

(Last Revised: 7 January 2021)

These Standard End User Terms of Use (“**Terms of Use**”) (as may be amended and modified from time to time) is the legal agreement between the Customer (either on behalf of yourself as an individual or on behalf of an entity as its authorised representative) and ViSenze Inc. and its Affiliates (collectively referred to as “**ViSenze**”) through the AWS Marketplace.

By choosing to access and use any ViSenze Service provided by ViSenze, an AWS Account Holder (the “**Customer**”):

- (a) acknowledges having had the opportunity to read and review these Terms of Use, accepts them and agrees to be bound by these Terms of Use; and
- (b) represents and warrants to ViSenze that:
  - (i) the Customer meets, and will at all times with comply with, all of the terms, conditions and requirements set out in these Terms of Use;
  - (ii) in entering into these Terms of Use, the Customer is NOT relying on any extrinsic representation, warranty, guarantee, covenant, promise, forbearance or inducement of any kind or nature that is or was made by any person that is not specifically set out in these Terms of Use; and
  - (iii) in the case of a representative of the Customer that is a legal person, that such representative is acting on behalf of the Customer and is authorised to, and possesses the authority to accept, agree and bind the Customer to these Terms of Use and does do so; and
- (c) agrees that written approval is not a prerequisite to the validity or enforceability of these Terms of Use and that no solicitation of any written approval shall be construed as inferring to the contrary.

If the Customer does not accept and agree to these Terms of Use, neither the Customer nor any Customer’s Personnel may access or use the ViSenze Service. The Customer must immediately notify AWS that the Customer does not agree to these Terms of Use and will not be accessing or using the ViSenze Service.

## 1. INTERPRETATION

### 1.1 Definitions

In this Agreement, the following terms have either the following stated meaning (including by being set out in the relevant Order Form):

<b>Applicable Law</b>	means: <ul style="list-style-type: none"><li>(a) all applicable laws, statutes and regulations and</li><li>(b) all applicable orders, judgments, decisions, recommendations, rules, policies or guidelines passed or issued by any regulatory authority or any competent court,</li></ul> to the extent applicable to either of the Parties, as the same may be amended and in effect from time to time, including, without limitation, any data protection, security and/or privacy-related laws and regulations.
<b>this Agreement</b>	means these Terms of Use, any Order Form or relevant document constituting the agreement for ViSenze Service between the Customer and ViSenze.
<b>Confidential Information</b>	the terms of this Agreement and any information that: <ul style="list-style-type: none"><li>● is not public knowledge and/or</li><li>● the Receiving Party knew, or ought to have known from the surrounding circumstances and context, should be treated as Confidential Information, and that is obtained from the Disclosing Party in the course of, or in connection with, this Agreement and Intellectual Property owned by the Disclosing Party but does not include:<ul style="list-style-type: none"><li>● information already known to the Receiving Party without an obligation of confidentiality</li><li>● information that is or becomes publicly known other than through a breach of the Receiving Party’s confidentiality obligation under this Agreement or</li><li>● information that is independently developed by the Receiving Party.</li></ul></li></ul>
<b>Content</b>	means the Query Images and/or, as the case requires, the Reference Images
<b>Defaulting Party</b>	has the meaning set out in clause 9.2

