

VISUAL VOCAL
SUBSCRIPTION AGREEMENT
LAST UPDATED: JUNE 27, 2017

This Subscription Agreement (“**Agreement**”) is by and between 30 60 90 Corporation, a Delaware Corporation (“**Visual Vocal**”) and the customer identified in the applicable Order Form (defined below) (“**Customer**”) and is incorporated by reference into such Order Form.

1. DEFINITIONS. Capitalized terms shall have the meanings set forth in this Section 1, or in the section where they are first used.

1.1 “Access Protocols” means the passwords, access codes, technical specifications, connectivity standards or protocols, or other relevant procedures, as may be necessary to allow Customer or any Authorized Users to access the Services.

1.2 “Active Project” means any Project, including Projects that have been archived by Customer, which have not be removed by Customer from the Services.

1.3 “Authorized User” means any individual who Customer invites to use and access the Services pursuant to Customer’s rights under this Agreement.

1.4 “Customer Content” means, without limitation, (a) any and all information, data, texts, files, images and other materials that is provided, imported or otherwise used by or on behalf of Customer (or its Authorized Users) with the Services and (b) any User Content of your Authorized Users (as defined in the Terms of Service (defined below)).

1.5 “Data” means any personal data, including, without limitation, an Authorized User's personal data and personal data of Customer’s employees, consultants or other personnel, that is collected, processed or stored by either party in connection with the provision and receipt of the Services;

1.6 “Data Protection Legislation” means Directive 95/46/EC of the European Parliament, any successor legislation and any legislation and/or binding regulations by which it is implemented in the relevant jurisdiction and the terms “data processor”, “data controller” “processor”, “processing” and “personal data” shall each have the meaning ascribed to it in the Data Protection Legislation.

1.7 “Documentation” means the technical materials provided by Visual Vocal to Customer in hard copy or electronic form describing the use and operation of the Services.

1.8 “Error” means a reproducible failure of the Services to substantially conform to the Documentation.

1.9 “Error Corrections” means bug fixes or workarounds intended to correct Errors in the Services.

1.10 “Intellectual Property Rights” means any and all now known or hereafter existing (a) rights associated with works of authorship, including copyrights, mask work rights, and moral rights; (b) trademark or service mark rights; (c) trade secret rights; (d) patents, patent rights, and industrial property rights; (e) layout design rights, design rights, and other proprietary rights of every kind and nature other than trademarks, service marks, trade dress, and similar rights; and (f) all registrations, applications, renewals, extensions, or reissues of the foregoing, in each case in any jurisdiction throughout the world.

1.11 “Order Form” means a document signed by both parties identifying the Services to be made available by Visual Vocal pursuant to this Agreement.

1.12 “Project” means any virtual reality and/or augmented reality project that is created by or on behalf of Customer on the Services.

1.13 “Services” means the services ordered by Customer through an Order Form and provided by Visual Vocal by means of access to certain content and use of the features and functionality of software applications made available to Customer as a service, including the Visual Vocal App and web portal, solely to the extent set forth and further described in, and as limited by, the Order Forms executed by the parties. The Services generally provide VR/AR-powered sharing, querying, collaboration, synthesis and decision-making.

1.14 “Supported Environment” means the minimum hardware, software, and connectivity configuration specified from time to time by Visual Vocal as required for use of the Services. The current requirements are described in the Documentation.

1.15 “Visual Vocal App” means the Visual Vocal mobile application.

2. PROVISION OF SERVICES

2.1 Access. Subject to Customer’s payment of the fees set forth in the Order Form (“**Fees**”), Visual Vocal will provide Customer with access to the Services. On or as soon as reasonably practicable after the Effective Date Visual Vocal shall provide to Customer the necessary passwords, security protocols and policies and network links or connections and Access Protocols to allow Customer and its Authorized Users to access the Services in accordance with the Access Protocols. Customer will use commercially reasonable efforts to prevent unauthorized access to, or use of, the Services, and notify Visual Vocal promptly of any such unauthorized use of the Services known to Customer.

2.2 Maintenance and Support. Visual Vocal will provide certain maintenance and support services for the Services that include Error Corrections and updates to the Services.

2.3 Security. Visual Vocal will use commercially reasonable efforts to maintain the security of the Services.

2.4 Responsibility for Services and Content Hosting. Visual Vocal shall, at its own expense, provide for the hosting of the Services which is accessible as part of the Services, provided that nothing herein shall be construed to require Visual Vocal to provide, or bear any responsibility with respect to, any telecommunications or computer network hardware required by Customer or any Authorized User to access the Services from the Internet or via a mobile device on which the Visual Vocal App is installed

2.5 Modification. Visual Vocal may update or modify the Services from time to time. If, in Visual Vocal’s sole and reasonable discretion, any such modification to the Services materially reduces the Services’ functionality, Visual Vocal will notify Customer of such proposed modifications via email to the email address associated with Customer’s account no less than thirty (30) days prior to such change.

