



## Product Agreement Terms and Conditions

PLEASE READ THE FOLLOWING CAREFULLY. YOU MAY NOT USE THE SERVICES AND/OR SOFTWARE UNTIL YOU ACCEPT THE TERMS OF THIS AGREEMENT. BY CLICKING THE "SUBMIT" BUTTON DURING THE LOGIN PROCESS AND YOUR ACT OF USING THE SERVICE (INSTALLING THE SOFTWARE) YOU AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST SELECT THE "I DECLINE" BUTTON AND MAY NOT USE THE SERVICE (OR INSTALL THE SOFTWARE).

This agreement (the "Agreement") describes your rights to access, install and use the web conferencing service and/or software (versions 10.x and thereafter) (the "Product"). The Product is being provided by INVISION, a Delaware corporation ("INVISION") (together with our authorized agents, resellers and distributors) to the person or entity (the "Customer") who is identified on the order form (the "Order Form"), together with the individuals who are authorized by Customer to access the Product (the "End Users"). The Product is provided to the Customer (and its authorized End Users) on the condition that their use abides at all times by the terms and conditions of this Agreement.

- Registration.** In order to use the Product, Customer must complete the registration form provided online (or the order form if a paper format is used) (the "Order Form"). The type of license provided to Customer, the number of named users and the number of authorized End Users, and any associated fees or charges are also identified on the Order Form. As part of the registration process for the Product, Customer agrees to provide certain information about Customer ("Customer Information") and maintain and update this Customer Information as required to keep it current, complete and accurate. Should INVISION discover that any Customer Information is inaccurate or incomplete, then INVISION may terminate your access to the Product immediately upon notice. INVISION will evaluate Customer Information on a timely basis, and reserves the right, in its sole discretion, to reject any Customer or registration application if it determines that the Customer is not an appropriate owner or user of the Product. Specifically INVISION may refuse access to the Product to any Customer who has been suspended or who has canceled previous accounts. If the Customer is an individual, then, Customer is representing that they are a person over 18 years of age, and if a entity, that the person completing the Order Form is authorized by Customer to do so and is over 18 years of age.
- Rate Plans.** The Product is being offered under various licensing structures and rate plans ("Rate Plans") that may be found on Customer's Order Form. Please refer to Customer's individual Rate Plan for information about fees and charges that may apply to Customer's account. A subscription plan will continue and will renew automatically unless terminated by Customer by notifying INVISION of that decision to change before the beginning of the relevant subscription period. For termination or cancellation instructions, log in and click the billing information on the account page or simply send written notice to INVISION. If annual, monthly or similar periodic fees apply, these fees will be billed automatically (either to the credit card designated during the registration process or by invoice), unless Customer terminates the subscription. By your registration and use of the Product, Customer agrees to pay all fees and charges incurred in connection with use of the Product (including any applicable taxes) in accordance with this Agreement, the Order Form and Rate Plan in effect and applicable to Customer. Unless otherwise indicated on the Order Form, INVISION may change the amounts reflected on the Rate Plan or add new fees or charges, by giving Customer prior written notice, permitting Customer to pay the revised fees and charges or terminate use of the Product. Charges associate with a Rate Plan for a term (e.g. an annual subscription) will not change during the term of that initial subscription.
- Early Termination Fee.** If Customer subscribes to a term agreement (e.g. one that has a contractual length which is typically one year, and is not a month-to-month agreement), then an early termination fee shall be paid if Customer terminates the Agreement prior to the end of the initial (or any renewal term) (an "Early Termination Fee"). The Early Termination Fee shall be equal to the greater of: (a) one month's payment or (b) fifty percent (50%) of the remaining balance of the contractual amount due under the term agreement. Customer may cancel the Agreement, for any reason and without incurring the Early Termination Fee, within thirty (30) days of signing the Order Form, PROVIDED, however, that if you cancel service you will remain responsible for any service fees and charges incurred.
- Credit Cards.** As a condition to access and use of the Product, Customer must provide INVISION with a valid credit card number (or a debit card number with authorization to debit the account) (the "Card") belonging to Customer which will at all times have available credit (or debit balance) sufficient to pay the applicable fees and charges. In the event that the Card is cancelled or has insufficient credit (or balance), Customer must immediately provide INVISION with a new valid Card. In the event that any Card is not valid or is rejected, then Customer will be in violation of this Agreement, and INVISION may immediately terminate this Agreement and access to the Product. No invoice or receipt will be provided to Customer for this electronic authorization. If Customer does not notify INVISION of any discrepancies within ninety



