



GISUAL SUBSCRIPTION SERVICES AGREEMENT

This Subscription Services Agreement (this “**Agreement**”), effective as of the Order Form Effective Date above (the “**Effective Date**”), is by and between Gisual, Inc. (“**Gisual**”) and [Customer entity name] (“**Customer**”). This Agreement includes and incorporates the Order Form attached above, and any additional Order Forms incorporated by reference. Gisual and Customer may be referred to herein collectively as the “**Parties**” or individually as a “**Party**”. In consideration of the mutual covenants, terms, and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. OVERVIEW.

1.1 General. This Agreement states the terms and conditions by which Gisual will deliver and Customer will receive any or all of the Subscription Services, as set forth on any applicable Order Form. The specific services to be provided hereunder are identified in the Order Form(s) signed by the Parties. Each Order Form submitted, accepted and executed by both parties is hereby incorporated by reference into this Agreement. This Agreement is intended to cover any and all Subscription Services ordered by Customer and provided by Gisual.

1.2 Definitions.

(a) “**Authorized User**” means an employee or contractor whom Customer has authorized to access and use the Subscription Services.

(b) “**Customer Data**” means all information and data input by or on behalf of Customer through the Subscription Services or to Gisual in connection with Customer’s access and/or use of the Subscription Services, but excluding, for clarity, Gisual Data.

(c) “**Customer Materials**” means all information, documentation, blueprints, maps, content and other materials, in any form or medium, that is submitted, posted, collected, transmitted or otherwise provided by or on behalf of Customer through the Subscription Services or to Gisual in connection with Customer’s access and/or use of the Subscription Services, but excluding, for clarity, any information, documentation, blueprints, maps, content and other materials owned or controlled by Gisual and made available through or in connection with the Subscription Services.

(d) “**Gisual Data**” means any data, information and insights generated from, derived from, appended, extrapolated from, modified, altered, transformed, compiled or otherwise adapted or enhanced from any data, including Customer Data, by the Subscription Services in accordance with this Agreement. For avoidance of doubt, Gisual Data includes Performance Data (as defined below).

(e) “**Gisual IP**” means the Subscription Services, the underlying software provided in conjunction with the Subscription Services, algorithms, interfaces, technology, databases, tools, know-how, processes and methods used to provide or deliver the Subscription Services and Gisual Data, all improvements, modifications or enhancements to, or derivative works of, the foregoing (regardless of inventorship or authorship), and all Intellectual Property Rights in and to any of the foregoing.

(f) “**Intellectual Property Rights**” means patent rights (including, without limitation, patent applications and disclosures), inventions, copyrights, trade secrets, know-how,

data and database rights, mask work rights, and any other intellectual property rights recognized in any country or jurisdiction in the world.

(g) “**Order Form**” means a (i) mutually executed order form or other mutually agreed upon ordering document; (ii) purchase order issued by Customer and accepted by Gisual in writing; or (iii) quote issued by Gisual and accepted by Customer, in each case which references this Agreement and sets forth the applicable Subscription Services to be provided by Gisual.

(h) “**Person**” means any individual, corporation, partnership, trust, limited liability company, association, governmental authority or other entity.

(i) “**Usage Maximum**” means the limit on the number of Uses of the Subscription Services by Customer and Authorized Users, as set forth in the applicable Order Form, based on Customer’s subscription tier.

(j) “**Subscription Services**” means Gisual’s proprietary software-as-a-service platform and/or application programming interface, and all associated technology, in object code format only, which is made available by Gisual to Customer pursuant to an Order Form and is intended to enable Customer to track network outages across its infrastructure.

(k) “**Uses**” means each instance that a network outage is identified for Customer or an Authorized User on the Subscription Services.

2. SUBSCRIPTION SERVICES; ACCESS AND USE.

2.1 Subscription Services. Subject to the terms and conditions of this Agreement, Gisual hereby grants to Customer a limited, non-exclusive, non-transferable (except in compliance with Section 10.6) right to access and use the Subscription Services during the Term, solely for Customer’s internal business purposes in accordance with, and subject to, the Usage Maximum.