3. INTELLECTUAL PROPERTY

3.1 License Grant. Subject to the terms and conditions of this Agreement, Visual Vocal grants to Customer a non-exclusive, non-transferable (except as permitted under Section 11.7) license during the Term (as defined below) pursuant to this Agreement, in accordance with the Documentation and limitations (if any) set forth in the Order Form, (a) to access and use the Services enable and enable Customer’s Authorized Users to access and use the Services; and (b) to use and reproduce a reasonable number of copies of the Documentation solely to support Customer’s use of the Services.

3.2 Authorized Users Use of the Services. Customer acknowledges and agrees that its Authorized Users’ access to and use of the Services is subject to Visual Vocal’s Terms of Service located here: <http://visualvocal.com/terms> (the “**Terms of Service**”). Each Authorized User will be required to accept the Terms of Service prior to being able to access and use the Services.

3.3 Restrictions. Customer will not, and will not permit any Authorized User or other party to: (a) allow any third party to access the Services or Documentation, except as expressly allowed herein; (b) modify, adapt, alter or translate the Services or Documentation; (c) sublicense, lease, sell, resell, rent, loan, distribute, transfer or otherwise allow the use of the Services or Documentation for the benefit of any unauthorized third party; (d) reverse engineer, decompile, disassemble, or otherwise derive or determine or attempt to derive or determine the source code (or the underlying ideas, algorithms, structure or organization) of the Services, except as permitted by law; (e) interfere in any manner with the operation of the Services or the hardware and network used to operate the Services; (f) modify, copy or make derivative works based on any part of the Services or Documentation; (g) access or use the Services to build a similar or competitive product or service; (h) attempt to access the Services through any unapproved interface; or (i) otherwise use the Services in any manner that exceeds the scope of use permitted under Section 3.1 or in a manner inconsistent with applicable law, the Documentation, or this Agreement. Customer acknowledges and agrees that the Services will not be used, and are not licensed for use, in connection with any of Customer’s time-critical or mission-critical functions.

3.4 Ownership. The Services, Documentation, and all worldwide Intellectual Property Rights in each of the foregoing, are the exclusive property of Visual Vocal, its affiliates and its suppliers. All rights in and to the

Services and Documentation not expressly granted to Customer in this Agreement are reserved by Visual Vocal, its affiliates and its suppliers. Except as expressly set forth herein, no express or implied license or right of any kind is granted to Customer regarding the Services, Documentation, or any part thereof.

3.5 Open Source Software. Certain items of software may be provided to Customer with the Services and are subject to “open source” or “free software” licenses (“**Open Source Software**”). Some of the Open Source Software is owned by third parties. The Open Source Software is not subject to the terms and conditions of Sections 3.1 or 9. Instead, each item of Open Source Software is licensed under the terms of the end-user license that accompanies such Open Source Software. Nothing in this Agreement limits Customer’s rights under, or grants Customer rights that supersede, the terms and conditions of any applicable end user license for the Open Source Software. If required by any license for particular Open Source Software, Visual Vocal makes such Open Source Software, and Visual Vocal’s modifications to that Open Source Software, available by written request at the notice address specified below.

3.6 Feedback. Customer hereby grants to Visual Vocal a royalty-free, worldwide, transferable, sublicensable, irrevocable, perpetual license to use or incorporate into the Services any suggestions, enhancement requests, recommendations or other feedback provided by Customer, including Authorized Users, relating to the Services. Visual Vocal will not identify Customer or Authorized User as the source of any such feedback without Customer’s or Authorized User’s prior written (email sufficient) consent.

3.7 Visual Vocal Customer List. Visual Vocal may include Customer’s name and logo in a list of Visual Vocal’s customers online and in print and electronic marketing materials. Subject to the terms and conditions of this Agreement, Customer hereby grants to Visual Vocal a non-exclusive and limited license to use and publicly display Customer’s logo as set forth in this Section 3.7.

