



## Terms of Use

**Effective Date: June 16, 2017**

**Last Updated Date: January 17, 2019**

Welcome to the Virgo Surgical Video Solutions, Inc.'s ("**Virgo**," "**us**," "**we**," and "**Company**") website and application. We make available a cloud-based video-recording system designed to help healthcare providers record, store, and utilize medical video data. The "**Virgo System**" comprises (1) smart hardware video recording devices (the "**Virgo Hardware**") that record video information relating to endoscopic medical procedures ("**Medical Video Data**"), and (2) Virgo's cloud-based proprietary platform which stores the Medical Video Data recorded by the Virgo Hardware and allows users to access, view, edit, download, and/or annotate such recorded Medical Video Data (the "**Virgo Platform**").

PLEASE READ THIS TERMS OF USE AGREEMENT (THE "**TERMS**") CAREFULLY. THIS WEBSITE AND ANY OTHER WEBSITES OF COMPANY, ITS AFFILIATES OR AGENTS (COLLECTIVELY, THE "**WEBSITE**") AND THE INFORMATION ON IT ARE CONTROLLED BY COMPANY. THESE TERMS OF USE GOVERN THE USE OF THE WEBSITE AND MOBILE AND OTHER SOFTWARE APPLICATIONS ("**APPLICATIONS**"), INCLUDING THE VIRGO SYSTEM, AND APPLY TO ALL USERS VISITING THE WEBSITE (EACH, A "**USER**") BY ACCESS OR USING THE WEBSITE IN ANY WAY, INCLUDING USING THE VIRGO SYSTEM OR ANY PART THEREOF, AND ANY OTHER SERVICES AND RESOURCES AVAILABLE OR ENABLED VIA THE WEBSITE OR APPLICATION (EACH A "**SERVICE**" AND COLLECTIVELY, THE "**SERVICES**"). BY CLICKING ON THE "I ACCEPT" BUTTON, COMPLETING THE REGISTRATION PROCESS, AND/OR BROWSING THE WEBSITE, YOU REPRESENT THAT (1) YOU HAVE READ, UNDERSTAND, AND AGREE TO BE BOUND BY THE TERMS OF USE, (2) YOU ARE OF LEGAL AGE TO FORM A BINDING CONTRACT WITH COMPANY, AND (3) YOU HAVE THE AUTHORITY TO ENTER INTO THE TERMS OF USE PERSONALLY OR ON BEHALF OF COMPANY YOU HAVE NAMED AS THE USER, AND TO BIND THAT COMPANY TO THE TERMS OF USE. THE TERM "**YOU**" REFERS TO THE INDIVIDUAL OR LEGAL ENTITY, AS APPLICABLE, IDENTIFIED AS THE USER WHEN YOU REGISTERED ON THE WEBSITE. **IF YOU DO NOT AGREE TO BE BOUND BY THE TERMS OF USE, YOU MAY NOT ACCESS OR USE THIS WEBSITE OR THE SERVICES.**

**IF YOU SUBSCRIBE TO THE SERVICES FOR A TERM (THE "INITIAL TERM"), THEN THE TERMS WILL BE AUTOMATICALLY RENEWED FOR ADDITIONAL PERIODS OF THE SAME DURATION AS THE INITIAL TERM AT COMPANY'S THEN-CURRENT FEE FOR SUCH SERVICES UNLESS YOU OPT OUT OF THE AUTO-RENEWAL IN ACCORDANCE WITH SECTION 9.9 BELOW.**

PLEASE BE AWARE THAT SECTION 16 OF THIS AGREEMENT, BELOW, CONTAINS PROVISIONS GOVERNING HOW CLAIMS THAT YOU AND WE HAVE AGAINST EACH OTHER ARE RESOLVED, INCLUDING, WITHOUT LIMITATION, ANY CLAIMS THAT AROSE OR WERE ASSERTED PRIOR TO THE EFFECTIVE DATE OF THIS AGREEMENT. IN PARTICULAR, IT CONTAINS AN ARBITRATION AGREEMENT WHICH WILL, WITH LIMITED EXCEPTIONS, REQUIRE DISPUTES BETWEEN US TO BE SUBMITTED TO BINDING AND FINAL ARBITRATION. **UNLESS YOU OPT OUT OF THE ARBITRATION AGREEMENT: (1)**



**YOU WILL ONLY BE PERMITTED TO PURSUE CLAIMS AND SEEK RELIEF AGAINST US ON AN INDIVIDUAL BASIS, NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY CLASS OR REPRESENTATIVE ACTION OR PROCEEDING; AND (2) YOU ARE WAIVING YOUR RIGHT TO SEEK RELIEF IN A COURT OF LAW AND TO HAVE A JURY TRIAL ON YOUR CLAIMS.**

**ANY DISPUTE OR CLAIM RELATING IN ANY WAY TO YOUR USE OF THE SITE WILL BE GOVERNED AND INTERPRETED BY AND UNDER THE LAWS OF THE STATE OF CALIFORNIA, CONSISTENT WITH THE FEDERAL ARBITRATION ACT, WITHOUT GIVING EFFECT TO ANY PRINCIPLES THAT PROVIDE FOR THE APPLICATION OF THE LAW OF ANY OTHER JURISDICTION. THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS IS EXPRESSLY EXCLUDED FROM THIS AGREEMENT.**

Your use of, and participation in, certain Services may be subject to additional terms (“**Supplemental Terms**”) and such Supplemental Terms will either be listed in the Terms of Use or will be presented to you for your acceptance when you sign up to use the supplemental Service. If the Terms of Use are inconsistent with the Supplemental Terms, the Supplemental Terms shall control with respect to such Service. The Terms of Use and any applicable Supplemental Terms are referred to herein as the “**Terms.**”

PLEASE NOTE THAT THE TERMS ARE SUBJECT TO CHANGE BY COMPANY IN ITS SOLE DISCRETION AT ANY TIME. When changes are made, Virgo will make a new copy of the Terms available at the Website and within the Application and any new Supplemental Terms will be made available from within, or through, the affected Service on the Website or within the Application. We will also update the “Last Updated” date at the top of the Terms of Use. If we make any material changes, and you have registered with us to create an Account (as defined below) we will also send an e-mail to you at the last e-mail address you provided to us pursuant to the Terms. Any changes to the Terms will be effective immediately for new Users of the Website, the Application and/or Services and will be effective thirty (30) days after posting notice of such changes on the Website for existing Users, provided that any material changes shall be effective for Users who have an Account with us upon the earlier of thirty (30) days after posting notice of such changes on the Website or thirty (30) days after dispatch of an e-mail notice of such changes to Registered Users. The Company may require you to provide consent to the updated Terms in a specified manner before further use of the Website, the Application and/or the Services is permitted. If you do not agree to any change(s) after receiving a notice of such change(s), you shall stop using the Website, the Application and/or the Services. Otherwise, your continued use of the Website, the Application and/or Services constitutes your acceptance of such change(s). PLEASE REGULARLY CHECK THE WEBSITE TO VIEW THE THEN-CURRENT TERMS.

**1. Use of the Services and Company Properties.** The Software (as defined below), the Website, the Services, and the information and content available on the Website and in the Application (as these terms are defined herein) (collectively, the “**Company Properties**”) are protected by copyright laws throughout the world. Subject to the Terms, Company grants you a limited license to reproduce portions of Company Properties for the sole purpose of using the Services for your personal or internal business purposes. Unless otherwise specified by Company in a separate license, your right to use any Company Properties is subject to the Terms.

2.



**1.1 Application License.** Subject to your compliance with the Terms, Company grants you a limited non-exclusive, non-transferable, non-sublicensable, revocable license to download, access, and use the Application solely for your own internal business purposes.

**1.2 Company Software.** Use of any software and associated documentation, other than the Application, that is made available via the Website or the Services (“**Software**”) is governed by the Terms. Subject to your compliance with the Terms, Company grants you a non-assignable, non-transferable, non-sublicensable, revocable non-exclusive license to use the Software for the sole purpose of enabling you to use the Services in the manner permitted by the Terms. Some Software may be offered under an open source license that we will make available to you. There may be provisions in the open source license that expressly override some of these terms.

**1.3 Modifications.** We reserve the right, at any time, to modify, suspend, or discontinue the Company Properties (in whole or in part) with or without notice to you. You agree that neither Virgo nor its licensors or suppliers will be liable to you or to any third party for any modification, suspension, or discontinuation of the Company Properties or any part thereof. You agree that you will not be entitled to any refund or rebate for such suspensions. Virgo does not offer any specific uptime guarantee for the Company Properties.

