

Visybl Customer Agreement (“Customer Agreement”)

IMPORTANT: PLEASE READ THIS CUSTOMER AGREEMENT CAREFULLY AND PRINT IT OR GO TO [HTTP://WWW.VISYBL.COM/LEGAL](http://www.visybl.com/legal) TO OBTAIN A DOWNLOADABLE COPY OF THE CURRENT VERSION OF THE CUSTOMER AGREEMENT TO MAINTAIN A COPY FOR YOUR RECORDS.

BY DOWNLOADING, COPYING, INSTALLING, ORDERING, RECEIVING OR OTHERWISE USING VISYBL OR VISYBL-SUPPLIED DEVICES OR SERVICES, OR BY CLICKING THE "ACCEPT" BUTTON OR CHECK BOX DISPLAYED AS PART OF THE PROCUREMENT, INSTALLATION, UPGRADE OR UPDATE PROCESS, YOU ACCEPT AND AGREE TO BE BOUND BY THIS CUSTOMER AGREEMENT, THE DOCUMENTATION, AND THE OTHER ITEMS REFERENCED HEREIN AND THEREIN (COLLECTIVELY, THE "AGREEMENT"), ALL OF WHICH ARE INCORPORATED INTO AND FORM PART OF THE AGREEMENT. YOU REPRESENT THAT YOU HAVE READ AND UNDERSTAND ALL OF THE PROVISIONS OF THE AGREEMENT.

VISYBL OFFERS DEVICES AND SERVICES ONLY SUBJECT TO THE AGREEMENT AND THEREFORE YOU MUST ACCEPT THE AGREEMENT BEFORE YOU CAN DOWNLOAD, COPY, INSTALL, UPGRADE, UPDATE, ORDER, RECEIVE OR OTHERWISE USE VISYBL OR VISYBL-SUPPLIED DEVICES OR SERVICES. IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THE AGREEMENT, THEN VISYBL IS UNWILLING TO OFFER, LICENSE OR SELL THE VISYBL OR VISYBL-SUPPLIED DEVICES OR SERVICES TO YOU AND YOU MAY NOT DOWNLOAD, COPY, INSTALL, ORDER, RECEIVE OR USE THEM.

THE AGREEMENT IS BETWEEN THE VISYBL ENTITY THAT ACCEPTS THE ORDER FORM OR ISSUES AN ORDER FOR THE APPLICABLE DEVICE OR SERVICE (“VISYBL,” “WE,” OR “US”) AND THE INDIVIDUAL OR LEGAL ENTITY DOWNLOADING, COPYING, INSTALLING, ORDERING, RECEIVING OR USING VISYBL OR VISYBL-SUPPLIED DEVICES OR SERVICES, OR THAT CLICKS THE "ACCEPT" BUTTON OR CHECK BOX DISPLAYED OR ISSUES AN ORDER AS PART OF THE PROCUREMENT, COPY, INSTALLATION, UPGRADE OR UPDATE PROCESS (“CUSTOMER,” “YOU,” OR “YOUR”). IF YOU ARE ENTERING INTO THE AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY, IN WHICH CASE THE TERMS “CUSTOMER,” “YOU” OR “YOUR” SHALL REFER TO SUCH ENTITY.

Questions or Additional Information:

If you have questions regarding the Agreement or wish to obtain additional information, please send an e-mail to info@visybl.com.

Last Updated: January 12, 2016

1. **RIGHT TO USE DEVICES AND ACCESS SERVICES.** After Customer’s acceptance of the Agreement and subject to Customer’s strict compliance therewith, Customer is granted a nonexclusive and nontransferable right to use the Devices and Services solely during the applicable Subscription Term for which Customer has paid the required fees consistent with the order. All cloud-based Services and delivery and hosting infrastructure are the property of Visybl or its licensors, and are protected by law, including applicable copyright law.

2. CHARGES AND PAYMENT.

2.1. **Scope.** This section and all of its subsections apply in all situations in which you directly pay Visybl. If you pay a company other than Visybl for Devices or Services, then the charges and billing terms stated by the other company and agreed to by the Customer, will supersede the terms stated in this section. Customer is responsible for all incidental charges related to using the Devices or Services including, for example, charges for Internet access, third party Devices licenses mobile text messaging, or other data transmission. All pricing terms are Confidential Information of Visybl.

2.2. **General Requirement.** Customer agrees to pay Visybl when due the applicable amounts in accordance with the order. Customer agrees to be responsible for paying for all fees for the entire Term, regardless of whether such Devices or Services are actively used. You agree to cause those who access or use the Devices and Services by or through you or your accounts to comply with the terms and conditions of the Agreement and, except where caused by Visybl’s gross negligence, to be responsible for payment for all such activity regardless of whether authorized by Customer or not. Except as otherwise set forth in the Agreement, all payment obligations are non-cancelable and all amounts paid are nonrefundable.

2.3. **Subscription Pricing.** With respect to Devices or Services on a Subscription basis, all fees charged at any time during the year are for the annual term between January and December, inclusive, of the same year, unless otherwise specified in the order.

