

GENERAL TERMS AND CONDITIONS

FOR SUBSCRIPTION SERVICES – HARDWARE



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United Kingdom

GENERAL TERMS AND CONDITIONS

FOR

SUBSCRIPTION SERVICES- HARDWARE

1. PRELIMINARIES

- 1.1. Words and phrases in these Subscription GTCs beginning with a capital letter shall, except where the context expressly requires otherwise, have their respective meanings given in Appendix 1 (DEFINITIONS).
- 1.2. The Agreement applies to the provision and use of the Supplier's Subscription Hardware and Hardware Support Services).
- 1.3. For the avoidance of doubt, the:
 - 1.3.1. Professional Services GTCs apply to the provision and receipt of Vizrt Professional Services; and
 - 1.3.2. Software GTCs apply to the sale and delivery of Vizrt Software, if any.
- 1.4. Subject to clause 5.2, the Agreement is a legally binding contract between:
 - 1.4.1. the Supplier; and
 - 1.4.2. the Customer,that is binding and effective on the parties from the Effective Date.
- 1.5. Each party warrants and represents to the other that it has the requisite power and authority to:
 - 1.5.1. enter into the Agreement; and
 - 1.5.2. carry out its obligations as contemplated by the Agreement.

2. DIGITAL EXECUTION

- 2.1. The parties agree that:
 - 2.1.1. the Agreement may be electronically executed by the Customer acting through an authorised representative (e.g., by presentation through a *click-wrap*, *scroll-through*, or other similar mechanism); and
 - 2.1.2. where the Customer's authorised representative clicks "Accept" (and/or completes such other affirming act(s) required by the registration and/or subscription process) or downloads, installs, hosts, or otherwise accesses the Vizrt Hardware (the "**Electronic Signature**"), the Customer unconditionally confirms to the Supplier that:
 - 2.1.2.1. such authorised representative has all necessary authority to accept the terms of the Agreement for and on behalf of the Customer;
 - 2.1.2.2. the Agreement is binding on the parties from the Effective Date; and
 - 2.1.2.3. the Electronic Signature shall have equivalent standing in applicable Legislation to a physical signature.
 - 2.1.3. where the Customer's authorized representative signs or otherwise accepts an Order Form, quotation or any other similar documents which incorporates, references or links these Subscription GTC such acceptance -whether by electronic means, physical signature or other affirmative action -shall constitute the Customer's agreement to be bound by the Agreement, including the Subscription GTC.

3. THE AGREEMENT

- 3.1. Each Agreement is a separate contract between the parties for the Vizrt Subscription Service described in the relevant Order Form.
- 3.2. Each Order Form:
 - 3.2.1. fully incorporates, and is subject to, these Subscription GTCs (and the other documents forming the Agreement);
 - 3.2.2. identifies the relevant:
 - 3.2.2.1. Vizrt Subscription Hardware (or components thereof);

- 3.2.2.2. additional Hardware Use Conditions (if any) including:
 - 3.2.2.2.1. the number and type of Hardware units subscribed to (if applicable);
 - 3.2.2.2.2. the type and/or nature of the permitted use; and
 - 3.2.2.2.3. the Hardware EULA (if applicable).
- 3.2.3. describes and/or documents:
 - 3.2.3.1. the Subscription Period;
 - 3.2.3.2. the Fees;
 - 3.2.3.3. the Customer's Responsibilities (in addition to those described elsewhere in the Agreement); and/or
 - 3.2.3.4. to what extent the Hardware is to be installed and maintained by the Supplier or Customer.

4. COMMENCEMENT AND SUBSCRIPTION PERIOD

- 4.1. The Agreement (and the Hardware Use Rights) shall:
 - 4.1.1. be effective (and binding on the parties) from the Effective Date; and
 - 4.1.2. continue, unless and until terminated in accordance with its terms, for the Subscription Period.

5. HARDWARE USE RIGHTS

- 5.1. Subject to:
 - 5.1.1. clause 4 (COMMENCEMENT AND SUBSCRIPTION PERIOD);
 - 5.1.2. the Customer's compliance with the Hardware Use Conditions; and
 - 5.1.3. payment of the Fees in accordance with clause 17 (FEES AND PAYMENT);

the Supplier hereby grants the Customer the right to use the Subscription Hardware for the Subscription Period.
- 5.2. Subscription Hardware (and the corresponding Hardware Support Services) may be purchased directly from the Supplier or a Reseller (and where purchased directly from a Reseller, references in these Subscription GTCs to "Supplier" shall be construed as references to the "Reseller").
- 5.3. The Customer agrees that the Subscription Hardware including any and all software and/or other materials made available by, or on behalf of, the Supplier in connection with the installation and/or use of the Vizrt Hardware is provided for use under this Agreement and is not sold, unless set forth in the Quote.
- 5.4. The Hardware Use Rights are subject to the Manufacturer's terms, including any use restrictions, warranties, disclaimers and limitations, unless otherwise agreed in an Order Form.

6. NOT USED

7. ACCEPTABLE USE

- 7.1. The Hardware Use Rights are granted subject to the following conditions:
 - 7.1.1. the Subscription Hardware may not be used and/or accessed in breach of clause 26 (SOCIAL RESPONSIBILITY LAWS AND SANCTIONS RESTRICTIONS);
 - 7.1.2. use and/or access to the Subscription Hardware may be limited to the Customer's sites, facilities, and/or territories listed in the Order Form;
 - 7.1.3. the Customer shall not:
 - 7.1.3.1. use the Hardware outside the scope of the permitted use;
 - 7.1.3.2. authorise or allow any person to access and/or use the Hardware who is not an Authorised User; and
 - 7.1.3.3. use the Hardware in noncompliance with the Manufacturer's warranty or other relevant Manufacturer terms and conditions.
 - 7.1.4. The Customer shall not use the Hardware to access, store, distribute, or transmit any software, code, file or programme which may prevent, impair or otherwise adversely affect the operation of the Hardware

(including worms, Trojan horses, viruses and other similar things or devices) or attempt to circumvent, disable, or otherwise interfere with any performance or security related features of the Hardware

7.1.5. Customer shall not attempt to circumvent, disable, or otherwise interfere with any security related features of the Hardware.