(90) days after they first appear on any statement, Customer will be considered to have accepted the amounts charged. Customer releases INVISION from any and all liability and claims resulting from any error or discrepancy that is not reported to INVISION within that ninety (90) day notice period.

5. Trial Offers, Coupons, Credits and Special Offers. INVISION reserves the right to discontinue or modify coupons, credits and special promotional offers in our sole and absolute discretion. INVISION encourages initial use of the Product through free trials. However, each Customer is only entitled to one registration of a free trial. Free trial terms vary. INVISION is authorized to begin billing Customer's Card at the end of the free trial period unless Customer cancels the offer and use of the Product prior to the end of your free trial period. **CUSTOMER MUST CANCEL PRIOR TO THE END OF YOUR FREE TRIAL TO AVOID CHARGES TO THE CREDIT CARD.**
6. License Grant & Usage Restrictions. Subject to the terms and conditions of this Agreement and in consideration for the payment of the applicable fees described on the Order Form, INVISION hereby grants to Customer (and each of its authorized End Users), a limited, nonexclusive, non-transferable license (the "License") to access and use the Product, as applicable (as well as any related documentation, instructions, evaluations, or other written materials). Customer agrees to provide access to the Product only to its authorized End Users during the term of this Agreement. This Agreement shall apply to any Product initially provided to Customer as well as any subsequent versions, revisions or updates of the Product provided to Customer. Customer shall be solely responsible for all content transferred by Customer or any other party in connection with Customer's access and/or use of the Product, including all visual, written and/or audible communications. Customer hereby agrees not to access and/or use the Product to: (i) send unsolicited commercial email in violation of applicable law or this Agreement; (ii) request, collect and/or store sensitive data (such as credit card numbers or social security numbers) from online meeting or attendees; (iii) communicate any message or material that is deemed harassing, threatening, indecent, obscene, libelous, slanderous, or otherwise unlawful; (iv) violate the intellectual property rights of any party; or (v) encourage conduct that could be a criminal or civil offense under any applicable law or regulation. Customer shall not access and/or use any of the Product in any manner that could damage, disable, overburden, impair or otherwise interfere with or disrupt the INVISION online web site, Products or the networks or security systems of INVISION. Specifically, the sending of any form of unsolicited bulk email through INVISION or its data centers is prohibited, or likewise, the sending of unsolicited bulk email from another internet service provider where those messages violate this Agreement. Customer may not resell, distribute, or otherwise use any of the Product on a timeshare or service bureau basis. INVISION reserves the right to take any action it deems necessary or appropriate in its sole discretion, with respect to any such prohibited content or spam email communications that violate this Agreement of which INVISION may become aware, at any time and with notice to Customer.
7. Named Host Licensing Restrictions. If the Order Form reflects the selection of INVISION's Named User License Model, then Customer will provide a list of identified individuals (a "Named Host") that will each have access to their own individual room, with the number of participants (guests) not exceeding the number per room identified on the Order Form. Only a Named Host may host a meeting in their assigned room, and the Named Host must be present as the host during the meeting. Named Hosts possess individual licenses that are not transferable to any other person, and Named Host agrees not to share their username and/or password with any person other than INVISION or the administrator of Customer's INVISION site. Customer agrees that the number that are permitted to attend a session will not exceed the number of guests identified on the Order Form. Customer shall maintain a list of all Named Hosts that have been assigned rooms. Once initially assigned, Customer may only reassign the room to a different person if the original Named Host is no longer employed by Customer. INVISION reserves the right to audit the site and the records of Customer to ensure compliance with these Named Host provisions. INVISION will be responsible for the cost of the audit unless it is discovered that the subscriber has violated the terms of these conditions (e.g. Named Hosts permitting others to use their room or improperly reassigning a room). Should Named Hosts provide access to others in violation of these terms, then INVISION may charge Customer for the duration of the meeting using the greater of the prevailing retail perminute or the per-minute rate identified on the Order Form.
8. Customer Content. If, in the process of using the Product, Customer or any End User uploads, records or otherwise transmits any content to an INVISION Web server, (including any PowerPoint™ presentations, photographs, illustrations, icons, articles, text, audio clips, or video clips (the "Content"), then Customer represents and warrants to INVISION that Customer: is the owner or authorized user of the Content; is solely responsible for the Content; and acknowledges and agrees that INVISION neither controls nor guarantees the accuracy, integrity, or quality of the Content. Customer will not use the Product or upload, record or otherwise transmit any Content that: infringes any third party's copyright, patent, trademark, trade secret or other proprietary rights or rights of publicity or privacy; violates any law, statute, ordinance or regulation; is defamatory, trade libelous, threatening, harassing, obscene, harmful, or pornographic; or contains any viruses or other software that is intended to damage or interfere with (or surreptitiously intercept or capture) any system, data or personal information. Because Customer and its End Users will be in control of the Content displayed online as a part of use of the Product, Customer understands that by using the Product that End Users may be exposed to Content that is improper, offensive or a violation law, and therefore under no circumstances will INVISION be



