



## VirBELA Terms of Service

These VirBELA Terms of Service (the “**Terms of Service**”) are agreed to and accepted effective as of the Effective Date (the “**Effective Date**”) set forth in that certain Customer Order Form (“**Customer Order Form**”) between eXp World Technologies, LLC, a Delaware limited liability company d/b/a VirBELA, having a mailing address of 2219 Rimland Drive, Suite 301, Bellingham, Washington 98226 (“**VirBELA**”), and Customer (“**Customer**”), as identified in the foregoing referenced Customer Order Form. These Terms of Service set forth and govern the legal relationship between VirBELA and Customer regarding Customer’s subscription and use (the “**Subscription Services**”) of the VirBELA 3D virtual campus client software, technology, applications, documentation, and/or data provided by VirBELA (collectively, the “**Software**”), and VirBELA’s delivery of Professional Services (defined below), and any other services set forth on the Customer Order Form. The Subscription Services together with the Professional Services and any other services set forth on the Customer Order Form will be referred to hereinafter as the “**Services**”. Throughout these Terms of Service, references to Customer’s use of, or access to, the Subscription Services, and any such analogous provisions, shall be deemed to include use of, or access to, the Subscription Services by Customer’s End-Users (defined below).

1. **Right to Use the Subscription Services.** VirBELA grants to Customer, solely during the Term hereof, a nontransferable, nonexclusive, worldwide, revocable license to use, and to permit its registered employees, agents, contractors, students, and participants (each, an “**End-User**”), to use the Subscription Services in accordance with these Terms of Service and such other documents as are incorporated by their reference herein (collectively, the “**Agreement**”). The Software is provided by VirBELA through the Subscription Services from a data center facility to which Customer and its End-Users will have remote access.
  - a. **Customer’s Account.** Customer will be able to create, manage, and terminate an account from VirBELA (an “**Organization Account**”) in connection with Customer’s Subscription Services. Within its Organization Account, Customer will have the ability to register and remove intended End-Users, as well as assign particular End-Users with access rights to aspects of the Subscription Services subscribed to by Customer.
  - b. **End-User Account.** Each End-User will have their own user account (“**User Account**”), as more fully described in the VirBELA End-User License Agreement. The maximum number of End-Users that may use the Subscription Services shall not exceed the number of Registered Users, as set forth in the Customer Order Form. However, if this maximum number is exceeded, then we will assess an “**Additional Registered User Fee**,” as provided in Section 4(b), below. The maximum number of Registered Users that may use the Subscription Services at any one time shall not exceed the maximum number of Concurrent Users, as set forth in the Customer Order Form. However, if this maximum number is exceeded, then, (i) we will assess an “**Additional Concurrent User Fee**,” as provided in Section 4(b), below, but only if this option is selected on the Customer Order Form, or (ii) we may restrict access rights to aspects of the Subscription Services, or suspend Customer’s Organization Account, or terminate this Agreement, as provided in Section 6, below.
2. **Usage Restrictions.** The rights granted to Customer in this Agreement are subject to all of the Usage Restrictions described in this Section 2.
  - a. Whether or not any Software associated with the Subscription Services will be hosted on Customer’s computers, this Agreement is a contract for the provision of services, and any Software will be installed, accessed and maintained only in connection with Customer’s use of the Subscription Services, and no separate software license (other than the revocable license referenced in Section 1, above) is granted to Customer by this Agreement.
  - b. Customer shall not directly or indirectly: (i) reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas or algorithms of any Software; (ii) modify, translate, or create derivative works based on the Subscription Services or any Software; or copy (except for archival purposes), rent, lease, distribute, pledge, assign, or