2.4. **AssetBeacon replacement.** As part of the order, Customer may have purchased Visybl AssetBeacon replacement service. As long as the subscription for this Device is active, this entitles the customer to replacement AssetBeacons as the original batteries run low. The replacement service requires the customer to return the original AssetBeacon. The replacement service does not cover AssetBeacons damaged for any reason, except for any exclusions provided by the manufacturer's warranty. If the Customer is unable or unwilling to return the original AssetBeacon, the new AssetBeacons will be handled as new purchases.

2.5. **Maintenance, Shipping, and Returns.** The Devices and Services require Updates to run properly; these Updates may occur automatically and without notice and occasionally may cause brief disruption in Services. You are responsible to inspect unit and accessories upon arrival; if items are missing or unit is defective you must contact Visybl immediately.

2.6. **Taxes.** Visybl's fees are exclusive of all taxes, fees, levies, duties or similar charges arising out of or relating to the Agreement, and you shall be responsible for payment of all such taxes, fees, levies, duties or similar fees, excluding only taxes based solely on Visybl's income.

2.7. **Invoices; Errors.** We may only provide you with a single invoice and we may provide it via electronic means including via an online billing statement. This may be the only billing statement that we provide. If you request a paper copy, we may charge you a retrieval fee. If we make an error on your invoice, we will correct it promptly after you tell us and we investigate the charge. **YOU MUST TELL US WITHIN NINETY (90) DAYS AFTER AN ERROR FIRST APPEARS ON YOUR INVOICE (WHETHER IN YOUR ONLINE BILLING STATEMENT OR IF SENT TO YOU). YOU RELEASE US FROM ALL LIABILITY AND CLAIMS OF LOSS RESULTING FROM ANY ERROR THAT YOU DO NOT REPORT TO US WITHIN (90) DAYS AFTER THE ERROR FIRST APPEARS ON YOUR INVOICE (WHETHER IN YOUR ONLINE BILLING STATEMENT OR IF SENT TO YOU).** If you do not tell us within this time, we will not be required to correct the error. We can correct billing errors at any time.

3. **TERM AND TERMINATION.**

3.1. **Term and Auto-Renewal.** The initial term for each Subscription shall be as set forth in the Order Form, and is usually the current 12-month January-December period. Upon the expiration of the initial term, each Subscription will automatically renew for successive renewal terms equal in duration to the initial term at Visybl's then current fees. Either party may terminate any such Subscription, effective only upon the expiration of the then current term, by notifying the other party in writing at least thirty (30) days prior to the expiration date of the current term.

3.2. **Termination.** In addition to the rights otherwise set forth in the Agreement and not in limitation thereof, Visybl may terminate the Agreement and the rights granted herein in whole or in part with respect to all Devices or Services purchased by Customer upon written notice to Customer in the event of a material breach by Customer of the Agreement or any of its obligations to any Visybl entity, provided that if the breach is curable, the termination shall be effective only if the breach is not cured within ten (10) days following the Customer's receipt of such written notice. Customer may terminate the Agreement with respect to the affected Devices or Service upon written notice to Visybl in the event of a material breach by Visybl of the Agreement with respect to such Devices or Service, provided that if the breach is curable, the termination shall be effective only if the breach is not cured within ten (10) days following the Visybl's receipt of such written notice. Any free or Trial Devices or Services may be terminated by either party at any time with or without notice to the other. Visybl will have no responsibility to notify any third party, of any termination or suspension of the Agreement, nor will Visybl have any liability for any consequences resulting from any termination, suspension or lack of notification.

3.3. **Effect of Termination.** In the event of termination, cancellation, or expiration: Customer's rights to the Services shall immediately terminate; All sections of the Agreement other than the license grant in Section 2 shall survive; and except where Customer terminates for Visybl's breach, Customer agrees to pay any future Installment or Subscription payments due for the entire Installment Schedule or Subscription Term, as applicable, as consideration for pricing accommodations and other consideration and as a fair approximation of damages and not as a penalty.

4. **CONFIDENTIALITY.**

4.1. Each party agrees to hold the other party's Confidential Information in confidence and not to use it for any purpose other than to provide or receive the Devices and Services under the Agreement as applicable. Each party agrees to use the same standard of care to protect Confidential Information as it uses to protect its own similar confidential and proprietary information, but not less than a reasonable standard of care.

4.2. Confidential Information may only be disclosed to those Affiliates, employees, contractors and advisors of the Visybl Entities or the Customer, as applicable, on a need-to-know basis and who agree to be bound by confidentiality restrictions; provided that nothing herein shall prevent or prohibit a party from using or disclosing Confidential Information as may be required by law, rule, regulation or legal process.

4.3. Confidential Information remains at all times the property of the disclosing party. Unless otherwise explicitly set forth herein, no licenses or rights under any patent, copyright, trademark, or trade secret are granted or are to be implied with respect to Confidential Information.

5. CUSTOMER DATA; SERVICE SUSPENSION.

5.1. **Account Information and Customer Data.** Visybl does not claim ownership of any Customer Data. You hereby grant to Visybl a nonexclusive, worldwide, royalty-free, fully-paid, transferable license to host, cache, record, copy, and display Customer Data solely for the purpose of providing the Services. Except as set forth in the Agreement, as between you and Visybl, you retain all right, title, and interest in and to the Customer Data. You, not Visybl, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of all Customer Data, and you agree that Visybl shall not be responsible or liable for the unauthorized access to, alteration of, or deletion, correction, destruction, corruption, damage, loss or failure to secure or store any Customer Data. You acknowledge that you bear sole responsibility for adequate security, protection and backup of Customer Data. Visybl has no obligation to provide any information (including Customer Data) to Customer in any specific format. Visybl reserves the right to withhold, remove and/or discard Customer Data or other reports without notice for any breach, including, without limitation, your non-payment.