liable to any person or entity for any alleged damages sustained by the distribution of the Content to any End User. Upon termination of this Agreement, Customer agrees that any Content posted to the Customer's INVISION site will not be returned to Customer and will be removed from the INVISION site. Should Customer or an End User submit technical support questions or comments to INVISION, then Customer agrees that INVISION may edit and post those questions or comments with the response, (without revealing personal information), on INVISION's customer support Web site and that all such questions or comments shall remain INVISION's property. Customer further agrees that Customer will not use the Product to send unsolicited mass email ("Spam") outside of Customer's company or organization and will abide by any anti-spam or mass email rules, regulations and laws pertaining thereto. Upon Customer's request, INVISION will create a customized look and feel to the Customer's INVISION Product site and Customer agrees to pay for all applicable changes resulting from that Customization. Customer will provide to INVISION all branding materials.

9. Technical Support and Maintenance. Customer may subscribe for INVISION's customer support services, and such services shall be provided based upon the level of support services chosen by Customer on the Order Form (for example, Basic, Enhanced or Premium). Unless otherwise indicated on the Order Form, INVISION will provide Customer only Basic technical support and such Basic support will be provided only to Customer's Administrator. Customer may access INVISION's support services using email through submission of a trouble ticket using INVISION's "Submit a Ticket" process (found at: <http://www.invisionmeeting.com/support/ticket>); or by telephone by calling the number indicated on a Customer's site or individual "My Account" page. INVISION support via telephone are available during normal support hours and normal business days. In addition to email and telephone support, Customers may also avail themselves of INVISION's customer support portal (found at <http://www.invisionmeeting.com/support>); that provides additional self-service information including access to frequently asked questions ("FAQ"), knowledge base, support chat and training materials. INVISION's Basic Support obligation will be limited to INVISION's normal support hours of 8:30 a.m. to 8:30 p.m. Eastern Time, Monday through Friday (excluding all U.S. federal holidays). INVISION will provide only email Terms and Conditions Contract Reference: Version 10x Effective 06-01-09 © INVISION Communications, Inc. Page 3 of 6 support to End Users outside the U.S. and Canada, and all support will be provided in English only. Basic Customer Support will address issues related to use of the Product (i.e., registration, navigation, configuration, installation and troubleshooting), but will not include issues with respect to any End Users' own Internet connectivity issues or computer hardware issues. INVISION may conduct maintenance of the INVISION hosted Product sites, which will normally be performed each Saturday from 6:00 p.m. to 11:00 p.m. Pacific Time. During that scheduled maintenance time, access to the Product may not be available for use by Customer or its End Users; and INVISION may make periodic changes or upgrades to the Product (a "Maintenance Release") as it deems appropriate. INVISION will update all documentation as appropriate when these changes result in new and/or improved features and/or functionality of the Product. Customers using INVISION's hosted services will automatically receive new Maintenance Releases during regularly scheduled maintenance periods.
10. Maintenance and Hosting Contracts (Applicable to Perpetual License Products Only). For those Customer that purchase a perpetual license to INVISION's Products, those Customers may also subscribe to INVISION's maintenance, support and software upgrade contract (a "Maintenance Contract"). The term of the Maintenance Contract shall be specified in the Order Form, but if not so specified shall be an annual contract that shall begin on the Effective Date of this Agreement. The Maintenance Contract shall automatically renew for like periods of time as the original term, unless and until Customer provides no less than sixty (60) days prior written notice to INVISION of Customer's intention to terminate the Maintenance Contract. Should INVISION provide hosting to a Customer then the Hosting Agreement shall have a term that is coterminous with that of the Customer's Maintenance Contract. Furthermore, should INVISION provide Hosting to Customer, then Customer shall at all times maintain and keep current their Maintenance Contract with a current effective Maintenance Contract being a condition precedent to INVISION's obligation to provide hosting services to Customer.
11. Payments and Late Charges. All fees and charges provided for in the Order Form for use of the Product will be due upon the dates reflected in the Order Form, or if not so indicated, on the date of the invoice provided by INVISION. Any undisputed amount not received when due will bear interest at the lower of 1.5% per month or the highest rate permitted by law. INVISION is entitled to recover any sums expended in connection with the collection of undisputed sums not paid when due, including reasonable attorneys' fees. INVISION may terminate this License and use of the Product, after transmittal of notice, if INVISION does not receive payment of the fees and charges when due. All license fees and charges are non-refundable (except for sums due to Customer as a result of a Limited Warranty claim submitted within the Warranty Period or an Intellectual Property claim). Should Customer continue to use the Product after termination of this Agreement, then Customer agrees to pay the per-minute or monthly fees associated with use of the Product for as long as used by Customer or its End Users at the then prevailing published rates. Monthly service and certain other charges are billed one month in advance, and there is no proration of such charges if service is terminated on other than the last day of Customer's billing cycle. Customer agrees to pay the lesser of \$30 or the highest amount allowed by law for any check or other instrument tendered by Customer and returned unpaid by a financial institution (including credit card charge backs).