**1.4 Updates.** Virgo may from time to time develop patches bug fixes, updates, upgrades and other modification to improve the performance of the Company Properties (“**Updates**”). These Updates may be automatically installed without providing any additional notice or receiving any additional consent. You consent to this automatic update. If you do not want such updates, your remedy is to terminate your Account (defined below). If you do not terminate your Account, you will receive updates automatically. You may need to update third-party software from time to time in order to use Company Properties.

**1.5 No Support or Maintenance.** Virgo may, at its discretion, provide implementation services related to the Virgo System, at its then-current rates. Except as otherwise expressly agreed to by the parties in writing, you acknowledge and agree that Virgo will have no obligation to provide you with any support or maintenance services in connection with the Virgo System, Services or Company Properties.

**1.6 Certain Restrictions.** The rights granted to you in the Terms are subject to the following restrictions: (a) you shall not license, sell, rent, lease, transfer, assign, reproduce, distribute, host or otherwise commercially exploit Company Properties or any portion of Company Properties, including the Website, (b) you shall not frame or utilize framing techniques to enclose any trademark, logo, or other Company Properties (including images, text, page layout or form) of Company; (c) you shall not use any metatags or other “hidden text” using Company’s name or trademarks; (d) you shall not modify, translate, adapt, merge, make derivative works of, disassemble, decompile, reverse compile or reverse engineer any part of Company Properties except to the extent the foregoing restrictions are expressly prohibited by applicable law; (e) you shall not use any manual or automated software, devices or other processes (including but not limited to spiders, robots, scrapers, crawlers, avatars, data mining tools or the like) to “scrape” or download data from any web pages contained in the Website (except that we grant the operators of public search engines revocable permission to use spiders to copy materials from the Website for the sole purpose of and solely to the extent necessary for creating publicly available



searchable indices of the materials, but not caches or archives of such materials); (f) you shall not access Company Properties in order to build a similar or competitive website, application or service; (g) except as expressly stated herein, no part of Company Properties may be copied, reproduced, distributed, republished, downloaded, displayed, posted or transmitted in any form or by any means; (h) you shall not remove or destroy any copyright notices or other proprietary markings contained on or in Company Properties; (i) interfere or attempt to interfere with the proper functioning of Company Properties or connect to or use Company Properties in any way not expressly permitted by the Terms; (j) use any unauthorized software that accesses, intercepts, “mines” or otherwise collects information from or through Company Properties or that is in transit from or to Company Properties, including but not limited to, any software that reads areas of RAM or streams of network traffic used by Company Properties; (k) intercept, examine or otherwise observe any proprietary communications protocol used by a client, a server or Company Properties, whether through the use of a network analyzer, packet sniffer or other device; (l) make any automated use of Company Properties, or take any action that imposes or may impose (in Company’s sole discretion) any unreasonable or disproportionately large load on the infrastructure for Company Properties; (m) use, facilitate, create, or maintain any unauthorized connection to Company Properties, including, but not limited to: (i) any connection to any unauthorized server that emulates, or attempts to emulate, any part of Company Properties; or (ii) any connection using programs, tools, or software not expressly approved by Company; (n) reverse engineer, decompile, disassemble, decipher or otherwise attempt to derive the source code for any underlying software or other intellectual property used to provide Company properties, or to obtain any information from Company Properties; (o) solicit or attempt to solicit personal information from other Users of Company Properties; (p) register for more than one Account or register for an Account on behalf of an individual other than yourself; or (q) advocate, encourage or assist any third party in doing any of the foregoing activities in this section.. Any future release, update or other addition to Company Properties shall be subject to the Terms. Company, its suppliers and service providers reserve all rights not granted in the Terms. Any unauthorized use of Company Properties terminates the licenses granted by Company pursuant to the Terms.

**1.7 Third-Party Materials.** As a part of Company Properties, you may have access to materials that are hosted by another party. You agree that it is impossible for Company to monitor such materials and that you access these materials at your own risk.

**1.8 Interface to Third Party Products and Services.** Over time, Virgo may provide the opportunity for you to interface the Virgo System to one or more third party products and services, through and using the Services (“**Third Party Products and Services**”). You decide whether and with which Third Party Products and Services you want to interface. Your consent and authorization is required for this interface, and is revocable by you at any time. Once your consent is given for a particular Third Party Product and Service, you agree that Virgo may exchange information and control data regarding you and your products, including your personal information, in order to enable the interface you have authorized. Once this information is shared with the particular Third Party Product and Service, its use will be governed by the third party’s privacy policy and not by Virgo’s Privacy Policy. You acknowledge that Third Party Products and Services that you connect to your Account or interface with are not Virgo products and services and you acknowledge and agree that Virgo does not control, and that these Terms do not apply to, any Third Party Products and Services. Use of any Third Party Products and Services is governed by separate terms and conditions provided by the operator(s) of the applicable Third



Party Products and Services. You acknowledge and agree that Virgo makes no representation or warranty about the safety of any Third Party Products or Services. Accordingly, Virgo is not responsible for your use of any Third Party Product or Service or any personal injury, death, property damage (including, without limitation, to your home), or other harm or losses arising from or relating to your use of any Third Party Products or Services. You should contact the third party with any questions about their Third Party Products and Services.

## 2. Registration.

**2.1 Access to the Services: Provider of Record**. The Services are made available to “Providers” (as defined in 45 CFR §160.103) and to members of a Provider’s Authorized Workforce (as defined and described below). All individuals who register for an account on behalf of a Provider must provide the Provider’s full legal name as part of the registration process. We call the Provider whose name the account is established as the owner of all user accounts associated with such Provider the “Provider of Record”. Even though a member of a Provider of Record’s Authorized Workforce may have signed up for an account, only the Provider of Record is entitled to the rights, remedies or benefits under this Agreement. The Provider of Record may delegate certain administrative rights for the account to one or more members of the Provider of Record’s Authorized Workforce, but the Provider of Record remains responsible for all activity occurring under such account.

**2.2 Access to Services: Authorized Representatives**. An authorized representative of a Provider may request an account from Company on behalf of such Provider, and once the account has been established, such Authorized Representative may have administrative privileges on the account. We call the person(s) authorized to act on behalf of a Provider the “Authorized Representative(s)” of such Provider. The Provider and Authorized Representative may be the same person. If you are establishing an account or taking any action with respect to a Provider’s account, you represent and warrant that (a) you have the authority to act on such Provider’s behalf either as owner/principal or as a member of such Provider’s Authorized Workforce, (b) the information you submit is complete and accurate, and (c) you have the authority to enter into this Agreement on behalf of such Provider and bind such Provider to the covenants, obligations, restrictions, limitations, acknowledgements, consents, representations, warranties, grants, waivers and releases contained in this Agreement. If you are an Authorized Representative, you recognize that you have no personal rights with respect to such Provider’s account, and that such Provider may change the Authorized Representative at any time, for any or no reason, with or without notice.

**2.3 Access to Services: Authorized Workforce**. For purposes of this Agreement, the term “Authorized Workforce” means those individuals who are employees, volunteers, trainees, and other persons whose conduct, in the performance of work for Provider, is under the direct control of such Provider, whether or not paid by the Provider, and who Provider has identified in writing to Company as authorized to access the Services on your behalf. If you are a member of a Provider’s Authorized Workforce, and such Provider has authorized you to access the Services on its behalf by authorizing Company to create a unique set of “Credentials” (i.e., username and password) for you, then you are authorized under this Agreement to access the Services solely on behalf and at the direction of such Provider. As such, you may sign in and use the functionality of the Services solely on behalf and at the direction of such Provider. You and/or your Provider are solely responsible for all activities occurring under the Provider of Record’s



account and/or using your Credentials. You consent to and authorize the disclosure to such Provider of any content related to, or otherwise generated by your use of the Services, including secure messages sent or received using your Credentials. You hereby agree and acknowledge that you are subject to, and we may enforce against you, all of the covenants, obligations, restrictions, limitations, acknowledgements, consents, representations and warranties set forth in this Agreement that are applicable to the person addressed as “you” in this Agreement, and you hereby grant and make all rights, waivers and releases set forth in this Agreement that are granted and made by the person addressed as “you” in this Agreement, but you are entitled to none of, and hereby waive and agree not to exercise or assert any of, the rights, remedies or benefits under this Agreement other than the limited, non-exclusive, non-transferable, personal right under this paragraph to sign in and use the functionality of the Services solely on behalf and at the direction of such Provider. Notwithstanding anything contained herein, you acknowledge that your access to the Services may be terminated by the Provider or us at any time, for any reason or no reason at all, with or without notice. By (i) accessing any of the Services under a Provider’s account(s), or (ii) contacting us by any means and requesting or directing us to take any action with respect to any Provider’s account(s) or data held by such account(s), or (iii) asserting any right or authority with respect to such account(s) or data, you represent and warrant that you have the authority to act on such Provider’s behalf and that you are not using the Services, or otherwise engaging in the activities described in clauses (i) through (iii) above, for the benefit or at the direction, of any person or entity other than such Provider.