7.1.6. The Customer shall not use the Hardware to access, store, distribute, or transmit any software, code, files, or programs intended to cause harm to others or compromise the integrity, security, or performance of any system, network, or data. This includes, but is not limited to, malware, ransomware, viruses, worms, Trojan horses, spyware, keyloggers, or tools used for unauthorized access (such as brute force attack tools, packet sniffers, or exploit kits). The Customer shall also not use the Hardware to launch or facilitate denial-of-service attacks, phishing campaigns, or other cyberattacks.

8. SUPPLIER'S OBLIGATIONS

8.1. Subject to clause 9 (DISCLAIMERS), the Supplier shall:

8.1.1. comply with all Legislation applicable to the Supplier as a provider of the Subscription Hardware and Hardware Support Services;

8.1.2. in all cases, provide:

8.1.2.1. Hardware Support as described herein and in the Hardware Support Services;

8.1.2.2. using reasonable skill and care and in accordance with the applicable service levels described in the support documentation; and

8.1.2.3. Hardware that performs (in technical and functional respects) as described in the Documentation (except in trivial and/or immaterial respects not affecting functionality and/or use of the Hardware).

9. DISCLAIMERS

9.1. Subject to clause 25.1 (LIMITS ON LIABILITY) and except to the extent expressly set out in clause 8 (SUPPLIER'S OBLIGATIONS):

9.1.1. the Supplier gives no warranties, representations, undertakings, or other commitments to the Customer (or its Authorised Users) as to the functionality, performance or availability of the Subscription Hardware and Hardware Support Services; and

9.1.2. all warranties, conditions, representations, and terms (whether written or oral, express or implied by Legislation, common law, custom, trade usage, course of dealing or otherwise, including as to satisfactory quality, fitness for a particular purpose or use, accuracy, adequacy, completeness or timeliness) are hereby excluded to the fullest extent permitted by applicable Legislation.

9.2. The Customer agrees that the Supplier is not responsible, and shall have no liability, for loss or damage (including any reduction to the functionality or performance of the Hardware) resulting from, caused or contributed to by:

9.2.1. delays or delivery failures resulting from the transfer of data over or through the Customer's System or any third party's communications networks and/or facilities (including the internet);

9.2.2. use of the Hardware contrary to the (i) Documentation (or reasonable instructions given from time to time), (ii) Manufacturer's warranty or (iii) other applicable use terms;

9.2.3. combination or use of the Hardware with hardware that has not been approved for interoperation by the Supplier;

9.2.4. modification or alteration of Hardware by any party other than the Supplier or the Supplier's contractors or agents (including any alteration to, or error in, the configuration of Hardware);

9.2.5. a failure of the Customer's Systems to meet the Minimum System Requirements;

9.2.6. misuse of, or damage to, Hardware, other than normal wear and tear;

9.2.7. use of the Customer's Property; and/or

9.2.8. the Customer's breach of the Agreement (including a failure to perform a Customer Responsibility).

9.3. The Customer acknowledges and agrees that the Hardware provided under this Agreement may be designed, developed, or manufactured in whole or in part by a third-party manufacturer (the "Manufacturer") that is not a subsidiary or affiliate of the Supplier.

- 9.3.1. To the extent applicable, any warranties or obligations relating to the physical condition, workmanship, or performance of the Hardware arising from manufacturing defects shall be governed exclusively by the Manufacturer's warranty terms. The Supplier shall, where reasonably possible, pass through to the Customer the benefit of any such Manufacturer warranty. The Supplier shall have no independent liability for defects or deficiencies attributable solely to the Manufacturer's design or production process.
- 9.3.2. The Supplier does not warrant or represent that it has independently tested, verified, or modified the Hardware as provided by the Manufacturer. The Customer acknowledges that the Supplier's role is limited to provisioning and subscription management and that any claims relating to manufacturing defects or latent faults may, where appropriate, be referred to the Manufacturer.
- 9.3.3. To the extent permitted by applicable law, the Supplier disclaims all warranties and liabilities, whether express or implied, in relation to the manufacturing quality, component sourcing, or fitness for a particular purpose of the Hardware to the extent such issues arise from acts or omissions of the Manufacturer and not from the Supplier's own gross negligence or wilful misconduct.
- 9.3.4. The Supplier reserves the right to source equivalent Hardware from an alternative manufacturer, provided that the substitute Hardware is materially compliant with the relevant specifications and functional requirements.

10. CUSTOMER'S OBLIGATIONS

10.1. The Customer:

- 10.1.1. shall perform its obligations under the Agreement (including all of the Customer's Responsibilities);
- 10.1.2. shall comply with all applicable Legislation and binding codes of practice applicable to the Customer and its use of the Hardware;
- 10.1.3. warrants and represents that it has obtained, and undertakes to the Supplier that it shall maintain, all necessary licences, consents, and permissions for it to:
- 10.1.3.1. provide or make available the Customer's Property; and
- 10.1.3.2. connect the Customer's System to, or integrate the Customer's System with, the Hardware including by obtaining all Mandatory Third-Party Licences.
- 10.1.4. shall comply with the reasonable requests of the Supplier made in connection with the operation of the Hardware and the receipt of Hardware Support Services;
- 10.1.5. shall ensure that the Customer's System complies with the Minimum System Requirements (where applicable); and
- 10.1.6. shall, where the Hardware is connected to Customer's System, be solely responsible for procuring and maintaining its network connections and telecommunications links from the Customer's System to the Hardware.
- 10.1.7. shall be responsible for the proper care, use, and custody of the Hardware for the duration of the Subscription Period and shall take all reasonable steps to protect the Hardware from damage, loss, theft, or misuse.
- 10.1.8. shall ensure that the Hardware is installed, operated, and stored only in environments that comply with the manufacturer's technical specifications and guidelines, including but not limited to temperature, humidity, ventilation, and dust exposure requirements.
- 10.1.9. shall not subject the Hardware to physical abuse, tampering, or modification (including disassembly and reconfiguration) and shall not use the Hardware for any purposes other than those for which it is intended under this Agreement.