5.2. **Representations and Warranties About Customer Data.** You represent, warrant and covenant that you: (A) are the owner or authorized licensee of any and all Customer Data and have the right to grant the rights set forth herein; and (B) will not publish, post, upload, record, or otherwise distribute or transmit Customer Data that: (1) infringes or would infringe any copyright, patent, trademark, trade secret, or other proprietary right of any party, or any rights of publicity or privacy of any party; (2) violates any law, statute, ordinance, or regulation (including without limitation the laws and regulations governing export control, unfair competition, anti-discrimination, or false advertising); (3) is inappropriate, profane, defamatory, libelous, obscene, indecent, threatening, harassing, or otherwise unlawful; (4) is harmful to minors or otherwise pornographic; (5) contains any viruses, Trojan horses, worms, time bombs, cancelbots, corrupted files, or any other similar Devices, data, or programs that may damage, detrimentally interfere with, surreptitiously intercept, or expropriate any system, data, personal information, or property of another; (6) is materially false, misleading, or inaccurate; and/or (7) contains information for which you do not have the right to permit Visybl to collect and process as set forth in the Privacy Statement.

5.3. **Responsibility for Use of Devices and Services.** You agree that the security of your account and of any network or system utilized by you is solely your own responsibility. You are responsible for maintaining the secrecy and security of your passwords and acknowledge and agree that Customer Data will be lost and irretrievable without your passwords. You are fully responsible for all activities that occur on your accounts, regardless of whether such activities are undertaken by you or a third party. Therefore, you further agree that if you believe that the security of your account or of any such network or system has been compromised in any way, you will notify Visybl immediately both by email and telephone. You agree not to interfere with the proper operation of any network or system utilized by Visybl (including but not limited to defeating identification procedures, obtaining access beyond that which you are authorized for, and impairing the availability, reliability, or quality of service for other customers of Visybl) or with the proper operation of other systems reachable through the Internet, including any attempt at unauthorized access. You further agree not to use the Devices or Services for or in connection with any illegal or improper purpose, activities or in violation of this Agreement or in violation of any third party rights.

5.4. **Downtime and Service Suspensions.** In addition to our rights to terminate or suspend Services to you as otherwise set forth in the Agreement, you acknowledge that: (i) we shall be entitled, to suspend access to any portion or all of the

Services at any time: (a) for scheduled downtime to permit us to conduct maintenance or make modifications to any Service; (b) in the event of a denial of service attack or other attack on the Service or other event that we determine, in our sole discretion, may create a risk to the applicable Service, to you or to any of our other customers if the Service were not suspended; (c) in the event that we determine that any Service is prohibited by law or we otherwise determine that it is necessary or prudent to do so for legal or regulatory reasons; (d) if you engage in any conduct or activities that is in excess of average customer usage parameters including but not limited to your bandwidth, CPU or disk space usage and such usage by you is or may adversely affect the performance or availability of the Services, Visybl's infrastructure or resources, or Visybl's other customers; or (e) if you engage in any conduct or activities that Visybl in good faith believes to be in violation of any of the terms and conditions in the Agreement; and (ii) your access to and use of the Services may be suspended for the duration of any unanticipated or unscheduled downtime or unavailability of any portion or all of the Services for any reason, including as a result of power outages, system failures or other interruptions (all of the foregoing collectively referred to as "Service Suspensions"). The Visybl Entities shall have no liability whatsoever for any damage, liabilities, losses (including any loss of data or profits) or any other consequences that you may incur as a result of any Service Suspension. To the extent we are able; we will endeavor to provide you notice of any Service Suspension, but shall have no liability for the manner in which we may do so or if we fail to do so; it being further understood that Visybl may take any mitigating action without liability or notice to Customer in response to the situations described in (i)(c)-(e) above.

5.5. **Submissions.** You may submit questions or comments to Visybl from time to time. Visybl reserves the right to edit and post such questions or comments along with answers, if any, while maintaining all confidentiality. All such communications and any comments, feedback, suggestions, scripts, Devices, ideas, and other submissions related to the Devices and/or Services submitted to Visybl (collectively, "Submissions") will be and remain Visybl's property, and all worldwide right, title, and interest in all copyrights and other intellectual property in all Submissions are hereby assigned (and in the future deemed to be assigned) by you to Visybl.

