



## Subscription Agreement *(August 1<sup>st</sup>, 2021)*

### STANDARD SUPPORT AGREEMENT

PLEASE READ THIS SUBSCRIPTION AGREEMENT CAREFULLY. BY SIGNING AN ORDER FORM REFERENCING THIS SUBSCRIPTION AGREEMENT, CLICKING ON THE "I AGREE" BUTTON, OR USING PRODUCTS OR SERVICES DESCRIBED IN THE SUBSCRIPTION AGREEMENT, YOU ARE ACCEPTING AND AGREEING TO BE LEGALLY BOUND BY THE TERMS AND CONDITIONS IN THIS SUBSCRIPTION AGREEMENT.

Visibility Software, LLC ("**Visibility**") and the Client identified in the applicable Order Form ("**Client**") enter into and agree to be bound by this Subscription Agreement (the "**Agreement**").

### 1. DEFINITIONS

The capitalized terms below shall have the following meanings for purposes of this Agreement:

1.1 "**Affiliate**" of a Party means an entity that directly or indirectly controls, is controlled by, or is under common control with that Party, in each case through majority voting power.

1.2 "**Candidate**" means any person who directly or indirectly enters into the Subscription, a job application or other information related to a job or job opportunity with Client or its Affiliate.

1.3 “**Data Security & Privacy Statement**” means the Data Security & Privacy Statement that may be accessed

through <https://www.visibilitysoftware.com/gc>.

1.4 “**Documentation**” means the product functionality descriptions and release notes that may be accessed at <http://vspublic.com/help/cyberrecruiter/> or [http://vspublic.com/help/cyber train/](http://vspublic.com/help/cybertrain/).

1.5 “**Visibility Content**” means the forms, content samples, and other support and informational materials provided by Visibility for use in connection with the Subscription, as may be modified from time to time by Visibility.

1.6 “**Order Form**” means an order form signed by Client and Visibility and expressly designated as an “Order Form,” including the first Order Form and any renewal or other Order Form.

1.7 “**Party**” means Visibility or Client.

1.8 “**Subscription**” means the Visibility software components set forth in an Order Form.

1.9 “**Client Data**” as used in this Agreement means the electronic data and files entered, imported, uploaded or transferred into the Subscription by Client, its Affiliate, a User, or a Candidate, excluding any Visibility Content.

1.10 “**Support & Maintenance Policy**” means the Support & Maintenance Policy that may be accessed at <https://www.visibilitysoftware.com/gc>.

1.11 “**User**” means Client’s or its Affiliate’s employee, contractor or agent authorized by Client or its Affiliate to use the Subscription.

## **2. SUBSCRIPTION AND OTHER PRODUCTS AND SERVICES**

**2.1 Subscription and Visibility Content.** Subject to the terms and conditions set forth in this Agreement, Client may use the Subscription solely for Client’s and its Affiliate’s own pre-employment and employment purposes and use the

Documentation and Visibility Content solely to support use of the Subscription under this Agreement. Client may allow its Affiliates and Users to use the Subscription, Documentation and Visibility Content subject to the same terms and conditions of this Agreement as are applicable to use by Client. Client shall remain fully responsible and liable for the acts and omissions of its Affiliates and Users.

**2.2 Visibility Services.** Visibility shall support and maintain the Subscription in accordance with the Support & Maintenance Policy. Updates as defined in the Support & Maintenance Policy are deemed part of the Subscription. Visibility also shall deliver the implementation, training, consulting and other services set forth in an applicable Order Form.

**2.3 Third-Party Products and Services.** Client may use, or Visibility may enable or allow access to products, services and web sites provided by other persons or entities, including the products and services available through the Visibility' Marketplace and other third-party web sites, products and services (each, a "**Third-Party Product**"). Client is solely responsible for entering into and complying with any contractual agreement or other terms and conditions that are required by the provider of any Third-Party Product. Visibility does not make any representation regarding any Third-Party Product. Visibility shall have no obligation or liability relating to any Third-Party Product. Except as expressly set forth in an addendum to this Agreement, Visibility' sole responsibility for any integration or other link or connection to a Third-Party Product identified in an Order Form is to make the Subscription available to receive and send data between the Subscription and the Third-Party Product in accordance with the Documentation, subject to the usage and other limitations set forth in an Order Form, the Documentation, or an addendum to this Agreement.