**2.4 Access to Services: No Third-Party Access.** Except as required by law, you will not permit any third party (other than persons who satisfy the definition of Authorized Workforce) to use or access the Services without our prior written agreement. Nor will you authorize or assist any person or entity in accessing, or attempting to access, any portion of the Services via any means other than a commercial browser (such as Internet Explorer, Mozilla Firefox or Chrome) or an authorized mobile application developed and operated by us. You will promptly notify us in writing of any order or demand for compulsory disclosure of health information if the disclosure requires access to or use of the Services. You will cooperate fully with us in connection with any such demand. You will also notify us in writing in the event that any person or entity, whether or not a member of your Authorized Workforce, (a) attempts to access the Services by any means other than a commercial browser, (b) claims to offer a service or system that “integrates with” our Services or (c) requests to use your Credentials or requests that you obtain Credentials in order to access to the Services in a manner that would violate this Agreement if you engaged in such activity.

**2.5 Access to Services: Your Workforce.** You may permit your Authorized Workforce to use the Services on your behalf, subject to the terms of this Agreement. In such event, you will:

(a) Require each member of your Authorized Workforce to have unique Credentials, and will provide valid email addresses to Company of each such member for which you are seeking access;

(b) Train all members of your Authorized Workforce in the requirements of this Agreement and the Policies and Procedures relating to their access to and use of the Services, and ensure that they comply with such requirements;



(c) Suspend and/or terminate access to and use of the Services by any member of your Authorized Workforce who violates the terms of this Agreement or the Policies and Procedures, and notify Company of the same;

(d) Ensure that only the person to whom a specific set of Credentials have been assigned accesses the Services with such Credentials; and

(e) Immediately notify us in writing of the termination of employment of any member of your Authorized Workforce, or of your withdrawal of authorization for any such person to access the Services.

**2.6 Your Account.** Notwithstanding anything to the contrary herein, you acknowledge and agree that you shall have no ownership or other property interest in your Account, and you further acknowledge and agree that all rights in and to your Account are and shall forever be owned by and inure to the benefit of Company.

**2.7 Necessary Equipment and Software.** You must provide all equipment and software necessary to connect to Company Properties. You are solely responsible for any fees, including Internet connection that you incur when accessing Company Properties.

### **3. Responsibility for Content.**

**3.1 Types of Content.** You acknowledge that all Medical Video Data, including files, materials, data, text, audio, video, images or other content, including Company Properties (“**Content**”), is the sole responsibility of the party from whom such Content originated. This means that you, and not Company, are entirely responsible for all Content that you upload, post, e-mail, transmit or otherwise make available (“**Make Available**”) through Company Properties (“**Your Content**”), and that you and other Users of Company Properties, and not Company, are similarly responsible for all Content they Make Available through Company Properties (“**User Content**”).

**3.2 No Obligation to Pre-Screen Content.** You acknowledge that Company has no obligation to pre-screen Content (including, but not limited to, User Content), although Company reserves the right in its sole discretion to pre-screen, refuse or remove any Content. By entering into the Terms, you hereby provide your irrevocable consent to such monitoring. You acknowledge and agree that you have no expectation of privacy concerning the transmission of Your Content, including without limitation chat, text, or voice communications. In the event that Company pre-screens, refuses or removes any Content, you acknowledge that Company will do so for Company’s benefit, not yours. Without limiting the foregoing, Company shall have the right to remove any Content that violates the Terms or is otherwise objectionable.

**3.3 Storage.** Unless expressly agreed to by Company in writing elsewhere, Company has no obligation to store any of Your Content that you Make Available on Company Properties. Company has no responsibility or liability for the deletion or accuracy of any Content, including Your Content; the failure to store, transmit or receive transmission of Content; or the security, privacy, storage, or transmission of other communications originating with or involving use of Company Properties. Certain Services may enable you to specify the level at which such Services restrict access to Your Content. You are solely responsible for applying the appropriate level of



access to Your Content. If you do not choose, the system may default to its most permissive setting. You agree that Company retains the right to create reasonable limits on Company's use and storage of the Content, including Your Content, such as limits on file size, storage space, processing capacity, and similar limits described on the Website and as otherwise determined by Company in its sole discretion.

**3.4 Patient Data.** The Virgo System is designed to transmit certain data relating to your patients to you, and Virgo may be provided (or provide) other data by you about your patients, solely as permitted by applicable laws and regulations, including the Health Insurance Portability and Accountability Act of 1996 (HIPAA). The privacy and security of such data will be protected by Virgo, and such data will be subject to the terms of our Privacy Policy available at <https://virgosvs.com/tos>.

**3.5 Protected Health Information and HIPAA.** You are responsible for maintaining the confidentiality of the laboratory reports and protected health information (PHI) made available through the Virgo System in accordance with federal, state, and local requirements, including HIPAA. You will maintain appropriate security with regard to all personnel, systems, and administrative processes used by you or members of your workforce to transmit, store and process electronic health information through the use of the Services. You may grant access to records in the Services to healthcare professionals and other workforce members at your organization for the purposes of treatment and operations in accordance with your organization policies and HIPAA. It is your responsibility to revoke access to such workforce members when they are no longer employed by your organization or otherwise should no longer have access to such records. If you are granted access rights to Protected Health Information through the Virgo System, you may use such information for educational, treatment and operational purposes; provided that, (i) you may access only information pertaining to individuals with whom you have a treatment relationship; (ii) for whom a provider who has a treatment relationship with the individual has requested a professional consultation from you; (iii) you are an authorized member of the organization workforce working on behalf of the physician or the patient care team; or (iv) you have received authorization from a patient to access and use their health information. You acknowledge and agree that: (i) any and all information provided, transmitted, and/or transferred to us, through the Virgo System or by other means, that may be reasonably be understood to be used by us in connection with the Services will be accurate and will comply with HIPAA and the Health Information Technology for Economic and Clinical Health Act ("**HITECH**"); (ii) you will enter into a business associate agreement ("**BAA**") with Virgo; and (iii) you are solely responsible for the accuracy of such information and compliance with HIPAA and HITECH with regard to the transmittal and provision of such information. You represent and warrant that you have all rights and authorizations necessary to provide, transmit, and/or transfer any such data that is made available through the Virgo System.

**3.6 Compliance with Law.** You are solely responsible for ensuring that your use of the Services complies with applicable law, including laws relating to the maintenance of the privacy, security, and confidentiality of patient and other health information. You will not grant any user, including members of your Authorized Workforce, any rights to access or use of our Services that they would not be allowed to have under applicable laws. We offer no assurance that your use of the Services under the terms of this Agreement will not violate any law or regulation applicable to you. Except as otherwise provided in this Agreement, we will keep information that you or your Authorized Workforce input or upload onto the Services private and will not share it





with third parties, unless we believe in good faith that disclosure of Your Information is necessary to (i) comply with a court order, warrant or other legal process, (ii) protect the rights, property or safety of others, (iii) investigate or enforce suspected breaches of this Agreement, or (iv) allow our third-party partners to comply with their obligations under federal or state law.

#### **4. Ownership and Rights.**

**4.1 Company Properties.** Except with respect to Your Content and User Content, you agree that Company and its suppliers own all rights, title and interest in Company Properties (including but not limited to, any titles, computer code, themes, objects, dialogue, concepts, artwork, animations, sounds, audiovisual effects, methods of operation, moral rights, documentation). You will not remove, alter or obscure any copyright, trademark, service mark or other proprietary rights notices incorporated in or accompanying the Website, the Services, or Company Properties.

**4.2 Trademarks.** “Virgo” and other related graphics, logos, service marks and trade names used on or in connection with Company Properties or in connection with the Services are the trademarks of Company and may not be used without permission in connection with any third-party products or services. Other trademarks, service marks and trade names that may appear on or in Company Properties are the property of their respective owners.