6. **RESTRICTIONS.** Customer agrees to the following:

6.1. **General Restrictions.** You acknowledge that the Devices and Services contain trade secrets of Visybl or its suppliers or licensors. You agree not to disclose, provide, or otherwise make available trade secrets contained within the Devices and Services in any form to any third party and you further agree to implement reasonable security measures to protect such trade secrets. You agree not to reverse engineer, decompile, disassemble, translate, or attempt to learn the source code of the Devices or Services. Unless expressly set forth in the Agreement, you may not use, copy, modify, create derivative works of, distribute, sell, assign, pledge, sublicense, lease, loan, rent, timeshare, deliver, or otherwise transfer, directly or indirectly, the Devices (in whole or in part) or any rights in the Services. You may not remove from the Devices or Services, or alter or add, any Marks or copyright notices or other proprietary rights markings. You shall not reverse engineer or access the Service or Devices in order to (1) build a competitive product or service, (2) build a product using similar ideas, features, functions or graphics of the Devices or Service, or (3) copy any ideas, features, functions or graphics of the Devices or Service. **IF YOU ARE NOT AN EMPLOYEE, INDEPENDENT CONTRACTOR, OR INVITEE OF A CUSTOMER, YOU ARE NOT AUTHORIZED TO INSTALL OR OTHERWISE USE THE DEVICES OR SERVICES.**

6.2. **Restricted Rights.** The Devices and Services are provided to non-Department of Defense agencies with RESTRICTED RIGHTS and its supporting Documentation is provided with LIMITED RIGHTS. Use, duplication, or disclosure by the government is subject to the restrictions as set forth in subparagraph "C" of the Commercial Computer Devices - Restricted Rights clause at FAR 52.227-19. In the event this transaction is with a Department of Defense agency, the government's rights in Devices, supporting documentation, and technical data are governed by the restrictions in the Technical Data Commercial Items clause at DFARS 252.227-7015 and DFARS 227.7202. Manufacturer of Devices is Visybl, Corporation.

6.3. **Subject To Compliance.** Your rights to use the Devices and Services are and shall at all times remain subject to your compliance with all of the terms and conditions of the Agreement, and shall terminate without notice by Visybl to you in the event of a breach by you of any of your obligations under this Agreement. You agree that Visybl may disable or deactivate Services or Devices or refuse to renew Services, rendering some or all aspects of the Devices or Services unusable by you, at any time to enforce its rights under the Agreement.

6.4. **Proprietary Rights.** You acknowledge that: (a) Visybl is the exclusive owner of all trade names, trademarks, service marks, inventions, copyrights, trade secrets, patents, know-how and other proprietary rights relating to the Devices and Services; and (b) Visybl may automatically track and monitor Devices, users and the Services to collect Usage Data, and

Visybl is the exclusive owner of the Usage Data and may sell, publish or otherwise use the Usage Data for any purpose at its sole discretion.

7. **LIMITED WARRANTY; DISCLAIMER OF WARRANTIES; INTERNET DELAYS.**

7.1. **Limited Warranty.** Visybl warrants that the Devices when shipped or transmitted to you will operate substantially in accordance with the Documentation upon delivery to Customer. Customer's sole and exclusive remedy and the entire liability of Visybl under this limited warranty will be at Visybl's option, repair, replacement, or refund of the purchase price of the Devices (or if the Devices provides the functionality intended by Visybl and the error is in the Documentation Visybl will correct the Documentation), in each case subject to the condition that any error or defect constituting a breach of this limited warranty is reported to Visybl. This warranty does not apply if the Devices, or any other equipment upon which the Devices is authorized to be used: (a) has been altered, except by Visybl or its authorized representative, (b) has not been installed, operated, repaired, or maintained in accordance with instructions supplied by Visybl, (c) has been subjected to abnormal physical or electrical stress, abnormal environmental conditions, misuse, negligence, or accident; (d) is licensed for beta, evaluation, testing or demonstration purposes; or (e) any Devices for which Visybl does not receive a license fee.

7.2. **Disclaimer Of Warranties.** EXCEPT AS SET FORTH IN THE PRECEDING SECTION, ALL DEVICES AND SERVICES ARE PROVIDED "AS IS" AND "WITH ALL FAULTS" AND WITHOUT ANY WARRANTY. EACH OF THE VISYBL ENTITIES HEREBY DISCLAIMS ALL WARRANTIES, CONDITIONS, AND DUTIES OF ANY KIND (IF ANY), EXPRESS, IMPLIED, OR STATUTORY, INCLUDING WITHOUT LIMITATION, ANY OF MERCHANTABILITY, OF FITNESS FOR ANY PARTICULAR PURPOSE, OF ACCURACY, OF SYSTEM INTEGRATION OR COMPATIBILITY, OF WORKMANLIKE EFFORT, OR OF NON-NEGLIGENT PERFORMANCE. THE FOREGOING DISCLAIMERS INCLUDE, WITHOUT LIMITATION, ANY WARRANTY, DUTY, OR CONDITION THAT: THE DEVICES OR SERVICES WILL BE UNINTERRUPTED, RELIABLE, AVAILABLE AT ANY PARTICULAR TIME, SECURE, ERROR-FREE, VIRUS-FREE, OR CORRESPOND TO ANY CONDITION; THAT MESSAGES OR REQUESTS WILL BE DELIVERED; THAT DEFECTS WILL BE CORRECTED; OR THAT THE DEVICES OR SERVICES, ANY CONTENT, SYSTEMS, SERVERS, AND INFORMATION THAT IS IN OR UTILIZED BY THE DEVICES AND/OR SERVICES WILL BE FREE OF HARMFUL ASPECTS. ALSO, THERE IS NO WARRANTY OF TITLE OR AGAINST INTERFERENCE WITH ANYONE'S ENJOYMENT OF THE DEVICES OR SERVICES OR AGAINST INFRINGEMENT.