2.2 Restrictions. Customer will not at any time and will not permit any Person (including, without limitation, Authorized Users) to, directly or indirectly: (i) access or use the Subscription Services in any manner beyond the scope of rights expressly granted in this Agreement; (ii) modify or create derivative works of the Subscription Services, in whole or in part; (iii) reverse engineer, disassemble, decompile, decode or otherwise attempt to derive or gain improper access to any software component of the Subscription Services, in whole or in part; (iv) frame, mirror, sell, resell, rent or lease any access or use of the Subscription Services to any other Person, or otherwise allow any Person to access or use the Subscription Services for any purpose other than for the benefit of Customer



in accordance with this Agreement; (v) access or use the Subscription Services in any manner or for any purpose that infringes, misappropriates, or otherwise violates any Intellectual Property Right or other right of any Person, or that violates any applicable law; (vi) contact any end user to Customer's property using contact information obtained through use of the Subscription Services without obtaining such end user's express written consent; (vii) interfere with, or disrupt the integrity or performance of, the Subscription Services, or any data or content contained therein or transmitted thereby; (viii) access or search the Subscription Services (or download any data or content contained therein or transmitted thereby) through the use of any engine, software, tool, agent, device or mechanism (including spiders, robots, crawlers or any other similar data mining tools) other than software or Subscription Services features provided by Gisual for use expressly for such purposes; or (ix) access or use the Subscription Services, or any other Gisual Confidential Information for benchmarking or competitive analysis with respect to competitive or related products or services, or to develop, commercialize, license or sell any product, service or technology that could, directly or indirectly, compete with the Subscription Services.

2.3 Authorized Users. Customer will not allow any Person other than Authorized Users to access or use the Subscription Services. Customer may permit Authorized Users to access and/or use the Subscription Services, *provided* that Customer ensures each Authorized User complies with all applicable terms and conditions of this Agreement. Customer will be responsible for all acts, omissions and obligations of Authorized Users in connection with the activities contemplated by this Agreement and/or the Subscription Services, as though such acts, omissions and/or obligations were those of Customer. Customer will, and will require all Authorized Users to, use all reasonable means to secure user names and passwords, hardware and software used to access the Subscription Services in accordance with customary security protocols, and will promptly notify Gisual if Customer knows or reasonably suspects that any user name and/or password has been compromised.

2.4 API. In order to use the Subscription Services on Customer's properties, Customer may be given a key for Gisual's application programming interface ("**API**"). Customer is solely responsible for the security of the API key, is required to take appropriate measures to safeguard the API key and will be responsible for any unauthorized access to the API key. Customer's property must maintain absolute compatibility with the API in order to be granted access to the Subscription Services.

2.5 Violations of Law. Gisual may immediately suspend provision of the Subscription Services at any time, without notice to Customer and without liability, if Gisual suspects or receives notice that the Subscription Services or the use thereof actually or allegedly infringes or violates any third party's rights or violates any applicable laws or regulations. Gisual may immediately suspend Customer's and its users' access to and use of the Subscription Services in order to comply with applicable laws and regulations, or upon having reason to believe that any improper activity or potential damage to Gisual products or services or other customers is associated with

Customer's or its Authorized Users' use of or access to the Subscription Services.

2.6 Security. Customer will and will ensure that all Authorized Users ensure the security of its account ID, password, and connectivity with the Subscription Services. If any account ID or password is stolen or otherwise compromised, Customer will immediately change the password and inform Gisual of the compromise. Gisual may change the authorization method for access to the Subscription Services if it determines in its sole discretion that there are circumstances justifying such changes. Gisual is not responsible for loss of any data in transmission or improper transmission by Customer or its users and Customer is solely responsible for maintaining an appropriate backup of Customer Data. Gisual will adhere to industry standard security processes in hosting the Subscription Services, Gisual Platform and any other applicable platform through which the Subscription Services are provided, and will promptly respond to any security breaches of the Subscription Services or any such platform of which it becomes aware

2.7 Reservation of Rights. Subject to the limited rights expressly granted hereunder, Gisual reserves and, as between the Parties will solely own, the Gisual IP and all rights, title and interest in and to the Gisual IP. No rights are granted to Customer hereunder (whether by implication, estoppel, exhaustion or otherwise) other than as expressly set forth herein.