3.8 Branding. Should the parties mutually agree to any branding of the Services under this Agreement, such branding (including the scope and pricing associated with such branding), will be set forth in the applicable Order Form, and this Section 3.8 shall apply. As soon as practicable following the Effective Date, Visual Vocal will provide to Customer a version of the Services branded with Customer Marks as set forth in the Order Form (“**Branded Service**”). Such Branded Service will have the same overall design, “look and feel,” features and functionality of the Services as of the Effective Date, but will be branded (to the extent set forth on the Order Form) with Customer Marks as opposed to Visual Vocal branding. “**Customer Marks**” means Customer’s trademarks, service marks, trade names and associated logos that Customer may provide to Visual Vocal from time to time for use in connection with this Agreement. Customer hereby grants to Visual Vocal a limited, non-exclusive and non-transferable license to use, reproduce and display the Customer Marks solely as necessary to make the Branded Service available to Customer and its Authorized Users hereunder, including the right to integrate the Customer Marks into the Branded Service. Visual Vocal’s use of the Customer Marks shall be in compliance with Customer’s then-current trademark usage guidelines as communicated to Visual Vocal by Customer. Should Customer find objectionable any use of the Customer Marks by Visual Vocal, Customer will have the right to revoke, with respect to the objectionable use, the rights granted to Visual Vocal under this Agreement to use such Customer Marks, and Visual Vocal will promptly cease using the applicable Customer Marks in the manner found objectionable by the Customer. In such case, Customer acknowledges and agrees that all or a portion of the Branded Service may no longer be available. Visual Vocal’s use of the Customer Marks shall inure to the benefit and be on behalf of Customer, and any such use will not create in Visual Vocal any right, title or interest in the Customer Marks.

4. FEES AND EXPENSES; PAYMENTS

4.1 Fees. In consideration for the access rights granted to Customer and the services performed by Visual Vocal under this Agreement, Customer will pay to Visual Vocal the Fees. Fees are non-refundable except as required by law or as explicitly set forth herein. Customer will pay all applicable fees when due and, if such fees are being paid via credit card or other electronic means, Customer authorizes Visual Vocal to charge such fees using Customer’s selected payment method. By default, customer accounts are set to auto-renew and Visual Vocal may automatically charge Customer for such renewal on or after the renewal date associated with Customer’s account unless Customer has cancelled the Services prior to its renewal date. Visual Vocal may revise Fees charged hereunder from time to time and will provide Customer’s designated administrator(s) with email notice of any changes in fees at least sixty (60) days prior to Customer’s renewal date. Visual Vocal reserves the right (in addition to any other rights or remedies Visual Vocal may have) to discontinue the Services and suspend all Authorized Users’ and Customer’s access to the Services if any fees are more than thirty (30) days overdue until such amounts are paid in full. Customer will maintain complete, accurate and up-to-date Customer billing and contact information at all times.

4.2 Purchase Orders. If Customer requires the use of a purchase order or purchase order number, Customer (a) must provide the purchase order number at the time of purchase; and (b) agrees that, except for any amendments to this Subscription Agreement that are clearly marked as such on the face of the purchase order, any terms and conditions on a Customer purchase order that conflict with this Subscription Agreement will not apply and are null and void.

4.3 Overages and Pricing Tiers. In the event Customer adds additional Active Projects beyond the maximum number of Active Projects for which Fees have been paid Customer shall be required to pay additional fees (as set forth on the Order Form) associated with the increased number of Active Projects (“**Overage Fees**”). The Overage Fees will be deemed Fees and subject to the same payment terms herein. If the Overage Fees meet or exceed the fees associated with a higher volume-based pricing tier (as set forth in the applicable Order Form), Customer’s use of the Services will be subject to the pricing of such higher volume-based pricing tier. If Customer wishes to downgrade to a lower volume-based pricing tier, Customer must provide Visual Vocal written notice of such downgrade. If Customer provides Visual Vocal notice of its intent to downgrade its subscription to a lower volume-based pricing tier, Customer may continue to use its subscription at the then-current volume-based pricing tier until the end of Customer’s then-current subscription term. Customer will not be eligible for a prorated refund of any portion of the Fee paid for the then-current subscription period.

4.4 Taxes. The Fees are exclusive of all applicable sales, use, value-added and other taxes, and all applicable duties, tariffs, assessments, export and import fees, or other similar charges, and Customer will be responsible for payment of all such taxes (other than taxes based on Visual Vocal’s income), fees, duties, and charges and any related penalties and interest, arising from the payment of the fees, the delivery of the Services, or the license of the Services to Customer. Customer will make all payments of fees to Visual Vocal free and clear of, and without reduction for, any withholding taxes; any such taxes imposed on payments of fees to Visual Vocal will be Customer’s sole responsibility, and Customer will provide Visual Vocal with official receipts issued by the appropriate taxing authority, or such other evidence as the Visual Vocal may reasonably request, to establish that such taxes have been paid.

4.5 Interest. Any amounts not paid when due shall bear interest at the rate of one and one half percent (1.5%) per month, or the maximum legal rate if less, from the due date until paid.

