

## RESALE AGREEMENT

This resale agreement ("**Agreement**") is entered into on May 27<sup>th</sup>, 2024 (the "**Effective Date**") by and between PACT CLOUD LTD, Vancouver, Canada company with a principal place of business located at 550 Burrard Street, Suite 2300 Bentall , Vancouver, British Columbia V6C 2B5, Canada (the "**Reseller**") and VZ Hybrid Compute (UK) Limited, a United Kingdom company with a principal place of business located at Riverbank House, 2 Swan Lane, London, EC4R 3TT ("**Virtuozzo**"). This Agreement refers to each of Reseller and Virtuozzo individually as a "**Party**" and jointly refers to them as the "**Parties**."

**WHEREAS**, it is the intention of the Parties to establish this Agreement to govern their respective rights, duties and obligations; and

**THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which both Parties hereby acknowledge, Virtuozzo and Reseller agree as follows:

### 1. DEFINITIONS

**1.1. "Deal"** – for purposes of this Agreement the Deal means one total order amount from one End User, in a single invoice for a single project, billed and invoiced by Virtuozzo to Reseller.

**1.2. "Certificate for technical support"** shall mean a document confirming the right of the End User for a technical support service under the terms specified in such Certificate and at Virtuozzo's website: <https://www.virtuozzo.com/support/all-products/scope-of-support.html>.

**1.3. "Virtuozzo Partner Program"** means the guide for Resellers, which includes Virtuozzo partner portal ("partner portal"), which will be published by Virtuozzo at <https://virtuozzo.allbound.com/> (as may be updated from time to time upon thirty (30) calendar days' notice) setting forth sales and marketing targets and procedures applicable to Reseller and Sub-Resellers.

**1.4. "Electronic Software Download"** means the method by which Virtuozzo may deliver the Software electronically.

**1.5. "End User" / "Customer"** means an ultimate end user of a Product who (i) is a customer of Reseller or a customer of a Sub-Reseller, (ii) is neither Reseller nor Sub-Reseller itself, and (iii) has no authorized access to the KA System.

**1.6. "End-User License Agreement"** means a standard end-user license agreement specified by Virtuozzo that is to be accepted by End-Users as a condition to installing or using Software. First use of the Software by the End User shall mean its consent with these rules and terms. The effective version of the End-User License Agreement with End Users can be found at <https://www.virtuozzo.com/legal/eula/> and may be amended, supplemented or modified by Virtuozzo from time to time, which will be notified to all parties concerned by the means of publishing of the new version at the mentioned above web site.

**1.7. "KA System"** means Virtuozzo Key Administrator System, which allows Reseller to generate License Keys according to the terms and conditions of this Agreement.

**1.8. "License Key"** means confidential information representing a unique sequence of symbols and providing Reseller and the End User with an opportunity to activate and use the Software.

**1.9. "Rebate Program"** – Rebate program in the Territory is as detailed in the Exhibit B hereto.

**1.10. "Product(s)"** means the Software, Services and Certificates for technical support, listed in **Exhibit A** hereto. Products will not include OEM versions, beta versions or any other customized or individual software solution. Virtuozzo may from time to time, amend, add, supplement, change or discontinue any Software, support services included in the Products by giving Reseller thirty (30) calendar days written notice to Reseller of such action. All Upgrades and Updates will automatically become Products unless Virtuozzo provides written notice otherwise prior to the launch of the Upgrade or Update. Any withdrawal of a Product will not be deemed a material change in the total scope of the Products.

**1.11. "Sub-Reseller"** means a sub-reseller appointed by Reseller who purchases Products for resale.

**1.12. "Software"** means licensed software, in object code form only, and accompanying documentation, made commercially available by Virtuozzo to its customers, including any Updates and Upgrades.

**1.13. "Open-Source Software"** means any software licensed under any form of open-source licensed under any form of open-source licence meeting the Open Source Initiative's Open Source definition from time to time.

**1.14. "Term"** has the meaning given in Section 3.1

**1.15. "Territory"** means Canada, subject to the following limitations and exceptions:

- Products are not authorized for resale and use by any Reseller and any Customer in any country embargoed by any sanctions authority according to Section 13 below or to any Reseller or any Customer to whom export is restricted or prohibited by any sanctions authority according to Section 13 below;
- Virtuozzo may apply any restrictions to the Territory where Products might be sold and used, which are corresponding to the applicable sanction legislation.

**1.16. "Update(s)"** means improved versions of Software, or portions thereof, which incorporate corrections or minor enhancements for which Virtuozzo does not normally charge a fee. Virtuozzo designation of a particular release as an Update will be dispositive.

**1.17. “Upgrade(s)”** means commercial releases of Software which enhance and/or improve the functionality of Software and for which Virtuozzo normally charges a fee. An Upgrade does not include a future software program that is not a direct successor to Software. Virtuozzo designation of a particular release as an Upgrade will be dispositive.

**1.18. “Virtuozzo Marketing Materials”** means the marketing information and other advertising materials that Virtuozzo may make available to Reseller from time to time during the Term.

**1.19. “Virtuozzo Marks”** means Product names, trademarks, trade names, service marks, service names and logos (in each case whether registered or unregistered including all applications (or rights to apply) for and be granted, renewals, or extensions of, or rights to claim priority from) that Virtuozzo may adopt from time to time.

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

**1.21. “VHC Terms”** means the terms and conditions governing the use of VHC, which are available at: <https://www.virtuozzo.com/legal/virtuozzo-hybrid-cloud-services-terms-and-conditions/>

**1.22. “Services”** means Virtuozzo Hybrid Cloud Services and any additional services that may be added to the Product(s) listed in Exhibit A.

## **2. RESALE SCOPE**

**2.1. Reseller Authorization.** Subject to the terms and conditions of this Agreement, Virtuozzo hereby grants to Reseller the non-exclusive right to market and resell the Products to Sub-Resellers and End Users within the Territory during the Term.

**2.2. No Exclusivity.** Virtuozzo reserves the unrestricted right without any liability to Reseller to license, market, resell and support any Product in any worldwide location, including the Territory, directly to any customers or indirectly through any channel, including, but not limited to original equipment manufacturers, channel partners, Resellers, Sub-Resellers, online sales, retail outlets, systems integrators, or other vendors.

**2.3. VHC Terms and Conditions.** In case Virtuozzo grants to Reseller the right to use and access VHC and to resell VHC to its Sub-Resellers and End Users, Reseller hereby agrees to be bound by the VHC Terms available at <https://www.virtuozzo.com/legal/virtuozzo-hybrid-cloud-services-terms-and-conditions/>. For the purpose of this Agreement, any reference to “Customer” in the VHC Terms

is a reference to Reseller. The VHC Terms form an integral part of this Agreement. If there is any contradiction between the VHC Terms and this Agreement, the terms of the Agreement shall prevail. Capitalized terms used but not defined herein shall have the meanings assigned to them in the VHC Terms.

## **3. TERM & TERMINATION**

**3.1. Term.** The initial term of this Agreement is one (1) year from the Effective Date (the “Term”). This Agreement will automatically renew for successive one (1) year terms unless either Party provides the other Party with at least ninety (90) calendar days written notice prior to the expiration of the then-current term.

**3.2. Termination for Convenience.** Notwithstanding any other provision hereof, Virtuozzo may terminate this Agreement for any reason by giving ninety (90) calendar days’ written notice.

**3.3. Termination for Cause.** Either Party will have the right to terminate this Agreement if the other Party breaches any material term or condition of this Agreement and fails to cure such breach (if curable) within thirty (30) calendar days after written notice, ten (10) calendar days in the case of payment default. All payment defaults are material defaults by definition. A Party may, at its option, and upon written notice to the other Party, terminate this Agreement or suspend its performance (other than payment obligations) if the other Party fails to pay its obligations to the first Party in the ordinary course of business when due or ceases doing business.