2.8 Support. Gisual will provide reasonable technical support to Customer by electronic mail in connection with its use of the Subscription Services on weekdays during the hours of 9:00 a.m. to 5:00 p.m. Eastern Time, with the exception of U.S. federal holidays ("Support Hours"), subject to the following conditions: (i) prior to initiating any support request, Customer (and its own personnel responsible for information technology support) will have first attempted to resolve the issue generating the need for such support; and (ii) Customer will reasonably cooperate with Gisual support staff as needed to resolve the issue. Customer may initiate a helpdesk ticket during Support Hours by emailing help@gisual.com

2.9 Feedback. From time to time Customer or its employees, contractors, or representatives may provide Gisual with suggestions, comments, feedback or the like with regard to the Subscription Services (collectively, "**Feedback**"). Customer hereby grants Gisual a perpetual, irrevocable, royalty-free and fully-paid up license to use and exploit all Feedback in connection with Gisual's business purposes, including, without limitation, the testing, development, maintenance and improvement of the Subscription Services.

3. **FEES AND PAYMENT.**

3.1 Fees. Customer will pay Gisual the fees set forth in the relevant Order Form in accordance with the terms therein ("**Fees**") and without offset or deduction. Gisual will issue invoices to Customer in accordance with the Order Form, and Customer will pay all amounts set forth on any such invoice no later than thirty (30) days after the date of such invoice. If Customer has signed up for automatic billing, Gisual will charge



Customer's selected payment method (such as a credit card, debit card, gift card/code, or other method available in Customer's home country) for any Fees on the applicable payment date, including any applicable taxes. If Gisual cannot charge Customer's selected payment method for any reason (such as expiration or insufficient funds), Customer remains responsible for any uncollected amounts, and Gisual will attempt to charge the payment method again as Customer may update its payment method information. In accordance with local law, Gisual may update information regarding Customer's selected payment method if provided such information by Customer's financial institution.

3.2 Payments. Payments due to Gisual under this Agreement must be made in U.S. dollars by check, wire transfer of immediately available funds to an account designated by Gisual or such other payment method mutually agreed by the Parties. All payments are non-refundable and neither Party will have the right to set off, discount or otherwise reduce or refuse to pay any amounts due to the other Party under this Agreement. If Customer fails to make any payment when due, late charges will accrue at the rate of 1.5% per month or, if lower, the highest rate permitted by applicable law and Gisual may suspend Services until all payments are made in full. Customer will reimburse Gisual for all reasonable costs and expenses incurred (including reasonable attorneys' fees) in collecting any late payments or interest. Gisual reserves the right to suspend the Subscription Services with notice in the event of Customer non-payment of past due invoices.

3.3 Taxes. Customer is responsible for all sales, use, ad valorem and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state, multinational or local governmental regulatory authority on any amount payable by Customer to Gisual hereunder, other than any taxes imposed on Gisual's income. Without limiting the foregoing, in the event that Customer is required to deduct or withhold any taxes from the amounts payable to Gisual hereunder, Customer will pay an additional amount, so that Gisual receives the amounts due to it hereunder in full, as if there were no withholding or deduction.

