



THIS CLIENT SERVICE AGREEMENT is made by and between **Visiam, LLC** (“**Visiam**”), and the **Registering Company** (“**Client**”).

WHEREAS, Visiam’s Online Technology, (“**Technology**”) provides services to facilitate electronic processing of information and is willing to license that Technology and provide certain services to Client;

WHEREAS, Visiam provides access to and use of its proprietary web-based software, including, but not limited to on-line tools designed to facilitate human resource management and communications;

WHEREAS, Client wishes to use the Visiam’s Technology and services for the benefit of itself and its designated Users (“**Client’s Users**”);

NOW THEREFORE, in consideration of the foregoing and the promises below, the Parties hereby agree as follows:

**1. Services and License Provided by Visiam.** The services provided by Visiam are subject to the terms of this Agreement. Visiam grants to Client a non-exclusive, non-transferable license to use the Visiam Technology during the Term of this Agreement. The Technology is licensed for use by the Client and Client’s Users; it is not sold, but remains the property of Visiam. The services and license include the following:

- Visiam will provide Client access to and use of Visiam’s suite of tools designed to facilitate communications and reduce transaction costs associated with human resource processes and activities, such as, but not limited to, Time Management (time-card/time-clock for employees), human Resource Document Management (controlled access to various human resource documents as determined by the Client and the Client’s Users), Bulletin Board (to facilitate communication with and between Client and Users designated by Client) and a Customizable Forms tool (to assist workflow).
- Visiam will provide Client’s Administrator or representative training and support on the use of Visiam’s suite of tools through tutorials and help desk. Client will train its users in the use of the tools.
- Client, and such other Users designated by Client, will access Visiam’s tools through the Client’s and Users’ Internet access connections and web software to create, view, modify or add information to files. Visiam will not provide a physical connection to the Internet or the communication software necessary to access Visiam’s web site.

**2. Pricing and Payment Programs.** Pricing for the license to the Technology is \$250 for a company or companies with common ownership, or \$1,000 for companies that are using the Visiam product to offer outsourced services to multiple companies. The user fee is \$5.00 USD per month, per User that is included in the system during the billing cycle. If the number of users exceed 250, please contact [info@visiam.com](mailto:info@visiam.com) for licensing terms that include a reduced monthly price per user. Visiam reserves the right to adjust pricing any time

during the term of this Agreement by giving thirty (30) days written notice to Client.

**3. Payment Methods and Billing.** Visiam will issue an Electronic Invoice via the Visiam user interface incorporated in the Technology or via e-mail, 5 days in advance of due date. All payments will be made through the Visiam website by electronic payment such as, Credit Card, eCheck, PayPal or other methods designated by Visiam. Visiam may select which method of payment to be offered to Client and may change method from time to time.

**4. Term.** The initial term of this Service and License Agreement is for one year commencing from the date of this Agreement, after which the Agreement shall automatically renew for additional annual terms, unless terminated by either party on thirty (30) days prior written notice to the non-terminating Party.

**5. Termination.** Invoices not paid within ten (10) business days of invoice date will be considered delinquent and terminated. This Agreement may be terminated immediately upon notice of any breach by either party of the provisions of this Agreement that has not been cured within thirty (30) business days. Upon termination of Agreement, Visiam’s responsibility to Client and Client’s Users immediately cease.

**6. Business Continuity.** Visiam may provide its services directly to any individual company or qualified Visiam licensee or reseller without limitation. Visiam reserves the right to provide services to any individual company at any time.

**7. No Agency Relationship.** The Parties agree and understand that continuation of services under this provision does not create an agency relationship between Visiam and Client, and neither Client nor Visiam have the right or ability to bind either with respect to services provided to Client’s Users.

**8. Ownership of Intellectual Property.** Visiam exclusively retains title to and ownership of the Technology and all intellectual property rights, title and interest in any ancillary



or derivative product or code developed by Visiam. The Technology is protected by copyright laws and international treaty provisions. Client hereby assigns to Visiam and agrees to timely inform Visiam of any invention, improvement, idea, know-how (whether or not patentable) or other intellectual property rights that are conceived, learned or reduced to practice in the course of performance under this Agreement related to the use and operation of the Technology. Client retains all rights, title, interest, and intellectual property in and to any temporary data stored or transmitted via Visiam's Hosting Service.