11. NOT USED

12. THIRD-PARTY MATERIALS

12.1. The Customer agrees that:

- 12.1.1. the Hardware may comprise, contain, or interoperate with, Third-Party Materials;
- 12.1.2. Third-Party Materials are made available subject to the Third-Party Terms;
- 12.1.3. the Customer's use of the Third-Party Materials is subject to, and the Customer shall therefore comply with, the Third-Party Terms; and

- 12.1.4. except as expressly described otherwise in the Agreement, the Third-Party Materials are provided "as-is" and "as available".

13. UPDATES

- 13.1. Except as otherwise agreed between the parties in the Order Form (including as part of the Hardware Support Services), the Supplier is not obliged to provide the Customer with any modifications, enhancements, upgrades, patches, releases, fixes, or new versions of the Vizrt Hardware that the Supplier may develop from time to time.
- 13.2. The Supplier shall not be responsible for the obsolescence of the Hardware that results from:
- 13.2.1. changes in the Customer's requirements or to the Customer's System; or
- 13.2.2. the Customer's failure to implement any modifications, enhancements, upgrades, patches, releases, fixes, or new versions provided by the Supplier from time to time.

14. CONFIDENTIALITY

- 14.1. Each party shall:
- 14.1.1. hold the other party's Confidential Information in confidence (including by using the same degree of care and discretion to avoid disclosure, publication, or dissemination as it uses to protect its own similar information); and
- 14.1.2. subject to [clause 14.2](#) and [clause 14.3](#), not:
- 14.1.2.1. make the other's Confidential Information available to any third party; or
- 14.1.2.2. use the other's Confidential Information for any purpose other than in connection with the provision or receipt of the Vizrt Subscription Service.
- 14.2. A party may disclose the other party's Confidential Information if and to the extent required by applicable Legislation or by any regulatory body or securities exchange, provided that the disclosing party shall, as soon as reasonably practicable and to the extent permitted by applicable Legislation, notify the other party in writing of the circumstances of such disclosure and the Confidential Information to which such disclosure applies.
- 14.3. The Supplier shall be entitled to disclose the Customer's Confidential Information:
- 14.3.1. to any employee, consultant, contractor, auditor, professional adviser, or other person engaged by the Supplier who has a need to know the Customer's Confidential Information in connection with the Agreement or the Vizrt Subscription Service; or
- 14.3.2. for the purpose of the examination and certification of the Supplier's accounts.
- 14.4. The Supplier shall ensure that the person to whom the Customer's Confidential Information has been disclosed under [clause 14.3](#) is bound by written or statutory confidentiality obligations that are materially as protective of the Customer's Confidential Information as those set out in this [clause 14](#).
- 14.5. The Customer warrants and represents to the Supplier that it has the right to disclose Confidential Information:
- 14.5.1. provided to the Supplier; or
- 14.5.2. submitted to the Vizrt Subscription Service,
- and to authorise the Supplier to use such Confidential Information in connection with the provision of the Vizrt Subscription Service.
- 14.6. The obligations contained in this [clause 14](#) shall not apply to Confidential Information that:
- 14.6.1. is or becomes publicly known (other than through any act or omission of the receiving party);
- 14.6.2. was in the receiving party's lawful possession before the disclosure;
- 14.6.3. is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
- 14.6.4. is independently developed by the receiving party without use or reference to the other party's Confidential Information.

15. PERSONAL DATA

- 15.1. Each party shall comply with its obligations set out in the Data Processing Terms.
- 15.2. The Customer shall ensure that, to the extent it shares or makes available any personal data or personally identifiable information to the Supplier, it is lawfully entitled to do so and does so in accordance with the Data Processing Terms and applicable Legislation.

16. VIZRT DATA

- 16.1. The Customer agrees that the Supplier may:
- 16.1.1. collect use application-level metrics relating to the use of the Hardware (e.g., the date, time, number of logins, installation numbers) including for the following uses:
 - 16.1.1.1. making the Hardware functional and available for use in accordance with the Agreement;
 - 16.1.1.2. providing Hardware Support Services;
 - 16.1.1.3. protecting and/or enforcing the Supplier's IPR;
 - 16.1.1.4. planning and implementing improvements to the Hardware;
 - 16.1.1.5. preparing accurate invoices; and
 - 16.1.1.6. evaluating adoption rates and the success of new features and releases of the Hardware; and
 - 16.1.2. subject to clause 16.2, use Vizrt Data for its business purposes including:
 - 16.1.2.1. improving the Hardware;
 - 16.1.2.2. developing new or additional products and/or services;
 - 16.1.2.3. analysing market trends;
 - 16.1.2.4. creating and publishing press releases and white papers; and
 - 16.1.2.5. preparing case studies,and, in each case, the Customer hereby gives its consent to the same.
- 16.2. The Supplier shall ensure that use of Vizrt Data is:
- 16.2.1. not attributable to the Customer; and
 - 16.2.2. does not reveal the Customer's Confidential Information.

17. FEES AND PAYMENT

- 17.1. Where the Hardware has been purchased through a Reseller, the Fees and payment terms shall be as agreed between the Customer and the Reseller and, in all other cases, this clause 17 shall apply.
- 17.2. The Fees are payable in the currency, frequency, and as described in the Order Form.
- 17.3. The Customer shall pay each invoice for the Fees (without set-off or deduction) before the expiry of the Due Date.
- 17.4. If the Customer is in breach of clause 17.3 then, without prejudice to any other of the Supplier's rights or remedies, the Supplier may:
- 17.4.1. suspend the provision of the Hardware Support Services (in whole or in part) unless and until the Fees are paid; and
 - 17.4.2. charge the Customer interest, accruing on a daily basis, on the overdue Fees at the maximum rate permitted or prescribed by applicable Legislation, commencing on the Due Date and continuing until full payment of the Fees (whether before or after judgment).
- 17.5. The Customer agrees that:
- 17.5.1. the Fees are calculated exclusive of all sales taxes (e.g., any value added tax); and
 - 17.5.2. sales tax (if applicable) shall be added to the Fees, and specified in the invoice, at the appropriate rate.
- 17.6. If the Customer is required by applicable Legislation to make any deduction or withholding from any payment to the Supplier then the sum due in respect of such payment shall be increased so that, after making such deduction or withholding, the Supplier receives a net sum that is equal to the sum it would have received had no such deduction or withholding been made.
- 17.7. Subject to clause 17.8, the Supplier shall be entitled to be reimbursed for any expenses (such as travel or subsistence expenses) incurred in the performance of the Agreement provided that such expenses have been authorised by the Customer in advance in writing (e.g., by e-mail or in the Order Form).
- 17.8. The Customer shall reimburse the Supplier for all expenses incurred in compliance with clause 17.7 provided that the Supplier provides the Customer with receipts or other proof of payment for such expenses.