### **3. CLIENT RESPONSIBILITIES**

**3.1 Equipment and Resources.** Client is solely responsible for any travel, accommodations, computer equipment, telecommunications, and expenses required for Client or its Users to access or use the Subscription.

**3.2 Configuration and Use.** Client may not allow any person or entity to use or access the Subscription or Visibility Content except its Affiliates, Users, and Candidates. Use of the Subscription and Visibility Content under this Agreement is limited to authorized Users only, and other limitations set forth in the applicable Order Form or Documentation. Client and its Affiliates and Users shall comply with Visibility' Acceptable Use Policy that may be accessed at <https://www.visibilitysoftware.com/gc>, and shall not authorize its Candidates to violate the Acceptable Use Policy. Client is solely responsible for any configuration of the Subscription and any electronic forms, materials, communications, content and processes selected by Client or its Affiliate or User for use in or in connection with the Subscription. Client is solely responsible for any use of the Subscription by Client or its Affiliate or User, including any recruiting, hiring or employment-related process, action or decision, and shall ensure that any process, action or decision does not violate any law or regulation. Subject to Visibility' compliance with Section 4 of this Agreement, Client is solely responsible for and shall ensure that use or disclosure of any Client Data in accordance with this Agreement complies with applicable laws and regulations, including any required notices or consents.

**3.3 Certification.** Upon reasonable belief that Client has violated this Agreement, with prior written notice from Visibility, Client shall provide to Visibility or its representatives access to any information reasonably necessary for Visibility to verify Client's compliance with the applicable provisions of this Agreement.

## **4. CLIENT DATA**

**4.1 Data Protection.** Visibility shall maintain administrative, physical and technical safeguards intended to protect the security, privacy and integrity of Client Data as set forth in the Data Security & Privacy Statement. Visibility may update the Data Security & Privacy Statement from time to time in accordance with Section 13.8, provided however, Visibility shall not make changes to the Data Security & Privacy Statement that materially diminish the protections for Client Data set forth therein. Visibility in its discretion also may maintain supplemental or additional safeguards.

**4.2 Data Use and Disclosure.** Visibility and its Affiliates may use Client Data only for the purpose of providing the Subscription and related services under this Agreement or as otherwise set forth in this Agreement. Visibility may disclose Client Data to its contractor under a written agreement requiring the contractor to use and disclose the Client Data only for the purposes permitted under this Agreement, and subject to the Data Security & Privacy Statement. Visibility also may disclose Client Data to Client's and its Affiliate's contractors, providers of Third-Party Products, and other third parties, only for purposes of providing the Subscription or as otherwise directed or permitted by Client or its Affiliate or User. Notwithstanding anything to the contrary in this Agreement:

(a) Visibility may use and disclose Client Data as reasonably necessary to comply with applicable laws and regulations, cooperate with law enforcement agencies, or attempt to prevent or respond to illegal conduct, fraud, abuse, or a threat to the security or integrity of systems or data including the Subscription or Client Data.

(b) Visibility may derive or create benchmarking, transactional, or performance information, and other forms of statistics or analytics on an aggregated basis that may not reasonably be used on its own to distinguish or trace the identity of a Client or its Affiliate, User, or Candidate (collectively, "**Analytics**"). Visibility shall maintain policies and procedures, which may

include de-identification, aggregation or other steps, reasonably necessary to prevent Analytics from including information that may be used on its own to distinguish or trace the identity of a Client or its Affiliate, User, or Candidate.

(c) Nothing in this Agreement prohibits Visibility from using Client Data or the same or similar information that: (i) is or becomes publicly available except through violation of this Agreement by Visibility; (ii) is or was received by Visibility from a third party that to Visibility' knowledge is not under a confidentiality obligation with respect to the Client Data; or (iii) is or was previously known to or independently developed by Visibility without use of the Client Data.

**4.3 Data Access and Storage.** During the Subscription Period set forth in an applicable Order Form, Client may access and download the Client Data in accordance with the Documentation, and Visibility will provide backups of Client Data if requested and as further agreed by the Parties in writing, including payment of fees for data backups. Backups will be transferred to a secure ftp site or Client hosted ftp site in .csv format, as determined by Visibility, or in such other manner as is agreed by the Parties. In addition, upon written request by Client no more than ten (10) days following the expiration or termination of this Agreement and payment of all outstanding amounts due under the Agreement, Visibility shall promptly deliver a copy of the Client Data in a file to a Visibility secure ftp site or Client-hosted ftp site in .csv format, as determined by Visibility. Visibility shall dispose of the Client Data in accordance with the Data Security & Privacy Statement.