otherwise transfer or encumber rights to the Subscription Services or any Software; (iii) use the Subscription Services or any Software for timesharing, service bureau purposes, or otherwise for the benefit of any third party (except as expressly allowed herein); (iv) access the Subscription Services or any Software for the purposes of monitoring availability, performance, or functionality, or for any other benchmarking purposes, in any manner which materially interferes with the operation or performance of the Subscription Services or the Software; (v) use or access the Subscription Services or any Software to build or support, and/or assist a third party in building or supporting, products or services competitive to VirBELA; (vi) remove any proprietary notices or labels from the Subscription Services or Software. By way of example only, and not to limit the intent or effect of the foregoing, unless otherwise agreed in writing by VirBELA, Customer shall not attempt to obscure, mask or otherwise conceal VirBELA's branding of the Subscription Services or Software by way of wrapping, enclosing or otherwise packaging the Subscription Services or Software inside another business application, system or process. If Customer desires co-branding in connection with the Subscription Services or Software (which co-branding, for the avoidance of doubt, is distinct from that level of branding offered through our Application Labeling Customizations to Private Campus), then the terms of any co-branding must first be established and entered into, in writing, between VirBELA and Customer. The preceding sentence does not preclude Customer from posting its branding (*i.e.*, its trademarks and registered trademarks) on VirBELA's virtual web boards situated within the Software, subject to Customer's compliance with the terms of this Agreement.

- c. Customer shall not use the Subscription Services in any manner that could damage, disable, overburden, impair or otherwise interfere with VirBELA's provision of the Subscription Services or the normal operation of the Software. Customer may not use the Subscription Services or access the Software if Customer is or becomes a direct competitor of VirBELA (as determined in VirBELA's sole and absolute discretion), unless Customer obtains VirBELA's prior written consent.
  - d. Customer represents, covenants, and warrants that Customer will use the Subscription Services only in compliance with this Agreement and in accordance with all applicable laws and regulations including but not limited to policies and laws related to spamming, privacy (including but not limited to any European privacy laws), intellectual property, consumer and child protection, obscenity or defamation.
  - e. Customer acknowledges that the Services may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, or because of other causes beyond VirBELA's sole control. VirBELA shall use reasonable efforts to provide advance notice of any scheduled disruption to the Services.
  - f. VirBELA is not responsible for Customer's network connections or for conditions or problems arising from or related to Customer's network connections (e.g., bandwidth issues, excessive latency, network outages) or caused by the Internet or by any other factor outside VirBELA's sole control. Customer shall be responsible for maintaining the security of its own network; hardware; and Customer's account information, passwords, and files. Customer agrees to make reasonable efforts to prevent unauthorized third parties from accessing the Services.
- 3. Professional Services.** Customer's use of the Subscription Services may require that VirBELA provide additional, specialized services in connection with the Software, including, "Application Labeling Customizations to Private Campus," "Custom Development," and/or additional specialized services such as, for example, implementation services or support services (collectively, "**Professional Services**"). If Professional Services are to be provided by VirBELA, the terms of such Professional Services will be as described in the Customer Order Form. For the avoidance of doubt, the following provisions of these Terms of Service shall apply to Professional Services to be provided by VirBELA hereunder: Section 4(c) (Professional Services Fees), Section 5 (Intellectual Property Rights; Customer's Data), Section 7 (Customer Representations and Warranties), Section 8 (VirBELA Representations and Warranties), Section 9 (Disclaimer of Warranties), Section 10 (Limitation of

Liability), Section 11 (Indemnification), Section 12 (Confidential Information), Section 14 (Force Majeure), and Section 16 (General Provisions).