18. FEES ADJUSTMENTS

- 18.1. The Supplier shall be entitled to adjust the Fees:
- 18.1.1. in accordance with the Order Form; and
 - 18.1.2. generally and at any time by providing written notice to the Customer (provided that any such general adjustment to the Fees shall not take effect until the commencement of the next billing period).
- 18.2. Without limiting [clause 18.1](#), the Supplier shall be entitled to increase the Fees payable on the first anniversary of the Effective Date (and on each anniversary thereafter) by up to a sum equal to 2 % above the percentage change in the Consumer Price Index published by the UK Office for National Statistics over the most recent twelve (12) month period for which data is available at the time the adjustment is to occur, unless otherwise agreed in the order form.

19. SUPPLIER'S IPR

- 19.1. The Customer agrees that, as between the parties, the Supplier:
- 19.1.1. owns all present; and
 - 19.1.2. shall own all future,
Intellectual Property Rights in (and to) the Supplier's IPR.
- 19.2. The Supplier may freely incorporate any feedback or suggested improvements to the Supplier's IPR given by the Customer or an Authorised User.
- 19.3. Except as provided in [clause 5](#), the Customer acquires no right or interest in the Supplier's IPR under and/or in connection with the Agreement.
- 19.4. The Customer agrees that the Supplier's IPR comprises commercially valuable proprietary assets and trade secrets of the Supplier or its licensors, the design and development of which, reflect the effort of skilled developers and the investment of considerable time and money by the Supplier.
- 19.5. If (at any time):
- 19.5.1. through use of the Hardware;
 - 19.5.2. receipt of the Hardware Support Services;
 - 19.5.3. by operation of applicable Legislation; or
 - 19.5.4. otherwise,
- the Customer comes to own Intellectual Property Rights in the Supplier's IPR then the Customer shall (promptly at the Supplier's request and without delay) assign (or procure the assignment of) such Intellectual Property Rights to the Supplier and, to the extent permitted by applicable Legislation, waive (or procure the waiver of) all moral rights (and analogous rights) worldwide in connection with such Supplier's IPR.
- 19.6. The Customer shall not remove the Supplier's trademark, copyright notice, or any other proprietary notice from the Supplier's IPR and shall ensure that all copies of the Supplier's IPR made under the Agreement include the Supplier's trademark and copyright notice.

20. SUPPLIER'S INDEMNITY

- 20.1. Subject to [clauses 20.2 to 20.5](#) (inclusive) the Supplier shall defend and indemnify the Customer against any claim made against the Customer by a third party claimant alleging that the Customer's use of the Hardware excluding any Third-Party Materials in accordance with the Agreement infringes any Intellectual Property Rights belonging to that third party claimant (the "**Supplier's Indemnity**").
- 20.2. The Supplier's Indemnity shall not apply unless:
- 20.2.1. the Supplier is given prompt written notice of any claim to which the Supplier's Indemnity applies (the "**Indemnified Claim**") and, in any event, is given written notice within five (5) days of the Customer becoming aware of, or being notified of, the Indemnified Claim;
 - 20.2.2. the Customer provides the Supplier with all reasonably requested co-operation in connection with the defence and settlement of the Indemnified Claim;
 - 20.2.3. the Customer takes all reasonable and timely action necessary to mitigate all Losses incurred by the Customer as a result of the Indemnified Claim (including such reasonable actions as the Supplier may request to avoid, dispute, resist, appeal, compromise, or defend the Indemnified Claim); and

- 20.2.4. the Supplier is given sole authority to defend or settle the Indemnified Claim.
- 20.3. In the defence or settlement of any Indemnified Claim, the Supplier may:
 - 20.3.1. procure the right for the Customer to continue using the Hardware;
 - 20.3.2. replace or modify the Hardware so that it becomes non infringing; or
 - 20.3.3. if such remedies are not reasonably available, terminate or suspend the Agreement (and the Customer's access to the Hardware).
- 20.4. The Supplier's Indemnity shall not apply if, and to the extent, the Indemnified Claim is based on:
 - 20.4.1. a modification of the Supplier's IPR by any person other than the Supplier or the Supplier's authorised representatives (except with the Supplier's express prior agreement and technical direction);
 - 20.4.2. an infringing Third-Party Material;
 - 20.4.3. infringing Customer's Property; or
 - 20.4.4. the Customer's use of the Hardware in breach of the Agreement or in a manner contrary to the reasonable instructions given to it by the Supplier.
- 20.5. The Supplier's Indemnity shall only apply to the extent Losses:
 - 20.5.1. have been awarded against the Customer by a court or other body having competent jurisdiction; or
 - 20.5.2. have been agreed to be paid (with the consent of the Supplier) to the third-party claimant in settlement of the Indemnified Claim; and
 - 20.5.3. in all cases, comprise reasonably and properly incurred legal fees and disbursements, fees levied by any court of competent jurisdiction, arbitrator or mediator, or fees and disbursements charged by expert witnesses.