## **5. PAYMENT**

**5.1 Fees and Expenses.** Upon signing an Order Form, Client shall pay the total one-time fees set forth in such Order Form. Unless otherwise set forth in the applicable Order Form, Visibility will invoice recurring fees in advance, on an annual basis or as defined in the order form, payable within thirty (30) days of

delivery of an invoice. Except as otherwise provided herein, all fees paid under this Agreement are non-refundable.

**5.2 Taxes.** Client shall be solely responsible for paying any sales, value-added, business use or other similar taxes relating to the Subscription, or any other product or service provided by Visibility, exclusive of Visibility' income taxes. The fees listed in an Order Form are exclusive of taxes, and Visibility shall have the right to invoice taxes together with or separately from the fees payable by Client.

**5.3 Purchase Orders.** Any terms or conditions in any purchase order or other document issued by Client are void and of no force or effect as between Client and Visibility. Issuance of a purchase order or other document is not a condition of Client's payment obligations.

**5.4 Overdue Payments.** Visibility may charge Client overdue payment charges on the unpaid balance from the original due date at the rate of the lesser of one and one-half percent (1.5%) per month or the maximum interest charge allowed by law and may suspend access and use of the Subscription by Client and its Affiliates and Users.

**5.5 Invoice Disputes.** Any invoice must be disputed prior to when it is due. If within that period Client delivers written notice disputing an invoiced amount and describing the basis for dispute with reasonable particularity, the Parties shall make a good faith effort to confer and resolve the dispute within thirty (30) days of delivery of Client's notice. If Client has paid all undisputed amounts, and engages in good faith negotiations, Visibility' rights under this Agreement to assess overdue payment charges, suspend access to the Subscription, and terminate the Agreement for material breach based on non-payment of the disputed payment, shall be suspended during that thirty (30) day period.

## **6. TERM AND TERMINATION**

**6.1 Subscription Period.** The Subscription Period under each Order Form begins on the Subscription Start Date (as defined in the applicable Order Form) and ends upon the expiration of the Subscription Period as set forth in the applicable Order Form. Except as otherwise specified in an Order Form, upon expiration of the Subscription Period under an Order Form, Client's right to access and use the Subscription pursuant to that Order Form expires. Visibility may require the Subscription Period under any subsequent Order Form to end on the same date as the Subscription Period under the first Order Form (or subsequent renewal), so that all Subscription Periods share the same expiration date, and in such event Visibility will prorate the fees for the Subscription Period of each Order Form accordingly.

**6.2 Term.** The term of this Agreement (the "**Term**") commences on the last date of signature of the first Order Form and shall remain in effect until the Subscription Periods on all Order Forms have expired or the date of termination of this Agreement under its terms, whichever is earlier.

**6.3 Termination of Cause.**

(a) Either Party (the "**Non-Breaching Party**") may terminate this Agreement upon written notice to the other Party (the "**Breaching Party**") if the Breaching Party does not cure its material breach of the Agreement within thirty (30) days of written notice from the Non-Breaching Party stating its intent to terminate and describing the breach with reasonable particularity. Nonpayment by Client of any amount within thirty (30) days of the due date constitutes material breach, subject to the overdue payment resolution procedures set forth in Section 5 above. Reference to the unpaid amount and invoice constitutes sufficiently reasonable particularity for the notice of breach.



(b) Visibility may terminate this Agreement upon written notice in the event of filing of a petition in bankruptcy of Client, or commencement of a receivership or similar proceeding based on the insolvency of Client.

(c) Termination by Visibility for material breach will not relieve Client of its obligation to pay all fees that would have otherwise been due had the Agreement not been terminated for breach, and all such fees shall become immediately due.