**3.4. Termination for Insolvency.** Either Party may terminate this Agreement immediately upon written notice to the other Party, if that other Party takes or has taken against it (other than in relation to a solvent restructuring) any step or action towards its entering bankruptcy, administration, provisional liquidation or any composition or arrangement with its creditors, applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court), being struck off the register of companies, having a receiver appointed to any of its assets, or its entering a procedure in any jurisdiction with a similar effect to a procedure listed in this Section 3.4.

**3.5. Effect of Termination.** Upon any termination or expiration of this Agreement for any reason: (i) all license rights and appointments granted hereunder will immediately terminate, including any license to use Virtuozzo Marks and Virtuozzo Marketing Materials; (ii) Reseller must certify to Virtuozzo in writing that it does not have any Products remaining in its possession and that all software elements of the Products have been removed from Reseller’s machines; (iii) Sections 3.5, 3.6, 4.11, 4.13, 4.14, 4.17 (but only for the remainder of each End User’s then-current support or subscription term), 7, 8.4, 8.6, 9, 10, 11, 12, 13, 14, and those provisions that by their nature are intended to survive termination or expiration of this Agreement will so survive; and (iv) Reseller will immediately pay any amounts owed to



Virtuozzo under this Agreement. Virtuozzo reserves the right to revoke and rebill any discounts that were predicated on prepayment terms.

**3.6. NO DAMAGES FOR TERMINATION.** NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR DAMAGES OF ANY KIND, INCLUDING INCIDENTAL OR CONSEQUENTIAL DAMAGES, ARISING AS A RESULT OF THE TERMINATION OR EXPIRATION OF THIS AGREEMENT IN ACCORDANCE WITH ITS TERMS, INCLUDING WITHOUT LIMITATION FOR REIMBURSEMENT OR DAMAGES FOR PROSPECTIVE PROFITS, OR ANTICIPATED INCOME, OR ON ACCOUNT OF ANY EXPENDITURES, INVESTMENTS, LEASES, OR COMMITMENTS MADE BY EITHER PARTY, OR FOR ANY OTHER REASON. RESELLER WAIVES ANY RIGHT IT MAY HAVE TO RECEIVE ANY COMPENSATION OR REPARATIONS ON TERMINATION OR EXPIRATION OF THIS AGREEMENT UNDER THE LAW OF ANY COUNTRY IN THE TERRITORY OR OTHERWISE, OTHER THAN AS EXPRESSLY PROVIDED IN THIS AGREEMENT.

#### **4. RESELLER OBLIGATIONS**

**4.1. Resale Infrastructure and Staff.** Reseller must at all times (i) have adequate premises, (ii) have skilled staff, and (iii) be able to demonstrate a professional logistics resale infrastructure for Products (including but not limited to supporting IT systems, and proven ability to meet delivery timescales).

#### **4.2. Business Plan.**



**4.3. Marketing.** Reseller will actively promote and market the Products in the Territory, including but not limited to advertising the Products in trade publications and on Reseller's website, and participating in appropriate trade shows and joint marketing programs with hardware or peripheral manufacturers. Reseller's contact at the Virtuozzo Marketing Team is listed in Exhibit B hereto.

**4.4. Marketing Materials.** Except as provided in this Agreement, Reseller will produce at its own expense promotional and advertising material necessary to effectively advertise and promote the Products. All such material shall strictly comply with guidelines and/or samples provided by Virtuozzo from time to time. Use of any material not complying with such guidelines and/or samples will be subject to Virtuozzo's prior written consent.

**4.5. Product Integrity.** Reseller will deliver Products without modification and with all documentation, disclaimers, proprietary rights and other notices, marks, serial numbers, and license agreements, unopened and intact unless otherwise requested by Virtuozzo in writing. Reseller will immediately inform Virtuozzo in writing about any applicable laws and regulations and any possible changes in the laws and regulations in the Territory regarding any requirements concerning design, Product description, directions for use and warnings applicable to Products. Upon request, Reseller will make available to Sub-Resellers the applicable End User License Agreement and other Virtuozzo Product or service use terms and conditions. Reseller will not (i) make promises, representations, warranties or guarantees concerning Products that are inconsistent with Virtuozzo's then-current specifications, (ii) commit or bind Virtuozzo to any agreement or undertaking, and (iii) pursue, waive or compromise any of Virtuozzo's rights relating to Sub-Resellers, End Users or other parties.

**4.6. Reporting Requirements.** Reseller must meet the reporting requirements and obligations set forth in Exhibit A and Exhibit C to this Agreement. Each such exhibit may be subdivided by Product, as appropriate. All reports will be provided electronically in the format(s) reasonably requested by Virtuozzo. Some Products may have usage reports automatically generated based on Reseller's (or its Sub-Resellers') usage of the respective Product, according to the metrics set forth in Exhibit A and Exhibit C.

**4.7. KA System Account.** Virtuozzo reserves the right to grant or deny access to KA System to Reseller. In case access is granted, the following Procedure shall take place:

- i. Virtuozzo will open an account for Reseller in Virtuozzo's KA System. The KA account will allow Reseller to generate License Keys inside its individual account in Virtuozzo's licensing system. Reseller shall order License Keys solely by using Virtuozzo's KA System to generate, manage, update and terminate License Keys on demand.
- ii. Reseller agrees that KA System access is a non-chargeable benefit of being a Reseller and will use KA System in good faith.
- iii. Reseller understands that KA System access may be suspended and/or revoked by Virtuozzo at any time in Virtuozzo's sole and exclusive discretion in the event Virtuozzo is of the opinion that Reseller is not using KA System in a proper or responsible manner or abuses the KA System for the purposes to receive more License Keys without respective payment, including cases of removal of any HWID or another information.
- iv. **Reseller is financially responsible for all keys created in its KA System account. Reseller acknowledges and agrees that Reseller is exclusively responsible for the termination of unused License Keys in its KA System account, as well as the security and safe disposal of any records or passwords pertaining thereto. In no event will Virtuozzo be responsible for maintenance**

**or termination of License Keys in Reseller's KA System account. Any activated License Key in Reseller's account will be billed towards Reseller in the following monthly invoice. Activated License Keys are defined as any License Key that was activated and is not marked for termination within 15 minutes after activation. Reseller can access its KA System account at any time to terminate License Keys. Some License Keys carry a minimum subscription period and will be billed for the entire subscription period even if marked as terminated. In the event, Virtuozzo denies Reseller access to KA System for any reason, License Keys termination requests can be sent to Virtuozzo via email ([billing-ops@virtuozzo.com](mailto:billing-ops@virtuozzo.com)).**

- v. If Reseller's KA System account information is or may be compromised, Reseller commits to notify Virtuozzo in writing immediately but in any event within one business day from becoming aware of such fact and to change its password accordingly. Where Reseller fails to notify Virtuozzo under this Section, Reseller cannot refer to such circumstances as the ground to dispute the number of the active License Keys.
- vi. Reseller has thirty (30) calendar days upon receipt of its' monthly invoice to dispute any discrepancies between billing and active License Keys. Otherwise, the number of licenses billed is deemed correct and undisputed.
- vii. If Reseller is more than thirty (30) calendar days past due on any outstanding invoices, Virtuozzo will be authorized to suspend or deny Reseller's access to KA System and cancel all existing License Keys and licenses of this Reseller.

**4.8. Training.** Reseller will provide its staff and appointed Sub-Resellers with adequate training regarding the demonstration, sales, use and operation of the Products, and will also provide its staff with regular training regarding Updates and Upgrades. Upon Virtuozzo's request, Reseller's staff will participate in at least two (2) marketing and/or sales training being offered by Virtuozzo per year.

**4.9. Programs.** Reseller will comply with the entitlement/qualification requirements of any special discount, promotional or marketing programs established by Virtuozzo and will comply with the provisions of the Virtuozzo Reseller Program including any non-discriminatory updates made by Virtuozzo to the Virtuozzo Reseller Program. Virtuozzo will provide Reseller thirty (30) calendar days' notice of such updates. If Reseller is unwilling or unable to comply with a particular update to the Virtuozzo Reseller Program, it will notify Virtuozzo of its objection within thirty (30) calendar days after Reseller receives notice of the update, specifying in reasonable detail the basis of its objection, whereupon Virtuozzo will promptly either waive Reseller's compliance with the update, modify the update in a mutually acceptable manner, or terminate this Agreement on thirty (30) calendar days' notice. In the event Virtuozzo waives Reseller's compliance, Reseller will not be obligated

to comply with the relevant update provided Reseller has complied with the terms of this Section 4.9, but instead will continue to comply with the Virtuozzo Reseller Program as though the specific contested update had not been made.