**4.3 Other Content.** Except with respect to Your Content, you agree that you have no right or title in or to any Content that appears on or in Company Properties.

**4.4 Your Content.** Company does not claim ownership of Your Content. However, when you as a User submit Your Content on or in Company Properties, you represent that you own and/or have a royalty-free, perpetual, irrevocable, worldwide, non-exclusive right (including any moral rights) and license to use, license, reproduce, modify, adapt, publish, translate, create derivative works from, distribute, derive revenue or other remuneration from, perform and display Your Content (in whole or in part) worldwide and/or to incorporate it in other works in any form, media or technology now known or later developed, for the full term of any worldwide intellectual property right that may exist in Your Content.

**4.5 License to Your Content.** You grant Company a fully paid, royalty-free, perpetual, irrevocable, worldwide, royalty-free, non-exclusive and fully sublicensable right (including any moral rights) and license to use, license, distribute, reproduce, modify, and adapt Your Content (in whole or in part) for the purposes of operating and providing Company Properties to you and to our other Users. You warrant that the holder of any worldwide intellectual property right, including moral rights, in Your Content, has completely and effectively waived all such rights and validly and irrevocably granted to you the right to grant the license stated above. You agree that you, not Company, are responsible for all of Your Content that you Make Available on or in Company Properties.

**4.6 Feedback.** You agree that submission of any ideas, suggestions, documents, and/or proposals to Company through its suggestion, feedback, wiki, forum or similar pages (“**Feedback**”) is at your own risk and that Company has no obligations (including without limitation obligations of confidentiality) with respect to such Feedback. You represent and warrant that you have all rights necessary to submit the Feedback. You hereby grant to Company a fully



paid, royalty-free, perpetual, irrevocable, worldwide, non-exclusive, and fully sublicensable right and license to use, reproduce, perform, display, distribute, adapt, modify, re-format, create derivative works of, and otherwise commercially or non-commercially exploit in any manner, any and all Feedback, and to sublicense the foregoing rights, in connection with the operation and maintenance of Company Properties.

**5. User Conduct.** As a condition of your use of the Company Properties, you agree not to use Company Properties for any purpose that is prohibited by the Terms or by applicable law. You shall not (and shall not permit any third party) either (a) take any action or (b) Make Available any Content on or through Company Properties that: (i) infringes any patent, trademark, trade secret, copyright, right of publicity or other right of any person or entity; (ii) is unlawful, threatening, abusive, harassing, defamatory, libelous, deceptive, fraudulent, invasive of another's privacy, tortious, obscene, offensive, or profane; (iii) constitutes unauthorized or unsolicited advertising, junk or bulk e-mail; (iv) involves commercial activities and/or sales without Company's prior written consent, such as contests, sweepstakes, barter, advertising, or pyramid schemes; (v) impersonates any person or entity, including any employee or representative of Company; (vi) interferes with or attempt to interfere with the proper functioning of Company Properties or uses Company Properties in any way not expressly permitted by the Terms; or (vii) attempts to engage in or engage in, any potentially harmful acts that are directed against Company Properties, including but not limited to violating or attempting to violate any security features of Company Properties, using manual or automated software or other means to access, "scrape," "crawl" or "spider" any pages contained in Company Properties, introducing viruses, worms, or similar harmful code into Company Properties, or interfering or attempting to interfere with use of Company Properties by any other user, host or network, including by means of overloading, "flooding," "spamming," "mail bombing," or "crashing" Company Properties.

**6. Investigations.** Company may, but is not obligated to, monitor or review Company Properties and Content at any time. Without limiting the foregoing, Company shall have the right, in its sole discretion, to remove any of Your Content for any reason (or no reason), including if such Content violates the Terms or any applicable law. Although Company does not generally monitor user activity occurring in connection with Company Properties or Content, if Company becomes aware of any possible violations by you of any provision of the Terms, Company reserves the right to investigate such violations, and Company may, at its sole discretion, immediately terminate your license to use Company Properties, or change, alter or remove Your Content, in whole or in part, without prior notice to you.

## **7. Interactions with Other Users.**

**7.1 User Responsibility.** You are solely responsible for your interactions with other Users and any other parties with whom you interact through the Virgo System and Services; provided, however, that Company reserves the right, but has no obligation, to intercede in such disputes. You agree that Company will not be responsible for any liability incurred as the result of such interactions.

**7.2 Content Provided by Other Users.** Company Properties may contain User Content provided by other Users. Company is not responsible for and does not control User Content. Company has no obligation to review or monitor, and does not approve, endorse or



make any representations or warranties with respect to User Content. You use all User Content and interact with other Users at your own risk.

## 8. Third-Party Services.

**8.1 Third-Party Websites, Applications & Ads.** Company Properties may contain links to third-party websites (“**Third-Party Websites**”) and applications (“**Third-Party Applications**”) and advertisements for third parties (“**Third-Party Ads**”). When you click on a link to a Third-Party Website, Third-Party Application or Third-Party Ad, we will not warn you that you have left Company Properties and are subject to the terms and conditions (including privacy policies) of another website or destination. Such Third-Party Websites, Third-Party Applications and Third-Party Ads are not under the control of Company. Company is not responsible for any Third-Party Websites, Third-Party Applications or Third-Party Ads. Company provides these Third-Party Websites, Third-Party Applications and Third Party Ads only as a convenience and does not review, approve, monitor, endorse, warrant, or make any representations with respect to Third-Party Websites, Third-Party Applications or Third-Party Ads, or their products or services. You use all links in Third-Party Websites, Third-Party Applications and Third-Party Ads at your own risk. When you leave our Website, our Terms and policies no longer govern. You should review applicable terms and policies, including privacy and data gathering practices, of any Third-Party Websites or Third-Party Applications, and should make whatever investigation you feel necessary or appropriate before proceeding with any transaction with any third party.

**8.2 Third-Party Providers.** We use third-party services, including but not limited to analytics, authentication, hosting, and payment services to help us analyze how users use Company Properties and so that users may access Company Properties. Each third-party service is restricted by the third party’s terms of use and privacy policy. By using Company Properties, you consent to such third-party services and their terms. For a full list of our third-party service providers, please contact us at support@virgosvs.com.

## 9. Fees and Purchase Terms.

**9.1 Making Purchases.** If you wish to purchase the Virgo Hardware (“**Product**”), you will be required to supply certain information applicable to your purchase, including payment, contact, and other information. Any such information will be treated as described in our Privacy Policy. All information that you provide to us or our third party payment processor must be accurate, current, and complete. YOU REPRESENT AND WARRANT THAT YOU HAVE THE LEGAL RIGHT TO USE ANY CREDIT CARDS OR OTHER PAYMENT MEANS USED TO INITIATE ANY TRANSACTION. You agree to pay all charges incurred by you or any users of your account and credit card (or other applicable payment mechanism) at the prices in effect when such charges are incurred. You will also be responsible for paying any applicable taxes relating to your purchases. Verification of information applicable to a purchase may be required prior to our acceptance of any order.

**9.2 Product Descriptions.** Descriptions, images, references, features, content, specifications, products, prices, and availability of Product are subject to change without notice, and our current prices can be found on the Website. We make reasonable efforts to accurately display and describe the attributes of our Product. The inclusion of any Products on the Website at a particular time does not imply or warrant that these products or services will be available at



any time. It is your responsibility to ascertain and obey all applicable local, state, federal, and international laws (including minimum age requirements) in regard to the possession, use, and sale of any item purchased through the Website. By placing an order, you represent that the Products ordered will be used only in a lawful manner. We reserve the right, with or without prior notice, to limit the available quantity of or discontinue any Product; to honor or impose conditions on the honoring of, any coupon, coupon code, promotional code, or other similar promotions; to bar any user from making any or all purchases; and to refuse to provide any user with any product or service.

**9.3 Acceptance.** A Product is deemed irrevocably accepted upon your use of the Product.

**9.4 Orders.** Title and risk of loss for any purchases pass to you upon our delivery to our carrier. When you place an order, we will not charge you at the time the order is placed. We reserve the right to ship partial orders (at no additional cost to you), and the portion of any order that is partially shipped may be charged at the time of shipment.