7.3. **Internet and Fault Tolerance.** SERVICES MAY BE SUBJECT TO LIMITATIONS, SECURITY RISKS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. VISYBL ENTITIES ARE NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, SECURITY BREACHES OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS. THE DEVICES AND SERVICES CONTAIN TECHNOLOGY THAT IS NOT FAULT TOLERANT AND IS NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USE IN ENVIRONMENTS OR APPLICATIONS IN WHICH THE FAILURE OF THE DEVICES OR SERVICES COULD LEAD TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL, PROPERTY OR ENVIRONMENTAL DAMAGE.

8. **TRIAL DEVICES AND SERVICES.** Customer acknowledges and agrees that any Trial Devices and Services may not be at the level of performance or compatibility of a final, generally available Devices or Service offering. Furthermore, you understand that, for promotional purposes, from time to time, Visybl may enable new functionality for a trial period to show you what is available or new in the Devices and Services, and you agree to accept these new functionalities on a trial basis as they are provided to you. Pre-Release Devices or Services may not operate correctly and may be substantially modified prior to commercial shipment, or withdrawn in whole or in part. All Trial Devices and Services offered on a trial basis are provided "AS IS" without warranty of any kind. The entire risk arising out of the use or performance of Trial Devices or Services remains with Customer. In no event shall any of the Visybl Entities be liable for any damage whatsoever arising out of or related to any Trial Devices or Services even if Visybl has been advised of the possibility of such damages and Customer's sole and exclusive remedy will be to terminate use of the Trial Devices or Service.

9. **MARKS.** The Marks are available to you only if you meet the Visybl criteria to use them. The criteria may be obtained by written request to Visybl. If you meet the criteria and Visybl has not informed you otherwise, during the Term, we grant to you a revocable at any time non-exclusive, non-transferable, limited, royalty-free license to use the applicable Marks. You acknowledge and agree that: (A) Visybl or its licensors is the sole owner of the Marks and the sole beneficiary of the goodwill associated with your use of the Marks; (B) You will not acquire any right, title or interest in the Marks because of your use of the Marks; and (C) You will not register, adopt or use any name, trademark, domain name or other designation that includes all or part of any Mark, or any term that is confusingly similar to a Mark, or a translation or transliteration of a Mark and specifically agree not to direct or re-direct communications network traffic to any network address associated with Customer or with any other third party; cause such network traffic to be so directed or so re-

directed on behalf of Customer or with any other third party; or list or cause to be listed any Internet website associated with Customer or with any third party in response to a keyword search that receives as input, whether in whole or in part based on the foregoing.

10. EXCLUSION OF DAMAGES; LIMITATION ON LIABILITY.

10.1. **Exclusion Of Certain Damages.** YOU AGREE THAT THE FOLLOWING DAMAGES ARE EXCLUDED AND THAT YOU WILL NOT BE ENTITLED TO ANY OF THEM: ALL SPECIAL, INCIDENTAL, PUNITIVE, AND CONSEQUENTIAL DAMAGES; DAMAGES FOR LOSS OF PROFITS OR CONFIDENTIAL OR OTHER INFORMATION, FOR BUSINESS INTERRUPTION, FOR PERSONAL INJURY, FOR LOSS OF PRIVACY, FOR FAILURE TO MEET ANY DUTY INCLUDING OF GOOD FAITH OR OF REASONABLE CARE, OR FOR NEGLIGENCE OR NEGLIGENT MISREPRESENTATION; AND FOR ANY OTHER PECUNIARY OR OTHER LOSS WHATSOEVER OTHER THAN "DIRECT DAMAGES" AS DESCRIBED BELOW. THE FOREGOING DAMAGES WILL BE EXCLUDED EVEN IN THE EVENT OF THE FAULT, TORT (INCLUDING NEGLIGENCE), STRICT OR PRODUCT LIABILITY, AND/OR BREACH OF CONTRACT OF VISYBL OR ANY OF THE OTHER VISYBL ENTITIES, AND EVEN IF VISYBL OR ANY OF THE VISYBL ENTITIES HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. YOU AGREE THAT THESE EXCLUSIONS AND THE BELOW LIMITATION ON LIABILITY WILL APPLY EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

10.2. **Limitation On Liability.** EXCEPT FOR DAMAGES THAT ARE REQUIRED BY LAW TO BE PAID AND CANNOT BE LIMITED BY CONTRACT, YOU AGREE THAT ALL DAMAGES ARE EXCLUDED EXCEPT FOR THE DIRECT DAMAGES THAT ARE ACTUALLY INCURRED BY YOU UP TO THE GREATER OF THE AMOUNT OF A REFUND OF THE PRICE THAT YOU ACTUALLY PAID FOR THE APPLICABLE DEVICES AND SERVICES DURING THE SERVICES TERM IMMEDIATELY PRECEDING THE FILING OF SUCH CLAIM REGARDLESS OF THE FORM OF ACTION OR CLAIM (E.G., CONTRACT, WARRANTY, TORT, STRICT LIABILITY, NEGLIGENCE, FRAUD, OR OTHER LEGAL THEORY) AND ONE DOLLAR (US\$1.00).