**4.10. Flow Down of Obligations.** Reseller will ensure that its Sub-Resellers are bound to Reseller by written terms obligating those Sub-Resellers to comply with obligations substantially similar to Reseller's obligations hereunder and as might be amended from time to time by the Parties (insofar as those Reseller obligations are applicable to Sub-Resellers). When reselling VHC under this Agreement, Reseller will ensure that Sub-Resellers, End-Users and Customers are bound by the VHC Terms available at <https://www.virtuozzo.com/legal/virtuozzo-hybrid-cloud-services-terms-and-conditions/>. If Reseller does not pass such obligations on, then Reseller is solely liable for any of its Sub-Resellers and/or End Users' damages, and Reseller will indemnify Virtuozzo for any damages claimed by the same. In the event this Agreement is terminated, Reseller shall ensure that all related agreements with Sub-Resellers and sub-Sub-Resellers are also promptly terminated.

**4.11. License Compliance.** Reseller will comply with End-User License Agreements with respect to Products supplied by Virtuozzo to Reseller for use by Reseller. Reseller will not reproduce, lend, rent or otherwise transfer those Products except as expressly permitted in the applicable End-User License Agreement. Reseller may not circumvent any Product locking or other copy protection system in any manner or instruct or assist any third party to do so.

**4.12. Compliance with Virtuozzo Sales Policies.** Reseller warrants and undertakes not to license or transfer or otherwise resell or provide in any manner Products in contravention of Virtuozzo Upgrade, Update, Cross Grade, Educational, Student, Multi-seat or other similar program policies. When one or more Products are bundled together ("**Bundle**") and sold to Reseller, Reseller will resell the entire Bundle only. Reseller will not unbundle one or more of the individual Products contained in a Bundle and resell those individual Products.

**4.13. Books and Records.** Reseller will keep complete, accurate and current books and records relating to the supply and resale of Products. During the Term and for three (3) years thereafter, Virtuozzo or its authorized representatives may upon ten (10) working days' prior written notice inspect and make copies of such books and records, should Virtuozzo (i) have reason to believe that Reseller is not complying or has not complied with its obligations under this Agreement and (ii) Virtuozzo has stated its concerns in writing to Reseller and has given Reseller not less than five (5) working days in which to respond to such concerns. The inspection will take place during Reseller's normal business hours at Virtuozzo's cost, unless such inspection shows that Reseller has not been complying with its obligations hereunder in which case Reseller will bear the costs of such inspection.

**4.14. Administrative Assistance.** Reseller will reasonably assist Virtuozzo during cooperation with Sub-Resellers and



End Users. Such assistance will include the validation of End-User information to ensure End Users' compliance with Virtuozzo's license policies. For the avoidance of doubt, Reseller's obligations under this Section 4.14 do not include technical support.

**4.15. General Compliance.** Reseller will conduct its business through a corporation or other form of business organization recognized by the laws of the Territory, and obtain and maintain at its own expense all permissions, consents, and licenses necessary to enable Reseller to resell and support Products in accordance with this Agreement. Reseller will comply with all laws and regulations applicable to the marketing, license and support of Products, and will conduct its business in a manner that does not negatively affect the reputation, goodwill or prospects of Virtuozzo or its Products.

**4.16. Restrictions.** Reseller will not (and will not permit others to): (i) obtain the Products from anyone other than Virtuozzo, (ii) promote, advertise, market, solicit orders for Products, open branches or maintain resale depots for supply or support of Products outside of the Territory, (iii) export the Product from the Territory, or (iv) sell any Product to any entities or persons on any restricted lists or those entities or persons prohibited by applicable law, international embargo or similar prohibition.

**4.17. Maintenance of Upgrades.** Reseller must make every reasonable effort to update its End Users to the most up-to-date version of a Software within six (6) months of its release in accordance with License and Support package of each End User. Virtuozzo will only support Software installations that are no older than one (1) prior major released version.

**4.18. End-User License Agreements.** Reseller will notify Sub-Resellers and if applicable, End Users prior to taking any order that Products are subject to an End-User License Agreement, and that Software included in any Product is licensed not sold. Reseller will make copies of applicable End-User License Agreements freely available to prospective End Users upon request. Reseller will not make any statements in its marketing and sales communications to prospective or actual End Users that are inconsistent with or derogates from the provisions of any applicable End-User License Agreement.

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

i. Virtuozzo grants Reseller a non-exclusive, revocable, non-transferable, non-sublicensable Access Authorization to use VHC.

ii. Unless the Access Authorization for the Sub-Resellers and/or End Users is administered through the Resale Platform, Virtuozzo will provide Access Authorization for the Platform to the Reseller or to Sub-Resellers through the Reseller to administer access for its respective End Users and assign Resources on the Platform to enable End Users to use VHC.

iii. Reseller agrees and shall procure that its Sub-Resellers and End Users agree, that the Access Authorization is a non-chargeable benefit of being a Reseller (Reseller or End User, as applicable) and will use the Access Authorization in good faith.

iv. Reseller agrees and shall procure that its Sub-Resellers and End Users agree, that the Access Authorization is a non-chargeable benefit of being a Customer (Reseller or End User, as applicable) and will use the Access Authorization in good faith.

v. Reseller is financially responsible for all Access Authorization it creates or administers for itself, its Sub-Resellers or its End Users.

vi. Reseller shall be responsible for the use of the Access Authorization and shall be liable for any malfunction of VHC resulting from the loss, theft, misuse or any other unauthorized use of the Access Authorization.

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

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

ix. If Reseller's or Reseller's Access Authorization is or may be compromised, Reseller shall notify Virtuozzo in writing promptly (but in any event within one (1) Business Day from becoming aware of such compromise) and shall change its password accordingly. Unless Reseller complies with this Section 4.19(ix), it may not rely upon any such incident as the grounds to dispute the number of active Resources.

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

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

## 5. ORDER PROCEDURES

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**5.1. Orders.** Unless indicated otherwise by Virtuozzo, Reseller must submit purchase orders for Products containing the information set forth in **Exhibit D**, and all such orders will be subject to the terms and conditions of this Agreement. Nothing contained in any order document submitted by Reseller will modify or add any term or condition of or to this Agreement. This Agreement will control over any conflicting provision of any order. Reseller must send orders to the following address: [billing-ops@virtuozzo.com](mailto:billing-ops@virtuozzo.com).

**5.2. Acceptance and Rejection.** An order is not binding on Virtuozzo until expressly accepted by Virtuozzo in writing. Virtuozzo may reject orders for any reason without recourse.

## 6. DELIVERY AND FULFILLMENT

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**6.1. Delivery.** Any delivery date specified in Virtuozzo's confirmation of acceptance is an estimated date and non-binding. Generally, Virtuozzo will deliver the Product within 72 hours of order via email. Products in the form of Software may be resold via Electronic Software Download. Products in the form of Certificates for technical support may be delivered by the provision to the email specified by Reseller. Delivery procedures may be described on a Product specific basis in **Exhibit D**.

**6.2. Fulfillment.** Virtuozzo will deliver Products to each End User in accordance with this Agreement and orders accepted by Virtuozzo.