**6.4 Effect of Termination.** Upon termination or expiration of this Agreement, all rights and licenses granted by a Party under the Agreement immediately terminate, and Client and its Affiliates and Users shall immediately cease use of the Subscription and Visibility Content. Termination by either Party will not relieve Client of any obligation to pay fees due for periods prior to termination. Visibility may provide post-termination or expiration assistance services as further agreed by the Parties in writing, including the fees payable for such assistance. Notwithstanding this Section 6.4, Visibility may continue to use the Client IP and Client Marks (as defined below) to satisfy its post-termination or expiration obligations or as otherwise set forth in this Agreement or the Data Security & Privacy Statement. Sections 6.4, 8.1, 8.2, 10, 11 and the provisions of Section 13 that by their terms naturally survive shall survive expiration or termination of the Agreement. The Receiving Party's obligations under Section 7 of this Agreement with respect to Confidential Information received during the Term shall survive: (i) with respect to Confidential Information that constitutes a trade secret of the Disclosing Party, as long as that Confidential Information remains a trade secret; and (ii) with respect to all other Confidential Information, for a period of five (5) years after the expiration or termination of the Agreement.

## **7. CONFIDENTIAL INFORMATION**

**7.1 Confidential Information Defined.** “**Confidential Information**” as used in this Agreement means any information that during the Term is disclosed by or on behalf of a Party or its Affiliate (the “**Disclosing Party**”) to the other Party or its Affiliate (the “**Receiving Party**”) and at the time of disclosure: (i) is designated in writing as confidential or proprietary; (ii) is designated orally as confidential or proprietary, and embodied by the Disclosing Party in written or other tangible form, including meeting minutes, memos, diagrams, flow charts, and software; or (iii) should reasonably be understood by the Receiving Party to be confidential to the Disclosing Party under the circumstances. Notwithstanding the absence of any designation of confidentiality, the Parties agree that: (a) any Order Form, non-public Documentation, Visibility Content, specifications regarding the Subscription or its functionality, and Analytics are the Confidential Information of Visibility; and (b) without limiting any of the rights in Section 4.2, any Client Data is the Confidential Information of Client, subject to the exceptions in Section 7.3 below.

**7.2 Obligations.** Except as approved by the Disclosing Party in writing, the Receiving Party shall not: (i) use the Confidential Information of the Disclosing Party except to perform or exercise its rights and obligations under this Agreement; or (ii) disclose the Confidential Information of the Disclosing Party to any third party except to the Receiving Party’s Affiliates, contractors, agents, or corporate directors or officers (each, a “**Representative**”) who are under a duty in substance and effect to use and disclose the Confidential Information only as permitted under this Agreement. The Receiving Party shall be responsible for any use by its Representative of the Confidential Information it discloses to its Representative. Upon termination of the Agreement, each Party shall cease use of, and within thirty (30) days of termination shall destroy or return, all Confidential Information of the other Party, except that: (a) Visibility may retain Confidential Information of Client as needed to comply with any post-expiration or termination obligation under this Agreement; (b) each Party may retain Confidential Information as required

to comply with its obligations under applicable laws or regulations; and (c) Confidential Information may be stored on secured backup media that are destroyed no more than twelve (12) months after the month in which the Agreement terminates or expires.

**7.3 Exceptions.** Confidential Information does not include any: (i) information which is or becomes publicly available except through any act or omission of the Receiving Party in violation of a duty to the Disclosing Party; (ii) information received by the Receiving Party from a third party that to the Receiving Party's knowledge is not under a confidentiality obligation with respect to the Confidential Information; or (iii) information previously known to or independently developed by the Receiving Party without use of the Disclosing Party's Confidential Information. The Receiving Party may disclose Confidential Information in accordance with a subpoena, judicial or other governmental order, or requirement of any law, regulation or the rules of any applicable stock exchange, provided that where legally permissible the Receiving Party must give the Disclosing Party reasonable written notice prior to such disclosure so that the Disclosing Party may, at Disclosing Party's sole expense, take appropriate action to seek a protective order or injunction to seek confidential treatment for the disclosed Confidential Information.

## **8. INTELLECTUAL PROPERTY**

**8.1 Visibility IP Ownership.** As used in this Agreement, "**Intellectual Property Right**" means any patent application, patent, copyright, moral right, database right, trademark right, trade secret or other intellectual property or proprietary right recognized or enforceable under any U.S., foreign or international law, rule, or regulation. Visibility retains ownership of and reserves all Intellectual Property Rights in or related to the Subscription, Visibility Content or Analytics (collectively, "**Visibility IP**"). Visibility does not convey to Client or its Affiliate or User any Intellectual Property Right in any Visibility IP except for the non-exclusive right to use the Subscription and Visibility Content as set forth in

this Agreement. Client agrees further that Visibility is free to use and incorporate into Visibility IP any comment, feedback, review or other input provided by Client or its Affiliate, User, or Candidate, and that such use or incorporation does not create or give rise to any Intellectual Property Right of Client or its Affiliate or User in Visibility IP.