**9.5 Payment.** You agree to pay all fees or charges to your Account in accordance with the fees, charges and billing terms in effect at the time a fee or charge is due and payable. You must provide Company with a valid credit card (Visa, MasterCard, or any other issuer accepted by us) or PayPal account (“**Payment Provider**”), or purchase order information as a condition to signing up for the Services. Your Payment Provider agreement governs your use of the designated credit card or PayPal account, and you must refer to that agreement and not the Terms to determine your rights and liabilities. By providing Company with your credit card number or PayPal account and associated payment information, you agree that Company is authorized to immediately invoice your Account for all fees and charges due and payable to Company hereunder and that no additional notice or consent is required. You agree to immediately notify Company of any change in your billing address or the credit card or PayPal account used for payment hereunder. Company reserves the right at any time to change its prices and billing methods, either immediately upon posting on Company Properties or by e-mail delivery to you.

**9.6 Service Subscription Fees.** You will be responsible for payment of the applicable fee for any Services (each, a “**Service Subscription Fee**”) at the time you create your Account and select your subscription package (each, a “**Service Commencement Date**”). Except as set forth in the Terms, all fees for the Services are non-refundable. No contract will exist between you and Company for the Services until Company accepts your order by a confirmatory e-mail or other appropriate means of communication.

**9.7 Taxes.** Company’s fees are net of any applicable Sales Tax. If any Services, or payments for any Services, under the Terms are subject to Sales Tax in any jurisdiction and you have not remitted the applicable Sales Tax to Company, you will be responsible for the payment of such Sales Tax and any related penalties or interest to the relevant tax authority, and you will indemnify Company for any liability or expense we may incur in connection with such Sales Taxes. Upon our request, you will provide us with official receipts issued by the appropriate taxing authority, or other such evidence that you have paid all applicable taxes. For purposes of this section, “**Sales Tax**” shall mean any sales or use tax, and any other tax measured by sales proceeds, that Company is permitted to pass to its customers, that is the functional equivalent of a sales tax where the applicable taxing jurisdiction does not otherwise impose a sales or use tax.



**9.8 Withholding Taxes.** You agree to make all payments of fees to Company free and clear of, and without reduction for, any withholding taxes. Any such taxes imposed on payments of fees to Company will be your sole responsibility, and you will provide Company with official receipts issued by the appropriate taxing authority, or such other evidence as we may reasonably request, to establish that such taxes have been paid.

**9.9 Automatic Renewal.** Your subscription will continue indefinitely until terminated in accordance with the Terms. **After your initial subscription period, and again after any subsequent subscription period, your subscription will automatically commence on the first day following the end of such period (each a “Renewal Commencement Date”) and continue for an additional equivalent period, at Company’s then-current price for such subscription. You agree that your Account will be subject to this automatic renewal feature unless you cancel your subscription at least (a) thirty (30) days prior to the Renewal Commencement Date (or in the event that you receive a notice from Company that your subscription will be automatically renewed, you will have thirty days from the date of the Company notice), by logging into and going to the “Change/Cancel Membership” page of your “Account Settings” page.** If you do not wish your Account to renew automatically, or if you want to change or terminate your subscription, please contact Company at support@virgosvs.com or log in and go to the “Change/Cancel Membership” page on your “Account Settings” page. If you cancel your subscription, you may use your subscription until the end of your then-current subscription term; your subscription will not be renewed after your then-current term expires. However, you will not be eligible for a prorated refund of any portion of the subscription fee paid for the then-current subscription period. By subscribing, you authorize Company to charge your Payment Provider now, and again at the beginning of any subsequent subscription period. Upon renewal of your subscription, if Company does not receive payment from your Payment Provider, (i) you agree to pay all amounts due on your Account upon demand, and/or (ii) you agree that Company may either terminate or suspend your subscription and continue to attempt to charge your Payment Provider until payment is received (upon receipt of payment, your Account will be activated and for purposes of automatic renewal, your new subscription commitment period will begin as of the day payment was received).

**9.10 Free Trials and Other Promotions.** Any free trial or other promotion that provides Registered User level access to the Services must be used within the specified time of the trial. At the end of the trial period, your use of that Service will expire and any further use of the Service is prohibited unless you pay the applicable subscription fee. If you are inadvertently charged for a subscription, please contact Company to have the charges reversed.

**9.11 Disputes.** You must notify us in writing within seven (7) days after receiving your credit card statement, if you dispute any of our charges on that statement or such dispute will be deemed waived. Billing disputes should be notified to the following address: 1111 Kearny St. #15, San Francisco, CA 94133 or via email at support@virgosvs.com.

**10. Indemnification.** You agree to indemnify and hold Company, its parents, subsidiaries, affiliates, officers, employees, agents, partners and licensors (collectively, the “**Company Parties**”) harmless from any losses, costs, liabilities and expenses (including reasonable attorneys’ fees) relating to or arising out of: (a) Your Content; (b) your use of, or inability to use, Company Properties; (c) your violation of the Terms; (d) your violation of any rights of another party, including any Users; or (e) your violation of any applicable laws, rules or regulations.



Company reserves the right, at its own cost, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you, in which event you will fully cooperate with Company in asserting any available defenses. This provision does not require you to indemnify any of the Company Parties for any unconscionable commercial practice by such party or for such party's fraud, deception, false promise, misrepresentation or concealment, suppression or omission of any material fact in connection with the Website or any Services provided hereunder. You agree that the provisions in this section will survive any termination of your Account, the Terms or your access to Company Properties.

## **11. Disclaimer of Warranties and Conditions.**

**11.1 As Is.** YOU EXPRESSLY UNDERSTAND AND AGREE THAT TO THE EXTENT PERMITTED BY APPLICABLE LAW, YOUR USE OF COMPANY PROPERTIES IS AT YOUR SOLE RISK, AND ACCESS TO COMPANY PROPERTIES AND THE INFORMATION CONTAINED ON THEM ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITH ALL FAULTS. COMPANY PARTIES EXPRESSLY DISCLAIM ALL WARRANTIES, REPRESENTATIONS, AND CONDITIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, QUIET ENJOYMENT, ACCURACY, AND NON-INFRINGEMENT OF THIRD-PARTY RIGHTS. COMPANY DOES NOT GUARANTEE ANY SPECIFIC RESULTS FROM THE USE OF COMPANY PROPERTIES OR THAT ANY RESULTS WILL BE ACCURATE OR RELIABLE.

**(a)** COMPANY PARTIES MAKE NO WARRANTY, REPRESENTATION, GUARANTEE, OR CONDITION THAT: (1) COMPANY PROPERTIES WILL MEET YOUR REQUIREMENTS; (2) YOUR USE OF COMPANY PROPERTIES WILL BE UNINTERRUPTED, TIMELY, SECURE, FREE OF VIRUSES OR OTHER HARMFUL CODE OR ERROR-FREE; OR (3) THE RESULTS THAT MAY BE OBTAINED FROM USE OF COMPANY PROPERTIES WILL BE ACCURATE OR RELIABLE.

**(b)** YOU ARE SOLELY RESPONSIBLE FOR ANY AND ALL ACTS OR OMISSIONS TAKEN OR MADE IN RELIANCE ON THE SERVICES, INCLUDING THE ACTS OR OMISSIONS OF YOUR AUTHORIZED REPRESENTATIVES OR MEMBERS OF YOUR AUTHORIZED WORKFORCE, OR THE INFORMATION IN THE SERVICES, INCLUDING INACCURATE OR INCOMPLETE INFORMATION.

**(c)** ANY CONTENT DOWNLOADED FROM OR OTHERWISE ACCESSED THROUGH COMPANY PROPERTIES IS ACCESSED AT YOUR OWN RISK, AND YOU SHALL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR PROPERTY, INCLUDING, BUT NOT LIMITED TO, YOUR COMPUTER SYSTEM AND ANY DEVICE YOU USE TO ACCESS COMPANY PROPERTIES, OR ANY OTHER LOSS THAT RESULTS FROM ACCESSING SUCH CONTENT.

**(d)** THE SERVICES MAY BE SUBJECT TO DELAYS, CANCELLATIONS AND OTHER DISRUPTIONS. COMPANY MAKES NO WARRANTY, REPRESENTATION OR CONDITION WITH RESPECT TO SERVICES, INCLUDING BUT NOT LIMITED TO, THE QUALITY, EFFECTIVENESS, REPUTATION AND OTHER CHARACTERISTICS OF SERVICES.



(e) NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED FROM COMPANY OR THROUGH COMPANY PROPERTIES WILL CREATE ANY WARRANTY NOT EXPRESSLY MADE HEREIN.