## 7. WARRANTY CLAIMS, RETURNS AND REFUNDS

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**7.1. Warranty Claims.** End-User License Agreements may contain limited warranties specified by Virtuozzo with respect to the media on which a Product is provided, the performance of the Product and other matters ("**End User Warranties**"). Reseller will not make any warranty or representation concerning a Product that is any broader, narrower, or otherwise different from the End User Warranties. In accordance with the procedures specified in the End-User License Agreement, all warranty claims by End Users who acquire a nonconforming Product from Reseller (or its Reseller) will initially be directed to Reseller (or its Reseller). Virtuozzo will promptly forward any such initial claims that it receives to Reseller. Within three (3) working days after Reseller receives an initial warranty claim, it will: (i) determine if the claim is from one of its authorized End Users and if it has been lodged within the applicable warranty period under the relevant End-User License Agreement; (ii) provide first-level support to the End User by telephone, fax or email in an effort to resolve problems that are not in fact the result of a breach of End User Warranties if Reseller has elected to provide first call responsibilities; and (iii) if the claim is valid, forward the claim to Virtuozzo, indicating the name and contact information of the End User and the date that the Product in question was delivered to the End User and the date that the End User notified Reseller of the warranty claim. Virtuozzo will resolve the warranty claim in

accordance with the applicable End-User License Agreement by either correcting the non-conformity or, if the non-conformity cannot be corrected, terminating licenses to non-conforming Software, as the case may be. Reseller will promptly pay a refund to the End User in accordance with **Section 7.3**. Reseller will be solely responsible for resolving any warranty claims by End Users that are based on warranties or representations by Reseller other than the End User Warranties.

**7.2. Returns.** Virtuozzo does not accept returns unless Virtuozzo determines at its sole discretion that the Product (i) does not perform to a warranty specified in the associated Product documentation provided by Virtuozzo, (ii) effort has been made by Virtuozzo support to rectify Product issues, and (iii) Virtuozzo has provided written approval for the return.

**7.3. Refunds.** In accordance with the warranty and indemnity terms specified in its agreements with End Users, Virtuozzo has the right or obligation in some cases, to terminate licenses to Software that has been resold by Reseller. In such cases, Virtuozzo will notify Reseller and — as Virtuozzo's only liability and Reseller's sole and exclusive remedy — will credit Reseller's account the price paid by Reseller to Virtuozzo for the terminated Software license, as the case may be. Reseller will then promptly refund to the End User the full price charged to End User by Reseller for the terminated Software license.

## 8. PAYMENT AND PRICING

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**8.1. Reseller Price List.** Virtuozzo will invoice Reseller on the basis of the applicable price list set forth on Virtuozzo Partner portal available on <https://virtuozzo.allbound.com> hereto as may be updated by Virtuozzo in its sole discretion from time to time ("**Reseller Price List**"), which list may be subdivided by Product, as appropriate. Pricing of certain Products may be based on certain usage metrics (such as amount of data processed or number of registered users or devices, etc.), and/or may require a minimum dollar, quantity, or usage commitment, as set forth on the Virtuozzo partner portal on <https://virtuozzo.allbound.com>. If actual usage is less than any specified minimum commitment, the unused portion of the minimum commitment will not roll over to the following month and will be forfeited. For the avoidance of doubt, Reseller will determine its own sales prices for Products that it charges to its Sub-Resellers or End Users. Virtuozzo reserves the right to modify, alter, change, enhance, improve, or discontinue any or all of the Virtuozzo Products and prices for Virtuozzo Products listed in the Virtuozzo partner portal. Such changes shall become effective in thirty (30) calendar days after written (email) notice is sent by Virtuozzo to Reseller, thereafter Virtuozzo may unilaterally add any new Virtuozzo Product and/or prices for Virtuozzo Products to the list in the **Exhibit A** to the Agreement. However, Reseller may continue using the last version of an altered or discontinued Virtuozzo Product that has already been in use by Customer before the modification or alteration until the end of the Term.

**8.2. Changes.** Virtuozzo may change its prices, discounts, currency exchange rates, incentives, price benefits other price-related terms offered to Reseller (including Reseller Price List) on thirty (30) calendar days written notice to Reseller. Price increases will not affect unfulfilled orders accepted by Virtuozzo prior to the effective date of the price increase. Price decreases will apply to pending orders accepted by Virtuozzo prior to the effective date of the decrease.

**8.3. Taxes.** Virtuozzo's prices do not include any national, state or local sales, use, value added or other taxes, customs duties, or similar tariffs and fees which Virtuozzo may be required to pay or collect upon the sale or delivery of Products or upon collection of the sales price. Should any tax or levy be made, Reseller agrees to pay such tax or levy and indemnify Virtuozzo for any claim for such tax or levy demanded including penalties and interest. For any sales tax for which Reseller has an exemption, Reseller agrees to provide Virtuozzo with appropriate resale or tax exemption certificate numbers and other documentation satisfactory to the applicable taxing authorities to substantiate any claim of exemption from any such taxes or fees. If Reseller is required to withhold taxes from the amounts payable hereunder, Reseller will request documentation from Virtuozzo that may reduce or eliminate such withholding and, to the extent withholding is required, will provide Virtuozzo with official tax receipts issued by the local tax authority as proof that such taxes have been paid. To the extent that Reseller complies with the foregoing requirements, Reseller will pay the invoiced amount, net of such legally required withholding taxes.

**8.4. Credit Limit.** A credit limit (if any) may be set by Virtuozzo at its sole discretion. Reseller will provide Virtuozzo such financial information as Virtuozzo deems necessary to determine Reseller's creditworthiness. Virtuozzo may increase or decrease such credit limit from time to time as it deems appropriate. The total amount owed by Reseller to Virtuozzo at any time will not exceed Reseller's credit limit (if any) set by Virtuozzo to Reseller, and orders to Virtuozzo above the credit limit will be paid in cash in advance of delivery or by other means of secured payment chosen by Virtuozzo.

**8.5. Payment Terms.** Payment will be due and payable within thirty (30) calendar days as of the date of invoice to the bank account specified in **Exhibit F** (or such other bank account as specified by Virtuozzo in the invoice). Any and all transaction fees (e.g., bank fees) shall be borne by Reseller. All payments made under this Agreement are non-refundable and non-cancelable. Any invoiced amount not received within such payment term will be subject an interest rate of 4% per annum above the Bank of England's base rate (or, if less, the maximum allowable by applicable law). Notwithstanding the foregoing, if any payment is not received by Virtuozzo when due, Virtuozzo may, without prejudice to any other remedies at law, equity or under this Agreement, (i) offset the receivables against any amounts that

may be due or become due to Reseller from Virtuozzo, (ii) require that all future orders be fully paid in advance of shipment, (iii) revoke or suspend Reseller's credit terms and/or (iv) suspend Virtuozzo's obligations under this Agreement.

**8.6.** The Parties agree that any fee as stipulated in this Agreement is due from the Effective Date of the Agreement and is payable according to the terms of the Agreement. Reseller acknowledges and agrees that any payment of the fee is not contingent upon or any other conditions, including but not limited to timing or success of the installation of any of Products or Services and is due notwithstanding any non-payment to Reseller from Sub-Reseller or End User.

## **9. CONFIDENTIALITY**

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**9.1. Definition.** "**Confidential Information**" means proprietary and confidential information with respect to the disclosing Party's business, including without limitation, information that may relate to the disclosing Party's products, whether in resale or under development, trade secrets, computer source code and object code, software and other product designs and specifications, methodologies, financial information and projections, data, developments, ideas, improvements, product and marketing plans, customer and vendor lists, and other written information that the disclosing Party designates as confidential or proprietary at the time of disclosure or that, under the circumstances surrounding disclosure, or by the nature of the information, would reasonably be understood by the recipient to be confidential or proprietary, including without limitation any of the foregoing that is Confidential Information of the disclosing Party's customers, vendors, partners, licensors or other third party with respect to which the disclosing Party has an obligation of confidentiality. Confidential Information will not include information that: (i) is disclosed in a printed or web publication available to a portion of the public, is otherwise in the public domain at the time of disclosure, or becomes publicly known through no wrongful act or omission on the part of the recipient, (ii) is obtained by the recipient lawfully from a third party who is not under an obligation of secrecy to disclosing Party and is not under any similar restrictions as to use. Notwithstanding anything herein to the contrary, Confidential Information of Virtuozzo specifically includes the Products and any documentation, technical information, and technology relating to the foregoing.