12. Per-Minute Conferencing. For Customers using the Product on a per-minute basis, INVISION will provide access to conferencing services (that may include audio and/or web conferencing on an a-la-carte basis, and may include operator assisted calls, or access to national and international conferencing on an automated basis. Customer may use its host and participant personal identification numbers (PIN's) to access the Product, and INVISION will undertake no extra security precautions unless requested in advance of the audio conference call. Unless otherwise provided in the Order Form, Customer agrees to pay for all per-minute web conferencing at the rate of \$0.29 per minute per participant, and agrees to pay for all audio conferencing at the rate of \$0.15 per minute per participant for toll-free reservationless service, or \$0.29 per minute per participant for toll-free operator assisted service. Charges for web and audio usage on a per-minute basis will include up to 20 minutes before the Named User arrives and 20 minutes after the Named User departs the session. Use of call recording features may subject Customer and its End Users to state or federal laws or regulations. Customer and End Users are responsible for compliance with those state or federal laws or regulations related to recording of a conversation, including any required notification to their End User participants.
13. Term and Termination. The term of this Agreement shall commence with the earliest of: (i) the date that INVISION accepts Customer's Order Form, or (ii) that date that Customer first uses the Product, or (iii) the date that begins use of the Product; and will continue until the end of the applicable period as indicated on the Order Form (e.g., if a subscription then on a month to month or annual basis), subject to earlier termination in the event of breach as provided herein. If Customer subscribes for a periodic term license, then upon expiration of the initial term, this Agreement shall automatically renew for like terms until otherwise terminated as provided herein. Either party may terminate this Agreement at the end of any term (initial or renewal) by providing the other party written notice of termination at least thirty (30) days prior to the end of such term. Customer may terminate this Agreement if INVISION fails to provide the Product to Customer and such breach is not cured within five (5) days after receipt of written notice of the breach. INVISION may terminate this Agreement if Customer breaches any term or condition of this Agreement, including the failure to make timely payment of any fees due if such breach is not cured within five (5) days after receipt of written notice of Customer's breach. In the event that INVISION determines that there has been a breach of this Agreement, after notice and failure to cure, then INVISION may immediately revoke the License granted to Customer, prohibit Customer's use of the Product and Customer shall immediately discontinue use of the Product. Customer and each End User agree that INVISION may enforce any breach of this Agreement by means of equitable relief (including, but not limited to, injunctive relief) in addition to any other available rights and remedies. Upon termination, all payment obligations of Customer due through the date of termination shall be then due and payable, regardless of revocation of Customer's License.
14. Limited Warranty. INVISION warrants to Customer that the Product will operate substantially in accordance with functions and features described in the Administrator's User Guide (the "Documentation") provided to Customer (the "Limited Warranty"). This Limited Terms and Conditions Contract Reference: Version 10x Effective 06-01-09 © INVISION. Page 4 of 6 Warranty shall apply only during the thirty (30) day period beginning with the later of: (i) the date of purchase of the Product or (ii) the date that the Product is first available for use by Customer (the "Warranty Period"). INVISION will modify or replace, at no additional charge to Customer, the Product to correct any reproducible error that causes the Product not to perform substantially as set forth in the Documentation, provided that Customer reports the malfunction to INVISION during the Warranty Period. In the event that INVISION is unable after reasonable efforts to correct any such material error, Customer may during the Warranty Period at Customer's option terminate this Agreement and, upon return of the Product to INVISION, INVISION shall provide to Customer a pro-rata refund of the unused portion of the License Fees paid. All warranty claims not made in writing or not received by INVISION within the Warranty Period shall be deemed to have been waived by Customer. Customer's exclusive remedy for a breach of the foregoing Limited Warranty shall be replacement of the Product or a pro-rata refund of the unused portion of the License Fees paid. The foregoing Limited Warranty shall specifically not cover problems, complaints, issues or claims made by the Customer resulting from events and circumstances outside the control of INVISION that may impact the performance, function or use of the Product and/or the user's experience and are not covered by the Limited Warranty. Those type of problems, complaints, issues or claims that may impact the Product's functions and features and/or the user's experience, but yet are not a valid warranty claim include, but not are limited to, slowdown or loss of Internet connectivity causing a disconnection to the server, firewall and proxy difficulties that prevent connection to the server, customer service and training questions about the use of functions or features, an End User's computer hardware malfunctions, software on an End User's computer that interferes with operation of the Product (e.g. video drivers), simple End User error, or interruptions caused by third party hardware and software outside the control of INVISION. Except as otherwise and specifically provided by the Limited Warranty, in this Agreement, the Product is provided to Customer and its End Users "as is," with all faults. INVISION does not warrant that the Product will operate in combination with any other software selected by Customer, nor that it will operate in an uninterrupted manner should Customer experience Internet disruptions.
15. Intellectual Property Indemnity. INVISION agrees to defend Customer and to pay any judgments, costs and expenses, or amounts paid in settlement to which INVISION agrees, which Customer may sustain as the result of any claim by a third party that the Product by itself and in unmodified form infringes or misappropriates such third party's United States