- 4. Billing and Payment.** VirBELA will invoice Customer at the time of the execution of the Customer Order Form, and thereafter, in advance of the start of any renewal or subsequent billing period. Customer agrees to pay for the Subscription Services and Professional Services at the rates and fees specified in the Customer Order Form, and as follows:
- a. For Subscription Services. Except as it relates to the Additional Registered User Fees, and Additional Concurrent User Fees, invoicing for each of the Subscription Services will be prospective (*i.e.*, invoicing will be in advance of the month of service). Customer will be invoiced at the time of execution of the Customer Order Form, and thereafter in advance of the start of any renewal or subsequent billing period.
  - b. For Additional Registered Users and Additional Concurrent Users. Additional Registered Users and/or additional Concurrent Users in excess of the maximum amounts specified in the Customer Order Form will be invoiced in arrears. For any given month, Customer will be invoiced the Additional Registered User Fee or Additional Concurrent User Fee (as applicable), even if Customer exceeded the maximum number of Registered Users or Concurrent Users (as applicable) for only a partial month, and not the entire month. For example, assume the following: (i) that the maximum number of Registered Users specified on a Customer Order Form is 100, (ii) that for the first half of January, Customer had 95 Registered Users, and for the second half of January, customer had 101 Registered Users. Customer will be deemed as having had 101 Registered Users for the entire month of January, and Customer will be billed for each Additional Registered User applicable in that month, and such billing will be reflected on Customer's February invoice.
  - c. For Professional Services. Invoicing for Professional Services will be as follows:
    - (i) For Application Labeling Customizations to Private Campus. The Customer will be invoiced at the time of execution of the Customer Order Form for a one-time set up fee plus the initial recurring monthly fee, and thereafter invoicing of the recurring monthly fee will be no less than thirty (30) days in advance of the start of any renewal or subsequent billing period.
    - (ii) For Custom Development. Custom Development will be invoiced in arrears in the month following the end of any given month where custom work was completed. Final pricing will reflect a blended rate based on staff positions required and number of hours per position.
  - d. Billing Terms. Except as otherwise set forth in this Agreement, all fees due under this Agreement are non-cancelable and the sums paid nonrefundable. Customer will provide VirBELA with complete and accurate billing and contact information. Except for those amounts invoiced at the time of execution of the Customer Order Form, which amounts are due and payable upon such execution, all amounts invoiced to Customer that are not the subject of a written good faith dispute are due and payable within thirty (30) days of the date of the invoice. Unpaid invoices that are not the subject of a written good faith dispute are subject to a finance charge of 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is lower, plus all reasonable expenses of collection. VirBELA's fees are exclusive of all taxes, levies, or duties imposed by taxing authorities, and Customer shall be responsible for payment of all such taxes, levies, or duties (excluding U.S. taxes based on VirBELA's income), even if such amounts are not listed in this Agreement. Customer shall pay all charges in U.S. Dollars or in such other currency as agreed to in writing by the parties.

## **5. Intellectual Property Rights; Customer's Data**

- a. **Intellectual Property Rights.** Except for those rights expressly granted to Customer under this Agreement, VirBELA and its licensors own all right, title, and interest in and to all intellectual

property rights in the Services and Software (including all derivatives or improvements thereof), and any suggestions, enhancement requests, feedback, recommendations or other information provided by Customer, any End-User, or any other person relating to the Services and Software, including, without limitation, all copyright, trademark, trade secret, and patent rights. Customer's use of the Services and Software does not give Customer any ownership rights over any intellectual property rights in VirBELA's Services or Software, or any content or information made available through VirBELA's Services, and Customer is only permitted to use the Services and Software for the purposes authorized in this Agreement. Trademarks and logos used in connection with the Services and Software are the trademarks of their respective owners. VirBELA and other VirBELA trademarks, service marks, graphics, and logos used for the Services are trademarks or registered trademarks of VirBELA or its licensors. Customer is prohibited from using VirBELA's trademarks and logos for any purpose, including without limitation to suggest that Customer is sponsored or endorsed by VirBELA, without the prior written consent of VirBELA. Any intellectual property rights in the Services or Software not expressly granted to Customer in this Agreement are reserved to VirBELA and/or its licensors, as applicable.

- b. **Customer's Data.** Notwithstanding the terms of Section 5(a), above, Customer and its End-Users, respectively, retain exclusive ownership of all data, information or material (including any trademark or registered trademark) that Customer or any of its End-Users submit to the Subscription Services in the course of using the Subscription Services (collectively, "**Customer's Data**") provided that such data, information or material is exclusively owned by them, respectively, prior to such submission; for the avoidance of doubt, no data, information or material (including any trademark or registered trademark) owned or controlled by VirBELA or its licensors prior to submission, which is subsequently submitted to the Subscription Services by Customer or any End-User, will have the effect of causing such data, information or material to be deemed "Customer's Data." VirBELA is not granted any proprietary rights in such Customer's Data. As between the parties, Customer, on behalf of itself and its End-Users, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of Customer's Data. Except as otherwise expressly provided in this Agreement, VirBELA will treat Customer's Data provided by Customer that resides in Customer's online service environment as Confidential Information in accordance with Section 12, below. Customer acknowledges and agrees, on behalf of itself and each of its End-Users, that Customer's and/or any of its End-Users' use of the Subscription Services may cause Customer's Data to be transferred or stored outside of the country (or countries) or other jurisdiction where Customer and its End-Users are located, respectively. In addition, Customer must comply with all applicable data protection and privacy laws and regulations with respect to such Customer's Data, which may include informing third parties of the use, processing, or transfer of their personal information and obtaining their consent to such use, processing, and transfer. Customer acknowledges that VirBELA shall have no liability or responsibility for the content of Customer's Data stored, transmitted, or received by Customer or any End-User in connection with Customer's or its End-Users' use of the Subscription Services, and that it is the sole responsibility of Customer to ensure that the Customer's Data it or any of its End-Users store, transmit, or receive (i) complies with all applicable laws and regulations, (ii) does not contain confidential or restricted data, and (iii) does not violate or infringe any intellectual property or other rights of any third party. The parties acknowledge that (a) Customer's Data may include personally identifiable information from education records that are subject to FERPA ("**FERPA Records**"); and (b) to the extent that Customer's Data includes FERPA Records, Company will be considered a "School Official" (as that term is used in FERPA and its implementing regulations) and will comply with FERPA.