4.6 Records; Audit. Customer will permit Visual Vocal or its representatives to review Customer’s relevant records and inspect Customer’s facilities to ensure compliance with this Agreement. Visual Vocal will give Customer at least ten (10) days advance notice of any such inspection and will conduct the same during normal business hours in a manner that does not unreasonably interfere with Customer’s normal operations. If any such audit should disclose any underpayment of fees, Customer will promptly pay Visual Vocal such underpaid amount, together with interest thereon at the rate specified in this Section 4. If the amount of such underpayment exceeds five percent (5%) of fees actually paid during the audited period, Customer will also pay Visual Vocal for Visual Vocal’s expenses associated with such audit.

5. CUSTOMER CONTENT AND RESPONSIBILITIES

5.1 License; Ownership. Customer grants Visual Vocal and its affiliates and suppliers a non-exclusive, worldwide, royalty-free and fully paid license during the Term and any Transition Period pursuant to this Agreement (a) to use the Customer Content as necessary for purposes of providing, analyzing and improving the Services and displaying the Customer Content to Authorized Users, and (b) to use and disclose aggregated and anonymized data about the use of the Services by our customers. The Customer Content hosted by Visual Vocal as part of the Services, and all worldwide Intellectual Property Rights therein, is the exclusive property of Customer. All rights in and to the Customer Content not expressly granted to Visual Vocal in this Agreement are reserved by Customer.

5.2 Customer Warranty. Customer represents and warrants that any Customer Content hosted by Visual Vocal as part of the Services shall not (a) infringe any copyright, trademark, or patent; (b) misappropriate any trade secret; (c) be deceptive, defamatory, pornographic, obscene or unlawful; (d) contain any viruses, worms or other malicious computer programming codes intended to damage Visual Vocal’s system or data; or (e) otherwise violate the rights of a third party. Visual Vocal is not obligated to back up any Customer Content; the Customer is solely responsible for creating backup copies of any Customer Content at Customer’s sole cost and expense. Customer agrees that any use of the Services contrary to or in violation of the representations and warranties of Customer in this Section 5.2 constitutes unauthorized and improper use of the Services.

5.3 Customer Responsibility for Data and Security.

(a) Security. To the extent Customer and its Authorized Users have access to the Customer Content or request that Visual Vocal make certain changes and/or deletions to Customer Content by emailing Visual Vocal at support@visualvocal.com, they shall be responsible for all changes to and/or deletions of Customer Content. Customer and its Authorized Users shall be responsible for the security of all passwords and other Access Protocols required in order to access the Services. Customer may have the ability to export Customer Content out of the Services and is encouraged to make its own back-ups of the Customer Content. Customer shall have the sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Customer Content. Customer shall comply with all applicable laws, rules and regulations in connection with its use of any Customer Content and/or Data it receives from Authorized Users in connection with its use of the Services.

(b) Data Privacy. When Customer is based in the European Union and/or collects the personal data of data subjects, the following additional terms will apply:

(i) Roles of the parties. With respect to the Parties' rights and obligations under this Agreement relating to the processing, collection or storage of Data, the parties agree that they are jointly data controllers for the purposes of the Data Protection Legislation.

(ii) Purpose of processing. The parties each agree that Data shall only be processed and transferred for the purposes described in, and for the parties to perform their respective obligations outlined in, this Agreement (including, without limitation, the receipt and provision of the Services).

(iii) Obligations of the parties. Each party shall comply with its obligations under the Data Protection Legislation.

(iv) Warranties. Customer warrants, represents and undertakes to Visual Vocal that: (i) it is not aware of any circumstances likely to give rise to breach of Data Protection Legislation in the future; and (ii) it shall be responsible for ensuring that, for the purposes of compliance with Data Protection Legislation, all data subjects (including without limitation all Authorized Users) relating to the Data shall give or have given their valid, express consent to the processing, collection, transfer outside of the European Economic Area ("EEA") and storage of their Data by the parties as anticipated this Agreement.

(v) Information security. Customer agrees that in the event Customer is responsible for a breach of this Section 5.3, it shall offer Visual Vocal the opportunity to be involved in all discussions and decisions relating to the breach and its remedy. Customer agrees that in the event that it becomes aware of accidental or unlawful destruction or accidental loss, alteration, unauthorized disclosure or access of any Data it shall inform Visual Vocal as soon as practicable and in any event within twenty-four (24) hours.