<b>Disclosing Party</b>	has the meaning set out in clause 9.3(c)
<b>Effective Date</b>	means in connection with a ViSenze Service, the Effective Date for that ViSenze Service specified in the Order Form for that ViSenze Service.
<b>End User</b>	either an External End User or, as the case requires, an Internal End User.
<b>Enterprise Dashboard</b>	means an online portal made available by ViSenze to the Customer that may be accessed by Nominated Users.
<b>External End User</b>	means an individual who chooses to access the ViSenze Service via a Customer website and/or mobile app made available by the Customer in accordance with terms and conditions between the Customer and each such individual (for example, where the ViSenze Service is or includes returning visual matches to a Query Image as requested by the individual).
<b>Feedback</b>	has the meaning set out in clause 10.2.
<b>Force Majeure</b>	an event that is beyond the reasonable control of a Party, including interruptions in Internet services to an area where a Party's servers are located or co-located and excluding an event to the extent that it could have been avoided by a Party taking reasonable steps or reasonable care.
<b>Indemnified Party</b>	has the meaning set out in clause 13.1.
<b>Indemnifying Party</b>	has the meaning set out in clause 13.1.
<b>Intellectual Property Rights</b>	includes copyright and all worldwide rights conferred under statute, common law or equity relating to inventions (including patents), registered and unregistered trademarks and designs, circuit layouts, data and databases, confidential information, know-how and all other rights resulting from intellectual activity. <b>Intellectual Property</b> has a consistent meaning and includes any enhancement, modification or derivative work of the Intellectual Property.
<b>Internal End Users</b>	means Customer Personnel who: <ul style="list-style-type: none"><li>(a) access the ViSenze Service via the ViSenze API to enable the Customer to use the ViSenze Service (for example, where the ViSenze Service is or includes ViSenze annotating or tagging the Customer's Reference Images) or</li><li>(b) act as if they are an External End User in order to carry out testing or other administrative, technical or troubleshooting actions on behalf of the Customer (for example, by sending a Query Image to ViSenze to test that a Customer website or app is working correctly).</li></ul>
<b>IP Claim</b>	has the meaning set out in clause 10.5.
<b>Notifying Party</b>	has the meaning set out in clause 9.2.
<b>Nominated Users</b>	means Customer Personnel who have been nominated by the Customer to use the Enterprise Dashboard (if any) provided by ViSenze to the Customer.
<b>Objectionable</b>	includes being offensive, indecent, objectionable, defamatory, obscene, harassing, threatening or unlawful in any way.
<b>Personal Data</b>	means any information relating to an identified or identifiable natural person ( <b>Data Subject</b> ); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.
<b>Personnel</b>	means and includes in relation to a Party, the officers, employees, contractors and agents of that Party
<b>Platform Status Dashboard</b>	means a dashboard available at <a href="https://status.visenze.com">https://status.visenze.com</a> and updated in real-time, which shows any problems or errors with the ViSenze API or the

ViSenze Service that affects their availability or the functionality of the ViSenze API and/or the ViSenze services provided to its customers.

<b>Query Image</b>	means an image or other electronic file sent by an External End User either, depending on the way the Parties decide to implement the ViSenze Service for External End Users: (a) directly by the External End User to ViSenze when the External End User uses the ViSenze Service or (b) as the case requires, indirectly (that is, via the Customer) to ViSenze when the External End User uses the ViSenze Service, or an image or other electronic file sent by an Internal End User for the purpose of testing or other administrative, technical or troubleshooting actions on behalf of the Customer.
<b>Receiving Party</b>	has the meaning set out in clause 9.3(c).
<b>Reference Image</b>	means an image or other electronic file, usually from one or more of the Customer's current image libraries, uploaded by Customer Personnel as contemplated by clause 7.1.
<b>Specifications</b>	means: (a) the specification for the ViSenze API available on ViSenze's website and (b) ViSenze's published claims of specifications for the ViSenze Service
<b>Term</b>	for the provision by ViSenze to the Customer of a ViSenze Service, the period commencing on the Effective Date in the Order Form for that ViSenze Service and lasting for the Duration in such Order Form, subject to any renewal on the Renewal Date in such Order Form, unless this Agreement is terminated in accordance with these Terms of Use.
<b>ViSenze API</b>	the interface provided by ViSenze to enable the Customer and End Users to access and use the ViSenze Services, including all other ViSenze Software and other applications forming part of the interface
<b>ViSenze Service</b>	the Service or Services indicated in the relevant Order Form.
<b>ViSenze Software</b>	the software owned by ViSenze (and its licensors) that is used to provide the ViSenze API and/or the ViSenze Services.
<b>ViSenze Underlying Systems</b>	the ViSenze Software, IT solutions, systems and networks (including software and hardware) used to provide the ViSenze Service, including any third party solutions, systems and networks.
<b>ViSenze Affiliates</b>	has the meaning set out in clause 7.4
<b>ViSenze Brands</b>	means the ViSenze logo as of the Effective Date in the relevant Order Form and any other ViSenze branding in addition to the ViSenze logo, or in replacement of the ViSenze logo, as notified to the Customer by ViSenze at any time and from time to time.

## 1.2 Interpretation

- (a) clause and other headings are for ease of reference only and do not affect the interpretation of this Agreement
- (b) words in the singular include the plural and vice versa
- (c) a reference to:
  - (i) a **Party** to this Agreement includes that Party's permitted assigns
  - (ii) an **Order Form** is a reference to the Order Form issued to the Customer for the relevant ViSenze Service
  - (iii) a **person** includes an individual, a body corporate, an association of persons (whether corporate or not), a trust, a government department or any other entity
  - (iv) **including** and similar words do not imply any limit and

- (v) a statute includes references to regulations, orders or notices made under or in connection with the statute or regulations and all amendments, replacements or other changes to any of them
- (d) no term of this Agreement is to be construed against a Party because the term was first proposed or drafted by that Party and
- (e) if there is any conflict between these Terms of Use and Order Form or document between the Customer and ViSENZE, these Terms of Use prevails unless expressly stated otherwise in such Order Form or document.