10.3. Customer agrees that the limitations of liability and disclaimers set forth herein will apply regardless of whether Customer has accepted the Devices or Services. Customer acknowledges and agrees that Visybl has set its prices and entered into the Agreement in reliance upon the disclaimers of warranty and the limitations of liability set forth herein, that the same reflect an allocation of risk between the parties (including the risk that a contract remedy may fail of its essential purpose and cause consequential loss), and that the same form an essential basis of the bargain between the parties. The limitations and exclusions provided for by this section reflect an informed and voluntary allocation of risks between the parties and applies to risks both known and unknown that may exist in connection with the Agreement.

11. THIRD PARTY CLAIMS.

11.1. **Visybl's Obligations Re Third-Party Infringement Claims.** Visybl will defend, at Visybl's expense, any lawsuit brought against you in any court located within the United States, insofar (but only insofar) as the suit is based on a claim that the Devices or Services, as provided by Visybl to you, directly infringes any third party patent or copyright, provided that: (A) Visybl is notified in writing of the lawsuit within thirty (30) days after you obtain actual knowledge of it, (B) Visybl is given full control over the defense of such claims, and (C) you give Visybl reasonable assistance and cooperation in its defense of the claim. If your use of the Devices and Services is determined in a final, enforceable judgment to infringe a third-party patent or copyright, Visybl, at its own expense, shall either (1) procure for you the right to continue using the Devices and Services, or (2) modify the Devices and Services so that they become non-infringing while giving acceptable performance, or (3) in the event that neither of the foregoing options (1) and (2) are reasonably available to Visybl, terminate the Agreement with respect to the Subscription(s) for the infringing Devices and Services without compensation or other liability other than refunding amounts prepaid, if any, by Customer for a terminated Subscription for time period after the termination. Notwithstanding anything to the contrary in the Agreement, Visybl will have no obligation to you on account of any third-party claim of infringement that results from (V) any use by you of the Devices in violation of the Agreement, (W) any damage to, or misapplication or misuse of the Devices by you; (X) your combination of all or any portion of the Devices with Devices not supplied by Visybl; or (Y) your use of any superseded, altered, or allegedly infringing version or release of all or any portion of the Devices if such alleged infringement could be avoided by the use of a different version or Upgrade made available to you by Visybl; or (Z) any information, design, specification, instruction, Devices, data, or material not furnished by Visybl. You agree to defend, indemnify and hold harmless the Visybl Entities against any claims of infringement by third parties resulting from any of the circumstances listed in the immediately preceding sentence. The foregoing states Visybl's entire responsibility with respect to intellectual property claims and Customers sole and exclusive remedy.

11.2. **Customer Indemnity.** You agree to defend, indemnify, and hold harmless each of the Visybl Entities from and against any and all claims, liabilities, damages, and/or costs (including, but not limited to, fees, costs and other expenses of attorneys and expert witnesses) arising out of or related to: any actual or alleged violation of the Agreement or applicable law, rule or regulation by you or any person accessing or using the Devices or Services by or through you (including Third Party Clients); any actual or alleged infringement or violation by you or any person accessing or using the Devices or Services by or through you of any intellectual property or privacy or other right of any person or entity (including Third Party Clients); or any claims by Third Party Clients or arising out of or relating to Customer's relationship with any Third Party Client.

12. **MISCELLANEOUS.**

12.1. **Assignment.** No party may assign the Agreement, or any rights or obligations hereunder, whether by contract, operation of law, or otherwise without the express written consent of the other party to the Agreement, except: (A) in the case of Visybl, Visybl may assign the Agreement without your prior consent to: (1) one or more of the Visybl Entities, (2) an acquirer of assets, or (3) a successor by merger; and (B) in the case of Customer, you may assign all of your rights in connection with a sale of all or substantially all of Customer's assets or in connection with a merger or other third-party acquisition of all or substantially all of the business conducted by Customer for which the Devices is used by you, and then only if (1) you retain no further rights under this Agreement, (2) your assignee or transferee expressly agrees in writing to assume all of your obligations under this Agreement, (3) your assignee or transferee is no less capable of performing this Agreement than are you; and (4) the assignee is not a competitor of any Visybl Entity as determined in Visybl's sole discretion. Unless otherwise agreed in writing by Visybl, you will remain jointly and severally liable with any such assignee or transferee for the full and timely performance of all obligations under this Agreement. Notwithstanding the foregoing, any actual or proposed assignment to a competitor of Visybl or change in control of you that results or would result in a competitor of Visybl directly or indirectly owning or controlling 50% or more of you shall entitle Visybl to terminate the Agreement for cause in whole or in part immediately upon written notice. Any purported assignment in violation of this section shall be void.

12.2. **Notices and Electronic Communications.** Visybl may give notice by means of a general notice on the Devices or Service, electronic mail to your e-mail address on record in Visybl's account information, or by written communication sent by first class mail or pre-paid post to your address on record in Visybl's account information. Such notice shall be deemed to have been given upon the expiration of 48 hours after mailing or posting (if sent by first class mail or pre-paid post) or 12 hours after sending (if sent by email). You may give notice to Visybl (such notice shall be deemed given when received by Visybl) at any time by any of the following: letter sent by confirmed facsimile or third party confirmed mail delivery to Visybl at the address set forth on the Website. The Devices and Services are conducted and provided electronically and you agree that Visybl may communicate electronically with you for matters relating to the Devices and Services, including educational information and notifications regarding product updates, incentive and rewards programs, training opportunities and ways to more efficiently use the Devices and Services. The parties agree that the Agreement is to be written in English only, unless Visybl in its sole discretion releases any part of the Agreement in other language(s). If Visybl chooses to release any part of the Agreement in any language other than English, Visybl does so for informational purposes only and you hereby agree that the English language version shall govern and control in all cases.