(vi) Subprocessors. Each party may only authorize a third party ("**subprocessor**") to process the Data: (a) subject to the other party's prior written consent and where the subcontracting party has supplied the other party with full details of such subprocessor; (b) provided any such subcontracting shall only be by way of written agreement and on terms which impose the necessary obligations to comply with the subcontracting party's and the subprocessor's respective duties under Data Protection Legislation; and (c) provided that the subprocessor's contract terminates automatically on termination or expiry of this Agreement for any reason.

(vii) Liability for subprocessors. To the extent that subprocessor breaches the written agreement outlined in Section 5.3(b)(vii), the subcontracting party shall remain fully liable to the other party for: (a) the performance of its obligations under this Agreement; and (b) the acts or omissions of such subprocessor, as though they were the subcontracting party's own acts or omissions.

(viii) Data processing indemnity. Customer agrees to indemnify and keep indemnified and defend at its own expense Visual Vocal against all costs, claims, damages or expenses incurred by Visual Vocal or for which Visual Vocal may become liable due to any failure by Customer, its subprocessors, its employees, consultants, other personnel or agents to comply with this Section 5.3.

5.4 Administration of Customer's Account. Customer may specify one or more administrators (each an "**Project Owner**") to manage its account. Project Owners have the ability to access, monitor, use, export and disclose Customer Content posted by Authorized Users and to specify permissions for the Authorized Users.

Customer is responsible for: (a) the selection of its Project Owner (s); (b) maintaining the confidentiality of passwords and Project Owner accounts; (c) managing access to Project Owner accounts; and (iv) ensuring that each Project Owner's use of the Services complies with this Subscription Agreement. Visual Vocal shall not be held liable for any actions on the part of Customer's Project Owner (s).

5.5 Authorized User Conduct; Compliance. Customer is responsible for use of the Services by its Authorized Users and for their compliance with the Terms of Service. Customer is also responsible for providing any notice and obtaining any consents and authorizations necessary: (a) to allow the Project Owner to access, monitor, use and disclose the Customer Content posted by Authorized Users on the Services; and (b) to allow Visual Vocal to provide the Project Owner with access to such Customer Content. The Services are not authorized for use by persons under the age of 13 and Customer will ensure that it does not allow any person under 13 to use the Services.

6. WARRANTIES AND DISCLAIMERS

6.1 Limited Warranty. Visual Vocal warrants to Customer that the Services will operate free from Errors during the Term pursuant to this Agreement. Provided that Customer notifies Visual Vocal in writing of any breach of the foregoing warranty during the term hereof, Visual Vocal shall, as Customer's sole and exclusive remedy, provide the support and maintenance services described in Section 2.2. This warranty gives Customer specific legal rights, and Customer may also have other rights which vary from jurisdiction to jurisdiction.

6.2 Disclaimer. THE LIMITED WARRANTY SET FORTH IN SECTION 6.1 IS MADE FOR THE BENEFIT OF CUSTOMER ONLY. EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 6.1, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SERVICES AND DOCUMENTATION ARE PROVIDED "AS IS," AND VISUAL VOCAL MAKES NO (AND HEREBY DISCLAIMS ALL) OTHER WARRANTIES, REPRESENTATIONS, OR CONDITIONS, WHETHER WRITTEN, ORAL, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF SATISFACTORY QUALITY, COURSE OF DEALING, TRADE USAGE OR PRACTICE, MERCHANTABILITY, TITLE, NONINFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE USE, MISUSE, OR INABILITY TO USE THE SERVICES OR DOCUMENTATION (IN WHOLE OR IN PART) OR ANY OTHER PRODUCTS OR SERVICES PROVIDED TO CUSTOMER BY VISUAL VOCAL. VISUAL VOCAL DOES NOT WARRANT THAT ALL ERRORS CAN BE CORRECTED, OR THAT OPERATION OF THE SERVICES SHALL BE UNINTERRUPTED OR ERROR-FREE. SOME STATES AND JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY TO CUSTOMER.

7. LIMITATION OF LIABILITY

7.1 Types of Damages. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT IN CONNECTION WITH THEIR RESPECTIVE INDEMNIFICATION OBLIGATIONS HEREUNDER, IN NO EVENT SHALL EITHER PARTY OR THEIR RESPECTIVE AFFILIATES, AGENTS, DIRECTORS, EMPLOYEES OR SUPPLIERS BE LIABLE UNDER THIS SUBSCRIPTION AGREEMENT FOR:

(a) ANY SPECIAL, INDIRECT, EXEMPLARY, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE; OR

(b) ANY DAMAGES OR COSTS DUE TO LOSS OF PROFITS, DATA, REVENUE, GOODWILL, PRODUCTION OR USE, BUSINESS INTERRUPTION, PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR PERSONAL OR PROPERTY DAMAGE, REGARDLESS OF THE CAUSE OF ACTION OR THE THEORY OF LIABILITY, WHETHER IN TORT, CONTRACT, OR OTHERWISE, EVEN IF VISUAL VOCAL HAS BEEN NOTIFIED OF THE LIKELIHOOD OF SUCH DAMAGES.