## 2. GRANT OF RIGHT

### 2.1 Grant of right to use the ViSENZE Service

ViSENZE grants the Customer a worldwide, limited, non-exclusive, revocable, non-transferable, non-sub-licensable right to use the ViSENZE API and the ViSENZE Service on the terms, and subject to the conditions, set out in this Agreement.

### 2.2 Non-exclusive

The provision of the ViSENZE API and the ViSENZE Service to the Customer is non-exclusive. Nothing in this Agreement prevents ViSENZE from providing the ViSENZE API and/or the ViSENZE Service to any other person on such terms, and subject to such conditions, as ViSENZE thinks fit in its sole discretion.

### 2.3 Provision of the ViSENZE API

Upon execution of this Agreement, ViSENZE will provide the ViSENZE API to the Customer with all documentation, instructions and information to enable the Customer to use the ViSENZE API to make the Content and the ViSENZE Service available to End Users. Before doing so, ViSENZE will test the ViSENZE API to ensure that the ViSENZE Service operates without error and in accordance with the Specifications. If and to the extent that the ViSENZE Service fails to satisfy such requirements, ViSENZE will amend the ViSENZE API promptly and at no cost to the Customer so that the ViSENZE Service does satisfy them.

## 3. TESTING AND OTHER SUPPORT

### 3.1 Support for the ViSENZE API

ViSENZE will provide all commercially reasonable assistance, support, information and access to ViSENZE Personnel requested by the Customer in connection with the Customer's efforts to use the ViSENZE API to make the ViSENZE Service and/or Content available to End Users.

The Parties shall jointly conduct testing based on criteria agreed between the Parties and designed to ensure that the Content and the ViSENZE Service comply with the Specifications and that the ViSENZE Service is able to be provided successfully to End Users.

### 3.2 ViSENZE's testing obligations

If either Party considers that the criteria agreed in accordance with clause 3.1 have not been met after testing, that Party must provide the other Party with all relevant information as to the non-compliance.

In any such event, the Parties must collaborate and co-operate and, acting commercially reasonably and in good faith, work together to identify the issues causing non-compliance and to agree on how to resolve them, including the extent of any remedial work to be carried out by each of the Parties.

### 3.3 Maintenance support

ViSENZE is responsible for support and maintenance of the ViSENZE API and the ViSENZE Service, including provision of new versions of, and updates to, the ViSENZE API and the ViSENZE Service to improve their respective capabilities.

ViSENZE will inform the Customer via the Platform Status Dashboard upon becoming aware of any problems or errors with the ViSENZE API or the ViSENZE Service that affects their availability or the functionality of the ViSENZE

API and/or the ViSenze Service provided to the Customer for use by External End Users and/or, as the case requires, Internal End Users.

### 3.4 **Availability**

ViSenze will use reasonable efforts to ensure that the ViSenze API and the ViSenze Service are available on a 24/7 basis. However, it is possible that on occasion the ViSenze Service may be unavailable to permit maintenance or other development activity to take place or in the event of Force Majeure.

## 4. **BRANDING**

- (a) The Customer grants to ViSenze permission to use its company name and logo on the ViSenze website and in any ViSenze-issued marketing or other promotional materials.
- (b) The Customer may use the ViSenze Brands – for example, 'Powered by ViSenze' whenever it promotes the ViSenze Service.

## 5. **REPRESENTATIONS AND WARRANTIES**

### 5.1 **Mutual corporate representations and warranties**

Each Party represents and warrants that:

- (a) it is duly incorporated and validly existing under the laws of its country of incorporation
- (b) it has full power and authority to enter into and perform its obligations under this Agreement which, when signed, will constitute binding obligations on that warranting Party
- (c) this Agreement is enforceable against that Party in accordance with its terms and that all corporate and governmental approvals, consents, licences and permits required for that Party to validly enter into and perform its obligations under this Agreement have been obtained and
- (d) in entering into and performing this Agreement it will comply with Applicable Laws, regulations and directives applicable to it and will not cause the other Party to fail to comply with Applicable laws

### 5.2 **Other representations and warranties**

- (a) ViSenze represents and warrants to the Customer that the use of the ViSenze API and the ViSenze Service in accordance with this Agreement will not infringe the rights of any third parties, including any Intellectual Property Rights.
- (b) The Customer represents and warrants to ViSenze that it will not use the ViSenze API and/or the ViSenze Service for any illegal, unethical or abusive purposes or to develop or create a similar or competitive product or service to the ViSenze API and/or the ViSenze Service and that it will be responsible for use of the ViSenze Service by its External End Users and/or, as the case requires, its Internal End Users.