**9.2. Confidential Information.** Each Party will not disclose Confidential Information of the other Party or any part thereof to anyone for any purpose, other than to employees, contractors, or other parties authorized under this Agreement for the purpose of exercising the rights expressly granted under this Agreement, which employees, contractors, or other parties must be bound by confidentiality obligations at least as protective of such Confidential Information as this Agreement. Each Party agrees that it will protect the other's Confidential Information from unauthorized use with the same degree of care that it uses to protect its own non-public and confidential information but in no event less than a

reasonable amount of care. Each receiving Party will take all reasonable steps to protect the disclosing Party's Confidential Information from unauthorized copying or use by its employees and others, and to immediately notify the disclosing Party if it becomes aware of such unauthorized copying or use. Notwithstanding the foregoing, the receiving Party will not be prohibited from disclosing Confidential Information as required by law or valid order of a court or other governmental authority, provided that in such a case of a legally compelled disclosure, the receiving Party will promptly notify the disclosing Party and take reasonable steps to assist in contesting such order or in protecting the disclosing Party's rights prior to disclosure.

## **10. INTELLECTUAL PROPERTY RIGHTS**

**10.1. Ownership.** All rights including all patents, copyright and related rights, trademarks, trade secrets, trade names, moral rights, mask work rights, domain names and all other intellectual property rights through the world in each case whether registered or unregistered including all applications (or rights to apply) for and be granted, renewals or extensions of, or rights to claim priority from, relating to Products, Virtuozzo Marketing Materials, Virtuozzo Marks and any other materials or translations thereof provided by Virtuozzo to Reseller during the term of this Agreement, and any modifications or improvements to and derivative works based on any of the foregoing, however made, are owned by and remain the valuable exclusive property of Virtuozzo, its affiliates or their licensors. To the extent there is any legal basis under which Reseller or its successors may assert a right, title or interest in any such modifications, improvements or derivative works, Reseller hereby agrees to assign, and shall enter into any necessary documentation to assign, all rights, title and interest in same to Virtuozzo.

**10.2. Reseller, Reseller, and End User Data.** Virtuozzo hereby acknowledges that it acquires no ownership right, title or interest to Reseller's or any Reseller or End User's data used in conjunction with the Products. Reseller hereby grants Virtuozzo a non-exclusive, transferable license to use Reseller's data as necessary to provide Reseller with the Products. Reseller will ensure that any Reseller or End User using the Products grants Virtuozzo a non-exclusive, transferable license to use such party's data as necessary to provide such party with the Products, as applicable, as a condition of such party's use thereof, and Reseller hereby represents and warrants that such license has been granted to Virtuozzo before such party's data is used with the Products.

**10.3. Trademark License.** During the term of this Agreement Reseller may use the Virtuozzo Marks, solely within the Territory in association with the marketing of the Products during the term of this Agreement, all in unmodified form as and when provided by Virtuozzo, in strict accordance with Virtuozzo's trademark usage guidelines available at: <https://www.virtuozzo.com/legal/> and solely for marketing and promotional activities hereunder. Reseller will not have or obtain any right or interest in and to Virtuozzo's Marks, which will remain the sole and exclusive property of Virtuozzo, its affiliates or their licensors. Reseller warrants

and undertakes that it shall not take any action or permit any inaction that would in any way infringe or interfere with Virtuozzo's rights in Virtuozzo Marks. Reseller will not at any time adopt or register any name, internet domain, designation or mark that is confusingly or deceptively similar to any Virtuozzo Mark. Reseller may not register any domain name for use on the World Wide Web that incorporates any Virtuozzo Mark without Virtuozzo's prior written permission. Reseller will without charge assign to Virtuozzo, or cause the applicable third-party registrant to assign to Virtuozzo, any domain name registered by or for Reseller that incorporate an Virtuozzo Mark. Reseller agrees not to contest Virtuozzo's rights to or ownership of the Virtuozzo Marks anywhere in the world. Virtuozzo reserves the right to revoke Reseller's right to use the Virtuozzo Marks at any time at Virtuozzo's sole discretion.

**10.4. Enforcement.** Reseller will use its reasonable efforts to protect Virtuozzo's intellectual property rights and will report promptly to Virtuozzo any infringement of such rights of which Reseller becomes aware. Virtuozzo reserves the sole and exclusive right at its discretion to assert claims against third parties for infringement or misappropriation of its intellectual property rights in the Products.

**10.5. Marketing Materials.** Where Virtuozzo agrees to make Virtuozzo Marketing Materials available to Reseller, Virtuozzo hereby grants Reseller a non-exclusive, non-transferable and non-sub-licensable right during the term of this Agreement to reproduce and resell the Virtuozzo Marketing Materials solely in connection with the sale and resale of Products. Except as expressly provided herein, Reseller is not granted any other right or license to patents, copyright and related rights, trade secrets, trademarks, trade names, moral rights, mask work rights, domain names or other intellectual property right with respect to the Virtuozzo Marketing Materials. Within thirty (30) calendar days of any Virtuozzo request, Reseller will return to Virtuozzo all Virtuozzo Marketing Materials or copies thereof then in Reseller's possession, and/or upon Virtuozzo's written request, destroy all or part of the foregoing property and certify to its complete destruction.

**10.6. Notifications.** Reseller will notify Virtuozzo promptly if it knows of or suspects any unauthorized use of Products or other violations of Virtuozzo's or its affiliates proprietary rights in Products or Virtuozzo Marks. Reseller will immediately provide all reasonable information in its possession concerning such unauthorized use or other violations, upon request from Virtuozzo.

### **10.7. Restrictions.**

10.7.1 Reseller will not market, resell, sublicense, transfer, sell, or make available to third parties any Products (including without limitation Software and Certificates for technical Support) other than as expressly permitted under this Agreement.

10.7.2 Reseller will not induce or contribute to any tort or breach of contract by any End User or Reseller with respect



to Virtuozzo, including breach of an End-User License Agreement.

10.7.3 Reseller will not (and will not permit others to): (a) incorporate any Product or any portion thereof into any other work; (b) modify or create derivative works of any Product in any manner; (c) decompile, disassemble, reverse engineer or otherwise reduce to human perceivable form any portion of any Product; (d) use any Product to develop competitive offerings; (e) engage in any act to disrupt the security, integrity, or operation of any Product, including without limitation through the use of viruses, worms, Trojan horses, or any other malicious code, scripts, or programs; (f) engage in any act or incorporate any code into any Product that would subject the Product in whole or in part to any term of any “open-source” or other license that requires as a condition of use, modification or resale of software subject to it that such software, or other software combined and/or resold with such software, be: (i) disclosed or resold in source code form; (ii) licensed for the purpose of making derivative works; or (iii) redistributable at no charge, or (g) remove, delete, modify, or obscure any copyright and related rights or proprietary rights notice on the Products, or present the Products in a manner that suggests that a party other than Virtuozzo is the originator of the Products.

10.7.4 Before Reseller exercises any of the foregoing actions that Reseller believes it is legally entitled to undertake notwithstanding the prohibitions of this Section 10.7, based on mandatory law, Reseller will: (i) provide Virtuozzo with thirty (30) calendar days’ prior written notice or, if applicable law or the relevant court order does not allow for thirty (30) calendar days’ notice, the maximum amount of notice allowable, and (ii) provide all reasonably requested information to allow Virtuozzo to assess Reseller’s claim and, at Virtuozzo’s sole discretion, to provide alternatives that reduce any adverse impact on Virtuozzo’s intellectual property or other rights.

## **11. WARRANTIES**

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**11.1. Power and Authority.** Each Party represents and warrants that it has sufficient right and authority to grant to the other Party all licenses and rights granted under this Agreement and to accept the all the obligations under this Agreement.

**11.2. Disclaimer of Other Warranties.** Virtuozzo makes no warranty to Reseller except the warranty in the preceding Section 11.1. All Products, accompanying documentation, and all other materials that Virtuozzo may provide to Reseller under this Agreement are provided “AS-IS.” To the maximum extent allowed by applicable law, the warranties in Section 11.1 are the sole and exclusive warranty of any kind, express or implied, that is made by Virtuozzo in connection with this Agreement, and VIRTUOZZO SPECIFICALLY DISCLAIMS ALL STATUTORY OR OTHER WARRANTIES, INCLUDING -- BUT NOT LIMITED TO -- IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, TITLE, OR FITNESS FOR A PARTICULAR PURPOSE, OR ANY IMPLIED

WARRANTIES ARISING FROM USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE. To the extent that Virtuozzo may not disclaim any warranty as a matter of applicable law, the scope and duration of such warranty will be the minimum permitted under such law.