(f) FROM TIME TO TIME, COMPANY MAY OFFER NEW "BETA" FEATURES OR TOOLS WITH WHICH ITS USERS MAY EXPERIMENT. SUCH FEATURES OR TOOLS ARE OFFERED SOLELY FOR EXPERIMENTAL PURPOSES AND WITHOUT ANY WARRANTY OF ANY KIND, AND MAY BE MODIFIED OR DISCONTINUED AT COMPANY'S SOLE DISCRETION. THE PROVISIONS OF THIS SECTION APPLY WITH FULL FORCE TO SUCH FEATURES OR TOOLS.

**11.2 Medical Advice.** You acknowledge and agree that any advice provided to a User of the Virgo System or a patient as a result of information obtained or accessed through the Virgo System will be based on your own medical judgment and Virgo will not be liable for any review or liability that results from your advice.

**11.3 No Liability for Conduct of Third Parties.** YOU ACKNOWLEDGE AND AGREE THAT COMPANY PARTIES ARE NOT LIABLE, AND YOU AGREE NOT TO SEEK TO HOLD COMPANY PARTIES LIABLE, FOR THE CONDUCT OF THIRD PARTIES ON THE WEBSITE, INCLUDING OPERATORS OF EXTERNAL SITES, AND THAT THE RISK OF INJURY FROM SUCH THIRD PARTIES RESTS ENTIRELY WITH YOU.

**11.4 No Liability for Conduct of Other Users.** YOU ARE SOLELY RESPONSIBLE FOR ALL OF YOUR COMMUNICATIONS AND INTERACTIONS WITH OTHER USERS OF COMPANY PROPERTIES. YOU UNDERSTAND THAT COMPANY DOES NOT MAKE ANY ATTEMPT TO VERIFY THE STATEMENTS OF USERS OF COMPANY PROPERTIES.

## **12. Limitation of Liability.**

**12.1 Disclaimer of Certain Damages.** YOU UNDERSTAND AND AGREE THAT IN NO EVENT SHALL COMPANY PARTIES BE LIABLE FOR ANY LOSS OF PROFITS, REVENUE OR DATA, INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH COMPANY PROPERTIES, OR DAMAGES OR COSTS DUE TO LOSS OF PRODUCTION OR USE, BUSINESS INTERRUPTION, PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, WHETHER OR NOT COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, ARISING OUT OF OR IN CONNECTION WITH THE TERMS, OR FROM ANY COMMUNICATIONS, INTERACTIONS OR MEETINGS WITH OTHER USERS OF COMPANY PROPERTIES, ON ANY THEORY OF LIABILITY, RESULTING FROM: (1) THE USE OR INABILITY TO USE COMPANY PROPERTIES; (2) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES RESULTING FROM ANY GOODS, DATA, INFORMATION OR SERVICES PURCHASED OR OBTAINED OR MESSAGES RECEIVED FOR TRANSACTIONS ENTERED INTO THROUGH COMPANY PROPERTIES; (3) UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR TRANSMISSIONS OR DATA; (4) STATEMENTS OR CONDUCT OF ANY THIRD PARTY ON COMPANY PROPERTIES; OR (5) ANY OTHER MATTER RELATED TO COMPANY PROPERTIES, WHETHER BASED ON WARRANTY, COPYRIGHT, CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR ANY OTHER LEGAL THEORY. THE FOREGOING CAP ON LIABILITY SHALL NOT APPLY TO LIABILITY OF A COMPANY PARTY FOR (A) DEATH OR PERSONAL INJURY



CAUSED BY A COMPANY PARTY'S NEGLIGENCE; OR FOR (B) ANY INJURY CAUSED BY A COMPANY PARTY'S FRAUD OR FRAUDULENT MISREPRESENTATION.

**12.2 Cap on Liability.** UNDER NO CIRCUMSTANCES WILL COMPANY PARTIES BE LIABLE TO YOU FOR MORE THAN THE GREATER OF (A) THE TOTAL AMOUNT PAID TO COMPANY BY YOU DURING THE TWELVE (12) MONTH PERIOD PRIOR TO THE ACT, OMISSION OR OCCURRENCE GIVING RISE TO SUCH LIABILITY AND (B) THE REMEDY OR PENALTY IMPOSED BY THE STATUTE UNDER WHICH SUCH CLAIM ARISES. IF YOU HAVE NOT PAID COMPANY ANY AMOUNTS DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT THAT GAVE RISE TO SUCH CLAIM, COMPANY'S SOLE AND EXCLUSIVE LIABILITY SHALL BE LIMITED TO FIFTY DOLLARS (\$50). THE FOREGOING CAP ON LIABILITY SHALL NOT APPLY TO LIABILITY OF A COMPANY PARTY FOR (A) DEATH OR PERSONAL INJURY CAUSED BY A COMPANY PARTY'S NEGLIGENCE; OR FOR (B) ANY INJURY CAUSED BY A COMPANY PARTY'S FRAUD OR FRAUDULENT MISREPRESENTATION.

**12.3 DATA.** THE COMPANY PARTIES ASSUME NO RESPONSIBILITY FOR THE TIMELINESS, DELETION, MIS-DELIVERY OR FAILURE TO STORE DATA, INCLUDING ANY MEDICAL VIDEO DATA, OR PERSONALIZATION SETTINGS.

**12.4 User Content.** EXCEPT FOR COMPANY'S OBLIGATIONS TO PROTECT YOUR PERSONAL DATA AS SET FORTH IN THE COMPANY'S PRIVACY POLICY, COMPANY ASSUMES NO RESPONSIBILITY FOR THE TIMELINESS, DELETION, MIS-DELIVERY OR FAILURE TO STORE ANY CONTENT (INCLUDING, BUT NOT LIMITED TO, YOUR CONTENT AND USER CONTENT), USER COMMUNICATIONS OR PERSONALIZATION SETTINGS.

**12.5 Warnings.** THE COMPANY MAY INCLUDE PRODUCT WARNINGS AND INSTRUCTIONS ON THE PACKAGING, LABELS AND DOCUMENTATION OF THE VIRGO SYSTEM. AS A CONDITION TO RECEIVING THE SERVICES, YOU AGREE TO STRICTLY COMPLY WITH ALL PRODUCT WARNINGS AND INSTRUCTIONS ON THE PACKAGING, LABELS AND DOCUMENTATION OF THE VIRGO SYSTEM AND ANY UPDATES THAT COMPANY PROVIDES TO YOU THROUGH THE APPLICATION (OR THROUGH EMAIL IF YOU PROVIDE COMPANY WITH YOUR EMAIL ADDRESS). IN ADDITION YOU AGREE TO ONLY USE THE VIRGO SYSTEM IN A MANNER THAT COMPLIES WITH ALL APPLICABLE LAWS AND REGULATIONS.

**12.6 Basis of the Bargain.** THE LIMITATIONS OF DAMAGES SET FORTH ABOVE ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN COMPANY AND YOU.

### **13. Remedies.**

**13.1 Violations.** If Company becomes aware of any possible violations by you of the Terms, Company reserves the right to investigate such violations. If, as a result of the investigation, Company believes that criminal activity has occurred, Company reserves the right to refer the matter to, and to cooperate with, any and all applicable legal authorities. Company is entitled, except to the extent prohibited by applicable law, to disclose any information or materials on or in Company Properties, including Your Content, in Company's possession in connection





with your use of Company Properties, to (1) comply with applicable laws, legal process or governmental request; (2) enforce the Terms, (3) respond to any claims that Your Content violates the rights of third parties, (4) respond to your requests for customer service, or (5) protect the rights, property or personal safety of Company, its Users or the public, and all enforcement or other government officials, as Company in its sole discretion believes to be necessary or appropriate.

**13.2 Breach.** In the event that Company determines, in its sole discretion, that you have breached any portion of the Terms, or have otherwise demonstrated conduct inappropriate for Company Properties, Company reserves the right to:

- (a) Warn you via e-mail (to any e-mail address you have provided to Company) that you have violated the Terms;
- (b) Delete any of Your Content provided by you or your agent(s) to Company Properties;
- (c) Discontinue your registration(s) with the any of Company Properties, including any Services or any Company community;
- (d) Discontinue your subscription to any Services;
- (e) Notify and/or send Content to and/or fully cooperate with the proper law enforcement authorities for further action; and/or
- (f) Pursue any other action which Company deems to be appropriate.

## **14. Term and Termination.**

**14.1 Term.** The Terms commence on the date when you accept them (as described in the preamble above) and remain in full force and effect while you use Company Properties, unless terminated earlier in accordance with the Terms.