### 5.3 **Survival**

This clause 5 shall survive the expiration or earlier termination of this Agreement.

## 6. **INVOICING AND PAYMENT**

### 6.1 **Generally**

Pricing, invoicing and payment shall be in accordance with the relevant Order Form.

### 6.2 **Payment and remedies for late payment**

- (a) The Customer shall pay ViSenze in full within the period stated in the relevant Order Form, such period commencing on the date of issuance of ViSenze's invoice to the Customer (the '**Due Date**').

- (b) If any sum payable under this Agreement is not paid by the Due Date then (without prejudice to ViSenze's other rights and remedies) ViSenze reserves the right to suspend any or all of the ViSenze Services and to charge interest on the overdue sum from the Due Date to the date of actual payment (both before and after any judgment) at the lesser rate of 1.5% percent per month or the maximum rate permitted by law. In addition, the Customer shall be liable for any and all costs incurred by ViSenze in collection of any overdue amounts and accrued interest, including attorney's fees and court costs, which the Customer shall pay to ViSenze upon demand.
- (c) If for any reason any amount becomes owing to Customer by ViSenze, ViSenze shall be entitled to set off such amount against any obligations of the Customer under this Agreement that are not satisfied on or before their Due Date.

### **6.3 Taxes and charges**

- (a) All amounts invoiced to the Customer by ViSenze under this Agreement are exclusive of value added, sales, use, excise, import and any other applicable tax, duties or other charges (including, without limitation, bank charges incurred by the Customer when making payment to ViSenze), which the Customer shall be additionally liable to pay at the prevailing rate and in the manner prescribed by law (where applicable), except for taxes based on ViSenze's net income.
- (b) All payments the Customer makes to ViSenze under this Agreement shall be made without any withholding or deduction of any withholding tax or other tax or mandatory payment to government agencies. If the Customer's country of residence requires the Customer to withhold any taxes on payments made to ViSenze under this Agreement, the sum payable by the Customer upon which such withholding or deduction is based shall be increased to the extent necessary to ensure that, after such withholding or deduction, ViSenze receives and retains, free from liability for such withholding or deduction, a net amount equal to the amount ViSenze would have received and retained in the absence of such required withholding or deduction. The Parties shall cooperate with one another in any contest, legal or administrative proceeding related to the validity, payment or amount of any withholding tax.

## **7. REFERENCE IMAGES AND QUERY IMAGES**

### **7.1 Provision and use of Reference Images**

Whenever the use of a ViSenze Services requires the use of Reference Images, then in order for ViSenze to provide that ViSenze Service, the Customer may at any time and from time to time upload Reference Images by authorising Customer Personnel to upload images from the Customer's image library:

- (a) if, for the purpose of providing the relevant ViSenze Service the Customer is provided with an Enterprise Dashboard, via that Enterprise Dashboard (for example, where the relevant ViSenze Service is or includes returning visual matches to a Query Image) or
- (b) otherwise via a method agreed between ViSenze and the Customer for the purpose of the relevant ViSenze Service (for example, where the relevant ViSenze Service is or includes providing image annotation or product tagging of or in relation to the Customer's Reference Images).

ViSenze shall index such Reference Images for the purpose of providing the ViSenze Service for the Customer as set out in this Agreement.

### **7.2 Responsibility for Query Images**

- (a) In connection with the use of some ViSenze Services the Customer may allow for External End Users to upload Query Images. In any such case, as between ViSenze and the Customer, the Customer agrees to ensure the lawfulness, accuracy, integrity and quality of all Query Images transmitted to ViSenze by an External End User in the course of using the ViSenze Service. The Customer agrees with ViSenze to do so by including appropriate terms in its contract with External End Users under which it provides the relevant ViSenze Service to them.
- (b) In connection with the use of some ViSenze Services the Customer may allow for Internal End Users to upload Query Images for the purpose of testing or other administrative, technical or troubleshooting actions on behalf of the Customer. In any such case, the Customer agrees to ensure the lawfulness, accuracy, integrity and quality of all such query Images as such manner as the Customer sees fit.

**7.3 Ownership and use of Reference Images and Query Images**

As between ViSenze and the Customer, ViSenze does not claim ownership over any Reference Images or any Query Images. However, the Customer grants permission for ViSenze to use the Reference Images and, where relevant, the Query Images:

- (a) for the purpose of providing the ViSenze Service for the Customer as set out in this Agreement and
- (b) for the essential task of developing, supporting, enhancing and continuously training the machines and/or algorithms in an aggregated form.