**11.3. Open Source Software.** Reseller understands and acknowledges that any Open Source Software provided by Virtuozzo shall be used according to the terms and conditions of the specific licence under which the relevant Open Source Software is resold, but is provided “as is” and expressly subject to the disclaimer in Section 11.2.

## **12. LIMITATIONS OF LIABILITY**

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**12.1. Exclusion of Damages.** In no event will either Party be liable to the other Party for any special, incidental, indirect, or consequential damages (including for lost profits or lost data), whether based on breach of contract, tort (including negligence), product liability, or otherwise, and whether or not such Party has been advised of the possibility of such damage.

**12.2. Limitation of Damages.** In addition and not in derogation to Section 12.1 above, the total cumulative liability of Virtuozzo under this Agreement to Reseller, and any Sub-Resellers, or its or their End Users, whether in contract, in tort (including negligence or strict liability), or any other legal theory, will not exceed the amount paid by Reseller to Virtuozzo pursuant to this Agreement in the twelve (12) month period preceding the circumstances giving rise to the first claim at issue. The existence of multiple claims will not expand this limit.

**12.3. Exceptions.** The limitations in Section 12.1 do not apply to breaches of Section 10 and/or any other misappropriation of the other Party’s intellectual property. The limitations in Section 12.2 do not apply to breaches of Section 9 and Section 10 and/or any other misappropriation of the other Party’s intellectual property. The limitations will not apply to any liability arising from fraud or fraudulent misrepresentation, death or personal injury caused by gross negligence or any other liability which cannot be limited or excluded by applicable laws.

**12.4. Failure of Essential Purpose.** The Parties acknowledge that the license fees reflect the allocation of risk set forth in this Agreement and that Virtuozzo would not enter into this Agreement without the limitations on its liability in this in this Section 12. The Parties agree that the limitations specified in this Section 12 will survive and apply even if any limited remedy specified in this Agreement is found to have failed of its essential purpose.

## **13. COMPLIANCE WITH LAWS**

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**13.1. Compliance.** Reseller and all of its owners, directors, officers, employees, agents, or contractors (collectively “Reseller” for purposes of this Section 13) will use the Products only in accordance with this Agreement and with all applicable laws. Without limiting the foregoing:

**A.** Reseller acknowledges and agrees that the Products may be subject to economic sanctions and export controls of the United States of America (“**US**”), European Union (“**EU**”), and/or the United Kingdom (“**UK**”). Reseller agrees not to engage in any transaction or activity that would result in liability to Virtuozzo under EU, US or UK sanctions or export control laws or regulations. Reseller agrees to comply with all US, EU and UK economic sanctions and export control laws and regulations as if it were a US, EU and a UK company and a US, EU and UK exporter, and with all otherwise applicable export or import regulations of other countries, and will not allow any third-party to remove or export from the US, EU or UK or allow the export or re-export of any part of the Products or any direct product thereof (I) into (or to a resident or entity incorporated under the laws of) any country subject to a comprehensive US, EU or UK embargo, (II) to anyone on the US Commerce Department’s Denied Persons List, Entities List or Unverified List, the US Treasury Department’s Specially Designated Nationals and Blocked Persons List, Foreign Sanctions Evaders List or the Sectoral Sanctions Identifications List, the US Department of State’s List of Statutorily Debarred Parties, the EU’s Consolidated Sanctions List, or the UK Sanctions List (collectively, the “**Lists**”), or (III) to any country, entity or person to which such export or re-export is restricted or prohibited, or as to whom the US, EU or UK requires an export license or other governmental approval at the time of export from the US, EU or UK, respectively, or re-export without first obtaining such license or approval. Reseller assumes sole responsibility for any required export approval and/or licenses and all related costs and for the violation of any export law or regulation.

**B.** Reseller represents and warrants that Reseller is not included on any of the Lists. Reseller will immediately inform Virtuozzo of any inclusion of Reseller on any of the Lists and will cooperate with Virtuozzo’s investigation and/or reporting of such action to appropriate US, EU or UK authorities, which may occur at Virtuozzo’s sole discretion.

**C.** Reseller may not use or enable the use of the Products by Reseller, Reseller or any End User or any other third party whose rights are derivative of any of them (e.g., downstream Sub-Resellers and Resellers) who is a resident of, entity incorporated under the laws of, or under control of any of the governments of any country subject to a comprehensive US, EU or UK embargo, which as of the date hereof includes: Cuba, Iran, North Korea, Syria and the Crimea region of the Ukraine (which for the purpose of this paragraph may be referred to as a country). Each time Reseller uses or enables the use of the Products, Reseller represents, warrants, and covenants that none of Reseller, its Resellers, Sub-Resellers, End Users, or any other third party whose rights are derivative of any of them (I) is a resident of, an entity incorporated under the laws of, or under the control of the government of any country subject to a comprehensive US, EU or UK embargo; (II) will

download or otherwise export or re-export any Products, directly or indirectly, to the above mentioned countries or to residents or entities incorporated under the laws of those countries, or permit any third party to do so; (III) are listed in any of the Lists or subject to US, EU or UK sanctions; or (IV) will use or allow the use of the Products for any purposes prohibited by US, EU or UK law, including, without limitation, for the development, design, manufacture, or production of nuclear, chemical, or biological weapons, weapons of mass destruction or their proliferation; or (V) are using or permitting others to use the Products to create, store, backup, resell, or provide access to child pornography or any other content or data which is illegal under the applicable law, including that where Reseller is domiciled.

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

**E.** If Virtuozzo has a good faith belief that Reseller, or any third party acting on Reseller’s behalf, intends to violate, has violated, or causes Virtuozzo to violate, any EU, US or UK export controls or sanctions law or regulation, Virtuozzo may terminate this Agreement immediately, notwithstanding any other provision of this Agreement to the contrary. In the event of such termination, Virtuozzo will be relieved of all liability and obligations of any kind under this Agreement.

**F.** Reseller will indemnify and hold Virtuozzo harmless for any and all claims, losses, damages, liabilities, expenses and costs of whatever nature, including reasonable attorneys’ fees and expenses, arising out of Reseller’s non-compliance with US, EU or UK export controls or sanctions laws or regulations or Reseller’s inclusion on any of the Lists. Virtuozzo will be relieved of all claims and liabilities arising from (I) termination of this Agreement pursuant to this Section 13, and (II) Virtuozzo’s failure to perform, or inability to perform, as a result of Reseller’s inclusion on any of the Lists.

**G.** Reseller will, at its own cost and expense, screen against the Lists all new Sub-Resellers, Resellers and End Users and all third parties whose rights to use the Products are derivative of any of them, and will not contract with anyone who is included on one of the Lists.

**H.** Virtuozzo may at Virtuozzo’s option, exercisable by notice to Reseller at any time (the “**Pre-Screen Notice**”), direct Reseller not to authorize or permit the use of Products by any Reseller, Reseller

or End User or any third party whose rights to use the Products would be derivative of any of them unless Virtuozzo will have first approved such use in writing, including by email. After Reseller receives the Pre-Screen Notice, Reseller will give Virtuozzo advance written notice, including by email, of the identity of any such Reseller, Reseller, End User or third party, with such accompanying detail and additional information as Virtuozzo may request. Virtuozzo will use that information to determine whether any such person is on any of the Lists. Virtuozzo will give notice to Reseller of its approval of any such person not on any of the Lists. Any such person who is, or who appears to be on any of the Lists will not be approved and Virtuozzo will not deal with them regarding the Products.