7.2 Amount of Damages. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT IN CONNECTION WITH ITS INDEMNIFICATION OBLIGATIONS HEREUNDER, THE MAXIMUM LIABILITY OF EITHER PARTY ARISING OUT OF OR IN ANY WAY CONNECTED TO THIS AGREEMENT SHALL NOT EXCEED THE FEES PAID BY CUSTOMER TO VISUAL VOCAL DURING THE TWELVE (12) MONTHS PRECEDING THE ACT, OMISSION OR OCCURRENCE GIVING RISE TO SUCH LIABILITY. IN NO EVENT SHALL VISUAL VOCAL'S SUPPLIERS HAVE ANY LIABILITY ARISING OUT OF OR IN ANY WAY CONNECTED TO THIS AGREEMENT. NOTHING IN THIS AGREEMENT SHALL LIMIT OR EXCLUDE VISUAL VOCAL'S LIABILITY FOR GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT OF VISUAL VOCAL OR ITS EMPLOYEES OR AGENTS OR FOR DEATH OR PERSONAL INJURY

7.3 Basis of the Bargain. The parties agree that the limitations of liability set forth in this Section 7 shall survive and continue in full force and effect despite any failure of consideration or of an exclusive remedy. The parties acknowledge that the prices have been set and the Agreement entered into in reliance upon these limitations of liability and that all such limitations form an essential basis of the bargain between the parties.

8. CONFIDENTIALITY

8.1 Confidential Information. “**Confidential Information**” means any nonpublic information of a party (the “**Disclosing Party**”), whether disclosed orally or in written or digital media, that is identified as “confidential” or with a similar legend at the time of such disclosure or that the receiving party (the “**Receiving Party**”) knows or should have known is the confidential or proprietary information of the Disclosing Party. The terms of this Agreement, including the fees payable hereunder, the Services, Documentation, and all enhancements and improvements thereto will be considered Confidential Information of Visual Vocal.

8.2 Protection of Confidential Information. The Receiving Party agrees that it will not use or disclose to any third party any Confidential Information of the Disclosing Party, except as expressly permitted under this Agreement. The Receiving Party will limit access to the Confidential Information to Authorized Users (with respect to Customer) or to those employees who have a need to know, who have confidentiality obligations no less restrictive than those set forth herein, and who have been informed of the confidential nature of such information (with respect to Visual Vocal). In addition, the Receiving Party will protect the Disclosing Party’s Confidential Information from unauthorized use, access, or disclosure in the same manner that it protects its own proprietary information of a similar nature, but in no event with less than reasonable care. At the Disclosing Party’s request or upon termination or expiration of this Agreement, the Receiving Party will return to the Disclosing Party or destroy (or permanently erase in the case of electronic files) all copies of the Confidential Information that the Receiving Party does not have a continuing right to use under this Agreement, and the Receiving Party shall, upon request, provide to the Disclosing Party a written affidavit certifying compliance with this sentence.

8.3 Exceptions. The confidentiality obligations set forth in Section 8.2 will not apply to any information that (a) is at the time of disclosure or becomes generally available to the public through no fault of the Receiving Party; (b) is lawfully provided to the Receiving Party by a third party free of any confidentiality duties or obligations; (c) was already known to the Receiving Party at the time of disclosure free of any confidentiality duties or obligations; or (d) the Receiving Party can prove, by clear and convincing evidence, was independently developed by employees and contractors of the Receiving Party who had no access to the Confidential Information. In addition, the Receiving Party may disclose Confidential Information to the extent that such disclosure is necessary for the Receiving Party to enforce its rights under this Agreement or is required by law or by the order of a court or similar judicial or administrative body, provided that (to the extent legally permissible) the Receiving Party promptly notifies the Disclosing Party in writing of such required disclosure and cooperates with the Disclosing Party if the Disclosing Party seeks an appropriate protective order.