**7.4 No responsibility for Content**

Under no circumstances will ViSenze or its officers, agents, employees, licensors, users, suppliers, holding companies, subsidiaries, affiliates or related companies (collectively, the '**ViSenze Affiliates**') be liable to the Customer in any way for any Content, including any exposure to Content that is Objectionable, any errors or omissions in any Content or any loss or damage of any kind suffered by the Customer as a result of the receipt, storage or processing or use of any Content in connection with any use of the ViSenze Service by an End User.

**7.5 Prohibited use of the ViSenze Service by End Users**

The Customer agrees:

- (a) by including appropriate terms in its contract with External End Users under which it provides the ViSenze Service to them, to ensure that External End Users do not use the ViSenze Service in any one or more or all of the ways described in clause 7.6 and
- (b) by implementing such internal policies, rules or other mechanisms as it considers reasonably necessary, to ensure that Internal End Users do not themselves use the ViSenze Service or cause the Customer to use the ViSenze Service in any one or more or all of the ways described in clause 7.6.

**7.6 Prohibited use of the ViSenze Service**

The Customer agrees not to use the ViSenze Services and to ensure that End Users do not use the ViSenze Service to:

- (a) upload or otherwise transmit any Reference Images (in the case of Internal End Users) or Query Images (in the case of both External End Users and Internal End Users) containing content that is unlawful under the Applicable Laws, Objectionable or otherwise harmful or contrary to public interest, public order or national harmony in all relevant jurisdictions
- (b) harm minors in any way
- (c) upload or otherwise transmit any Reference Image (in the case of Internal End Users) or Query Image (in the case of both External End Users and Internal End Users) that the Customer or, as the case may require, the End User does not have a right to make available under the Applicable Laws or under contractual or fiduciary relationships
- (d) upload or otherwise transmit any Reference Image (in the case of Internal End Users) or Query Image (in the case of both External End Users and Internal End Users) that contains content that infringes any patent, trademark, trade secret, copyright or other proprietary rights of any person
- (e) upload or otherwise transmit any Reference Image (in the case of Internal End Users) or Query Image (in the case of both External End Users and Internal End Users) that contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment
- (f) engage in unlawful activity or intentionally or unintentionally violate any Applicable Law, statute, ordinance, regulation, rule or code, including any regulations, rules, notices instructions or directives of any regulatory body or authority, governmental agency or national or other securities exchange of any jurisdiction and/or

- (g) contribute any illegal or unethical or abusive content in any Reference Image (in the case of Internal End Users) or Query Image (in the case of both External End Users and Internal End Users), or use the ViSenze Service for any abusive or illegal activity.

#### 7.7 **Survival**

This clause 7 shall survive the expiration or earlier termination of this Agreement.

### 8. **DATA PROTECTION**

#### 8.1 **Processing restricted to lawful purposes**

Each Party must, and shall ensure its Personnel must, comply with and duly observe all obligations under the Applicable Law, including, without limitation, collecting, using, processing and disclosing Personal Data only to the extent and in such manner:

- (a) as is necessary for the performance of its obligations under this Agreement or as permitted and/or required by Applicable Law and
- (b) in the case of ViSenze, for the essential task of developing, supporting, enhancing and continuously training the machines and/or algorithms in an aggregated form,

and always in compliance with Applicable Law regarding Personal Data.

#### 8.2 **Protection of Personal Data**

Each Party must implement appropriate technical and organisational measures to protect Personal Data against unauthorised or unlawful collection, use, processing or disclosure and against accidental loss, destruction, damage, alteration or disclosure.

### 9. **TERM, TERMINATION AND SUSPENSION**

#### 9.1 **Term**

Unless terminated under this clause 9, this Agreement starts in relation to a ViSenze Service on the Effective Date and may be renewed on the Renewal Date, each as set out in the relevant Order Form.

#### 9.2 **Termination for cause**

- (a) Either Party (the '**Notifying Party**') may:
  - (i) by notice in writing to the other Party (the '**Defaulting Party**'), terminate this Agreement in relation to a ViSenze Service if the Defaulting Party breaches any provision of this Agreement, the breach is capable of being remedied and is not remedied within 10 business days of the receipt of a notice from the Notifying Party requiring the Defaulting Party to remedy the breach
  - (ii) by five business days' notice in writing to the Defaulting Party terminate this Agreement in relation to a ViSenze Service if the Defaulting Party materially breaches any provision of this Agreement and the breach is not capable of being remedied.
- (b) ViSenze may by five business days' notice in writing to the Customer terminate this Agreement in relation to all ViSenze Services provided by ViSenze to the Customer at that time if at any time the Customer undermines, or attempts to undermine, the security or integrity of the ViSenze Service and/or any Underlying Systems and/or uses or attempts to use the ViSenze Service for improper purposes or in a manner, otherwise than for normal operational purposes, that materially reduces the operational performance of the ViSenze Service.
- (c) Either Party (the '**Notifying Party**') may, by notice in writing to the other Party (the '**Defaulting Party**'), immediately terminate this Agreement in relation to a ViSenze Service if the Defaulting Party:
  - (i) breaches any material provision of this Agreement, the breach is not capable of being remedied and the Notifying Party considers that immediate termination is reasonably necessary

