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1. Definitions. In this Agreement:

“**Affiliate**” of VirtaMove means any corporation or other legal entity that VirtaMove directly or indirectly controls, is controlled by, or is under common control with. In this context, a party “controls” a corporation or other entity if it or any combination of it and/or its Affiliates owns fifty percent (50%) or more of the voting rights for the board of directors or other mechanism of control for such corporation or other entity;

“**Agreement**” means this VirtaMove Software License Agreement;

“**Confidential Information**” means any business, marketing, technical, scientific or other information disclosed by VirtaMove or embodied in the Software and/or Documentation which, at the time of disclosure is designated as confidential (or like designation), is disclosed in circumstances of confidence, or would be understood by someone exercising reasonable business judgment to be confidential;

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“**License Term**” means that period of time, as specified in the Master Software Agreement or Purchase Order, as applicable, for which Licensee has paid the applicable right-to-use fees for the Software;

“**License Type**” means the type of license granted under the Applicable Master Software Agreement or Purchase Order, being either a Single-Migration License or a Term License;

“**Master License Agreement**” means any master software license agreement or similar entered into between Licensee and VirtaMove;

“**Migration**” means a migration of applications from one version of an operating system to another version of that operating system, and “Migrated” shall be construed accordingly; “**Purchase Order**”

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“**Server Environment**” refers to the logical environment assigned in the migration process that is assigned to physical or virtual source and/or Target System Server (for example, “Dev”, “Test”, “Prod”);

“**Single Migration License**” means a license which terminates on the earlier of the end of the Licensed Term or its use for a Migration, whichever is the earlier;

“**Software**” means the VirtaMove binary and/or bytecode software program (excluding Third Party Software) that is made available to You after agreeing to the terms of this Agreement and payment of the related license fees;

“**System Server**” means the physical or virtual server where source applications are to be Migrated to, or to be Migrated from or from which the Migration is to be administered;

“**Term License**” means a license to Licensed Software which continues throughout the applicable License Term, irrespective of the number of Migrations during that License Term

“**Third Party Software**” means any software embedded in or delivered with the Software which is owned or licensed to VirtaMove by a third party; and

“**VAA**” or “**Container**” means a virtual application appliance.

2. **License Terms:**

2.1 *License Grant:* **The license granted under this section entitles Licensee to a non-exclusive, non-transferable, worldwide, non-sublicenseable license to use the Software for the License Term for Licensee’s own business use and subject to such additional limitations as may be set out in any Master Software Agreement and/or any Purchase Order. Licensee acknowledges and agrees that use of the Licensed Software is controlled by license keys and that the license key provided by VirtaMove will grant access to a specific server or device and may operate to switch off access to the Licensed Software at the end of the License Term or expiry of the permitted use, whichever is the earlier.**

2.2 *License for Use.* Each license purchased for Licensed Software permits the installation of that Licensed Software on a single System Server for use in any **number of Server Environments. A separate license is required for each System Server on which Licensed Software is installed**, and are subject to the License Type of that Licensed Software

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9.1 Subject to Sections 9.2 and 9.3, VirtaMove will defend, hold harmless and indemnify You, including reasonable legal fees, from third party claims that the Software infringes a presently existing US intellectual property rights of a third party. In addition, if in VirtaMove's opinion such a claim is or is likely to be made, VirtaMove, at its option and own expense, will exercise the first of the following remedies that is practicable:

- a. obtain for You the right to continue to use the Software consistent with this Agreement;
- b. modify the Software so it is non-infringing and in compliance with this Agreement;
- c. replace the Software with non-infringing software that complies with this Agreement; or
- d. accept the cancellation of infringing Software without Your having any cancellation liability and the return of the infringing Software at VirtaMove's expense and refund a pro-rated amount paid for the infringing Software, less a reasonable amount for Your use of the Software up to the time of return.

9.2 You must: (i) give VirtaMove prompt written notice of third party claims against You, (ii) cede sole control of the defense and all related settlement negotiations to VirtaMove (except that You are not obligated to make any payment without Your prior consent); and (iii) cooperate in the investigation, settlement and defense of such claims.

THE FOREGOING STATES YOUR EXCLUSIVE REMEDY WITH RESPECT TO ANY INFRINGEMENT CLAIM.