12.3. **Choice of Law.** The Agreement shall be governed by Delaware law and controlling United States federal law, without regard to the choice or conflicts of law provisions of any jurisdiction, and any disputes, actions, claims or causes of action arising out of or in connection with the Agreement or the Devices or Services shall be subject to the exclusive jurisdiction of the state and federal courts located in Santa Clara County, California. The 1980 United Nations Convention on Contracts for the International Sale of Goods and its related instruments will not apply to the Agreement. Customer and Visybl agree that Customer and Visybl MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY, and not as a plaintiff or class representative or class member in any purported class or representative proceeding as a private attorney general. Visybl and Customer hereby agree that each is waiving all respective rights to a trial by jury regarding any disputes, actions, claims or causes of action arising out of or in connection with the Agreement or the Devices or Services. This choice of jurisdiction and venue does not prevent either party from seeking injunctive relief with respect to a violation of intellectual property rights, confidentiality obligations or enforcement of recognition of any award or order in any appropriate jurisdiction. If either party commences litigation in connection with the Agreement, the prevailing party will be entitled to recover its reasonable attorneys' fees, costs and other expenses.

12.4. **Waiver and Severability.** The failure of either party to insist in any instance upon any payment or performance when due by the other party, shall not relieve such other party of its any of obligations with respect to such performance, or constitute a waiver of such party's right to insist upon the full and timely performance in the future of any of the other

party's obligations under the Agreement. If any of the provisions of the Agreement shall be held by a court of competent jurisdiction for any reason to be unenforceable by reason of being excessively broad, or excessively narrow or limited, in its scope or duration, the offending provision(s) automatically shall be deemed amended so as to be as broad as is permissible (if the unenforceability is due to excessive breadth) or as narrow or limited (if the unenforceability is due to excessive narrowness or limitation) as is permitted by applicable law. The unenforceability or invalidity of any one provision shall not affect the remainder of the Agreement, which shall continue in full force and effect.

12.5. Compliance With Law and Export Control. You shall abide by all applicable local, state, national and foreign laws, rules, treaties and regulations in connection with your use of the Devices and Service, including those related to data privacy, international communications and the transmission of technical or personal data. You acknowledge that the Devices, Services and related technology and technical data (collectively "Controlled Technology") may be subject to the import and export laws of any country where Controlled Technology is imported or re-exported, including U.S Export Administration Regulations. You agree not to export or import any Controlled Technology in contravention to law nor to any prohibited country (such as embargoed countries), entity, or person (such as designated nationals) for which a license or other governmental approval is required or is otherwise prohibited. All Controlled Technology is prohibited for export or re-export to Afghanistan, Burma, Cuba, Iraq, Iran, Libya, North Korea, Syria and Sudan and to any country subject to similar trade sanctions. You further agree that you will not use, export or sell any Controlled Technology for use in connection with chemical, biological, or nuclear weapons, or missiles, drones or space launch vehicles capable of delivering such weapons.

12.6. Verifying Compliance And Customer Records. Customer grants to Visybl and its independent accountants the right to examine Customer's books, records and accounts during Customer's normal business hours to verify compliance with the Agreement. In the event such audit discloses non-compliance with the Agreement, Customer shall immediately pay to Visybl the appropriate fees, plus the reasonable cost of conducting the audit.

12.7. Agreement Priority. The terms of this Customer Agreement govern Customer's access and use of the Devices and Services, provided that to the extent there is an applicable separate non-electronic agreement manually signed by authorized representatives of the parties the order of precedence shall be the signed agreement and this Customer Agreement. Except as set forth in the preceding sentence or otherwise indicated in this Customer Agreement, this Customer Agreement shall govern in case of a conflict between the Customer Agreement and the Documentation.

12.8. Force Majeure. Visybl's performance of the Agreement (including the Privacy Statement) is subject to existing laws and legal process, and you agree that Visybl may comply with law enforcement or regulatory requests or requirements notwithstanding any contrary term of the Agreement. Each party's obligation to perform its obligations hereunder (other than your obligation to pay fees when due) shall be suspended during any period that the party is rendered incapable of performing by virtue of any criminal acts of third parties, war, viruses, acts of public enemies, severe weather conditions, utility failures, strikes or other labor disturbances, fires, floods, other natural disasters, other acts of God, unforeseeable acts of employees, telecommunication or interruption of Internet service, or any causes of like or different kind beyond any reasonable control of the party.

12.9. Independent Contractor. We are independent contractors, and nothing contained in the Agreement shall be construed to (A) give either party the power to direct and control the day-to-day activities of the other, (B) constitute the parties as partners, joint venturers, co-owners agents, franchisee or franchisor or otherwise, or (C) allow either party to create or assume any obligation on behalf of the other party for any purpose whatsoever. Customer is not an employee of Visybl and is not entitled to any Visybl benefits. All financial and other obligations associated with each party's business and are the sole responsibility of such party. Customer represents and warrants that it: (X) will not make any representation, warranties, or guarantees on behalf of Visybl, and (Y) will not disparage Visybl in any manner or otherwise harm Visybl's business or reputation.