- (ii) except in relation to a reorganisation, reconstruction or amalgamation not affecting its creditworthiness, commences any kind of winding up proceedings, becomes insolvent, liquidated or bankrupt, has an administrator, receiver, liquidator, statutory manager, mortgagee's or chargee's agent appointed, becomes subject to any form of insolvency action or external administration, or ceases to continue business for any reason or
- (iii) is unable to perform a material obligation under this Agreement for 30 days or more due to Force Majeure.

### 9.3 **Other consequences of termination or expiration of the Term**

- (a) At the end of the Term, the Customer must immediately stop using ViSenze's Intellectual Property including, without limitation, the ViSenze API.
- (b) Expiration or earlier termination of this Agreement will not affect any rights or obligations that have accrued prior to or upon such expiration or earlier termination or any term of this Agreement that is intended expressly or impliedly to continue to survive expiration or such termination of this Agreement or any term of this Agreement that reasonably requires survival considering the nature of such term.
- (c) Upon the termination of this Agreement the Party that has received Confidential Information (the '**Receiving Party**') must, at the other Party's option (the '**Disclosing Party**') deliver to the Disclosing Party all papers and documents containing any Confidential Information or destroy the relevant Confidential Information and copies of it and certify to the Disclosing Party that this has been done, provided that the Receiving Party is not required to destroy or return Confidential Information to the extent that it has become part of the Receiving Party's business and financial records (for example, part of its accounting records or part of its board papers).

### 9.4 **Survival**

This clause 9 shall survive the expiration or earlier termination of this Agreement.

## 10. **INTELLECTUAL PROPERTY**

### 10.1 **Ownership of the ViSenze API and the ViSenze Service**

Except for Content, all title to, rights and interest in the ViSenze API and the ViSenze Services, including all Intellectual Property Rights, whether registered or not, and any goodwill associated with any such Intellectual Property Rights, are owned by, or licensed to, ViSenze. The Customer must not contest or dispute that ownership.

The Customer agrees and acknowledges that any goodwill or reputation of the ViSenze Services generated by the Customer's rights and/or obligations under this Agreement belong to ViSenze. The Customer shall not be entitled to claim compensation from ViSenze for such enhanced goodwill or reputation.

### 10.2 **Feedback**

If the Customer provides ViSenze with ideas, comments or suggestions relating to any ViSenze Service or to the ViSenze Underlying Systems (together, '**Feedback**');

- (a) all Intellectual Property Rights in that Feedback and anything created as a result of that Feedback (including new material, enhancements, modifications or derivative works) are owned solely by ViSenze and
- (b) ViSenze may use or disclose the Feedback for any purpose.

### 10.3 **No rights granted by the Parties**

Except as expressly set out in this Agreement, ViSenze does not grant the Customer any rights to patents, copyrights, trademarks (whether registered or unregistered), trade names, trade secrets, domain names or any other rights, functions or licences with respect to the ViSenze API and/or the ViSenze Services and/or the ViSenze Underlying Systems.

The Customer may use the ViSenze API and the ViSenze Services, and:

- (a) by including appropriate terms in its contract with External End Users and
- (b) by implementing appropriate internal policies, rules or other mechanisms as it considers reasonably necessary to govern the conduct of Internal End Users,

permit End Users (and the Customer by way of its Internal End Users) to use the ViSenze API and the ViSenze Service only in the manner, and for the purposes, contemplated by this Agreement.

#### **10.4 Rights and obligations regarding Intellectual Property Rights**

- (a) Each of the Parties undertakes and agrees throughout the Term of this Agreement not to do or permit any act that is directly or indirectly likely to prejudice the rights, title or interest in the other Party's Intellectual Property Rights or assist or allow any third party to do so.
- (b) The Customer undertakes and agrees throughout the Term of this Agreement to notify ViSenze in writing of:
  - (i) any actual, threatened or suspected infringement of ViSenze's Intellectual Property Rights and/or
  - (ii) any claim by any third party that a ViSenze Service and/or the ViSenze Underlying Systems infringe any Intellectual Property Rights of any third party.