4. CONFIDENTIAL INFORMATION.

4.1 Definition. As used herein, "**Confidential Information**" means any information that one Party (the "**Disclosing Party**") provides to the other Party (the "**Receiving Party**") in connection with this Agreement, whether orally or in writing, that is designated as confidential or that reasonably should be considered to be confidential given the nature of the information and/or the circumstances of disclosure. For clarity, the Subscription Services will be deemed Confidential Information of Gisual. However, Confidential Information will not include any information or materials that: (i) are at the date of disclosure, or have subsequently become, generally known or available to the public through no act or failure to act by the Receiving Party; (ii) are rightfully known by the Receiving Party prior to receiving such information or materials from the Disclosing Party; (iii) are rightfully acquired by the Receiving Party from a third party who has the right to disclose such information or materials without breach of any confidentiality or non-use obligation to the

Disclosing Party; or (iv) are independently developed by or for the Receiving Party without use of or access to any Confidential Information of the Disclosing Party.

4.2 Obligations. The Receiving Party will maintain the Disclosing Party's Confidential Information in strict confidence, and will not use the Confidential Information of the Disclosing Party except as necessary to perform its obligations or exercise its rights under this Agreement; *provided* that Gisual may use and modify Confidential Information of Customer in deidentified form for purposes of developing and deriving Aggregate Data. The Receiving Party will not disclose or cause to be disclosed any Confidential Information of the Disclosing Party, except (i) to those employees, representatives, or contractors of the Receiving Party who have a bona fide need to know such Confidential Information to perform under this Agreement and who are bound by written agreements with use and nondisclosure restrictions at least as protective as those set forth in this Agreement, or (ii) as such disclosure may be required by the order or requirement of a court, administrative agency or other governmental body, subject to the Receiving Party providing to the Disclosing Party reasonable written notice to allow the Disclosing Party to seek a protective order or otherwise contest the disclosure.

4.3 Terms of Agreement. The terms and conditions of this Agreement will constitute Confidential Information of each Party but may be disclosed on a confidential basis to a Party's advisors, attorneys, actual or bona fide potential acquirers, investors or other sources of funding (and their respective advisors and attorneys) for due diligence purposes.

5. CUSTOMER MATERIALS AND DATA.

5.1 Ownership. Gisual acknowledges that, as between Customer and Gisual and except as set forth in Section 5.2, Customer owns and retains all right, title and interest in and to all Customer Materials and Customer Data.

5.2 License. Notwithstanding anything in this Agreement to the contrary, Customer hereby grants to Gisual (a) a non-exclusive, worldwide, royalty-free right and license to use, host, reproduce, display and perform publicly, and modify the Customer Materials solely for the purpose of hosting, operating, improving and providing the Subscription Services, and (b) a non-exclusive, worldwide, royalty-free, perpetual, irrevocable right and license to use, host, reproduce, display and perform publicly, and modify the use, copy, modify, distribute and display the Customer Data (i) for purposes of providing the Subscription Services to Customer in accordance with this Agreement and as otherwise expressly authorized by this Agreement, and (ii) for related internal operations and functions such as operational analytics and reporting, internal financial reporting and analysis, audit functions, archival, and other internal business purposes.

5.3 Data Security. Each Party will use commercially reasonable efforts and take no less than industry standard precautions to store, collect, transmit, handle and receive all data received from the other Party in connection with this Agreement, and will cooperate with one another in good faith with respect to any issue, inquiry or incident involving the security of such data to



the extent necessary to comply with applicable laws, rules and regulations including, without limitation, all applicable data protection and privacy laws.

5.4 Authority. Customer represents and warrants that (a) it has obtained and will obtain and continue to have, during the Term, all necessary rights, authority and licenses for the access to and use of the Customer Materials and Customer Data (including any personal data provided or otherwise collected pursuant to Customer's privacy policy) as contemplated by this Agreement and (b) Gisual's use of the Customer Materials and Customer Data in accordance with this Agreement will not violate any applicable laws or regulations or cause a breach of any agreement or obligations between Customer and any third party.

5.5 Performance Data. In addition, Customer acknowledges and agrees that Gisual may monitor and gather data and information related to Customer's use of the Subscription Services, including, for example, data regarding memory usage, connection speed and efficiency ("Performance Data"). Customer acknowledges and agrees that such Performance Data and information is considered Gisual Data and is not considered Confidential Information of Customer.