## 6. Term, Restriction and Suspension, Termination, and Non-Renewal.

- a. Term. The word "**Term**," as used in these Terms of Service, shall have that meaning as described under the Customer Order Form.
- b. Restriction and Suspension. VirBELA may restrict access rights to aspects of the Subscription Services or suspend Customer's Organization Account, at any time and without notice, if VirBELA believes that the Subscription Services or Software is being used as follows: (i) in violation of

applicable law, (ii) in any way harmful or disruptive to other VirBELA customers or end-users, or (iii) in violation of this Agreement; or for Customer's failure to make payment due under this Agreement as and when due. VirBELA will not issue refunds for any Organization Account or Subscription Services that are restricted or suspended for any of the foregoing reasons. Any such restriction or suspension by VirBELA shall not excuse Customer from its obligation to pay all amounts due under this Agreement. Reactivation of any restricted access rights or suspended Organization Account will be subject to applicable fees, as determined by VirBELA.

- c. **Termination.** In the event of any material breach of this Agreement by either party, the non-breaching party shall have the right to terminate this Agreement if such breach has not been cured within thirty (30) days following written notice from the non-breaching party to the breaching party specifying the breach in detail. For the avoidance of doubt, a material breach includes, without limitation, the implementation of any restriction or suspension as provided in [Section 6\(b\)](#), above. If VirBELA terminates the Agreement as a result of Customer's uncured material breach, Customer must immediately pay all amounts which have accrued prior to such termination, as well as all sums remaining unpaid for Subscription Services for the remainder of the then-current Term (even if earlier terminated) plus related taxes. If Customer terminates the Agreement as a result of VirBELA's uncured material breach, Customer shall be entitled to receive a pro rata refund of prepaid fees and any fees paid for the non-conforming element of the Subscription Services, if any. Reactivation of any terminated Organization Account will be subject to applicable fees, as determined by VirBELA. Customer acknowledges and agrees that VirBELA has no obligation to retain Customer's Data following the expiration or earlier termination of this Agreement, and that Customer's Data may be irretrievably deleted by VirBELA upon expiration or earlier termination of this Agreement. Customer further acknowledges and agrees that Customer's right to access and use the Subscription Services shall terminate contemporaneous with termination of this Agreement.
- d. **Non-Renewal.** VirBELA reserves all rights to refrain from renewing Customer's subscription to the Subscription Services, and to renewing any User Account.