#### **10.5 Third party intellectual Property Rights**

- (a) ViSenze indemnifies the Customer against any claim or proceeding brought against the Customer to the extent that a claim or proceeding alleges that the Customer's access to and use of the ViSenze API and/or a ViSenze Service or ViSenze Services and/or the ViSenze Underlying Systems in accordance with this Agreement constitutes an infringement of a third party's Intellectual Property Rights ('**IP Claim**'). The indemnity is subject to the Customer:
  - (i) promptly notifying ViSenze in writing of the IP Claim
  - (ii) taking such reasonable action as ViSenze may direct in relation to such alleged infringement
  - (iii) making no admission of liability and not otherwise prejudicing or settling the IP Claim without ViSenze's prior written consent and
  - (iv) giving ViSenze complete authority and information required by ViSenze to conduct and/or settle the negotiations and litigation relating to the IP Claim.

The costs incurred or recovered are for ViSenze's account.

- (b) The indemnity in clause 10.5(a) does not apply to the extent that an IP Claim arises from or in connection with:
  - (i) the Customer's breach of this Agreement or
  - (ii) use of the ViSenze API and/or a ViSenze Service or ViSenze Services and/or the ViSenze Underlying Systems in a manner or for a purpose not reasonably contemplated by this Agreement or otherwise not authorised in writing by ViSenze.
- (c) If at any time an IP Claim is made, or in ViSenze's reasonable opinion is likely to be made, then in defence or settlement of the IP Claim, ViSenze may (at ViSenze's sole discretion):
  - (i) obtain for the Customer the right to continue use the items which are the subject of the IP Claim or
  - (ii) modify, re-perform or replace the items which are the subject of the IP Claim so they become non-infringing.

**10.6 Survival**

This clause 10 shall survive the expiration or earlier termination of this Agreement.

**11. CONFIDENTIALITY****11.1 Security**

Each Party must, unless it has the prior written consent of the other Party:

- (a) keep confidential at all times the Confidential Information provided by the other Party and not use it except in furtherance of the performance of, and the purposes contemplated by, this Agreement
- (b) effect and maintain adequate security measures to safeguard the Confidential Information provided by the other Party from unauthorised access or use and
- (c) disclose the Confidential Information provided by the other Party to its Personnel or professional advisers on a 'need to know' basis only and, in that case, ensure that any Personnel or professional advisor to whom it discloses such Confidential Information is aware of, and complies with, the provisions of clauses 11.1(a) and 11.1(b).

**11.2 Permitted disclosure**

The obligation of confidentiality in clause 11.1(a) does not apply to any disclosure or use of Confidential Information:

- (a) for the purpose or performing this Agreement or exercising a Party's rights under this Agreement
- (b) required by Applicable Law (including under the rules of a stock exchange or a government or statutory body with the authority to regulate or direct either or both of the Parties)
- (c) which is publicly available through no fault of the Party that received the Confidential Information from the other Party
- (d) which was rightfully received by a Party from a third party without restriction and without breach of any obligation of confidentiality of which the receiving Party was aware or should reasonably have been aware or
- (e) if required as part of a *bona fide* sale of the Disclosing Party's business (assets or shares, whether in whole or in part) to a third party, provided that the disclosing Party enters into a confidentiality agreement with the third party on terms no less restrictive than this clause 11.

**11.3 Survival**

This clause 11 shall survive the expiration or earlier termination of this Agreement.

**12. EXCLUSION OF IMPLIED WARRANTIES****12.1 No implied warranties**

To the maximum extent permitted by law:

- (a) warranties given by ViSenze are limited to those set out in this Agreement and all other conditions, guarantees or warranties whether expressed or implied by statute or otherwise (including any warranty under any consumer protection or similar law) are expressly excluded to the extent permitted by law and
- (b) ViSenze makes no representation concerning the quality of the ViSenze Service and does not promise that the ViSenze Service will meet the Customer's requirements or be suitable for a particular purpose or be secure, free of viruses or other harmful code, uninterrupted or error free.

**12.2 Limitation of remedies**

Where legislation or rule of law implies into this Agreement a condition or warranty that cannot be excluded or modified by contract, the condition or warranty is deemed to be included in this Agreement. However, the liability of ViSenze for any breach of that condition or warranty is limited, at the option of ViSenze, to supplying the ViSenze Service again and/or paying the costs of having the ViSenze Service supplied again.

**12.3 Survival**

This clause 12 shall survive the expiration or earlier termination of this Agreement.