**14.2 Prior Use.** Notwithstanding the foregoing, if you used Company Properties prior to the date you accepted the Terms, you hereby acknowledge and agree that the Terms commenced on the date you first used Company Properties (whichever is earlier) and will remain in full force and effect while you use Company Properties, unless earlier terminated in accordance with the Terms.

**14.3 Termination of Services by Company.** You will have thirty (30) days from the Service Commencement Date, or any Renewal Commencement Date, for any Services hereunder, to cancel such Service, in which case Company will refund your Service Subscription Fee, if already paid pursuant to Section 11.6 or 11.7, for the applicable Service. Except as set forth above, the Service Subscription Fee for any Service shall be non-refundable. If timely payment cannot be charged to your Payment Provider for any reason, if you have materially breached any provision of the Terms, or if Company is required to do so by law (e.g., where the provision of the Website, the Application, the Software or the Services is, or becomes, unlawful), Company has the right to, immediately and without notice, suspend or terminate any Services provided to you. You agree that all terminations for cause shall be made in Company's sole



discretion and that Company shall not be liable to you or any third party for any termination of your Account.

**14.4 Termination of Services by You.** If you want to terminate the Services provided by Company, you may do so by (a) notifying Company at any time and (b) closing your Account for all of the Services that you use. Your notice should be sent, in writing, to Company's address set forth below. THE SERVICES WILL CONTINUE AT THE END OF EACH SUBSCRIPTION PERIOD UNLESS YOU CANCEL YOUR SUBSCRIPTION IN ACCORDANCE WITH THE PROCEDURE SET FORTH IN SECTION 11.10.

**14.5 Effect of Termination.** Termination of any Service includes removal of access to such Service and barring of further use of the Service. Termination of all Services may include deletion of your password and all related information, files and Content associated with or inside your Account (or any part thereof), including Your Content. Upon termination of any Service, your right to use such Service will automatically terminate immediately. You understand that any termination of Services may involve deletion of Your Content associated therewith from our live databases. Company will not have any liability whatsoever to you for any suspension or termination, including for deletion of Your Content. All provisions of the Terms which by their nature should survive, shall survive termination of Services, including without limitation, ownership provisions, warranty disclaimers, and limitation of liability.

**14.6 No Subsequent Registration.** If your registration(s) with or ability to access Company Properties, or any other Company community is discontinued by Company due to your violation of any portion of the Terms or for conduct otherwise inappropriate for the community, then you agree that you shall not attempt to re-register with or access Company Properties or any Company community through use of a different member name or otherwise, and you acknowledge that you will not be entitled to receive a refund for fees related to those Company Properties to which your access has been terminated. In the event that you violate the immediately preceding sentence, Company reserves the right, in its sole discretion, to immediately take any or all of the actions set forth herein without any notice or warning to you.

**15. International Users.** Company Properties can be accessed from countries around the world and may contain references to Services and Content that are not available in your country. These references do not imply that Company intends to announce such Services or Content in your country. Company Properties are controlled and offered by Company from its facilities in the United States of America. Company makes no representations that Company Properties are appropriate or available for use in other locations. Those who access or use Company Properties from other countries do so at their own volition and are responsible for compliance with local law.

**16. Dispute Resolution.** *Please read the following arbitration agreement in this Section ("Arbitration Agreement") carefully. It requires you to arbitrate disputes with Company and limits the manner in which you can seek relief from us.*

**16.1 Applicability of Arbitration Agreement.** You agree that any dispute or claim relating in any way to your access or use of the Website, to any products sold or distributed through the Website, or to any aspect of your relationship with Company, will be resolved by binding arbitration, rather than in court, except that (1) you may assert claims in small claims court if your claims qualify, so long as the matter remains in such court and advances only on an individual



(non-class, non-representative) basis; and (2) you or Company may seek equitable relief in court for infringement or other misuse of intellectual property rights (such as trademarks, trade dress, domain names, trade secrets, copyrights, and patents). **This Arbitration Agreement shall apply, without limitation, to all claims that arose or were asserted before the Effective Date of this Agreement or any prior version of this Agreement.**

**IF YOU AGREE TO ARBITRATION WITH COMPANY, YOU ARE AGREEING IN ADVANCE THAT YOU WILL NOT PARTICIPATE IN OR SEEK TO RECOVER MONETARY OR OTHER RELIEF IN ANY LAWSUIT FILED AGAINST COMPANY ALLEGING CLASS, COLLECTIVE, AND/OR REPRESENTATIVE CLAIMS ON YOUR BEHALF. INSTEAD, BY AGREEING TO ARBITRATION, YOU MAY BRING YOUR CLAIMS AGAINST THE COMPANY IN AN INDIVIDUAL ARBITRATION PROCEEDING. IF SUCCESSFUL ON SUCH CLAIMS, YOU COULD BE AWARDED MONEY OR OTHER RELIEF BY AN ARBITRATOR. YOU ACKNOWLEDGE THAT YOU HAVE BEEN ADVISED THAT YOU MAY CONSULT WITH AN ATTORNEY IN DECIDING WHETHER TO ACCEPT THIS AGREEMENT, INCLUDING THIS ARBITRATION AGREEMENT.**

**16.2** Arbitration Rules and Forum. The Federal Arbitration Act governs the interpretation and enforcement of this Arbitration Agreement. To begin an arbitration proceeding, you must send a letter requesting arbitration and describing your claim to our registered agent United Corporate; 10 Bank Street, Suite 560, White Plains, NY 10606. The arbitration will be conducted by JAMS, an established alternative dispute resolution provider. Disputes involving claims and counterclaims under \$250,000, not inclusive of attorneys' fees and interest, shall be subject to JAMS's most current version of the Streamlined Arbitration Rules and procedures available at <http://www.jamsadr.com/rules-streamlined-arbitration/>; all other claims shall be subject to JAMS's most current version of the Comprehensive Arbitration Rules and Procedures, available at <http://www.jamsadr.com/rules-comprehensive-arbitration/>. JAMS's rules are also available at [www.jamsadr.com](http://www.jamsadr.com) or by calling JAMS at 800-352-5267. If JAMS is not available to arbitrate, the parties will select an alternative arbitral forum. If the arbitrator finds that you cannot afford to pay JAMS's filing, administrative, hearing and/or other fees and cannot obtain a waiver from JAMS, Company will pay them for you. In addition, Company will reimburse all such JAMS's filing, administrative, hearing and/or other fees for claims totaling less than \$10,000 unless the arbitrator determines the claims are frivolous. Likewise, Company will not seek attorneys' fees and costs in arbitration unless the arbitrator determines the claims are frivolous.

You may choose to have the arbitration conducted by telephone, based on written submissions, or in person in the country where you live or at another mutually agreed location. Any judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction.

**16.3** Authority of Arbitrator. The arbitrator, and not any federal, state or local court or agency shall have exclusive authority to resolve any dispute related to the interpretation, applicability, enforceability or formation of this Arbitration Agreement including, but not limited to any claim that all or any part of this Arbitration Agreement is void or voidable. The arbitration will decide the rights and liabilities, if any, of you and Company. The arbitration proceeding will not be consolidated with any other matters or joined with any other cases or parties. The arbitrator shall have the authority to grant motions dispositive of all or part of any claim. The arbitrator shall have the authority to award monetary damages and to grant any non-monetary remedy or relief



available to an individual under applicable law, the arbitral forum's rules, and the Agreement (including the Arbitration Agreement). The arbitrator shall issue a written award and statement of decision describing the essential findings and conclusions on which the award is based, including the calculation of any damages awarded. The arbitrator has the same authority to award relief on an individual basis that a judge in a court of law would have. The award of the arbitrator is final and binding upon you and us.

**16.4 Waiver of Jury Trial.** YOU AND COMPANY HEREBY WAIVE ANY CONSTITUTIONAL AND STATUTORY RIGHTS TO SUE IN COURT AND HAVE A TRIAL IN FRONT OF A JUDGE OR A JURY. You and Company are instead electing that all claims and disputes shall be resolved by arbitration under this Arbitration Agreement, except as specified in Section 17.1 above. An arbitrator can award on an individual basis the same damages and relief as a court and must follow this Agreement as a court would. However, there is no judge or jury in arbitration, and court review of an arbitration award is subject to very limited review.