9. INDEMNIFICATION

9.1 By Visual Vocal. Visual Vocal will defend at its expense any suit brought against Customer, and will pay any settlement Visual Vocal makes or approves, or any damages finally awarded in such suit, insofar as such suit is based on a claim by any third party alleging that the Services misappropriate any trade secret recognized under the Uniform Trade Secrets Act or infringes any copyright, trademark or United States patent issued as of the Effective Date. If any portion of the Services becomes, or in Visual Vocal’s opinion is likely to become, the subject of a claim of infringement, Visual Vocal may, at Visual Vocal’s option: (a) procure for Customer the right to continue using the Services; (b) replace the Services with non-infringing software or services which do not materially impair the functionality of the Services; (c) modify the Services so that it becomes non-infringing; or (d) terminate this Agreement and refund any unused prepaid fees, and upon such termination, Customer will immediately cease all use of the Services and Documentation. Notwithstanding the foregoing, Visual Vocal shall have no obligation under this Section 9.1 or otherwise with respect to any infringement claim based upon (w) any use of or access to the Services by Customer or its Authorized Users not in accordance with this Agreement, the Terms of Service or as specified in the Documentation; (x) any use of the Services in combination with other products, equipment, software or data not supplied by Visual Vocal; or (y) any modification of the Services by any person other than Visual Vocal or its authorized agents (collectively, the “**Exclusions**” and each, an “**Exclusion**”). This Section 9.1 states the sole and exclusive remedy of Customer and the entire liability of Visual Vocal, or any of the officers, directors, employees, shareholders, contractors or representatives of the foregoing, for infringement claims and actions.

9.2 By Customer. Customer will defend at its expense any suit brought against Visual Vocal, and will pay any settlement Customer makes or approves, or any damages finally awarded in such suit, insofar as such suit

is based on a claim arising out of or relating to (a) an Exclusion, or (b) any Customer Content. This Section 9.2 states the sole and exclusive remedy of Visual Vocal and the entire liability of Customer, or any of the officers, directors, employees, shareholders, contractors or representatives of the foregoing, for the claims and actions described herein.

9.3 Procedure. The party seeking indemnification will provide prompt notice concerning the existence of an indemnifiable claim and cooperate fully with the indemnifying party in defending the claim. Failure to give prompt notice shall not constitute a waiver of a party's right to indemnification and shall affect the indemnifying party's obligations hereunder only to the extent that the indemnifying party's rights are materially prejudiced by such failure or delay. The indemnifying party will have full control and authority over the defense of any claim; provided, however, that: (i) the indemnified party may join in the defense at its own expense using counsel of its choice; and (ii) any settlement requiring the party seeking indemnification to admit liability or make any financial payment will require such party's prior written consent, not to be unreasonably withheld or delayed.

10. TERM AND TERMINATION

10.1 Term. This Agreement will begin on the Effective Date and continue in full force and effect as long as any Order Form remains in effect, unless earlier terminated in accordance with the Agreement (the "**Term**"). Unless otherwise stated in the applicable Order Form, the initial term of an Order Form will be the Initial Term set forth in the Order Form. Thereafter, the Order Form will automatically renew for additional terms of one (1) year unless either party gives written notice of non-renewal to the other party at least thirty (30) days prior to the expiration of the then-current term.

10.2 Termination for Breach. Either party may terminate this Agreement immediately upon notice to the other party if the other party materially breaches this Agreement, and such breach remains uncured more than thirty (30) days after receipt of written notice of such breach.

10.3 Termination for Convenience. Customer may terminate this Agreement at any time upon thirty (30) days written notice (email sufficient) to Visual Vocal.

10.4 Effect of Termination. Upon termination or expiration of this Agreement for any reason: (a) all licenses granted to Customer hereunder shall immediately terminate; (b) promptly after the effective date of termination or expiration, each party shall comply with the obligations to return all Confidential Information of the other party, as set forth in the Section 8; and (c) any amounts owed to Visual Vocal under this Agreement will become immediately due and payable. Sections 1, 3.3, 3.4, 3.5, 3.6, 4, 6.2, 7, 8, 9, 10.4, and 11 will survive expiration or termination of this Agreement for any reason.

11. MISCELLANEOUS

11.1 Beta Release. Customer understands and agrees that the Services represent a beta test version of unreleased software and services that may contain bugs, defects, and errors. Visual Vocal has no obligation to create, distribute or otherwise offer a commercial release of the Services, and in the event of such commercial release, except as otherwise expressly provided in a separate agreement between the parties, has no obligation to offer the commercial release to Customer or to offer Customer any discounted pricing schedules or special terms. Customer understands and agrees that the commercial release may contain functions and functionality, and perform in a manner significantly different from the current beta version of the Services. Accordingly, Customer acknowledges that any research or development performed, or business plans made, by Customer regarding or in reliance upon the Services are done entirely at Customer's own risk. In addition, Customer understands and agrees that Visual Vocal has no obligation to maintain Customer Content within the Services during the transition from the beta version to the commercial release of the Services and, as a result, such Customer Content may not be available in such commercial release.