**9. Non-Disclosure and Confidentiality.** Client agrees that the Technology is the sole property of the Visiam and Client agrees to treat the Technology as confidential and provide a standard of care with at least the same degree of care that Client uses to protect its own confidential and proprietary information, but not less than a reasonable degree of care. Visiam and Client will not be liable for the disclosure of any confidential information which is: (a) in the public domain other than by a breach of this Agreement by Client or (b) rightfully received from a third party without any obligation of confidentiality; or (c) rightfully known to Client without any limitation on use or disclosure prior to its receipt. Upon termination of this Agreement, Client shall return to Visiam or destroy any written or electronic materials associated with the Technology, excluding any text or graphics owned by Client using the Technology. The existence, terms and conditions of this Agreement are confidential. Except with the prior written permission of the other Party, which may be withheld at the sole discretion of such Party, or as required by law, neither Party may make any public announcements, issue any press releases or use the others Party's name in any of its marketing materials.

**10. Relationship of the Parties.** Nothing herein shall be deemed in any way to constitute a Party as the partner, employee, agent or legal representative of the other Party, nor to create any fiduciary or exclusive relationship between them and no Party shall have the power to bind the other in any way. Parties also agree that, except for the continuing confidentiality obligations, this Agreement does not restrict either Party from entering into any other agreement with others who may or may not compete with the other Party.

**11. Limitations of Liability.** (a) Visiam recognizes that the information in files created by Clients may be confidential, personal information. Visiam will make commercially reasonable efforts to safeguard the security of information on its servers and to protect it from unauthorized disclosure. (b) CLIENT SHALL ENSURE THAT ITS EQUIPMENT AND SOFTWARE IS FULLY UPDATED WITH THE LATEST SECURITY PATCHES AND FREE OF VIRUSES, WORMS, TROJAN HORSES, SCREEN IMAGE CAPTURE SOFTWARE, KEYSTROKE LOGGERS AND OTHER ITEMS OF A MALICIOUS NATURE INCLUDING ANY FILES TRANSFERRED FROM CLIENT OR CLIENT'S USERS MACHINES TO VISIAM SERVERS. CLIENT ALSO AGREES TO MAKE REASONABLE EFFORTS TO

SAFEGUARD UNAUTHORIZED DISCLOSURE OF USER IDENTIFICATION AND PASSWORDS TO AVOID UNAUTHORIZED DISCLOSURE OF SENSITIVE DATA OR UNRECOVERABLE DATA LOSS. CLIENT IS RESPONSIBLE FOR ALL COSTS AND LIABILITY ASSOCIATED WITH THESE EFFORTS INCLUDING SOFTWARE AND HARDWARE UPDATES, USER EDUCATION, AND COMPLIANCE.

**12. Warranty, Indemnification and Limitation on Damages.** (a) Each Party represents and warrants to the other Party that (i) it has the power and authority to enter into and perform its obligations under this Agreement, (ii) this Agreement, when executed, shall become the legal, valid and binding obligation of such Party (iii) the person or persons executing this Agreement on behalf of such party has the full right, power and authority to do so on such Party's behalf and (iv) no consent from any other person or entity (including, without limitations, Authorizations) is required as a conditions precedent to such Party entering into or performing its obligations under this Agreement. (b) Client warrants to have the full right and power to grant the rights to use materials or any files transferred or used in conjunction with Visiam Services free and clear of any rights or claims by the owners or any others, and shall indemnify and hold Visiam, its agents, owners, members, employees, licensees, successors and assigns wholly harmless from any loss, liability, damage, cost of expense (including reasonable legal fees) from any claims by the owners or others arising out of Client's use of the Technology during the Term of this Agreement. Client agrees to indemnify, defend – at Client's expense – and hold Visiam harmless from any claim, demand or lawsuit arising from the improper use or disclosure of content of information placed with Technology by Client or its Users or Affiliates using the Technology. (c) Under no circumstances shall Visiam be liable for any damages whatsoever, (including, without limitation, damages for loss of goodwill, loss of revenues, loss of profit, work stoppage, computer failure or malfunction, business interruption, loss of information) arising out of the Client's use of or inability to use the Technology. (d) Visiam will maintain access to its website sufficient to accommodate the Clients and Client's Users who are reasonably expected to simultaneously access Visiam's tools. However, there may be time periods when the service is unavailable because of heavy use, scheduled or unscheduled maintenance. If the service is unavailable, Client should contact Visiam Client Service department to detail and documents the unavailability. Visiam is not responsible for unavailability due to a failure of Client's or Client's Users' Internet access facilities or service providers, failure of Client's or Client's Users' software, other items under Client's or Client's Users' control or an Event of *Force Majeure* described in 12 below. Client is responsible for installing and maintaining its Internet access and web-browser software to provide reasonable and reliable access to Visiam's website and use of Visiam's Technology. (e) Visiam provides only the mechanism to access and transmit data and is not responsible for loss of Client's or Client's