6. REPRESENTATIONS AND WARRANTIES.

6.1 Mutual Warranties. Each Party hereby represents and warrants to the other Party that: (i) it is duly organized, validly existing and in good standing under its jurisdiction of organization and has the right to enter into this Agreement and (ii) the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby are within the corporate powers of such Party and have been duly authorized by all necessary corporate action on the part of such Party, and constitute a valid and binding agreement of such Party.

6.2 Disclaimer. EXCEPT AS EXPRESSLY SET FORTH HEREIN, THE SUBSCRIPTION SERVICES AND OTHER GISUAL IP ARE PROVIDED ON AN "AS IS" BASIS, AND GISUAL MAKES NO WARRANTIES OR REPRESENTATIONS TO CUSTOMER, ITS AUTHORIZED USERS OR TO ANY OTHER PARTY REGARDING THE GISUAL IP, THE SUBSCRIPTION SERVICES OR ANY OTHER SERVICES OR MATERIALS PROVIDED HEREUNDER. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, GISUAL HEREBY DISCLAIMS ALL WARRANTIES AND REPRESENTATIONS, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE. WITHOUT LIMITING THE FOREGOING, GISUAL HEREBY DISCLAIMS ANY WARRANTY THAT USE OF THE SUBSCRIPTION SERVICES WILL BE ERROR-FREE, BUG-FREE OR UNINTERRUPTED.

THE GISUAL SERVICES MAY ALLOW ACCESS TO DATA, INFORMATION, OR SERVICES DISSEMINATED BY OUTSIDE DATA SOURCES AND IF CUSTOMER IS

ACCESSING THIRD PARTY DATA, INCLUDING PUBLIC DATA, CUSTOMER ACKNOWLEDGES THAT GISUAL AND ITS SUPPLIERS AND LICENSORS DISCLAIM RESPONSIBILITY FOR THE USE, CONTENT, ACCURACY, TIMELINESS, COMPLETENESS OR AVAILABILITY OF SUCH DATA AND MAKE NO WARRANTY CONCERNING SUCH DATA. CUSTOMER USES SUCH THIRD PARTY DATA AND PUBLIC DATA, INFORMATION (INCLUDING CUSTOMER DATA) AT CUSTOMER'S OWN RISK. GISUAL CANNOT ASSURE CUSTOMER THAT THE THIRD PARTY DATA OR PUBLIC DATA PROVIDED BY OTHER SOURCES IS ACCURATE OR COMPLETE. CUSTOMER ACKNOWLEDGES THAT GISUAL SHALL HAVE NO LIABILITY TO CUSTOMER OR ANY OTHER PERSON OR ENTITY, INCLUDING LIABILITY FOR ANY DAMAGES, LOSSES, LIABILITIES, COSTS OR EXPENSES, FOR ANY INACCURACIES, MISCALCULATIONS, MISSTATEMENTS OR OTHER ERRORS CONTAINED IN THE GISUAL DATA. CUSTOMER SHOULD CAREFULLY REVIEW AND INDEPENDENTLY VERIFY THE GISUAL DATA BEFORE RELYING ON IT IN ANY WAY AND FOR ANY PURPOSE. THE SUBSCRIPTION SERVICES DO NOT REPLACE CUSTOMER'S OBLIGATION TO EXERCISE ITS INDEPENDENT JUDGMENT IN REVIEWING OR ANALYZING DATA.

7. INDEMNIFICATION.

7.1 Gisual Indemnification. Subject to Section 7.2, Gisual will defend Customer against any claim, suit or proceeding brought by a third party ("Claims") alleging that Customer's authorized access or use of the Subscription Services infringes or misappropriates such third party's Intellectual Property Rights, and will indemnify and hold harmless Customer against any damages and costs awarded against Customer or agreed in settlement by Gisual (including reasonable attorneys' fees) resulting from such Claim.