**8.2 Client IP Ownership.** Client retains ownership of and reserves all Intellectual Property Rights in or related to the Client Data or any other materials, communications or content that Client or its Affiliate or User supplies for use in connection with the Subscription (collectively, “**Client IP**”). Client does not convey to Visibility any Intellectual Property Right in any Client IP, except as set forth in this Agreement.

**8.3 Client IP License.** Client grants Visibility a non-exclusive, non-sublicensable right during the Term to use, copy, create derivative works of and display the Client IP to perform its obligations under or as otherwise set forth in this Agreement.

**8.4 Client Marks.** Client grants Visibility a non-exclusive, non-sublicensable right, during the Term, to use any Client trademark, service mark or tradename contained in the Client IP or designated by Client for use in the Subscription (the “**Client Marks**”), to perform under this Agreement, and to identify Client in Visibility’ customer lists and other marketing and promotional materials and communications referencing Client as a customer of Visibility. Visibility shall comply with Client’s written guidelines for trademark usage provided reasonably in advance.

## **9. WARRANTIES AND LIMITATIONS**

**9.1 Software Warranty.** Visibility warrants that during the Term the Subscription will perform materially in accordance with the Documentation. Visibility’ warranty does not apply to any: (i) Third-Party Product; (ii) use of the Subscription not in accordance with the Documentation, Visibility’ published

policies or this Agreement; or (iii) failure of Client or its Affiliate or User to follow reasonable support or maintenance instructions provided by Visibility (each of (i), (ii), and (iii) above, an “**Excluded Condition**”). Visibility’ sole liability and obligation for breach of warranty will be to use commercially reasonable efforts to promptly repair or replace the Subscription to correct the breach, and the sole remedy of Client is that it may terminate this Agreement upon written notice and receive a refund of any pre-paid but unused amounts if the breach extends for sixty (60) consecutive days or for any one-hundred and twenty (120) days in any three-hundred and sixty (360) day period.

**9.2 Limitations.** EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 9, VISIBILITY DOES NOT MAKE AND EXPRESSLY DISCLAIMS ANY WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, ARISING AT COMMON LAW, OR OTHERWISE RELATED TO THE SUBJECT MATTER OF THIS AGREEMENT, INCLUDING THE SUBSCRIPTION, VISIBILITY CONTENT AND ANY SERVICES PROVIDED UNDER THE AGREEMENT. WITHOUT WAIVING THE GENERALITY OF THE FOREGOING, VISIBILITY DOES NOT MAKE AND EXPRESSLY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, DATA OR SYSTEM INTEGRITY, AVAILABILITY, TIMELINESS, COMPLETENESS, NON-INFRINGEMENT, OR THAT THE SUBSCRIPTION WILL PERFORM WITHOUT INTERRUPTION OR ERROR FREE, AND ANY WARRANTY REGARDING CLIENT’S USE OF THE SUBSCRIPTION, DATA OR INFORMATION ACCESSIBLE THEREFROM, ANY DECISION MADE USING THE SUBSCRIPTION, UNAUTHORIZED ACCESS TO THE SUBSCRIPTION, OR CLIENT’S USE OF ANY EQUIPMENT OR SOFTWARE IN CONNECTION WITH THE SUBSCRIPTION. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, VISIBILITY MAY MAKE CHANGES TO THE SUBSCRIPTION FROM TIME TO TIME, OR THE CORRESPONDING DOCUMENTATION, AND THOSE CHANGES SHALL NOT BE DEEMED TO GIVE RISE TO BREACH OF WARRANTY OR LIABILITY OF VISIBILITY.

## 10. INDEMNIFICATION

**10.1 Visibility Indemnification.** Visibility shall defend Client and its Affiliates, officers, directors, shareholders and agents (each, a “**Client Indemnitee**”) from and against any third-party claim, demand, lawsuit or legal action: (i) alleging that the Visibility IP infringes or violates an Intellectual Property Right of a third party; (ii) arising from Visibility’ failure to perform under Section 4.1 (Data Protection) or 4.2 (Data Use and Disclosure) above; or (iii) arising from Visibility’ violation of its obligations under this Agreement with respect to Confidential Information (each of (i), (ii) and (iii), an “**Visibility Indemnified Claim**”), and indemnify each Client Indemnitee against any damages, attorneys’ fees, or other costs awarded against it in connection with an Visibility Indemnified Claim. Visibility’ obligations under this Section 10.1 do not apply to any Excluded Condition.