11.2 Governing Law; Dispute Resolution. This Agreement and any action related thereto will be governed and interpreted by and under the laws of the State of Washington, without giving effect to any conflicts of laws principles that require the application of the law of a different jurisdiction. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement. Claims relating to this Agreement or the Services will be resolved through final and binding arbitration, except as set forth below. The American Arbitration Association (AAA) will administer the arbitration under its Commercial Arbitration Rules and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Arbitration will be held in Seattle, Washington. Notwithstanding these arbitration provisions, either party may bring suit in the federal or state courts located in Seattle, Washington solely for injunctive relief to stop unauthorized use or abuse of the Services or infringement of intellectual property rights and both Visual Vocal and Customer agree to personal

jurisdiction there. All disputes will be resolved on an individual basis and Customer may not bring a claim in a class, consolidated or representative action. Class arbitrations, class actions, private attorney general actions, and consolidations with other arbitrators are not allowed under this Agreement.

11.3 Compliance with Laws. The laws of the jurisdiction where Customer is located may be different from Washington law. Customer shall always comply with all international and domestic laws, ordinances, regulations, and statutes that are applicable to its purchase and use of the Services or Documentation hereunder.

11.4 Hosting of Services/Data Transfer. The Services are currently controlled and operated primarily from facilities in the United States. Visual Vocal makes no representations that the Services are appropriate or available for use in other locations. Customers who access or use the Services from other jurisdictions (or who allow their Authorized Users to do so) do so of their own volition and are responsible for compliance with all applicable United States and local laws and regulations, including but not limited to export and import regulations. If Customer is located outside of the United States, Customer agrees that Visual Vocal may transfer, store and process Customer Content in locations other than Customer's country.

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

11.6 Severability. If any provision of this Agreement is, for any reason, held to be invalid or unenforceable, the other provisions of this Agreement will remain enforceable and the invalid or unenforceable provision will be deemed modified so that it is valid and enforceable to the maximum extent permitted by law.

11.7 Waiver. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

11.8 No Assignment. Neither party shall assign, subcontract, delegate, or otherwise transfer this Agreement, or its rights and obligations herein, without obtaining the prior written consent of the other party, and any attempted assignment, subcontract, delegation, or transfer in violation of the foregoing will be null and void; provided, however, that either party may assign this Agreement in connection with a merger, acquisition, reorganization or sale of all or substantially all of its assets, or other operation of law, without any consent of the other party. The terms of this Agreement shall be binding upon the parties and their respective successors and permitted assigns.

11.9 Force Majeure. Any delay in the performance of any duties or obligations of either party (except the payment of money owed) will not be considered a breach of this Agreement if such delay is caused by a labor dispute, shortage of materials, fire, earthquake, flood, or any other event beyond the control of such party, provided that such party uses reasonable efforts, under the circumstances, to notify the other party of the cause of such delay and to resume performance as soon as possible.

11.10 Independent Contractors. Customer's relationship to Visual Vocal is that of an independent contractor, and neither party is an agent or partner of the other. Customer will not have, and will not represent to any third party that it has, any authority to act on behalf of Visual Vocal.

11.11 Notices. Each party must deliver all notices or other communications required or permitted under this Agreement in writing to the other party at the address listed on the Order Form by courier, by certified or registered mail (postage prepaid and return receipt requested), or by a nationally-recognized express mail service. Notice will be effective upon receipt or refusal of delivery. If delivered by certified or registered mail, any such notice will be considered to have been given five (5) business days after it was mailed, as evidenced by the postmark. If

delivered by courier or express mail service, any such notice shall be considered to have been given on the delivery date reflected by the courier or express mail service receipt. Each party may change its address for receipt of notice by giving notice of such change to the other party.

11.12 Entire Agreement. This Subscription Agreement, together with any Customer purchase order or Order Form associated herewith (as limited by Section 4.2), is the final, complete and exclusive agreement of the parties with respect to the subject matters hereof and supersedes and merges all prior or contemporaneous understandings, agreements and discussions between the parties, whether oral or written, with respect to such subject matters. This Subscription Agreement expressly overrides the Terms of Service solely with respect to Customer's use of the Services.

11.13 Modifications. Visual Vocal may revise this Subscription Agreement from time to time by posting the modified version on its website at least thirty (30) business days prior to the effective date of the modifications being made. If, in Visual Vocal's sole and reasonable discretion, the modifications being proposed are material, Visual Vocal will notify Customer of such proposed modifications via email to the email address associated with Customer's account. By continuing to access or use the Services after the posted effective date of modifications to this Subscription Agreement, Customer agrees to be bound by such modifications.