copyright, trade secrets, or patent ("Intellectual Property Indemnity"). In order for INVISION to provide its Intellectual Property Indemnity, Customer must provide INVISION with prompt written notice of such claims or threat of such claims and INVISION must be given full control and authority to investigate, defend and/or settle such intellectual property claim. In the event of any intellectual property claim, INVISION may in its sole discretion either procure the rights to allow Customer's continued use of the Product, or modify the Product so that it is not infringing on the claimed third party rights. Should the intellectual property claim result in Customer's inability to use the Product, then Customer may terminate this Agreement and receive a pro-rata refund of any unearned fees actually paid. Customer agrees to defend, indemnify and hold INVISION harmless, (and INVISION's subsidiaries, affiliates, officers, employees, and directors) from any and all third party claims, liabilities, damages and/or costs (including attorney fees) due to or arising directly out of Customer's (or any End User's): use of the Product; violation of this Agreement; unauthorized use or known breach of security; or infringement or violation, of any intellectual property or other right of any person or entity related to the Customer's Content.

16. Ownership and Reservation of Rights. Customer acknowledges and agrees that the Product and INVISION's intellectual property (i.e., INVISION's source code, copyrighted material, trademarks, service marks, trade secrets and proprietary and confidential information) are the property of INVISION, subject to Customer's use pursuant to this Agreement and that INVISION retains those rights in its intellectual property, including any enhancements thereto or derivative works thereof. It is expressly understood and agreed that title to, or ownership of, any part of the Product or any related items provided hereunder, including any enhancements thereto or derivative works thereof, shall not ever be transferred to Customer. Customer agrees not to use INVISION's service marks and trade marks and brand names (collectively, the "Marks") relating to the Product without INVISION's prior written permission. INVISION reserves all rights related to the Marks not expressly granted in this Agreement. INVISION's grant of any license to use any of the Product is subject to the rights retained by INVISION, which are exercisable in INVISION's sole discretion without notice. INVISION irrevocably reserves the right: (a) to improve, update and modify the Product; (b) restrict access to the Product or terminate this Agreement after providing reasonable notice should INVISION in its sole discretion determine that Customer or any authorized End User has engaged in any conduct that violates this Agreement; or, (c) to distribute and license the Product, alone or bundled with other products and to grant the right to copy, distribute and to sublicense the Product directly or indirectly to others wherever located.