**10.2 Client Indemnification.** Client shall defend Visibility and its Affiliates, officers, directors, shareholders and agents (each, an “**Visibility Indemnitee**”) from and against any third-party claim, demand, lawsuit or legal action: (i) alleging that Client IP or Client Marks infringe or violate an Intellectual Property Right of a third party; (ii) arising from any matter for which Client is responsible under Section 3 (Client Responsibilities) above; or (iii) arising from violation by Client of its obligations under this Agreement with respect to Confidential Information (each of (i), (ii) and (iii), a “**Client Indemnified Claim**”), and indemnify each Visibility Indemnitee against any damages, attorneys’ fees, or other costs awarded against it in connection with a Client Indemnified Claim.

### 10.3 Indemnification Conditions.

(a) As a condition of any Party’s duty to defend or indemnify under this Section 10, the person or entity seeking defense or indemnification must: (i) give the defending and indemnifying Party prompt written notice of the

applicable claim, demand, or legal action; (ii) allow the defending and indemnifying Party sole control of the defense and settlement; and (iii) reasonably cooperate in the defense and settlement at the defending and indemnifying Party's reasonable cost, except that the indemnified person or entity will not be required to make any settlement payment unless the defending and indemnifying Party agrees to include that payment as an indemnified expense.

(b) In the event of any claim, demand, legal action, or notice alleging infringement of Visibility IP, Visibility may either: (i) replace or modify the Visibility IP in whole or in part in a manner that does not materially degrade the Subscription; (ii) obtain a license or other grant necessary to continue to provide the Visibility IP in accordance with the Agreement, or (iii) terminate the Agreement upon written notice to Client. In such event, Visibility' sole liability will be its obligations under Section 10.1 above and a refund to Client of any pre-paid but unused fees.

## **11. LIMITATIONS OF LIABILITY**

**11.1** IN NO EVENT WILL VISIBILITY OR ITS AFFILIATES HAVE ANY LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT OR ITS SUBJECT MATTER, WHETHER UNDER ANY THEORY OF CONTRACT, NEGLIGENCE, INTENTIONAL OR UNINTENTIONAL TORT, OR ANY OTHER LEGAL THEORY, FOR: LOST REVENUE, LOST PROFITS, LOST DAMAGES, LOSS OF DATA, LOSS OF USE, ANY CLAIM OR ACTION OF ANY THIRD PARTY (EXCEPT UNDER SECTION 10 (INDEMNIFICATION) OF THIS AGREEMENT), OR ANY INCIDENTAL, INDIRECT, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES, WHETHER OR NOT VISIBILITY OR ITS AFFILIATE MAY HAVE ANTICIPATED OR BEEN ADVISED OF SUCH DAMAGES.

**11.2** THE TOTAL CUMULATIVE LIABILITY OF VISIBILITY AND ITS AFFILIATES AND REPRESENTATIVES ARISING OUT OF OR RELATED TO THIS

AGREEMENT OR ITS SUBJECT MATTER, WHETHER UNDER CONTRACT, TORT OR ANY OTHER LEGAL THEORY, SHALL NOT EXCEED, IN THE AGGREGATE, THE AMOUNT OF FEES PAID BY CLIENT IN THE TWENTY-FOUR (24) MONTHS PRIOR TO WHEN THE FIRST OF ANY SUCH LIABILITIES AROSE. IN NO EVENT WILL VISIBILITY BE LIABLE FOR ANY DAMAGES FOR BREACH OF CONTRACT UNDER THIS AGREEMENT UNLESS CLIENT FIRST PROVIDED TO VISIBILITY THIRTY (30) DAYS' PRIOR WRITTEN NOTICE AND AN OPPORTUNITY FOR VISIBILITY TO CURE THE BREACH WITHIN THOSE THIRTY (30) DAYS.

**11.3** TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE LIMITATIONS IN THIS SECTION 11 SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE.