- 7. Customer Representations, Warranties, and Covenants.** Customer represents, warrants, and covenants each of the following to VirBELA: (a) it has the authority to enter into this Agreement; (b) it will not use the Services in any manner which is in violation of any applicable laws or regulations, or this Agreement; (c) Customer's Data will not violate any applicable laws or regulations or violate or infringe any third party patents, trade secrets, copyrights, trademarks, services marks, trade names or similar proprietary rights; (d) Customer's Data will not include obscene material or constitute defamation or libel of VirBELA or any third party; (e) Customer agrees that Customer's Data may be shared with VirBELA's third-party providers on an as-needed basis (as determined by VirBELA in its sole and absolute discretion) for the purpose of providing the Services to Customer, and invoicing and receiving payment in connection therewith; (f) Customer will comply with all relevant export and encryption laws and regulations in any jurisdiction in which the Services are provided; (g) those individuals that create, manage, and terminate Customer's Organization Account (including registering and removing intended End-Users, and assigning particular End-Users with access rights to aspects of the Subscription Services subscribed to by Customer), have the proper authorization to do so; (h) Customer has obtained the consent of each End-User regarding (I) the linking of their respective User Accounts with Customer and/or the Organization Account, (II) VirBELA's receipt and processing of each End-User's Personal Information (as such term is defined under the Privacy Policy), (III) Customer's Data being transferred or stored outside of the country (or countries) or other jurisdiction where Customer and its End-Users are located, respectively; and (IV) Customer's Data being shared with VirBELA's third-party providers on an as-needed basis (as determined by VirBELA in its sole and absolute discretion) for the purpose of providing the Services to Customer, and invoicing and receiving payment in connection therewith; (i) all information provided to VirBELA in connection with the creation and management of the Organization Account is accurate and complete and will remain up-to-date; (j) Customer will immediately notify VirBELA if Customer becomes subject to insolvency or other similar legal proceedings; and k) except as otherwise expressly provided in this Agreement, the Services are provided to Customer on an "as is," "where is," "with all faults" basis.

- 8. VirBELA Representations and Warranties.** VirBELA represents and warrants to Customer that it has the authority to enter into this Agreement. VirBELA further represents and warrants to Customer that the Subscription Services and the Software will perform substantially in accordance with the parameters set forth under the Customer Order Form and the SLA (defined below), under normal intended use, for up to (but not exceeding) the maximum number of Registered Users and Concurrent Users as specified on the Customer Order Form. VirBELA further represents and warrants to Customer that to the best of its actual knowledge and belief as of the Effective Date, the Subscription Services and the Software, when used as intended, will not infringe the intellectual property rights of third parties.
- 9. Disclaimer of Warranties.** EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN SECTION 8, ABOVE, VIRBELA HEREBY DISCLAIMS TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, AND CUSTOMER HEREBY ACKNOWLEDGES AND IRREVOCABLY AGREES TO VIRBELA'S DISCLAIMER OF, ALL REPRESENTATIONS, WARRANTIES (EXPRESS AND IMPLIED), AND GUARANTIES, WITH REGARD TO THE SERVICES AND THE SOFTWARE, INCLUDING, BUT NOT LIMITED TO, EACH OF THE FOLLOWING: (A) REPRESENTATIONS OR WARRANTIES OF MERCHANTABILITY; (B) FITNESS FOR A PARTICULAR PURPOSE; (C) TITLE AND NON-INFRINGEMENT; (D) ANY IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE; AND (E) THE RELIABILITY, AVAILABILITY, TIMELINESS, QUALITY, SUITABILITY, ACCURACY OR COMPLETENESS OF ANY OF THE SERVICES AND THE SOFTWARE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, VIRBELA DOES NOT REPRESENT OR WARRANT, AND CUSTOMER ACKNOWLEDGES AND IRREVOCABLY AGREES THAT VIRBELA DOES NOT REPRESENT OR WARRANT, THAT (W) THE OPERATION OR USE OF THE SERVICES AND SOFTWARE WILL BE TIMELY, SECURE, UNINTERRUPTED OR ERROR-FREE; (X) THE QUALITY OF THE SERVICES AND SOFTWARE WILL MEET CUSTOMER'S REQUIREMENTS; (Y) THE RESULTS CUSTOMER MAY OBTAIN BY USING THE SERVICES AND/OR SOFTWARE; AND (Z) WITH RESPECT TO OUR THIRD-PARTY PROVIDERS, (I) THE EXISTENCE, SUFFICIENCY, INTEGRITY, AND LEGAL COMPLIANCE OF OUR THIRD-PARTY PROVIDERS' RESPECTIVE DATA COLLECTION, DATA PROTECTION, DATA STORAGE, AND DATA TRANSMISSION PROTOCOLS; AND (II) THAT THE SERVICES PROVIDED BY OUR THIRD-PARTY PROVIDERS WILL CONTINUE TO BE PROVIDED, WILL FUNCTION AS DESCRIBED, CONSISTENTLY, OR IN ANY PARTICULAR MANNER, OR WILL BE UNINTERRUPTED, ACCURATE, ERROR FREE, OR FREE OF HARMFUL COMPONENTS, OR WILL BE IN COMPLIANCE WITH ALL APPLICABLE LAW. CUSTOMER ACKNOWLEDGES THAT NEITHER VIRBELA NOR ITS THIRD-PARTY PROVIDERS CONTROL THE TRANSFER OF DATA OVER COMMUNICATIONS FACILITIES, INCLUDING THE INTERNET, AND THAT THE SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF SUCH COMMUNICATIONS FACILITIES. CORRESPONDINGLY, CUSTOMER ACKNOWLEDGES AND IRREVOCABLY AGREES THAT VIRBELA IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS. CUSTOMER FURTHER ACKNOWLEDGES AND IRREVOCABLY AGREES THAT VIRBELA IS NOT RESPONSIBLE FOR ANY ERROR, INTERRUPTION OF USE, LOSS OR INACCURACY OR CORRUPTION OF CUSTOMER'S DATA; CUSTOMER'S COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY; OR FOR CUSTOMER'S LOSS OF BUSINESS.
- 10. Limitation of Liability.** UNLESS OTHERWISE EXPRESSLY STATED IN THIS AGREEMENT, NEITHER PARTY SHALL BE RESPONSIBLE OR LIABLE WITH RESPECT TO THIS AGREEMENT OR ANY SERVICES PROVIDED HEREUNDER, PURSUANT TO ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY: (A) FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS, LOSS OF DATA AND COST OF COVER); (B) FOR ANY MATTER BEYOND SUCH PARTY'S REASONABLE CONTROL, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE; OR (C) FOR ANY AMOUNTS THAT, TOGETHER WITH AMOUNTS ASSOCIATED WITH ALL OTHER CLAIMS, EXCEED THE LESSER OF \$100,000 OR THE FEES PAID BY CUSTOMER TO VIRBELA UNDER THIS AGREEMENT IN THE TWELVE (12) MONTHS PRIOR TO THE ACT OR CIRCUMSTANCES THAT GAVE RISE TO THE LIABILITY. CERTAIN STATES AND/OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED

WARRANTIES OR LIMITATION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE EXCLUSIONS SET FORTH ABOVE MAY NOT APPLY IN SUCH STATES AND/OR JURISDICTIONS.

**11. Indemnification.** Customer irrevocably agrees to defend, indemnify, and hold harmless VirBELA, its holding company, and its or their shareholders, officers, directors, members, managers, employees, independent contractors, licensors, agents, subsidiaries, and affiliates (collectively, the “**VirBELA Parties**”), jointly, severally, and in any combination, from and against any and all losses, damages, costs, liabilities, expenses (including but not limited to all fees and charges of attorneys and other professionals, and all dispute resolution costs and litigation costs), and amounts paid in settlement (singularly, a “**Loss**” and collectively, “**Losses**”) by or on behalf of any VirBELA Parties incurred in connection with any actual, threatened, pending, or completed claim, action, suit, mediation, arbitration, alternate dispute resolution process, investigation, administrative hearing, appeal, audit, or any other proceeding (collectively, “**Claims**”) made or brought against any VirBELA Parties (including claims by governmental entities seeking to impose penal and/or civil sanctions) due to, arising out of, or in connection with any of the following: (a) any breach of this Agreement by Customer and/or any End-User; (b) any allegation that in any way conflicts with or attempts to refute any of Customer’s representations, warranties, and/or covenants in this Agreement, including, without limitation, those in Section 7, above; (c) any allegation that in any way conflicts with or attempts to refute any disclaimers of VirBELA in this Agreement, including, without limitation, those in Section 9, above; (d) any allegation that in any way conflicts with or attempts to refute any limitation of liability benefitting VirBELA in this Agreement, including, without limitation, those in Section 10, above; provided, that VirBELA (i) promptly gives written notice of the Claim to Customer; (ii) gives Customer sole control of the defense and settlement of the Claim (provided that Customer may not settle or defend any Claim unless it unconditionally releases VirBELA of all liability); and (iii) provides to Customer, at Customer’s cost, all reasonable assistance.