**16.5 Waiver of Class or Consolidated Actions.** ALL CLAIMS AND DISPUTES WITHIN THE SCOPE OF THIS ARBITRATION AGREEMENT MUST BE ARBITRATED ON AN INDIVIDUAL BASIS AND NOT ON A CLASS BASIS, ONLY INDIVIDUAL RELIEF IS AVAILABLE, AND CLAIMS OF MORE THAN ONE CUSTOMER OR USER CANNOT BE ARBITRATED OR CONSOLIDATED WITH THOSE OF ANY OTHER CUSTOMER OR USER. In the event that this subparagraph is deemed invalid or unenforceable neither you nor we are entitled to arbitration and instead claims and disputes shall be resolved in a court as set forth in Section 18.7.

**16.6 30-Day Right to Opt Out.** You have the right to opt out of the provisions of this Arbitration Agreement by sending written notice of your decision to opt out to the following address: Virgo Surgical Video Solutions, Inc., 1111 Kearny St. #15, San Francisco, CA 94133 or by email at support@virgosvs.com, within 30 days after first becoming subject to this Arbitration Agreement. Your notice must include your name and address, your Company username (if any), the email address you used to set up your Company account (if you have one), and an unequivocal statement that you want to opt out of this Arbitration Agreement. If you opt out of this Arbitration Agreement, all other parts of this Agreement will continue to apply to you. Opting out of this Arbitration Agreement has no effect on any other arbitration agreements that you may currently have, or may enter in the future, with us.

**16.7 Severability.** If any part or parts of this Arbitration Agreement are found under the law to be invalid or unenforceable, then such specific part or parts shall be of no force and effect and shall be severed and the remainder of the Arbitration Agreement shall continue in full force and effect.

**16.8 Survival of Agreement.** This Arbitration Agreement will survive the termination of your relationship with Company.

**16.9 Modification.** Notwithstanding any provision in this Agreement to the contrary, we agree that if Company makes any future material change to this Arbitration Agreement, it will not apply to any individual claim(s) that you had already provided notice of to Company.

## **17. General Provisions.**



**17.1 Confidentiality.** “**Confidential Information**” shall mean the software embedded within Virgo System and all other information disclosed to you that Company characterizes as confidential at the time of its disclosure either in writing or orally, except for information which you can demonstrate: (a) is previously rightfully known to you without restriction on disclosure; (b) is or becomes, from no act or failure to act on your part, generally known in the relevant industry or public domain; (c) is disclosed to you by a third party as a matter of right and without restriction on disclosure; or (d) is independently developed by you without access to the Confidential Information. You shall use your best efforts to preserve and protect the confidentiality of the Confidential Information at all times, both during the term hereof and for a period of at least 3 years after termination of the Terms, provided, however, that any source code you receive shall be held in confidence in perpetuity. You shall not disclose, disseminate or otherwise publish or communicate Confidential Information to any person, firm, corporation or other third party without the prior written consent of Company. You shall not use any Confidential Information other than in the course of the activities permitted hereunder. You shall notify Company in writing promptly upon discovery of any unauthorized use or disclosure of Confidential Information, and will cooperate with Company in every reasonable way to regain possession of Confidential Information and prevent any further unauthorized use. If you are legally compelled to disclose any of the Confidential Information, then, prior to such disclosure, you will (i) promptly notify Company prior to such disclosure to allow Company an opportunity to contest the disclosure, (ii) assert the privileged and confidential nature of the Confidential Information, and (iii) cooperate fully with Company in protecting against any such disclosure and/or obtaining a protective order narrowing the scope of such disclosure and/or use of the Confidential Information. In the event such protection is not obtained, you shall disclose the Confidential Information only to the extent necessary to comply with the applicable legal requirements.

**17.2 Electronic Communications.** The communications between you and Company use electronic means, whether you visit Company Properties or send Company e-mails, or whether Company posts notices on Company Properties or communicates with you via e-mail. For contractual purposes, you (1) consent to receive communications from Company in an electronic form; and (2) agree that all terms and conditions, agreements, notices, disclosures, and other communications that Company provides to you electronically satisfy any legal requirement that such communications would satisfy if it were to be in writing. The foregoing does not affect your statutory rights.

**17.3 Release.** You hereby release Company Parties and their successors from claims, demands, any and all losses, damages, rights, and actions of any kind, including personal injuries, death, and property damage, that is either directly or indirectly related to or arises from your use of Company Properties, including but not limited to, any interactions with or conduct of other Users or third-party websites of any kind arising in connection with or as a result of the Terms or your use of Company Properties. If you are a California resident, you hereby waive California Civil Code Section 1542, which states, “A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which, if known by him must have materially affected his settlement with the debtor. The foregoing release does not apply to any claims, demands, or any losses, damages, rights and actions of any kind, including personal injuries, death or property damage for any unconscionable commercial practice by a Company Party or for such party’s fraud, deception, false, promise, misrepresentation or



concealment, suppression or omission of any material fact in connection with the Website or any Services provided hereunder.

**17.4 Assignment.** The Terms, and your rights and obligations hereunder, may not be assigned, subcontracted, delegated or otherwise transferred by you without Company's prior written consent, and any attempted assignment, subcontract, delegation, or transfer in violation of the foregoing will be null and void.

**17.5 Force Majeure.** Company shall not be liable for any delay or failure to perform resulting from causes outside its reasonable control, including, but not limited to, acts of God, war, terrorism, riots, embargos, acts of civil or military authorities, fire, floods, accidents, strikes or shortages of transportation facilities, fuel, energy, labor or materials.

**17.6 Questions, Complaints, Claims.** If you have any questions, complaints or claims with respect to Company Properties, or believe that Company has not adhered to the Terms, please contact us at: support@virgosvs.com. We will do our best to address your concerns. If you feel that your concerns have been addressed incompletely, we invite you to let us know for further investigation.

**17.7 Exclusive Venue.** To the extent the parties are permitted under this Agreement to initiate litigation in a court, both you and Company agree that all claims and disputes arising out of or relating to the Agreement will be litigated exclusively in the state or federal courts located in California.

**17.8 Governing Law.** THE TERMS AND ANY ACTION RELATED THERETO WILL BE GOVERNED AND INTERPRETED BY AND UNDER THE LAWS OF THE STATE OF CALIFORNIA, CONSISTENT WITH THE FEDERAL ARBITRATION ACT, WITHOUT GIVING EFFECT TO ANY PRINCIPLES THAT PROVIDE FOR THE APPLICATION OF THE LAW OF ANOTHER JURISDICTION. THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS DOES NOT APPLY TO THESE TERMS.

**17.9 Notice.** Where Company requires that you provide an e-mail address, you are responsible for providing Company with your most current e-mail address. In the event that the last e-mail address you provided to Company is not valid, or for any reason is not capable of delivering to you any notices required/ permitted by the Terms, Company's dispatch of the e-mail containing such notice will nonetheless constitute effective notice. You may give notice to Company at the following address: 1111 Kearny St. #15, San Francisco, CA 94133. Such notice shall be deemed given when received by Company by letter delivered by nationally recognized overnight delivery service or first class postage prepaid mail at the above address.

**17.10 Waiver.** Any waiver or failure to enforce any provision of the Terms on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

**17.11 Severability.** If any portion of this Agreement is held invalid or unenforceable, that portion shall be construed in a manner to reflect, as nearly as possible, the original intention of the parties, and the remaining portions shall remain in full force and effect.



**17.12 Export Control.** You may not use, export, import, or transfer Company Properties except as authorized by U.S. law, the laws of the jurisdiction in which you obtained Company Properties, and any other applicable laws. In particular, but without limitation, Company Properties may not be exported or re-exported (a) into any United States embargoed countries, or (b) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce's Denied Person's List or Entity List. By using Company Properties, you represent and warrant that (i) you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country and (ii) you are not listed on any U.S. Government list of prohibited or restricted parties. You also will not use Company Properties for any purpose prohibited by U.S. law, including the development, design, manufacture or production of missiles, nuclear, chemical or biological weapons. You acknowledge and agree that products, services or technology provided by Company are subject to the export control laws and regulations of the United States. You shall comply with these laws and regulations and shall not, without prior U.S. government authorization, export, re-export, or transfer Company products, services or technology, either directly or indirectly, to any country in violation of such laws and regulations.

**17.13 Consumer Complaints.** In accordance with California Civil Code §1789.3, you may report complaints to the Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs by contacting them in writing at 400 R Street, Sacramento, CA 95814, or by telephone at (800) 952-5210.

**17.14 Entire Agreement.** The Terms are the final, complete and exclusive agreement of the parties with respect to the subject matter hereof and supersedes and merges all prior discussions between the parties with respect to such subject matter.

End of Terms