7.2 Exclusions. Gisual's obligations under Section 7.1 will not apply if the underlying third-party Claim arises from or as a result of: (i) Customer's breach of this Agreement, negligence, willful misconduct or fraud; (ii) any Customer Materials or Customer Data; (iii) Customer's failure to use any enhancements, modifications, or updates to the Subscription Services that have been provided by Gisual; (iv) modifications to the Subscription Services by anyone other than Gisual; or (v) combinations of the Subscription Services with software, data or materials not provided by Gisual.

7.3 IP Remedies. If Gisual reasonably believes the Subscription Services (or any component thereof) could infringe any third party's Intellectual Property Rights, Gisual may, at its sole option and expense use commercially reasonable efforts to: (i) modify or replace the Subscription Services, or any component or part thereof, to make it non-infringing; or (ii) procure the right for Customer to continue using the Subscription Services. If Gisual determines that neither alternative is commercially practicable, Gisual may terminate this Agreement, in its entirety or with respect to the affected component, by providing written notice to Customer. In the event of any such termination, Gisual will refund to Customer a pro-rata portion of the Fees that have been paid for the



unexpired portion. The rights and remedies set forth in this Section 7 will constitute Customer's sole and exclusive remedy for any infringement or misappropriation of Intellectual Property Rights in connection with the Subscription Services.

7.4 Customer Indemnification. Subject to Section 7.5, Customer will defend Gisual against Claims arising from (i) any Customer Materials, including, without limitation, (A) any Claim that the Customer Materials infringe, misappropriate or otherwise violate any third party's Intellectual Property Rights or privacy or other rights; or (B) any Claim that the use, provision, transmission, display or storage of Customer Materials violates any applicable law, rule or regulation; (ii) any of Customer's products or services; and (iii) access or use of the Subscription Services by Customer or its Authorized Users in a manner that is not in accordance with this Agreement, including, without limitation, any breach of the license restrictions in Section 2.2, and in each case, will indemnify and hold harmless Gisual against any damages and costs awarded against Gisual or agreed in settlement by Customer (including reasonable attorneys' fees) resulting from such Claim.

7.5 Indemnification Procedures. The Party seeking defense and indemnity (the "**Indemnified Party**") will promptly notify the other Party (the "**Indemnifying Party**") of the Claim for which indemnity is being sought and will reasonably cooperate with the Indemnifying Party in the defense and/or settlement thereof. The Indemnifying Party will have the sole right to conduct the defense of any Claim for which the Indemnifying Party is responsible hereunder (*provided* that the Indemnifying Party may not settle any Claim without the Indemnified Party's prior written approval unless the settlement is for a monetary amount, unconditionally releases the Indemnified Party from all liability without prejudice, does not require any admission by the Indemnified Party, and does not place restrictions upon the Indemnified Party's business, products or services). The Indemnified Party may participate in the defense or settlement of any such Claim at its own expense and with its own choice of counsel or, if the Indemnifying Party refuses to fulfill its obligation of defense, the Indemnified Party may defend itself and seek reimbursement from the Indemnifying Party.

8. LIMITATIONS OF LIABILITY.

8.1 Exclusion of Damages. EXCEPT FOR: (I) ANY INFRINGEMENT BY ONE PARTY OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS, (II) FRAUD OR WILFUL MISCONDUCT BY EITHER PARTY, OR (III) BREACH OF CUSTOMER'S PAYMENT OBLIGATIONS, NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR ANY INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES, OR ANY LOSS OF INCOME, DATA, PROFITS, REVENUE OR BUSINESS INTERRUPTION, OR THE COST OF COVER OR SUBSTITUTE SERVICES OR OTHER ECONOMIC LOSS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, THE GISUAL IP OR THE PROVISION OF THE SUBSCRIPTION SERVICES, WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED ON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, AND

WHETHER OR NOT SUCH PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE.