This Section 11 (Indemnification) is a “stand-alone” indemnification provision in that it shall neither supersede nor be subordinate to the indemnification provision set forth in the VirBELA End-User License Agreement.

**12. Confidential Information.** Each party (the “**Receiving Party**”) understands that the other party (the “**Disclosing Party**”) has disclosed or may disclose information relating to the Disclosing Party’s business (hereinafter referred to as “**Confidential Information**” of the Disclosing Party). Such information includes, without limitation, information related to Customer’s login identifiers, and credentials for each User Account. The Receiving Party agrees: (i) to take reasonable precautions to protect such Confidential Information, and (ii) not to use (except as expressly permitted herein) or divulge to any third person any such Confidential Information. The Disclosing Party agrees that the foregoing shall not apply with respect to any information after five years following the disclosure thereof or any information that the Receiving Party can document (a) is or becomes generally available to the public, or (b) was in its possession or known by it prior to receipt from the Disclosing Party, or (c) was rightfully disclosed to it by a third party, or (d) was independently developed without use of any Confidential Information of the Disclosing Party. If the Receiving Party is required to disclose Confidential Information by law, the Receiving Party shall immediately notify the Disclosing Party, take reasonable precaution to disclose the minimum amount necessary, and seek to protect the confidentiality of such disclosed information. Notwithstanding the foregoing, and provided that no specific Customer’s Data is disclosed in the process, VirBELA may (i) include information derived from Customer’s Data in an aggregate and anonymous manner; and (ii) collect other data with respect to Customer’s use of the Subscription Services and report on such usage in an aggregate and anonymous manner, including, without limitation, response rates and other measures of usage performance for the Services, including in connection with the collection of statistical data, as described in Section 15, below. Nothing in this Section 12 shall preclude VirBELA from sharing Customer’s Data with VirBELA’s third-party providers on an as-needed basis (as determined by VirBELA in its sole and absolute discretion) for the purpose of providing the Services to Customer, and invoicing and receiving payment in connection therewith, or as otherwise permitted in the Privacy Policy or elsewhere in this Agreement.

- 13. Notices.** Except as otherwise provided in the Privacy Policy or EULA (defined below), (A) VirBELA will give notice required or permitted under this Agreement and applicable to, (i) VirBELA's general customer base, through the Services by means of a general notice on the Subscription Services portal used by Customer, and (ii) specific to Customer, by electronic mail to Customer's e-mail address on file with VirBELA, or by written communication sent by first class mail or pre-paid post to Customer's address on file with VirBELA; and (B) Customer will deliver any notice required or permitted under this Agreement by first class mail or pre-paid post to eXp World Technologies, LLC, 2219 Rimland Drive, Suite 301, Bellingham, Washington 98226. Any notice to VirBELA must also be e-mailed to both [info@virbela.com](mailto:info@virbela.com) and [legal@virbela.com](mailto:legal@virbela.com), otherwise such notice will not be deemed as having been delivered.
- 14. Force Majeure.** Neither party shall be responsible for failure or delay of its own performance if caused by: an act of war, hostility, or sabotage; act of God; civil unrest; disease, epidemic, or pandemic; electrical, internet, or telecommunication outage that is not caused by the obligated party; declared state of emergency by a governmental authority having jurisdiction over VirBELA or Customer; government restrictions (including the denial or cancellation of any export or other license); the unavailability of third party services used in conjunction with the Services (e.g., Amazon Web Services, GoogleDocs, etc.) or other event outside the reasonable control of the obligated party. Each party will use reasonable efforts to mitigate the effect of a force majeure event. If such event continues for more than thirty (30) days, the other party may cancel the Agreement upon written notice to the obligated.
- 15. Statistical Information.** Notwithstanding anything else in this Agreement, VirBELA may compile statistical and performance information related to the provision of the Services, in the aggregate, and may make such information publicly available, provided that such information does not incorporate or identify Customer's Data and/or Customer's Confidential Information. VirBELA retains all intellectual property rights in such statistical information.
- 16. General Provisions.** This Agreement shall, in all respects, be governed, construed, applied, and enforced in accordance with the substantive and procedural laws of the State of Delaware (without regard to its conflict of laws provisions), and to the extent controlling, to the federal laws of the United States of America. Any Claims arising out of or in connection with this Agreement shall be subject to the exclusive jurisdiction of the state and federal courts situated in New Castle County, Delaware. The parties hereby consent to personal jurisdiction in Delaware for purposes of such proceedings. The parties waive rights to a jury trial regarding any issues under this Agreement, and instead shall submit to a bench trial. The Agreement has been prepared and is to be interpreted in the English (American) language. The Uniform Computer Information Transactions Act, the United Nations Convention on the International Sale of Goods, and choice of law rules of any jurisdiction, will not apply to this Agreement. The exchange of a fully executed Customer Order Form by fax or electronic signature service shall be sufficient to bind the parties to these Terms of Service and, more broadly, to this Agreement. Except with respect to the Privacy Policy and EULA, each of which may be revised by VirBELA at any time in its sole and absolute discretion, the terms and conditions of the Agreement may be amended only by written agreement of the parties, in which event, and for the avoidance of doubt, electronic signatures shall be effective and binding upon the parties. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then such provision(s) shall be deemed severed from this Agreement (in that jurisdiction only), and all other provisions under this Agreement will remain in full force and effect. No joint venture, partnership, employment, or agency relationship exists between VirBELA and Customer as a result of this Agreement or use of the Services. Neither party may assign this Agreement without the prior written approval of the other, such approval not to be unreasonably withheld, delayed, or conditioned, provided that such approval shall not be required in connection with a merger or acquisition of all or substantially all of the assets of the assigning company. Any purported assignment in violation of this section shall be void. VirBELA reserves the right to provide some or all of the Services from locations, and/or through use of third-party providers, worldwide. The failure of either party to enforce any right or provision in this Agreement shall not constitute a waiver of such right or provision unless acknowledged and agreed to by such party in writing. Except for any Claims for nonpayment, breach, infringement of VirBELA's proprietary rights, or indemnification of VirBELA, no Claims, regardless of form, arising out of or relating to this Agreement may be brought by either party