**I.** Virtuozzo may audit Reseller's compliance with this Section 13 on such terms as Virtuozzo determines reasonable. Reseller will also, upon request of Virtuozzo, provide to Virtuozzo the names of all Sub-Resellers, Resellers, Ends Users and all third parties whose rights to use the Products are derivative of any of them.

**J.** Virtuozzo may at any time suspend Reseller's access to the Products, in whole or in part, for the following reasons:

- i. In order to comply with any contractual, statutory, and/or regulatory obligation, a request or order from law enforcement, or a competent judicial, governmental, supervisory or regulatory body;
- ii. If Virtuozzo has reasonable grounds to suspect that Reseller, End Users or other third parties have acted or will act fraudulently, unlawfully, in a criminal way or in a way which could prejudice Virtuozzo, any End User or any other third party;
- iii. If Reseller, any End Users or other third parties violate any contractual, legal, regulatory, statutory, or administrative obligation, or if any Reseller, End User or other third party is subject to US, EU or UK sanctions.

**13.2. Certification.** Reseller will certify to Virtuozzo in writing compliance with its obligations under this Section 13, at least annually on or before March 31 of each calendar year, and at such other times as Virtuozzo will request.

**13.3. Anti-corruption compliance.** Reseller shall, not, and shall not permit any of its subsidiaries and Affiliates and Sub-Resellers or sub-Sub-Resellers, or any of its or their respective directors, officers, managers, employees, independent contractors, representatives or agents (collectively, "Representatives") to, promise, authorize or make any payment to, or otherwise contribute any item of value to, directly or indirectly, any non-U.S. government

official, in each case, in violation of the U.S. Foreign Corrupt Practices Act ("FCPA"), the UK Bribery Act 2010 or any other applicable anti-bribery or anti-corruption law of any other jurisdiction. Reseller shall, and shall cause each of its subsidiaries and Affiliates and Sub-Resellers or sub-Sub-Resellers to, cease all of its or their respective activities, as well as remediate any actions taken by Reseller, its subsidiaries or Affiliates or Sub-Resellers and sub-Sub-Resellers, or any of its or their respective Representatives in violation of the FCPA, Bribery Act 2010 or any other applicable anti-bribery or anti-corruption law of any jurisdiction. Reseller shall, and shall cause each of its Affiliates and subsidiaries and Sub-Resellers or sub-Sub-Resellers to, maintain systems or internal controls (including, but not limited to, accounting systems, purchasing systems and billing systems) to ensure compliance with the FCPA, Bribery Act 2010 or any other applicable anti-bribery or anti-corruption law of any jurisdiction.

## **14. GENERAL PROVISIONS**

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**14.1. Press Releases.** All press releases, advertisements, or publications involving, including and/or referencing Virtuozzo, or any Product must be approved by Virtuozzo prior to release, publication or resale. Virtuozzo may do press releases, advertisements, or any other marketing activity for the purposes of promoting Reseller's resale of the Products as set forth herein.

**14.2. Acquisitions.** If, as a result of any merger or acquisition of any kind, Reseller becomes obligated under, or entitled to the benefits of, any other resale agreement with Virtuozzo the terms of which are not consistent with the terms of this Agreement, then Virtuozzo will have the right to determine with respect to any such conflicting terms, which terms will be binding on Reseller and Virtuozzo, it being understood that Virtuozzo will have the right to choose with respect to any such conflicting terms the term that is most favorable to Virtuozzo and will not be obligated to choose one or the other resale agreements in its entirety.

**14.3. Signatory Acknowledgement.** Reseller acknowledges that this contract is intended to bind it and its subsidiaries and affiliates. Accordingly, Reseller will (i) take all necessary action to ensure compliance with the terms of this Agreement by all of its subsidiaries and affiliates and (ii) be responsible for any breaches by any of its subsidiaries and affiliates of any obligation hereunder, including without limitation, any payment obligation, any indemnification obligation and any warranty obligation.

**14.4. Assignment.** This Agreement will bind and inure to the benefit of each Party and to the Parties' permitted successors and assigns. Reseller may not assign this Agreement, in whole or in part, by operation of law or otherwise, without Virtuozzo's prior written consent. Any assignment by Reseller of any rights under this Agreement without the express written consent of Virtuozzo will be null and void. Reseller's assignment of this Agreement with Virtuozzo's consent will not relieve Reseller from liability as the primary obligor under this Agreement. Virtuozzo may



assign this Agreement in whole or in part to any of its affiliates, including parent and subsidiary companies upon ten (10) calendar days notification to Reseller.

**14.5. Governing Law.** This Agreement will be construed and enforced in accordance with the laws of England and Wales without giving effect to any choice of law principles that would require the laws of a different country or state. The Parties expressly exclude the application of the United Nations Convention on Contracts for the International Sale of Goods.

**14.6. Data Protection.** Virtuozzo and Reseller shall, in the course of performing its obligations under this Agreement, comply with the provisions of all applicable data protection legislation. To the extent needed, both Parties shall agree and enter into a separate data processing agreement. Further information regarding how Virtuozzo processes Reseller's personal data is available in the privacy policy (Privacy Policy – Virtuozzo) available at: <https://www.virtuozzo.com/legal/privacy-policy/>.

**14.7. Severability.** If a court of law holds that any provision of this Agreement is invalid or unenforceable, that provision will be enforced to the maximum extent permissible, and the other provisions of this Agreement will remain in full force and effect.

**14.8. Force Majeure.** Except for payments due under this Agreement, neither Party will be responsible for any failure to perform due to causes beyond its reasonable control (each a "**Force Majeure**"), including, but not limited to, acts of God, war, riot, embargoes, acts of civil or military authorities, denial of or delays in processing of export license applications, fire, floods, earthquakes, accidents, strikes, or fuel crises, provided that such Party gives prompt written notice thereof to the other Party. The time for performance will be extended for a period equal to the duration of the Force Majeure, but in no event longer than sixty (60) calendar days.

**14.9. Notices.** Unless specified otherwise in this Agreement, all notices, requests and other communications under this Agreement must be in writing and must be delivered personally, or sent by certified or registered postal mail or nationally-recognized express courier, return receipt requested. Notices delivered personally will be deemed given on the date of delivery. Notices by postal mail or a courier will be deemed given on the date received or five (5) working days after deposit with the mail or courier.

#### **If to Virtuozzo**

VZ Hybrid Compute (UK) Limited

Riverbank House, 2 Swan Lane

London, EC4R 3TT

United Kingdom

Attention: [REDACTED]

#### **If to Reseller**

PACT CLOUD LTD

550 Burrard Street, Suite 2300 Bentall 5,  
Vancouver, British Columbia V6C 2B5, Canada

**14.10. Dispute Resolution.** All disputes arising hereunder which cannot be settled amicably by the parties will be submitted to the exclusive jurisdiction of the English courts.

**14.11. Relationship between the Parties.** The Parties are entering into this Agreement as independent contractors. Nothing in this Agreement will be deemed to create an employer/employee, principal/agent, or joint venture relationship. Neither Party will have the authority to enter into any contracts in the name of or on behalf of the other Party or otherwise bind such other Party.

**14.12. Non-Solicitation.** Reseller 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 Section, "Personnel" includes any individual that Virtuozzo employs or has employed as a partner, employee or independent contractor and with which Reseller comes into direct contact in the course of the Agreement performance. If Reseller breaches this Section, Reseller will pay Virtuozzo 1,500,000.00 GBP (One million five hundred thousand GBP), payable net thirty (30) calendar days from the date of invoice, as liquidated damages for breach of this Section. The Parties agree that any such liquidated damages have been calculated as, and are, a genuine pre-estimate of the loss likely to be suffered by Virtuozzo and are considered reasonable and proportionate by the Parties.

**14.13. Entire Agreement.** This Agreement and its appendices are the complete agreement between the Parties with respect to the subject matter hereof, superseding and replacing any and all prior agreements, communications, and understandings (both written and oral) regarding such subject matter. This Agreement may only be modified, or any rights under it waived, by a written document executed by both Parties. In the event of an inconsistency between the terms of this Agreement and the terms of any Exhibit, the terms of this Agreement will prevail.