Users data, for any reason. Visiam does not provide data retention, data back-up or long-term archiving. Client and Client's Users are responsible for all data content and use or misuse of data. Client is responsible for storage outside of Visiam's Technology of all Original files, forms or data and no originals are considered to be stored, backed-up or archived on the Visiam System. (f) THE FOREGOING WARRANTIES ARE EXCLUSIVE REMEDIES AND ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. VISIAM WILL NOT BE RESPONSIBLE UNDER ANY PART OF THIS AGREEMENT FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES.

**13. Notices.** All notices to be given under this Agreement except as described in Paragraph 5 "Termination", must be in writing and shall be deemed to have been delivered to and received by a Party, and will otherwise become effective on the date of actual delivery (by personal delivery, express delivery service or certified mail) to the addresses of such Party set forth in this Agreement.

**14. Events of Force Majeure.** Neither Party shall be liable for failure to comply with the terms or conditions of this Agreement if performance is prevented or delayed by circumstances beyond such Party's reasonable control such as, any act of God, civil disorder, war or military operations, acts of terrorism, national or local emergency, acts or omissions of governmental authority, industrial disputes of any kind, fire, flood, lightning, explosion, subsidence, inclement weather, acts or omissions of telecommunications operators, internet service providers or utility service providers, acts or omissions of persons or bodies beyond the reasonable control of the affecting Party. (an "Event of Force Majeure"). The affecting Party shall make reasonable efforts to minimize the effects of an Event of Force Majeure.

**15. Third Parties.** The provisions of this Agreement are intended for the sole benefit of the Parties hereto, and do not create any right, claim or benefit on the part of any other person not a Party to this Agreement.

**16. Assignment.** Except for assignments of this Agreement to a legally affiliated company or new ownership of Visiam or Client, neither Party may assign or transfer this Agreement to another without the prior written authorization of the other Party, which may be withheld for any reason. Any assignment or transfer to assignee as described herein that agrees to be bound by the terms of this Agreement may be made by providing written notice to the other Party.

**17. Dispute Resolution.** Either Party may give notice to the other of a dispute under this Agreement, request resolution of the dispute, and will cooperate in good faith to resolve the dispute. If, within ten (10) business days of such notice, such dispute is not settled, either Party may submit the dispute to mediation. If the dispute persists beyond the conclusion of mediation, the Parties will resolve the dispute through binding arbitration. The arbitration shall be held in accordance with the rules of the American Arbitration Association. If there are disputes about who may be mediators or arbitrators, the Parties will each propose a mediator and/or arbitrator and select the mediator or arbitrator through a random drawing. Costs of mediation or arbitration will be split by the Parties. The mediation and arbitration shall be conducted in El Paso County, Colorado unless the Parties agree to a different location. Neither Party is entitled to recover their attorneys' fees from the other Party in the event of a dispute. The Parties agree and understand that dispute resolution provision is in lieu of litigation before a court of competent jurisdiction and the Parties waive any rights to demand a trial by a court or jury.

**18. Compliance with Laws.** The Parties will comply with all applicable laws, regulations, and the like, related to performance of Services, including the payment of applicable taxes. In addition, Client is responsible for all sales tax if applicable to the State in which they reside.

**19. Governing Law and Venue.** The Agreement shall be governed and construed in accordance with the laws of the State of Colorado. Any legal actions, including actions to compel arbitration and mediation to resolve disputes to enforce this Agreement shall only be brought in a court of competent jurisdiction in the El Paso County, Colorado.

**20. No-Waiver.** No course of dealing or failure to strictly enforce a provision of the Agreement will be construed as a waiver of the right to enforce performance of that provision.

**21. Severability and Survival.** If a provision of the Agreement is held unenforceable, all other provisions will remain in force. After termination or expiration of the Agreement, the obligations under this Agreement that by their nature would survive termination, shall so survive.

**22. Counterparts.** This Agreement may be executed in counterparts, each of which shall constitute an original, but all of which shall constitute one and the same instrument.

**23. Entire Agreement.** The Agreement contains the entire understanding of the Parties related to the Services, and it supersedes all prior or contemporaneous representations, either oral or written. The Parties may amend the Agreement only in writing signed by authorized persons.