8.2 Total Liability. IN NO EVENT WILL GISUAL'S TOTAL LIABILITY TO CUSTOMER OR ITS AUTHORIZED USERS IN CONNECTION WITH THIS AGREEMENT, THE GISUAL IP OR THE PROVISION OF THE SUBSCRIPTION SERVICES EXCEED THE FEES ACTUALLY PAID BY CUSTOMER TO GISUAL IN THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM, REGARDLESS OF THE LEGAL OR EQUITABLE THEORY ON WHICH THE CLAIM OR LIABILITY IS BASED, AND WHETHER OR NOT GISUAL WAS ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE.

8.3 Basis of the Bargain. THE PARTIES HEREBY ACKNOWLEDGE AND AGREE THAT THE LIMITATIONS OF LIABILITY IN THIS SECTION 8 ARE AN ESSENTIAL PART OF THE BASIS OF THE BARGAIN BETWEEN GISUAL AND CUSTOMER, AND WILL APPLY EVEN IF THE REMEDIES AVAILABLE HEREUNDER ARE FOUND TO FAIL THEIR ESSENTIAL PURPOSE.

9. TERM AND TERMINATION.

9.1 Term. The Term of this Agreement begins on the Effective Date and will continue until the expiration or termination of all Order Forms.

9.2 Termination. Either Party may terminate this Agreement or any Order Form, if the other Party materially breaches this Agreement, and such breach remains uncured fifteen (15) days after the non-breaching Party provides the breaching Party with written notice of such breach.

9.3 Survival. This Section 9.3 and Sections 1, 2.2, 2.5, 2.7, 2.9, 3, 4, 5.1, 5.2(b), 6.2, 7, 8, 9.4, 10 survive any termination or expiration of this Agreement.

9.4 Effect of Termination. Upon expiration or termination of this Agreement: (a) the rights granted pursuant to Section 2.1 will terminate; and (b) Customer will return or destroy, at Gisual's sole option, all Gisual Confidential Information in its possession or control, including permanent removal of such Gisual Confidential Information (consistent with customary industry practice for data destruction) from any storage devices or other hosting environments that are in Customer's possession or under Customer's control, and at Gisual's request, certify in writing to Gisual that the Gisual Confidential Information has been returned, destroyed or, in the case of electronic communications, deleted. No expiration or termination will affect Customer's obligation to pay all Fees that may have become due or otherwise accrued through the effective date of expiration or termination or entitle Customer to any refund.

10. GENERAL.

10.1 Entire Agreement. This Agreement, including its Order Forms and exhibits, is the complete and exclusive agreement between the Parties with respect to its subject matter and supersedes any and all prior or contemporaneous agreements,



communications and understandings, both written and oral, with respect to its subject matter. This Agreement may be amended or modified only by a written document executed by duly authorized representatives of the Parties.

10.2 Notices. All notices required or permitted under this Agreement will be in writing, will reference this Agreement, and will be sent to the address or email address set forth in the Order Form attached above or to such other address as may be specified by the relevant Party to the other Party in accordance with this Section 10.2. Such notices will be deemed given: (a) when delivered personally; (b) one (1) business day after deposit with a nationally recognized express courier, with written confirmation of receipt; (c) three (3) business days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (iv) when sent by email, on the date the email was sent without a bounce back message if sent during normal business hours of the receiving party, and on the next business day if sent after normal business hours of the receiving party.

10.3 Waiver. Either Party's failure to enforce any provision of this Agreement will not constitute a waiver of future enforcement of that or any other provision. No waiver of any provision of this Agreement will be effective unless it is in writing and signed by the Party granting the waiver.

10.4 Severability. If any provision of this Agreement is held invalid, illegal or unenforceable, that provision will be enforced to the maximum extent permitted by law, given the fundamental intentions of the Parties, and the remaining provisions of this Agreement will remain in full force and effect.

10.5 Governing Law; Jurisdiction. This Agreement will be governed by and construed in accordance with the laws of the State of New York without giving effect to any principles of conflict of laws that would lead to the application of the laws of another jurisdiction. The Parties expressly agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply. Any legal action or proceeding arising under this Agreement will be brought exclusively in the federal or state courts located in New York, New York and the Parties irrevocably consent to the personal jurisdiction and venue therein.