17. Limitations on Use. Customer and End Users may not access, distribute or use the Product except as expressly permitted under this Agreement, or the terms of the Order Form, including the requirements provided by applicable U.S. intellectual property laws and U.S. copyright laws. Except as permitted by this Agreement, any distribution of any portion of the Product is expressly prohibited. Furthermore, Customer and End Users shall not, nor shall they permit others to do any of the following: (a) sell, distribute, transmit, or otherwise provide access or use to any person not authorized by this License; (b) store any Product in any information storage and retrieval system which provides access to persons not authorized by this License or provides concurrent usage by more End Users than those authorized by this License; (c) rent, sublicense, lease, or assign any License to the Product to any person other than Customer itself or its authorized End Users; (d) copy, reproduce, create derivative works from or decompile, disassemble, or otherwise reverse-engineer the Product, or in any other way alter, translate, modify, or adapt the Product; or (e) make use of the Internet or an Intranet to provide access to the Product through any local or wide area networks, timesharing services, multiple site arrangements or other forums which permit multiple simultaneous access or distribution other than provided by this Agreement. Any access to or use of the Product (or any part thereof) by persons or other users who are not authorized by Customer and this Agreement is specifically prohibited. Unless otherwise provided for in the Order Form and within Customer's then current Maintenance and Support Agreement, if any, this Agreement shall not entitle the Customer to any future versions, revisions or future features of the Product. Upon termination of this Agreement (if the term of the license is periodic) or upon revocation of the License, after notice of breach and failure to cure such breach, Terms and Conditions Contract Reference: Version 10x Effective 06-01-09 © INVISION. Page 5 of 6 Customer agrees to immediately return the Product to INVISION and destroy all copies of the Product, including erasure of all electronic forms found on any computer or hardware device.
18. Liability Disclaimer. OTHER THAN THE LIMITED WARRANTY DESCRIBED ABOVE, INVISION MAKES NO REPRESENTATIONS ABOUT THE SOFTWARE OR SERVICES, AND IS PROVIDING THE SOFTWARE AND SERVICES TO CUSTOMER AND ITS END USER "AS IS" AND WITHOUT WARRANTY OF ANY KIND. INVISION EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ALL WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AS WELL AS ANY WARRANTIES ALLEGED TO HAVE ARISEN FROM CUSTOM, USAGE, OR A COURSE OF DEALINGS BETWEEN THE PARTIES. INVISION makes no warranty or representation regarding the results that may be obtained from the use of the Product, regarding the accuracy or reliability of any information obtained through the Product, regarding any goods or software purchased or obtained through the Product, regarding any transactions entered into through the Product or that the Product will meet any End User's requirements, or be uninterrupted or error free. Use of the Product is at the Customer's sole risk. Any material and/or data downloaded or otherwise obtained through the use of