21. NOT USED

22. CUSTOMER'S PROPERTY

- 22.1. As between the parties, the Customer:
 - 22.1.1. owns all Intellectual Property Rights in and to all the Customer's Property; and
 - 22.1.2. shall have sole responsibility for the acquisition, deployment, licensing, legality, non-infringement, reliability, integrity, accuracy, and quality of the Customer's Property.
- 22.2. The Customer grants the Supplier (and its representatives and sub-contractors) a non-exclusive right and licence to use the Customer's Property to the extent necessary for the Supplier (or the Supplier's representative or sub-contractor as the case may be) to perform its obligations and exercise its rights under the Agreement.
- 22.3. The Customer shall defend and indemnify the Supplier, its affiliates, its and their officers, directors, sub-contractors, and employees against any and all Losses arising out of, or in connection with, any allegation or claim that:
 - 22.3.1. the Customer's Property infringe any third party's Intellectual Property Rights;
 - 22.3.2. results from the Customer's breach of the Third-Party Terms; or
 - 22.3.3. results from the Supplier's use of the Customer's Property in accordance with the Agreement, (the "**Customer's Indemnity**").
- 22.4. The Supplier shall:
 - 22.4.1. give the Customer written notice of any allegation or claim to which the Customer's Indemnity applies promptly and without undue delay; and
 - 22.4.2. allow the Customer sole authority to defend any allegation or claim to which the Customer's Indemnity applies.

23. TERMINATION

- 23.1. A party may terminate the Agreement by written notice having immediate effect if the other party commits:
 - 23.1.1. an irremediable Material breach of the Agreement; or
 - 23.1.2. a Material breach (or series of persistent breaches which, when taken together, amount to a Material breach) of the Agreement which is not remedied within thirty (30) calendar days from the date of written notice requiring the Material breach to be remedied.

- 23.2. Without limiting its rights under clause 23.1, the Supplier may, at its option, suspend (for so long as the breach persists) or terminate the Agreement for cause:
- 23.2.1. in accordance with clause 17.4 (FEES AND PAYMENT);
 - 23.2.2. if the Customer breaches any one or more of the following clauses; 7 or 19.6; or
 - 23.2.3. on the occurrence of an Insolvency Event.
- 23.3. The Supplier may terminate the Agreement for convenience (including in order to discontinue the Hardware or Hardware Support Services) provided that, exercises its rights under this clause 23.3, it shall:
- 23.3.1. give the Customer as much advance notice of the termination as is reasonably practicable in the circumstances; and
 - 23.3.2. as the Customer's sole and exclusive remedy, provide the Customer with a pro-rated refund (for the remainder of the then current billing period) of Fees paid in advance for the Subscription Services.

24. EXIT PROVISIONS

- 24.1. The parties agree that on termination or expiry of the Agreement:
- 24.1.1. the Customer shall immediately stop all use of the Hardware;
 - 24.1.2. the Customer shall immediately return the Hardware to Supplier;
 - 24.1.3. the Customer shall irretrievably destroy all copies of the Documentation;
 - 24.1.4. each party shall return or destroy (at the proprietor party's option), and make no further use of, any, Confidential Information, or other items belonging to the other party (including all copies); and
- 24.2. Termination or expiry of the Agreement shall:
- 24.2.1. be without prejudice to any rights or liabilities which may have accrued up to the date of such termination or expiry; and
 - 24.2.2. not affect the coming into force, or the continuance in force, of any provisions which are expressly, or by implication, intended to come into, or to continue in force, on or after termination or expiry of the Agreement.

25. LIMITS ON LIABILITY

- 25.1. The limits and exclusions of liability in this clause 25 (LIMITS ON LIABILITY) apply to all Losses irrespective of whether the liability for such Losses arises in connection with a breach of contract, tort (including negligence), misrepresentation (other than given fraudulently), breach of statutory duty, or otherwise (the "**Cause(s) of Action**").
- 25.2. Nothing in the Agreement shall be construed as limiting or fettering either party's general obligation to mitigate its Losses arising out of, or in connection with, a breach of the Agreement including in respect of Losses arising under an indemnity.
- 25.3. Nothing in the Agreement shall limit or exclude (or seeks to limit or exclude), to a greater extent than is permitted under applicable Legislation, either party's liability to the other for Losses caused by or resulting from:
- 25.3.1. personal injury or death caused by the negligence of a party;
 - 25.3.2. fraud or fraudulent misrepresentation; or
 - 25.3.3. any matter which, under applicable Legislation, a party cannot exclude or limit (or attempt to exclude or limit) its liability.
- 25.4. Nothing in the Agreement shall limit or exclude:
- 25.4.1. the Customer's liability to pay the Fees; or
 - 25.4.2. subject to clause 25.2, Losses that are subject to the Supplier's Indemnity or the Customer's Indemnity.
- 25.5. Subject to clauses 25.3 and 25.4, neither party shall be liable to the other (or to any third party claiming under or through the other) under or in connection with the Agreement or under any Cause of Action to the extent that Losses comprise:
- 25.5.1. profit or revenue (excluding the Fees);
 - 25.5.2. anticipated savings;
 - 25.5.3. loss of contract or business opportunity;
 - 25.5.4. loss or depletion of goodwill;

- 25.5.5. loss or corruption of data or information; or
- 25.5.6. any special, indirect, or consequential loss or damage,

in each case, whether arising directly or indirectly under or in connection with the Agreement and whether or not reasonably foreseeable, reasonably contemplatable, actually foreseen, or actually contemplated by a party at the Effective Date.

- 25.6. Subject to clauses 25.1 to 25.5 (inclusive), each party's total aggregate liability to the other (and to any third party claiming under or through the other):

- 25.6.1. in each Contract Year; and

- 25.6.2. in respect of all Causes of Action arising in that Contract Year (determined at the date when the liability giving rise to the Cause of Action arose),

shall not exceed the sum equivalent to the total Fees paid and payable under the Agreement for the Contract Year in question.

- 25.7. The parties agree that the provisions of this clause 25 are reasonable in all the circumstances, having taken into account applicable Legislation and the nature of the Vizrt Subscription Service and the Fees.

26. SOCIAL RESPONSIBILITY LAWS AND SANCTIONS RESTRICTIONS

- 26.1. With regard to activities carried out under or in connection with the Agreement, each party shall, and shall use reasonable efforts to procure that its employees, directors, officers, agents, sub-contractors, and other representatives shall, comply with all applicable Social Responsibility Laws.

- 26.2. Each party shall have, and shall maintain in place throughout the Subscription Period, such policies and procedures as are reasonable and necessary to ensure its compliance with the Social Responsibility Laws.

