order Form will automatically renew for consecutive one (1) year terms, unless either party provides the other party with written notice of its intention to not renew within thirty (30) days of the then-current term.

b) **Termination.** Either party may terminate an Agreement upon written notice to the other party, in the event that the other party breaches its obligations under the Agreement and fails to cure such breach within thirty (30) days of the non-breaching party's notice. In addition, Virtual Facility shall have the right to terminate an Agreement at any time, for any or no reason, upon at least thirty (30) days prior written notice to Customer.

c) **Effect of Termination.** In the event of termination or expiration of an Agreement:

(i) All permissions and licenses granted to Customer under the Agreement and all Services will immediately cease, and Virtual Facility shall have the right to disable Connectivity and all access to the Platform, any Service Website(s) and the Virtual Facility System, including all user IDs and passwords;

(ii) Upon Customer's request, and subject to additional Fees and a timeline agreed to by the parties, all Customer Data in Virtual Facility's possession (except data contained in Virtual Facility's backup files or required to be maintained under applicable law) shall be forwarded to Customer, in the then-current format maintained by Virtual Facility;

(iii) All Confidential Information or other property of Virtual Facility in Customer's possession or under Customer's control, in whatever form, shall be provided to Virtual Facility, or upon request of Virtual Facility, destroyed, and an authorized representative of Customer shall provide certification of such return and/or destruction; and

(iv) Customer shall immediately pay Virtual Facility for all Fees due up to the effective date of termination or expiration.

13) **NOTICES.**

Any written notice to the other party under the Agreement will be deemed received upon the earlier of: (i) actual receipt, or (ii) five (5) business days after being deposited in the United States mail, or (iii) one (1) business day after being deposited with a nationally recognized overnight carrier. Such notices will be addressed to the Customer's last address shown on the records of Virtual Facility, or to Virtual Facility at 295 Madison Ave., 12th Floor, New York, New York 10017, or such other address as Virtual Facility may provide to Customer in writing.

14) **PUBLICITY.**

Virtual Facility shall have the right to use the Customer's name, trademarks, or trade names, in oral or written communication to third parties, including any sales or marketing publication or advertisement, describing Customer as a customer of Virtual Facility.

15) GOVERNING LAW.

This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York without reference to principles of conflicts of law. Jurisdiction and venue for any cause of action arising under the Agreement (other than collection actions by Virtual Facility) shall be exclusively in federal courts of New York, and the parties submit to personal jurisdiction of, and waive any personal jurisdiction or inconvenient forum objection to, such court. EACH PARTY EXPRESSLY WAIVES ALL RIGHTS TO A JURY TRIAL IN CONNECTION WITH ANY DISPUTE.

16) ASSIGNMENT; INUREMENT.

Neither party shall transfer, assign or otherwise convey this Agreement or its rights or obligations hereunder to any other person or entity without the prior written consent of the non-assigning party, which consent shall not be unreasonably withheld or delayed, and any such purported assignment without the non-assigning party's consent shall be void. Notwithstanding the foregoing, Virtual Facility may assign this Agreement upon notice to Customer to any parent, subsidiary or affiliate of Virtual Facility or to a successor pursuant to a merger, corporate reorganization, or sale of stock or all or substantially all of the assets of Virtual Facility. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns.

17) SEVERABILITY AND WAIVER.

If any provision of the Agreement is found to be illegal or otherwise unenforceable, the invalid or unenforceable provision shall be deemed to be curtailed or revised to the extent necessary to make such provision valid and enforceable and all other provisions of the Agreement shall remain enforceable and unaffected thereby. None of the failure, the delay by any party to exercise, or the partial exercise of any right under the Agreement will operate as a waiver or estoppel of such right, nor shall such amend the Agreement. All waivers requested by a party must be signed by the waiving party to be effective.

18) GENERAL INDEMNIFICATION.

a) **By Customer.** Customer agrees to indemnify, defend and hold harmless Virtual Facility, its parents, subsidiaries, and affiliates, and their officers, directors, employees, agents, successors and assigns (collectively, "Virtual Facility Indemnified Parties") from and against all liability to third parties and reimburse the Virtual Facility Indemnified Parties for all costs and expenses (including, without limitation, all settlements, judgments, fines, damages, reasonable legal fees, court

costs, expert fees, etc.) by reason of any claim, demand, penalty or judicial or administrative proceeding or investigation to the extent arising from or in connection with: (i) breach by Customer or any of its Authorized Users of representations, warranties, covenants or other obligations under an Agreement; (ii) violation of applicable federal, state, local or municipal laws, rules, regulations, ordinances, or orders in connection with use of the Platform or the provision of Customer Data to Virtual Facility hereunder; (iii) any access to the Platform, Virtual Facility System or Software in a manner that is unauthorized or otherwise inconsistent with the rights and responsibilities granted in the Agreement, and (iv) any claim arising from or relating to Customer Data.

b) **By Virtual Facility.** Virtual Facility agrees to indemnify, defend and hold harmless Customer, its parents, subsidiaries, and affiliates, and their officers, directors, employees, agents, successors and assigns (collectively, "Customer Indemnified Parties") from and against all liability to third parties and reimburse the Customer Indemnified Parties for all costs and expenses (including, without limitation, all settlements, judgments, fines, damages, reasonable legal fees, court costs, expert fees, etc.) by reason of any claim, demand, penalty or judicial or administrative proceeding or investigation to the extent arising from or in connection with (i) the death or bodily injury or damage or destruction of any real or tangible property caused by the gross negligence or willful misconduct of Virtual Facility in providing the Platform or performing the Services; or (ii) a claim by a third party that the Platform infringes, violates or misappropriates any U.S. patent, trademark copyright or trade secret. The foregoing shall be Customer's sole remedy and Virtual Facility's sole liability with respect to any claims for intellectual property infringement.