the Product is at used at Customer's own discretion and risk. Customer will be solely responsible for any damage resulting from the use of the Product. To the maximum extent permitted by law, and notwithstanding anything to the contrary contained herein, INVISION (or its officers, directors, employees, shareholders, agents or representatives) shall not be liable to Customer or any End User for any consequential, incidental, indirect exemplary or special damages, including (without limitation) damages arising out of or in connection with any loss of profit, interruption of service, or loss of business or anticipatory profits, even if INVISION had been apprised of the likelihood of such damages. In no event will INVISION's aggregate liability under this Agreement ever exceed the total amount of any fees paid by Customer during the term hereof.

19. Miscellaneous Provisions.

- a) **Governing Law and Enforceability.** This Agreement is made under and will be governed by and construed in accordance with the laws of the State of Arizona (except that body of law controlling conflicts of law) and specifically excluding from application to this Agreement that law known as the United Nations Convention on the International Sale of Goods. Customer consents to the personal jurisdiction and venue of the State of Arizona, or any other state in which INVISION maintains its primary corporate office, but not the exclusive jurisdiction of the State of Arizona. The prevailing party in any litigation between the parties shall recover its reasonable attorneys' fees and costs from the non-prevailing party.
- b) **Notices.** All notices, requests and other communications between the parties in connection with this Agreement shall be in writing. All such notices to INVISION shall be addressed to 2999 N. 44th Street, Suite 650, Phoenix, AZ 85018, with all notices to Customer addressed to the person and location provided in the Order Form. Either INVISION or Customer may change its notice address by written notice to the other, served as provided above, provided however, that any notice of change of address shall be effective only upon receipt.
- c) **Marketing.** Customer hereby consents to INVISION's use of Customer's name and logo for the limited purpose of identifying Customer as an INVISION Customer on locations such as INVISION's Web site, as a general list of customers and referenced in INVISION's corporate and promotional literature. Additionally, Customer agrees that INVISION may issue a press release identifying Customer as a customer of INVISION and describing Customer's intended use of INVISION and the benefits that Customer expects to derive from the use of INVISION's Product. The content of any press release identifying Customer will be subject to Customer's prior approval, and Customer's approval will not be unreasonably withheld. End Users may, when they initially log in or subsequently thereafter, be asked whether or not they wish to receive marketing and other non-critical service-related communications from INVISION from time to time. End Users may opt out of receiving such communications at that time or at any subsequent time by changing their preference under their individual personal preferences. Should INVISION host Customer's Product, then INVISION may occasionally notify all End Users (whether or not they have opted out) of important announcements regarding the operation of the Product. Customer and any End User, hereby consents to receive periodic email from INVISION, or INVISION's authorized partners, that provides information concerning offers, promotions and advertisements of the products and services of INVISION, and INVISION's authorized partners, provided such opt out procedures are available. INVISION, and INVISION's authorized partners agree to abide by the marketing choices selected in the each End User's personal profile, or any opt-out selection thereof.
- d) **Government Regulations.** Neither Customer nor any of its End Users will export, re-export, transfer, or make available, whether directly or indirectly, any regulated item or information to anyone outside the U.S. in connection with this Agreement without first complying with all export control laws and regulations which may be imposed by the U.S. government and any country or organization of nations within whose jurisdiction Customer operates or does business. U.S. Government rights to use, modify, reproduce, release, perform, display, or disclose these technical data and/or computer data bases and/or computer software and/or computer software documentation are subject to the limited rights restrictions of DFARS 252.227-7015(b)(2) (June 1995) and/or subject to the restrictions of DFARS 227.7202-1(a) (June 1995) and DFARS 227.7202-3(a) (June 1995), as applicable for U.S. Department of Defense procurements and the limited rights restrictions of FAR 52.227-14 (June 1987) and/or subject to the restricted rights provisions of FAR 52.227-14 (June 1987) and FAR 52.227-19 (June 1987), as applicable, and any applicable agency FAR Supplements, for non-Department of Defense Federal procurements.
- e) **Survivability.** The terms of the following Sections of this Agreement shall survive any cancellation, termination, or rescission: Ownership, Limitation of Use, Warranty, Indemnity and Limitation of Liability.
- f) **Severability and Waiver.** In the event any provision of this Agreement is held to be unenforceable, the remaining provisions of this Terms and Conditions Contract Reference: Version 10x Effective 06-01-09 © INVISION Communications, Inc. Page 6 of 6 Agreement will remain in full force and effect, and the unenforceable provisions will be construed in accordance with applicable law as nearly as possible to reflect the original intention of the parties. The waiver of any breach or default of this Agreement will not constitute a waiver of any subsequent breach or default, and will not act to amend or negate the rights of the waiving party. Customer may not assign or delegate its obligations under this Agreement either in whole or in part without the prior written consent of INVISION, and such consent may be unreasonably withheld.