- 26.3. The Customer shall not use the Vizrt Hardware to breach or circumvent (or in breach or circumvention of) any Sanctions Restrictions including by directly or indirectly, exporting, re-exporting, releasing, or making accessible the Vizrt Hardware (or any Documentation) to any jurisdiction or country to which export, re-export, or release is prohibited by Sanctions Restrictions.

- 26.4. The Customer shall notify the Supplier promptly and without undue delay if it becomes aware that, in connection with the Agreement, it is in breach of any Social Responsibility Laws or Sanctions Restrictions and shall:

- 26.4.1. provide all relevant information relating to such breach as the Supplier may reasonably request; and

- 26.4.2. co-operate with the Supplier and any relevant public authorities in relation to the breach of Social Responsibility Laws or Sanctions Restrictions.

27. FORCE MAJEURE

- 27.1. Neither party shall have any liability to the other under the Agreement if, and to the extent, it is prevented from, or delayed in, performing an obligation under the Agreement by a Force Majeure Event.

- 27.2. Each party shall:

- 27.2.1. promptly notify the other party of a Force Majeure Event or potential Force Majeure Event which could affect its ability to perform its obligations under the Agreement; and

- 27.2.2. use reasonable endeavours to mitigate the effects of the Force Majeure Event on the performance of its obligations under the Agreement.

28. MISCELLANEOUS PROVISIONS

- 28.1. The provisions of these Subscription GTCs for Hardware which expressly, or by their nature, are intended to survive termination or expiry of the Agreement shall, thereafter, remain in full force and effect.

- 28.2. The Supplier may subcontract the performance of its obligations (or any part thereof) to any third-party service provider provided that:

- 28.2.1. the Supplier shall remain responsible for all acts and omissions of its subcontractors (which shall not include Resellers) that cause a breach of the Agreement; and

- 28.2.2. the Supplier shall comply with the Data Processing Terms (including with respect to international data transfers and the disclosure of sub-processor lists).

- 28.3. No variation of these Subscription GTCs for Hardware (or of the Agreement) shall be effective unless made in writing (which may be by e-mail) and agreed by the parties.

- 28.4. No failure or delay by a party to exercise any right or remedy provided: (a) under the Agreement; or (b) by applicable Legislation, shall:
- 28.4.1. constitute a waiver of that (or any other) right or remedy; or
 - 28.4.2. prevent or restrict the further exercise of that (or any other) right or remedy.
- 28.5. The parties agree that, if any provision (in whole or in part) of the Agreement is found by any court or administrative body having competent jurisdiction over the parties and the Agreement to be invalid, unenforceable, or illegal, then:
- 28.5.1. the other provisions shall remain in full force and effect; and
 - 28.5.2. to the extent the invalid, unenforceable, or illegal provision would be valid, enforceable, or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.
- 28.6. Except as expressly provided otherwise in the Agreement, any notice or other communication given to a party under or in connection with the Agreement shall be in writing and shall be delivered by:
- 28.6.1. hand or prepaid first class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
 - 28.6.2. except with respect to the service of legal proceedings, e-mail to the addresses specified in the Order Form.
- 28.7. Any notice or communication shall be deemed to have been received:
- 28.7.1. if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
 - 28.7.2. if sent by prepaid first class post or other next working day delivery service, at 9.00 a.m. on the second Business Day after posting or at the time recorded by the delivery service; or
 - 28.7.3. if sent by e-mail, upon the generation of a receipt notice by the recipient's server or, if such notice is not generated, upon delivery to the recipient's server.
- 28.8. The Agreement, and any documents referred to in it, constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover.
- 28.9. Each party agrees that, in entering into the Agreement, it does not rely on any undertaking, promise, assurance, statement, representation, warranty, or understanding (whether in writing or not) of any person (whether party to the Agreement or not) except as expressly set out in the Agreement.
- 28.10. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement made prior to the Effective Date.
- 28.11. Subject to [clause 28.12](#), neither party shall assign any of its rights under the Agreement without the prior written consent of the other party, such consent not to be unreasonably withheld or delayed.
- 28.12. The Supplier may assign its rights under the Agreement without the prior written consent of the Customer:
- 28.12.1. for the purposes of invoice financing or the recovery of a debt owed;
 - 28.12.2. to any of the Supplier's Affiliates;
 - 28.12.3. to a purchaser of all, or substantially all, of the assets or entities that comprise an identifiable segment, portion, division, or unit of a business of the Supplier; or
 - 28.12.4. as part of a corporate reorganisation, amalgamation, consolidation, or merger,
- provided, in each case, there is no material deterioration to the Subscription Service.
- 28.13. The Agreement does not confer any rights on any person or party (other than the parties to the Agreement) under any applicable Legislation (including, for example, pursuant to the UK Contracts (Rights of Third Parties) Act 1999).
- 28.14. Nothing in the Agreement (or through use of Vizrt Hardware or Hardware Support Services) is intended to, or shall be deemed to:
- 28.14.1. establish any partnership or joint venture between the parties;
 - 28.14.2. constitute any party the agent of the other party; or
 - 28.14.3. authorise a party to make or enter into any commitments for or on behalf of the other party.
- 28.15. The Agreement and any dispute or claim arising out of, or in connection with, the Agreement (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England.

- 28.16. Each party irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Agreement (including non-contractual disputes or claims).

29. INTERPRETATION

29.1. For the purposes of interpreting the Agreement:

- 29.1.1. all headings are for convenience and shall not affect the interpretation of the provisions that follow;
- 29.1.2. an obligation on a party not to do something includes an obligation not to agree, allow, permit, or acquiesce in, or to, that thing being done;
- 29.1.3. the Customer shall be responsible for all acts and omissions of the Authorised Users (including in breach of the Agreement) as if such acts or omissions were its own;
- 29.1.4. an obligation of the Customer (unless the context reasonably requires otherwise) includes an obligation on the Customer to ensure that an Authorised User does not act, or omit to act, in breach of that obligation;
- 29.1.5. references to Legislation will be construed as references to such Legislation as replaced, amended, consolidated, or re-enacted (with or without modification) from time to time and includes all orders, rules, regulations, or other binding provisions made under such Legislation;
- 29.1.6. any list, word, or phrase following the words '**including**', '**include**', '**in particular**', '**for example**', or any such similar expression shall be construed as having the phrase '**without limitation**' following them;
- 29.1.7. references to '**from**' with respect to a timeline or date shall be construed as having the phrase '**and including**' following it;
- 29.1.8. the word '**Material**' in the context of classifying the seriousness of a breach means that the breach:
 - 29.1.8.1. is more than trivial but need not be repudiatory; and
 - 29.1.8.2. if not remedied (or if not capable of remedy), may or is likely to have, a serious impact on the benefit which the innocent party would otherwise derive from performance of the Agreement in accordance with its terms.