12.10. Entire Agreement. The Agreement constitutes the entire agreement between Visybl and you with respect to the Devices and Services and supersedes all other (prior or contemporaneous) communications and proposals, whether electronic, oral, or non-electronic, between Visybl and you regarding them. You agree that any terms or conditions contained in any document, including but not limited to a purchase order, acknowledgement, email, or other document that you may now or later provide to Visybl, will have no effect and that the Agreement is the only contract between Visybl and you regarding the Devices and Services and may only be amended as set forth herein. A printed version of the Agreement and of any notice given to you in electronic form will be admissible in judicial or administrative proceedings

based upon or relating to the Agreement to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form.

12.11. **Amendments.** Visybl may, at any time, amend the provisions of the Agreement and/or the Privacy Statement, and you may accept the amended provisions in the manner indicated in the amendment notice as communicated by Visybl. Any amendment proposed by you may only be accepted by Visybl in a non-electronic writing manually signed by authorized representatives of the parties. Therefore, you agree to periodically visit the Website to examine the then-current Agreement (including the Privacy Statement).

13. **DEFINITIONS:** All capitalized terms defined in the Agreement have the meanings as defined herein. In addition, as used in the Agreement the following terms shall be defined as set forth below:

13.1. "Affiliates" means any legal entity that a party owns, which owns the party, or which is under common ownership with the party. "Ownership" means, for the purposes of this definition, more than 50% ownership.

13.2. "Confidential Information" means the proprietary and non-public: technical, financial, marketing, staffing and business information; business strategies, marketing plans, industry and competitive information; technology and pricing information; employee and personal information; and the trade secrets of the Visybl Entities on the one hand or the Customer and its Third Party Clients on the other hand. Confidential Information does not include information that: (a) was or becomes publicly available or in a party's possession without breach of the Agreement; (b) is developed by a party independently of and without reference to the other's Confidential Information; or (c) is rightfully obtained by a party from third parties authorized to make such disclosure.

13.3. "Customer Data" means all Customer data, information and materials that are uploaded by or for you or that is accessed by Visybl in connection with your use or Visybl's provision of the Devices or Services including without limitation personal information, photographs, caricatures, illustrations, designs, icons, articles, audio clips, trademarks, logos, and video clips but does not include Submissions or Usage Data.

13.4. "Devices" means Visybl or Visybl-distributed hardware devices.

13.5. "Documentation" means written information (whether contained in catalogs, maintenance policies, user or technical manuals, training materials, support policies, specifications, copyright attributions or otherwise) pertaining to the Devices or Services and made available by Visybl with the Devices or Services in any manner (including via email, on the Website or other on-line format) as updated or amended by Visybl from time to time and includes Visybl's Privacy Statement and the Customer Agreement and Order Form(s) and SOW(s).

13.6. "Visybl Entities" means Visybl and any licensors and suppliers providing any part of the Devices or Services; and all subsidiaries, Affiliates, officers, employees, consultants, and agents of any of the foregoing.

13.7. "Marks" means Visybl or Visybl licensed trademarks, logos, symbols, and names.

13.8. "Order Form" means the Visybl form evidencing the Customer order, and which may specify, among other things, the number of Devices or Service licenses and other services purchased, the applicable fees, the billing period, the Installment Schedule, Term and other items, each such Order Form to be incorporated into and to become a part of the Agreement; and depending on the Devices or Services ordered, the Order Form may be completed online, may be the Visybl invoice or billing statement, or may be an SOW.

13.9. "Service(s)" means the Visybl services set forth in the applicable Documentation and also includes such Documentation.

13.10. "SOW(s)" means a statement of work, work order, or other similar document executed by Visybl and Customer which sets forth Services to be performed by Visybl.

13.11. "Subscription" means, subject to the terms and conditions of the Agreement, the Customer has the right to access and use the applicable Devices or Services only for the Term.

13.12. "Territory" means the geographic region where Devices and Services may be deployed and used for which Customer has paid the applicable fees and unless otherwise agreed to by Visybl in writing is the country where Customer is invoiced for the applicable Devices or Service.

13.13. "Trial Devices and Services" means any Devices or Services that are not generally released to the public for purchase such as alpha or beta releases or other trials.

13.14. "Updates" mean bug fixes, quick fix engineering updates, or other minor modifications to the Devices which are not deemed by Visybl in its sole discretion to be an Upgrade.

13.15. "Upgrades" mean any modifications to the Devices or Services which are not Updates as determined in Visybl's sole discretion such as those providing enhanced functionality or performance, or that otherwise improve or add to, delete or otherwise modify any aspect of the Devices.

13.16. "Usage Data" means any non-personally identifying information relating to or arising from the capabilities, problems, successes, statistics, diagnostics, inventory, composition, configuration, performance (or lack thereof) of: (a) the Devices or Services or (b) any machines or hardware comprising, or used in connection with or otherwise related to any of the foregoing.

13.17. "Website" means <http://www.visybl.com> and related Visybl micro-site(s), or regional or in country websites applicable to Customer or the applicable Devices or Services.