**14.14. No Implied Waivers.** The waiver by either Party of a breach of any provision of this Agreement will not be a waiver of the provision itself or a waiver of any breach thereafter or a waiver of any other provision herein.

**14.15. Counterparts.** This Agreement may be executed in counterparts, each of which will be considered an original, but all of which together will constitute the same instrument.

IN WITNESS WHEREOF, the Parties have executed this Resale Agreement.

**VZ Hybrid Compute (UK) Limited**

**PACT CLOUD LTD**

By: /s/ Ezequiel Steiner

By: /s/ Colin Frost

Name: Ezequiel Steiner

Name: Colin Frost

Title: Director

Title: CEO

Each of the Exhibits attached below are hereby incorporated herein by this reference.

**Exhibits:**

A – Price and Product List

B – Rebate Program

C – Reporting Requirements

D – Order Form

E – Support and Maintenance Terms

F – Bank Account



## Exhibit A – Product and Price List

### 1. Product Categories

The product list includes Virtuozzo Software and Services in the following categories, as they may be defined by Virtuozzo from time to time in its sole discretion:

- A. Virtuozzo Cloud Platform (Virtuozzo Hybrid Infrastructure)
- B. Virtuozzo Hybrid Server
- C. Certificates for technical support (SUS)
- D. Virtuozzo Application Platform (Jelastic)
- E. Virtuozzo Application Platform for WordPress
- F. Virtuozzo Application Platform for Kubernetes
- G. Virtuozzo Cloud Storage
- H. Virtuozzo Cloud Platform for VMware (Onapp for VMware)
- I. Virtuozzo Hybrid Cloud

### 2. Software and Services List and Price List

Virtuozzo Software and Services list in the aforementioned categories together with current prices is provided by Virtuozzo in the partner program link available in Section 8 “Product Price List” of this Exhibit A. Periodically Virtuozzo may update the lists and prices at its own discretion, with the new lists and pricing becoming effective upon ten (10) calendar days prior notification to Reseller, which is to be sent by Virtuozzo to Reseller by email. **Product Pricing** Tiers included in the partner program are only applicable to the usage of a Customer and cannot be applied to any Virtuozzo Software licenses or Services procured by Virtuozzo to Reseller.

### 3. Billing process

During the first ten (10) calendar days of a month Virtuozzo provides the Reseller with an invoice for the previous month per Customer based on that Customer’s consumption for the previous month. All payments of invoices shall be conducted in accordance with Section 8.5 of the Agreement.

### 4. Usage reporting terms

Reseller must ensure that every Customer provides access to Virtuozzo Billing Servers located here: <https://report.virtuozzo.com>, 443 port should be used and should be open for connection.

### 5. Audit

Reseller needs to ensure that every Customer agrees not to prevent usage data reporting exchange with Virtuozzo billing servers and agrees to provide Virtuozzo with access to Customer’s installation for the audit of data usage by prior notification of three (3) days.

### 6. Reporting process

Metrics and usage reports will be automatically sent by Virtuozzo Software and/or Services to Virtuozzo on a daily basis provided all requirements stated in Section 4 of this Exhibit A to the Agreement are met.

If Virtuozzo does not receive usage report from specific Product(s) by Reseller for three (3) days, Virtuozzo reserves the right to evaluate usage data for those specific Product(s) for the period of missed report or data loss based on average usage during the previous 30 (thirty) days.

### 7. Anti-fraud provisions

In case of reasonable suspicion of any fraudulent activities, including, but not limited to abusing billing system, implementing unauthorized changes to Products, providing unauthorized KA access to third parties, as well as in cases, where incorrect order was created due to use of unlicensed software, computer virus, programming bug, abusing KA functionality, Virtuozzo may in its ultimate and sole discretion accept, reject, or cancel any order submitted by Reseller, and/or suspend or terminate any KA access granted to Customer through Reseller or Reseller. Virtuozzo shall promptly notify Reseller if it decides to reject or cancel any orders submitted by Reseller, and/or suspend or terminate any KA access granted to Customer through Reseller or Reseller. Virtuozzo is not liable for any damages to Reseller or Customer or to any third party caused by Virtuozzo’s delay or error in filling, or failure to fulfill any orders for any reason.

## 8. Product Price List

The current list of Virtuozzo products together with current prices can be found in the partner portal available at:  
<https://virtuozzo.allbound.com>.

*Please contact your Virtuozzo sales representative for the current list of products and prices if they are unavailable at the link provided above.*

### A. Premium Support\*

\*Please refer to the Exhibit E for the details on Maintenance and Support options.

Premium Support plans description is published here: <https://www.virtuozzo.com/support/support-plans/>

1. Parties may agree on provision by Virtuozzo to Reseller, its Sub-Resellers and/or End Users of professional services (such as deployment, maintenance, or other services) which might be rendered by Virtuozzo as described in separate services agreement concluded between the Parties. In the event that Virtuozzo agrees to provide professional services to Reseller, its Sub-Resellers and/or End Users, Reseller agrees to be bound by and adhere to the Virtuozzo Professional Services Terms and Conditions available at <https://www.virtuozzo.com/legal/pstandc/> ("Virtuozzo Professional Services Terms and Conditions"), and to ensure that its Sub-Resellers and/or End Users comply with the Virtuozzo Professional Services Terms and Conditions.



2. Changes and Availability. Please contact Virtuozzo Sales Representative for the current list of Products and prices if they are unavailable at the links provided above. Virtuozzo may update the lists and prices in its own discretion from time to time.

## **Exhibit B – Rebate Program**

Virtuozzo shall inform Reseller of the applicable rebates every [REDACTED]. The rebates shall be paid upon achievement of a quarterly target by the Reseller. Rebates shall be paid to Reseller by applying additional discount to an order for [REDACTED]. The rebates shall be as described in the partner portal available at: <https://virtuozzo.allbound.com>, or as announced by Virtuozzo via e-mail notification to Reseller.



### Exhibit C – Reporting Requirements

Description of the report	Report submission frequency
<b>1. Report on sales.</b> Report shall include the following information: quantity of licenses, SKU numbers, price of Reseller, Software version, name of the Reseller, presence/absence of returns, as well as any acceptable information upon the Virtuozzo's request. The report shall be sent to <a href="mailto:billing-ops@virtuozzo.com">billing-ops@virtuozzo.com</a>	
<b>2. Report of performed activities.</b> Report shall include list of activities associated with the Software promotion, marketing, feedback from the Sub-Resellers and End Users as well as any acceptable information upon the Licensor's request. The report shall be sent to <a href="mailto:billing-ops@virtuozzo.com">billing-ops@virtuozzo.com</a>	

## **Exhibit D – Required Order Form Information**

Products Orders for Products, including Certificates for technical support purchase, must be accompanied by a purchase order that has at least the following information:



## **Exhibit E – Support and Maintenance Terms**

1. Technical support shall be rendered under the Virtuozzo Support Terms and Conditions available at <https://www.virtuozzo.com/wp-content/uploads/2023/03/virtuozzo-scope-of-support-2023.pdf> (“Virtuozzo Support Terms and Conditions”). Reseller shall flow down the aforementioned terms to the End Users and will ensure the End Users’ compliance with the Virtuozzo Support Terms and Conditions. The period of technical support related to Products listed in the order, which are not registered by the End User, shall not start before such Products are registered by the End User.
2. Reseller may propose to End Users and Virtuozzo shall render technical support services subject to strict compliance of the Virtuozzo Support Terms and Conditions. Reseller shall have good reputation in relation to performance hereof as established by Virtuozzo. Good reputation shall include the following:
  - 2.1. Reseller’s current complete performance of this Agreement and other contractual obligations and terms under other agreements between Virtuozzo and Reseller; and
  - 2.2. Reseller has no debts before Virtuozzo of any amount hereunder or according to other agreement between Virtuozzo and Reseller for more than thirty (30) calendar days. If Virtuozzo is not satisfied with Reseller’s performance of any of the precedent terms described herein above, Virtuozzo may unilaterally suspend or withdraw from support services.

**Exhibit F – Virtuozzo Bank Account Details**

[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]