29.2. If, and to the extent, there is any conflict, inconsistency, or ambiguity between the constituent parts of the Agreement then such conflict, inconsistency, or ambiguity shall be resolved in the following order of precedence (with the document earlier in the list prevailing over a document later in the list):

- 29.2.1. the Order Form;
- 29.2.2. these Subscription GTCs;
- 29.2.3. the Data Processing Terms;
- 29.2.4. the remaining documents comprising the Agreement.

Appendix 1

DEFINITIONS

Affiliate	with respect to any entity, any other entity Controlling, Controlled by, or under common Control with, such entity.
Agreement	<p>the binding contract between the Supplier and the Customer for the provision and receipt of the Vizrt Subscription Service comprising the following documents:</p> <ol style="list-style-type: none">1. the Order Form;2. these Subscription GTCs;3. the Vizrt Support Specification;4. the Data Processing Terms; and5. the Security Controls.
Authorised User	the employees, consultants, agents and other representatives appointed by the Customer to access and use the Hardware (provided that an Authorised User may not be a competitor of the Supplier).
Business Day	a day other than a Saturday, Sunday or public holiday in the Supplier's territory.
Cause(s) of Action	has the meaning given in clause 25.1
Confidential Information	any and all information that is proprietary or confidential in nature and is either clearly labelled as such or would, by its nature, be considered by a reasonable businessperson to be confidential (including, with respect to the Supplier, all information and materials concerning and/or relating to the Vizrt Subscription Service).
Contract Year	each successive period of twelve (12) months from the Effective Date.
Control	<p>and its derivatives means the power of a person to secure:</p> <ol style="list-style-type: none">1. by means of the holding of shares or the possession of voting power in an entity; or2. by virtue of any powers conferred by the articles of association or other document regulating or relating to an entity, <p>that the affairs of that entity are conducted in accordance with that person's wishes and Controlled and Controlling shall be construed accordingly.</p>
Customer	the corporate entity that has subscribed to receive the Vizrt Subscription Services for Hardware (as identified in the Order Form).
Customer's Data	the Customer's proprietary data or information submitted to the Supplier's help and/or ticket desk in connection with the Vizrt Hardware Support Services, by and/or on behalf of the Customer.
Customer's Materials	<p>the Customer's proprietary (or third party licensed):</p> <ol style="list-style-type: none">1. content;2. materials;3. logos or other creative, graphic or design assets, <p>provided or made available to the Supplier by the Customer under or in connection with the Agreement.</p>
Customer's Property	the Customer's Data, Customer's Materials, and Customer's System.
Customer's Responsibilities	all dependencies (including implementing, resourcing, and technical dependencies) and other obligations specified in the Order Form

Data Processing Terms	<p>the data processing terms referred in, or incorporated into, the Order Form or available for viewing or download at the following URLs:</p> <ol style="list-style-type: none"> 1. Data Processing Agreement https://www.vizrt.com/legal/#dpa; and 2. Privacy Notice: https://www.vizrt.com/privacy-policy/
Documentation	any user manuals, technical manuals, or other materials provided by the Supplier or Manufacturer in connection with the Vizrt Hardware or Hardware Support Services whether in printed, electronic or other form) that describe the installation, operation, use, or technical specifications of the Vizrt Hardware, the Minimum System Requirements, and Mandatory Third-Party Licences (including the "Vizrt Global Support Handbook").
Due Date	<p>means:</p> <ol style="list-style-type: none"> 1. the period of thirty (30) days from the date that the Supplier's invoice is issued to the Customer; or such other replacement period expressly specified in the Order Form.
Effective Date	<p>the:</p> <ol style="list-style-type: none"> 1. the 'Effective Date' specified in the Order Form; or <p>where the 'Effective Date' has not been specified in the Order Form, the date that the Order Form is last signed by the parties or, where applicable, the Electronic Signature is made.</p>
Electronic Signature	has the meaning given in clause 2.1.2 .
Exit Services	the provision (at the Customer's cost) of reasonable assistance (over and above the Vizrt Subscription Service for Hardware) to transition of all or part of the services from the Supplier to a successor supplier or to the Customer in accordance with, and to the extent described in, the Order Form and any documented exit plan agreed between the parties.
Fee(s)	the consideration payable for the Vizrt Subscription Service for Hardware as specified in the Order Form.
Force Majeure Event	acts, events, omissions, or accidents beyond a party's reasonable control (including strikes, lock-outs or other industrial disputes, failure of a utility service or transport or telecommunications network, epidemic or pandemic, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, or storm).
Insolvency Event	<p>in relation to the Customer;</p> <ol style="list-style-type: none"> 1. it suspends, or threatens to suspend, payment of its debts or becomes insolvent or unable to pay its debts; 2. it commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors; 3. a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer; 4. an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Customer; 5. the holder of a qualifying floating charge over the assets of the Customer has become entitled to appoint or has appointed an administrative receiver; 6. a person becomes entitled to appoint a receiver over the assets of the Customer or a receiver is appointed over the assets of the Customer; 7. a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued

	<p>against, the whole or any part of the Customer's assets and such attachment or process is not discharged within fourteen (14) days;</p> <p>8. it suffers or is subject to any equivalent event, circumstance or procedure to those set out above in paragraphs 1 to 7 above in any other jurisdiction; or</p> <p>it suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.</p>
Intellectual Property Right(s) or IPR	<ol style="list-style-type: none"> 1. patents, any extensions of the exclusivity granted in connection with patents, petty patents, utility models, registered designs, applications for any of the foregoing (including continuations, continuations-in-part, and divisional applications), the right to apply for and be granted any of the foregoing, and rights in inventions; 2. copyrights, design rights, semiconductor topography rights, moral rights, publication rights, database rights; 3. trade marks, service marks, and rights in trade-names, business names, brand names, get-up, logos, domain names, URLs, and all applications for the foregoing; 4. rights in know-how, trade secrets, and confidential information, data exclusivity rights; and <p>all other forms of intellectual property right having equivalent or similar effect to any of the above which may exist anywhere in the world.</p>
Legislation	enactments, statutory provisions, or subordinate legislation made under applicable laws.
Loss(es)	all losses, liabilities, damages, costs, charges, and reasonably incurred expenses (including management time, legal fees, other professional advisers' fees, and costs and disbursements of investigation, litigation, settlement, judgment, interest, fines, penalties, and remedial actions) howsoever arising in connection with a party's breach of the Agreement or under an indemnity.
Mandatory Third-Party Licences	the direct third-party licence(s) necessary to use the Hardware as described or listed in the Documentation.
Manufacturer	means any third-party entity that designs, produces, assembles, or otherwise manufactures the Hardware, or any component thereof, provided to the Customer from the Supplier under an Order Form. The Manufacturer is not a subsidiary, Affiliate, or agent of the Supplier and operates independently in relation to the production and quality assurance of the Hardware.
Minimum System Requirements	the minimum technical requirements that the Customer's System must meet in order for the Hardware to perform in accordance with the Agreement (as described or referenced in the Documentation).
Order Form	the Supplier's or Reseller's quotation or order form document (which may be in digital form) within which these Subscription GTCs for Hardware have been incorporated or referenced.
party	the Supplier or the Customer (as the case may be).
parties	the Supplier and the Customer (taken together).
Professional Services GTCs	the separate terms and conditions applicable to the provision of Vizrt Professional Services as referred in, or incorporated into, the Order Form.
Reseller	a Supplier-authorized reseller of the Vizrt Hardware or Hardware Support Services.
Sanctions Restrictions	<p>any economic sanctions laws, regulations, embargoes, or restrictive measures (including export control laws) administered, enacted or enforced by an applicable sanctions authority including by:</p> <ol style="list-style-type: none"> 1. the United Nations; 2. the European Union; 3. the United Kingdom; and

	the United States of America.
Security Controls	the technical and organisational security measures adopted by the Supplier in connection with the provision of the Vizrt Subscription Services as referred in, or incorporated into, the Order Form and Data Processing Terms.
Social Responsibility Laws	all applicable Legislation that concerns anti-bribery, anti-slavery, anti-discrimination, or the facilitation of financial crime and tax evasion (including, in the United Kingdom, the Criminal Finances Act 2017, the Terrorism Act 2006, the Money Laundering Regulations 2017, and the Bribery Act 2010).
Subscription GTCs	this document (being <u>clause 1</u> (PRELIMINARIES) to <u>clause 29</u> (INTERPRETATION) inclusive and this <u>Appendix 1</u> (DEFINITIONS)).
Subscription Period	the initial term of the Agreement as specified in the applicable Order Form (the "Initial Term"). Upon expiry of the Initial Term, the Agreement shall automatically renew for successive periods of twelve (12) months (each a "Renewal Term"), unless either Party provides written notice of non-renewal no less than 60 days prior to the end of the Initial Term or then-current Renewal Term.
Supplier	the provider of the Vizrt Subscription Services for Hardware and Hardware Support Services (as identified in the Order Form).
Supplier's IPR	<p>all present and future Intellectual Property Rights in:</p> <ol style="list-style-type: none"> 1. the Vizrt Hardware (excluding the Customer's Property); 2. all materials provided or made available by, or on behalf of, the Supplier in connection with the provision of the Hardware Support Services (including the Documentation); 3. any and all adaptations, add-ons, modifications, updates, and enhancements to the Hardware, and related software and materials described in limbs (1) and (2) including at the request or suggestion of the Customer or an Authorised User; and <p>the Vizrt Data.</p>
Third-Party Materials	the components (which may include software, tools, applications, reports, content, data, information, images, equipment, or other materials in whatever form or medium and related documentation) of the Vizrt Hardware described in the Documentation in respect of which third party licence or use terms apply to the Customer.
Third-Party Materials List	a list of such Third-Party Materials and links to the applicable Third-Party Terms may be made available by Supplier (e.g., via its website, in documentation, or upon request), and may be updated from time to time.
Third-Party Terms	the additional terms and conditions applicable to use of Third-Party Materials as identified in the Third-Party Materials List.
Vizrt Data	collected, grouped, anonymised, and aggregated data and/or information provided and/or made available to the Supplier in connection with the provision and/or receipt of the Vizrt Subscription Services for Hardware and the Hardware Support Services.
Vizrt Hardware	hardware or other equipment (which may comprise internal and/or external physical parts, devices, components, peripherals) provided to the Customer for the duration of the Subscription Period in connection with the Vizrt Subscription Services for Hardware and Hardware Support Services.
Vizrt Hardware Specification	the document describing the technical and functional specification(s) for the relevant Vizrt Hardware as referred in, or incorporated into, the Order Form.
Vizrt Support	may include the provision of:

1. troubleshooting and incident / problem classification, response, and resolution services; and
 2. upgrades, maintenance releases, improvements, versions, or enhancements to the Vizrt Hardware,
- in each case, to the extent described in the Vizrt Support Specification by reference to the level of Vizrt Support purchased in the Order Form.
- the document known as the “*Vizrt Global Support Handbook*” describing the Vizrt Support to be provided by the Supplier in connection with the relevant Vizrt Hardware and made available here: <https://docs.vizrt.com/Vizrt-Global-Software-Maintenance-and-Support-Handbook.pdf>.
- professional consultancy, training, design, implementation, development, or other supplemental services related to the Vizrt Hardware and falling outside the scope of these Vizrt Subscription Services.
- means, as specified in the Order Form, the provision of:
1. Vizrt Hardware, and
 2. Vizrt Hardware Support Services

Vizrt Support Specification

Vizrt Professional Services

Vizrt Subscription Services