more than two (2) years after the cause of action has accrued. All sections of these Terms of Service that by their nature should survive the expiration or earlier termination of the Agreement will survive the expiration or earlier termination of the Agreement, including, without limitation, accrued rights to payment, use restrictions and indemnity obligations, confidentiality obligations, warranty disclaimers, and limitations of liability.

#### **17. Entire Agreement.**

Except as expressly conditioned, below, each of the following documents are incorporated by this reference into and made a part of these Terms of Service:

- VirBELA Customer Order Form, and any/all amendments thereto that may be entered into from time to time hereafter
- VirBELA Service Level Agreement (“**SLA**”) ([https://assets.virbela.com/legal/VirBELA\\_SLA.pdf](https://assets.virbela.com/legal/VirBELA_SLA.pdf))
- VirBELA Privacy Policy (“**Privacy Policy**”) ([https://assets.virbela.com/legal/VirBELA\\_Privacy\\_Policy.pdf](https://assets.virbela.com/legal/VirBELA_Privacy_Policy.pdf))
- VirBELA End-User License Agreement (“**EULA**”) ([https://assets.virbela.com/legal/VirBELA\\_TOU\\_EULA.pdf](https://assets.virbela.com/legal/VirBELA_TOU_EULA.pdf))
- GDPR Data Processing Addendum to VirBELA Terms of Service (“**Data Processing Addendum**”) ([https://assets.virbela.com/legal/VirBELA\\_GDPR\\_Data\\_Processing.pdf](https://assets.virbela.com/legal/VirBELA_GDPR_Data_Processing.pdf)) (*but incorporated only if selected on VirBELA Customer Order Form*)

All references to the “Agreement” include these Terms of Service and all documents incorporated by reference herein. References to any additional document incorporated by reference into these Terms of Service are limited to that document only. The Agreement embodies the complete agreement and understanding among the parties with respect to the subject matter hereof and supersedes and preempts any prior understandings, agreements or representations by or among the parties, written or oral, which may have related to the subject matter hereof. In the event of any conflicts between these Terms of Service, and any of the foregoing documents, the order of document priority shall be as follows (from most controlling document to least controlling document): Privacy Policy, EULA, Customer Order Form (including any amendments), Terms of Service (inclusive of the Data Processing Addendum, if applicable), and SLA.

[END OF TERMS OF SERVICE]