## **12. INSURANCE**

**12.1** During the Term, Visibility shall maintain the following insurance: worker's compensation insurance, as applicable; commercial general liability insurance of at least One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in annual aggregate. Visibility shall deliver a certificate of insurance evidencing the coverages set forth above no more than thirty (30) days after written request by Client.

## **13. GENERAL TERMS**

**13.1 Headings.** The descriptive headings in this Agreement are for convenience only and are not intended to be part of, or to affect the interpretation of, this Agreement.

**13.2 Relationship of the Parties.** Both Parties agree that they are independent entities and that nothing in this Agreement creates a partnership, joint venture, fiduciary, agency, or affiliate relationship between the Parties. Each Party is



solely responsible for the supervision, management, direction and payment of compensation and benefits to its own employees.

**13.3 Federal Government Provisions.** If Client is directly or indirectly acquiring the Subscription on behalf of the U.S. Government, the software object code and source code that is delivered as part of the Subscription is classified as “Commercial Computer Product” and “Commercial Computer Documentation” developed at private expense and containing confidential information and trade secrets of Visibility, Inc. and its licensors, and is subject to “Restricted Rights” as that term is defined in the U.S. Federal Acquisition Regulations. Manufacturer is: Visibility Software, LLC, 1215 Friend Street, Newberry, SC 29108, U.S.A.

**13.4 Force Majeure.** No Party will be deemed in default of this Agreement to the extent that performance of its obligations or attempts to cure any breach are materially delayed or prevented by reason of any event that is beyond the reasonable control of that Party and could not reasonably have been foreseen and protected against by that Party, including any act of nature (including fire, earthquake or natural disaster) or act of government (such as war, terrorism or embargo), provided that the non-performing Party must give the other Party prompt written notice of the event. In the event the delay or nonperformance by Visibility as described in this Section 4 continues for a period of forty-five (45) consecutive days, Client may elect to terminate this Agreement by written notice no more than thirty (30) days’ after the end of the forty-five (45) day period, and receive a refund of any pre-paid fees for unused portions of the remaining Subscription Period. This Section 13.4 does not apply to payment obligations.

**13.5 Notices.** Notices required under this Agreement to be in writing must be made by, and notice is deemed to have been duly given when, sent by confirmed email or deposited with an overnight courier with a reliable system for tracking delivery. Visibility shall deliver any written notice and invoice to

the email address listed as the “Bill To Contact” in the most recent Order Form. Client shall deliver any written notice to: Visibility Software, LLC, Attn: General Counsel, 1215 Friend Street, Newberry SC, 29108, USA. Either Party may from time to time change the address for written notices by giving the other Party prior written notice of the change.

**13.6 Assignment.** Neither Party may assign any of its rights or obligations under this Agreement without prior written consent from the other Party, provided that a Party may assign this Agreement to an Affiliate or successor in interest by merger, acquisition of all stock or of substantially all assets, or reorganization. The assigning Party shall provide written notice of the assignment either before, or no more than thirty (30) days after, the assignment. Any purported assignment in violation of this paragraph is void and constitutes a material breach of this Agreement. This Agreement inures to the benefit of and is binding on each of the Parties, their successors, permitted assigns, and legal representatives.

**13.7 Size and Scale.** Client shall give Visibility written notice of any merger, acquisition (whether of stock or assets), formation of any joint venture or partnership, reorganization, or other transaction that materially increases the size or scale of Client’s or its Affiliate’s use of the Subscription (collectively, a “**Corporate Transaction**”). In the event of any Corporate Transaction, or other material increase in Client’s or its Affiliate’s size or scale of use, Visibility may, by written notice, request that the fees under this Agreement be increased commensurate with the increase in size and scale, and if a written agreement increasing the fees is not entered into by the Parties within forty-five (45) days of delivery of that notice, then Visibility may terminate this Agreement effective upon sixty (60) days’ prior written notice. Prior to each invoiced year, Visibility will request, and client will provide, an updated count of all active employees. If the this number has increased, the amount of the invoice will

increase based on the number of active employees multiplied by the per employee rate.