10.6 Assignment. Customer will not assign or transfer this Agreement, by operation of law or otherwise, without Gisual's prior written consent. Any attempt to assign or transfer this Agreement without such consent will be void. Gisual may assign or transfer this Agreement without Customer's consent to any third party. Subject to the foregoing, this Agreement is binding upon and will inure to the benefit of each of the Parties and their respective successors and permitted assigns.

10.7 Equitable Relief. Each Party agrees that a breach or threatened breach by such Party of any of its obligations under Section 4 or, in the case of Customer, Section 2.2, would cause the other Party irreparable harm and significant damages for which there may be no adequate remedy under law and that, in the event of such breach or threatened breach, the other Party will have the right to seek immediate equitable relief, including a

restraining order, an injunction, specific performance and any other relief that may be available from any court, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity or otherwise.

10.8 Force Majeure. Neither Party will be responsible for any failure or delay in the performance of its obligations under this Agreement (except for any payment obligations) due to causes beyond its reasonable control, which may include, without limitation, labor disputes, strikes, lockouts, shortages of or inability to obtain energy, raw materials or supplies, denial of service or other malicious attacks, telecommunications failure or degradation, pandemics (including but not limited to SARS-CoV-2 (COVID-19) or any mutation thereof), epidemics, public health emergencies, governmental orders and acts (including government-imposed travel restrictions and quarantines), material changes in law, war, terrorism, riot, or acts of God.

10.9 Publicity. Subject to the provisions of Section 4, each Party will have the right to publicly announce the existence of the business relationship between the Parties. In addition, during the Term, Gisual may use Customer's name, trademarks, and logos (collectively, "**Customer's Marks**") on Gisual's website and in its marketing materials to identify Customer as Gisual's customer, and for the purpose of providing the Subscription Services and any Professional Services to Customer, provided that Gisual will use commercially reasonable efforts to adhere to the usage guidelines furnished by Customer with respect to Customer's Marks.

10.10 Subcontracting. Gisual may use subcontractors, and other third-party providers ("**Subcontractors**") in connection with the performance of its own obligations hereunder as it deems appropriate; *provided* that the Gisual remains responsible for the performance of each such Subcontractor. Notwithstanding anything to the contrary in this Agreement, with respect to any third-party vendors including any hosting (e.g. AWS) or payment vendors (e.g. PayPal), Gisual will use commercially reasonable efforts to guard against any damages or issues arising in connection with such vendors, but will not be liable for the acts or omissions of such third-party vendors except to the extent that it has been finally adjudicated that such damages or issues are caused directly from the gross negligence or willful misconduct of Gisual.

10.11 Export Regulation. Customer will comply with all applicable federal laws, regulations and rules that prohibit or restrict the export or re-export of the Subscription Services or software, or any Customer Materials, outside the United States ("**Export Rules**"), and will complete all undertakings required by Export Rules, including obtaining any necessary export license or other governmental approval.

10.12 U.S. Government End Users. The Subscription Services and API are "commercial computer software", as the term is used in FAR 12.212 and other relevant government **procurement** regulations. Any use, duplication, or disclosure of



the software by or on behalf of the U.S. government is subject to restrictions as set forth in this Agreement.

10.13 Relationship of the Parties. The relationship between the Parties is that of independent contractors. Nothing in this Agreement will be construed to establish **any** partnership, joint venture or agency relationship between the Parties. Neither Party will have the power or authority to bind the other or incur any obligations on the other's behalf without the other Party's prior written consent.

AGREED AS OF the Order Form Effective Date.

Gisual Inc.:

By: _____

Name: _____

Title: _____

Date: _____

10.14 No Third-Party Beneficiaries. No provision of this Agreement is intended to confer any rights, benefits, **remedies**, obligations, or liabilities hereunder upon any Person other than the Parties and their respective successors and assigns.

10.15 Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement.

[Customer Name]:

By: _____

Name: _____

Title: _____

Date: _____