- g) Governmental Agencies. Use of the Product by the United States Government or other governmental agencies shall be as "restricted computer software" or "limited rights data" as set forth in "Rights in Data - General" at 48 CFR 52.227-14, or as "commercial computer software" or "commercial computer software documentation" under DFARS 252.227-7015, or under such other similar applicable terms and conditions to prevent the transfer of rights in and to the technology to the government other than under normal commercial licensing terms and conditions.
- h) Privacy Policy. Our Privacy Policy can be accessed at on INVISION's Web site ("Privacy Policy") and Customer hereby acknowledges that it will access and read the Privacy Policy, that it is a part of this Agreement, and that it is incorporated herein by this reference. The Privacy Policy explains how certain information about End Users may be processed and used, among many other details.
- i) Entire Agreement and Amendments. This Agreement (together with the Order Form and Privacy Policy) constitutes the entire agreement between the parties with respect to the Product and supersedes all other (prior or contemporaneous) communications and proposals, whether electronic, oral, or non-electronic. Customer agrees that any terms or conditions contained in any document, including but not limited to a purchase order, acknowledgement, email, or other document that Customer may now or later provide to INVISION, will have no effect and that this Agreement is the only contract and/or license between the parties regarding the Product and may only be amended as set forth herein. This Agreement and the associated Order Form shall not be changed, modified or amended except in writing signed by a duly authorized representative of the parties giving reference to the Agreement and Order Form. The application of the United Nations Convention on the International Sale of Goods is hereby expressly excluded. Our performance of this Agreement (including the Privacy Policy) is subject to existing laws and legal process, and Customer agrees that INVISION may comply with law enforcement or regulatory requests or requirements notwithstanding any contrary term of this Agreement or that policy. A printed version of this Agreement and of any notice given to Customer in electronic form will be admissible in judicial or administrative proceedings based upon or relating to this Agreement to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form. The Product is being provided electronically and Customer agrees that INVISION may communicate electronically with Customer on all matters relating to the Product, including matters related to use, customer service, billing and notification.