9.3 **Exceptions to Indemnification.** VirtaMove will have no obligation to indemnify You or Your personnel for claims that the Software infringes the intellectual property rights of a third party to the extent such claims arise as a result of:

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- b. Your misuse or modification of the Software and such infringement or claim would have been avoided in the absence of such modification or misuse.

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11. **Term & Termination:**

This Agreement shall continue for the term of Your license which, unless otherwise agreed in the applicable Master Software Agreement and/or Purchase Order will be for a period of

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12. Audit Rights

Licensee shall keep accurate records of the internal distribution and usage sufficient to verify that usage is within the scope of the granted rights under this Agreement. VirtaMove may enter Licensee's premises during business hours on five (5) business days' notice for the purpose of examining, or having examined (at VirtaMove's own expense), Licensee's relevant books, records and computers to verify Licensee's compliance with the license terms of this Agreement and/or any applicable Invoice. If the results of the audit reveal greater use of the Software than what Licensee is licensed for or an underpayment by Licensee greater than five (5%), then in addition to paying the amount of any such underpayment, Licensee shall also reimburse VirtaMove for the costs of the audit.

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The Software and Documentation are each a "commercial item" as that term is defined at FAR 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are defined in FAR 12.212, and are provided to the U.S. Government only as commercial end items. Government end users acquire the rights set out in this Agreement for the Software and Documentation consistent with: (i) for acquisition by or on behalf of civilian agencies, the terms set forth in FAR12.212; or (ii) for acquisition by or on behalf of units of the Department of Defense, the terms set forth in DFARS 227.7202. Use of the Software and Documentation is further restricted by the terms and conditions of this Agreement. For the purposes of any applicable government use, the Software and Documentation were developed exclusively at private expense, and are trade secrets of VirtaMove Incorporated for the purpose of any Freedom of Information legislation or any other disclosure statute, regulation or provision.

15. Third-Party Beneficiaries:

You are hereby notified that there may be third-party beneficiaries to this Agreement. To the extent that this Agreement contains provisions that relate to (i) the use by You of certain components of the Software in which such third parties have an interest, or (ii) services provided by Affiliates, licensors, subcontractors, and/or distributors of VirtaMove; such provisions are made expressly for the benefit of such third-party beneficiaries and are enforceable by such third-party beneficiaries in addition to being enforceable by VirtaMove.

16. General Terms:

This Agreement is the entire agreement between You and VirtaMove in respect to the Software, superseding any other agreement (unless the other agreement is expressly stated in the applicable Master Software Agreement and/or Purchase Order to override this Agreement in governing your use of the Software) or discussions, oral or written, and may not be changed except by a written license agreement with VirtaMove or a distributor of VirtaMove. The terms and conditions of this Agreement shall prevail over any pre-printed terms on any quotes, orders, purchase orders, or purchase order acknowledgements, and shall prevail over any other communications between the parties in relation to the Software and the Software shall be deemed to be licensed pursuant to the terms and conditions of this Agreement unless You have executed a written license agreement with VirtaMove or a distributor of VirtaMove, in which case the Software shall be deemed to have been licensed pursuant to the terms and conditions of such written license agreement. You may not assign this Agreement whether voluntarily, by operation of law, or otherwise without VirtaMove's prior written consent. VirtaMove may assign this Agreement at any time without notice. The failure of a party to claim a breach of any term of this Agreement shall not constitute a waiver of such breach or the right of such party to enforce any subsequent breach of such term. If any provision of this Agreement is held to be unenforceable or illegal, such decision shall not affect the validity or enforceability of such provisions under other circumstances or the remaining provisions of this Agreement and such remaining provisions shall be reformed only to the extent necessary to make them enforceable under such circumstances. This Agreement shall be governed by the laws of the Province of Ontario. No choice of laws rules of any jurisdiction shall apply to this Agreement. You shall only be entitled to bring any action or proceeding arising out of or relating to this Agreement, the Software or any services provided in respect to the Software in a court in Ottawa, Ontario and You consent to the jurisdiction of such courts for any such action or proceeding. You waive all rights that You may have or that may hereafter arise to contest such jurisdiction of such courts for any action or proceeding brought by You. You hereby waive any right You may have to request a jury trial with respect to any action brought by You in connection with this Agreement or the Software. The application of the United Nations Convention on Contracts for the International Sale of Goods to this Agreement is expressly excluded.

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