**13.8 Documentation and Policy Changes.** Visibility may make changes to the Documentation or any policy referenced in this Agreement, or the hyperlink or other means of access to the Documentation or policy, except that Visibility may not make changes to the Data Security & Privacy Statement that materially diminish the protections for Client Data set forth in the policy. Visibility provides a mechanism which may be accessed on <https://www.visibilitysoftware.com/gc> for Client to subscribe to receive email notice of any changes to the policies and procedures listed on <https://www.visibilitysoftware.com/gc>. If Client believes that any change to a policy creates a materially new obligation of Client, materially degrades the applicable policy, or materially diminishes the Subscription taken as a whole (each, a “**Material Adverse Change**”), then Client may, within thirty (30) days of the change, object to such Material Adverse Change by delivering written notice to Visibility. Any objection notice must set forth the basis of the objection with reasonable particularity. In the event of such an objection, the Material Adverse Change will not be deemed effective as to Client for thirty (30) days, and Visibility and Client shall work together reasonably, and in good faith, to resolve the objection. If within that thirty (30) day period the objection is not resolved and Client delivers a further written notice of objection within ten (10) days of the end of such period, then the Material Adverse Change shall remain ineffective as to Client and Visibility shall have ten (10) days from Visibility’ receipt of such further written notice in which to notify Client that the Material Adverse Change will not apply to Client for the remainder of the Term. If Visibility does not provide such notice within ten (10) days, then Client may terminate this Agreement for convenience if it provides Visibility with written notice of termination within ten (10) days, with the effective date of such termination to be no later than thirty (30) days from the date of the termination notice.

**13.9 Third-Party Beneficiaries.** No other person has any rights, interest, or claims hereunder or is entitled to any benefits under or on account of this Agreement as a third-party beneficiary or otherwise.

**13.10 Subpoenas.** Client shall reimburse Visibility for its reasonable costs (including but not limited to attorneys' fees) incurred in connection with any response to a subpoena, judicial or other governmental order, or requirement of any law or regulation requesting or requiring the disclosure of any Client Data or pertaining to Client's use of the Subscription.

**13.11 Law and Forum.** This Agreement is governed by, and will be construed in accordance with, the laws of the State of South Carolina without regard to its conflict of law provisions, the United Nations Convention on Contracts for the International Sale of Goods, or the Uniform Computer Information Transactions Act. Except as otherwise specified below, all actions, disputes, claims and controversies under common law, statutory law or in equity of any type or nature whatsoever, whether arising before or after the date of this Agreement, and whether directly or indirectly relating to: (a) this Agreement and/or any amendments and addenda hereto, or the breach, invalidity or termination hereof; (b) any previous or subsequent agreement between the parties; and/or (c) any other relationship, transaction or dealing between the parties (collectively the "Disputes"), will be subject to and resolved by binding arbitration pursuant to the Arbitration Rules of U.S. Arbitration & Mediation, ([www.usam.com](http://www.usam.com)). Any award or order rendered by the arbitrator may be confirmed as a judgment or order in any state or federal court of competent jurisdiction, which includes within the federal judicial district of the residence of the party against whom such award or order was entered.

**13.12 Rules of Interpretation.** It is the intention of the Parties that if a court of competent jurisdiction determines that any provision of this Agreement is unenforceable, the remaining provisions of the Agreement will remain in full force and effect. In the event of any conflict between this Agreement and an Order Form, statement of work, addendum or exhibit, the Agreement will be given precedence, except as expressly set forth in the applicable Order Form,

statement of work, addendum or exhibit. Unless explicitly specified to the contrary, the word “including” wherever used herein or in any addendum means “including, but not limited to”.

**13.13 Entire Agreement; Amendment; and Waiver.** Certain components of the Subscription or other products or services set forth in an Order Form may be subject to additional terms and conditions as stated in such Order Form or an addendum to the Agreement. No Order Form, statement of work or addendum to this Agreement is binding on the Parties unless agreed by both Parties in writing. Each binding Order Form, statement of work, and addendum is incorporated into and made part of this Agreement. This Agreement supersedes all prior discussions, statements, representations, and agreements, oral or written, between the Parties relating to the subject matter of the Agreement, and constitutes the entire agreement between the Parties relating to its subject matter. This Agreement may be amended, modified, or supplemented only by a written document signed by an authorized representative of each Party. The failure of either Party, at any time, to enforce any right or remedy available to it under this Agreement or otherwise with respect to any breach or failure by the other Party does not constitute a waiver of such right or remedy with respect to any other breach or failure by the other Party.

**13.14 Counterparts.** This Agreement may be executed by facsimile or other electronic means, and in one or more counterparts, each of which is deemed to be an original, but all of which together constitute one and the same Agreement