c) **Procedure.** In the event of a claim subject to indemnification under this Agreement, the applicable indemnified party shall: (i) provide the other party prompt notice of any such claim or threatened claim made against it (provided that the indemnifying party's obligations shall not be affected by any delay or failure in providing such notice unless and only to the extent that the indemnifying party reasonably demonstrates that the defense or settlement of the claim was prejudiced thereby); (ii) give the indemnifying party the right to exercise exclusive control over the preparation and defense of any such claim, suit or proceeding, including appeals, negotiations and any settlement or compromise thereof; and (iii) provide such assistance in connection with the defense and settlement of the claim as the indemnifying party may reasonably request, at the indemnifying party's expense. The indemnifying party will not enter into any settlement that imposes any liability or obligation on the indemnified party, or

contains any admission or acknowledgement of wrongdoing (whether in tort or otherwise), without the indemnified party's prior written consent. The indemnified party may join in the defense, with its own counsel, at its own expense.

- d) **Exceptions.** The indemnifying party, however, is not required to indemnify the indemnified party for damages to the extent caused by or resulting from the acts or omissions of the indemnified party.

19) RELATIONSHIP OF PARTIES.

Both parties agree that they are independent entities. Nothing herein shall be construed to create a partnership, joint venture, or agency relationship between the parties.

20) THIRD PARTY CONTRACTORS.

Customer acknowledges and understands that Virtual Facility may use the services of third party service providers in connection with the performance of Services, without Customer's consent.

21) SURVIVAL.

All of the obligations of each party hereto incurred prior to any termination of an Agreement or that by their nature should survive termination or expiration of an Agreement in order to achieve its purposes, including, without limitation, Sections 1, 6, 7, 8(d), 9, 10, 11(d), 12, 14-16, and 21-23 shall survive the expiration or termination of this Agreement.

22) MODIFICATIONS; COUNTERPARTS.

An Agreement may only be modified by an agreement in writing, executed by both parties. Each Order Form may be signed in one or more counterparts, each of which shall constitute an original and all of which, taken together, shall constitute one and the same agreement. Delivery of the various documents comprising the Agreement may be by facsimile or electronic transmission, and such a signed copy shall constitute a signed original.

SECTION B - GLOSSARY

“Authorized Users” means any of the Customer’s employees or contractors whom Customer expressly authorizes to access the Platform and use the Services on the Customer’s behalf in accordance with the terms and conditions of the Agreement.

“Connectivity” means Virtual Facility-controlled, non-public telecommunications connectivity and network services used to provide the Platform.

“Customer Software” means any and all software residing in the Customer operating environment required or used for connectivity to, access and use of the Platform.

“Customer Data” means all information or items proprietary to Customer (other than Aggregated Data) of which Virtual Facility obtains knowledge as a result of the Platform.

“Customer Resources” means all equipment, communications devices, databases, services and other resources (including third party services) that Customer maintains and operates in Customer’s place(s) of business and which enable Customer to access the Platform.

“Documentation” means Virtual Facility standard written services description for the Platform, that is delivered to Customer under an Agreement, including user manuals and best practices guides, as may be amended by Virtual Facility from time to time, but shall not include marketing materials, proposals, demonstrations and other promotional information.

“Virtual Facility System” means the information technology infrastructure, computer equipment, operating system(s), databases, network utilities and Software used by Virtual Facility to provide the Platform.

“Fees” means the Fees set forth in an Order Form.

“Implementation Services” means implementation, training, customization, consulting, or other services provided by Virtual Facility to Customer as described in an Order Form.

“Intellectual Property Rights” means, collectively, worldwide patents, trade secrets, copyrights, trademarks, service marks, trade names, and all other intellectual property rights and proprietary rights, including all rights or causes of action for infringement or misappropriation of any of the foregoing.

“Scope” means the buildings, integrations, and interfaces connected to, and providing data to, the Virtual Facility systems. Scope may also include custom additions as discussed between the parties. Examples of integrations and interfaces include but are not limited to building automation and asset management systems, whether connected by application programming interfaces (APIs) or other means. Examples of custom additions include but are not limited to custom Customer dashboards, or enhanced Authorized User login protocols e.g. Single Sign-On.

“Order Form” means one or more order form(s) mutually executed by the parties, which detail Customer’s access to the Platform, any Services provided by Virtual Facility, and all applicable Fees.

“Platform” the SaaS service, provided by Virtual Facility, using the Virtual Facility System (e.g. Alarm Triage™).

“Regulatory Authority” means any national, regional, state or local regulatory agency, department, bureau, commission, council or other governmental entity responsible for overseeing the operation or implementation of the Platform and Services.

“Service Reports” means the performance reports generated by the Platform for Customer based on the processing of the Customer Data.

“Service Web Site” means the Internet web site(s) operated by Virtual Facility and located at the URL designated by Virtual Facility for Customer to access the Platform (as that URL may be updated from time to time) via web browser or mobile application.

“Services” means the Support Services and Implementation Services.

“Software” means the Virtual Facility software and Third Party Software, applications, application programming interfaces (APIs) and other software and technology, involved in providing the Platform, and all Updates.

“Support Services” means the support services provided by Virtual Facility to Customer as described in an Order Form.

“Third Party Software” means any software products owned or licensed by a third party.

“Updates” means all revisions, patches, fixes, new releases, and other improvements to the Software.