**13. INDEMNIFICATION AND LIMITATION OF LIABILITY****13.1 Indemnification**

Each Party (the '**Indemnifying Party**') agrees to fully and effectively indemnify, defend and hold harmless the other Party, its related corporations, their officers, directors and employees (each an '**Indemnified Party**' and, collectively, the '**Indemnified Parties**') against any and all losses, damages, liabilities, claims, demands (including settlement, costs, charges and expenses and/or portions thereof), suffered or incurred by the Indemnified Parties:

- (a) arising directly or indirectly out of or in connection with the performance of the Indemnifying Party's obligations under this Agreement or any breach of this Agreement by the Indemnifying Party's employees, agents or sub-contractors and/or
- (b) arising out of any third party claim in connection with the Indemnifying Party's use of the ViSenze API and/or the ViSenze Service in any way not contemplated by this Agreement.

The Customer hereby agrees to fully and effectively indemnify, defend and hold harmless ViSenze, its related corporations, their officers, directors and employees (each an '**Indemnified Party**' and, collectively, the '**Indemnified Parties**') against any and all losses, damages, liabilities, claims, demands (including settlement, costs, charges and expenses and/or portions thereof), suffered or incurred by the Indemnified Parties arising out of any third party claim in connection with the Customer using the ViSenze Underlying Systems in any way not contemplated by this Agreement.

**13.2 Maximum liability of the Parties**

The maximum aggregate liability of a Party to the other Party under or in connection with this Agreement (including under clause 13.1 of this Agreement) or relating to the ViSenze API and/or the ViSenze Service and/or the ViSenze Underlying Systems, whether in contract, tort (including negligence), breach of statutory duty or otherwise must not exceed an amount equal to the total amount payable by the Customer to ViSenze under the Order Form for the Duration commencing on the Effective Date or, in the case of any renewal of the Term, the total amount payable by the Customer to ViSenze under the Order Form for that renewal Term.

**13.3 Unrecoverable loss**

Neither Party is liable to the other Party under or in connection with this Agreement or the ViSenze API and/or a ViSenze Service or ViSenze Services and/or the ViSenze Underlying Systems for any:

- (a) loss of profit, revenue, savings, business, use, data and/or goodwill or
- (b) consequential, indirect, incidental or special damage or loss of any kind.

**13.4 No liability for other Party's failure**

Neither Party will be responsible, liable or held to be in breach of this Agreement for any failure to perform its obligations under this Agreement or otherwise, to the extent that the failure is caused by the other Party failing to comply with its obligations under this Agreement, or by the negligence or misconduct of the other Party or its Personnel.

**13.5 Mitigation**

Each Party must take reasonable steps to mitigate any loss or damage, cost or expense it may suffer or incur arising out of anything done or not done by the other Party under or in connection with this Agreement.

**14. GOVERNING LAW AND DISPUTE RESOLUTION**

- (a) This Agreement, the ViSenze Service or, as the case may require, the ViSenze Services and any dispute arising out of, or in relation to, the use of the ViSenze Service or, as the case may require, the ViSenze Services, shall be governed by, and construed in accordance with, the laws of Singapore and without giving effect to any conflicts of law principles that would result in the application of the laws of a jurisdiction other than Singapore.
- (b) The Parties hereby submit to the non-exclusive jurisdiction of the Courts of Singapore.
- (c) If any dispute or difference arises between the Parties under or in connection with this Agreement and/or the Parties' respective rights and obligations under this Agreement, the Parties shall before taking any Court action attempt to bring about an amicable settlement through good faith negotiations. Such an attempt is considered to have failed only when a Party, after reasonable attempts that continue for not less than 15 days, gives 15 days' notice of such failure to the other Party.
- (b) Each Party must, to the extent possible, continue to perform its obligations under this Agreement even if there is a dispute.
- (c) This clause 14 does not affect either Party's right to seek urgent interlocutory and/or injunctive relief from the Courts of Singapore.

**15. GENERAL****15.1 Entire agreement**

This Agreement constitutes the entire agreement of the Parties with respect to access to, and use of, the ViSenze Service or ViSenze Services specified in the Order Form by the Customer and End Users and supersedes any and all prior agreements, negotiations and understandings, whether written or oral, about such ViSenze Service or ViSenze Services. No waiver, concession, extension representation, alteration, addition or derogation from this Agreement will be effective between the Parties unless agreed in writing by both Parties.

**15.2 No waiver**

No failure to exercise, nor any delay in exercising, any right or remedy under this Agreement shall operate as a waiver of such right or remedy. No single or partial exercise of any right or remedy prevent shall prevent any further or other exercise of such right or remedy.

**15.3 Severability of provisions**

With one exception, if any provision of this Agreement is held unenforceable, the provision will be severed from the rest of this Agreement, which will remain in force.

The exception arises if the severed provision is reasonably deemed by the Party asserting its validity to be essential to the purposes of this Agreement. In that case, the Parties will negotiate an amendment to this Agreement that realigns their respective benefits and burdens so that they most nearly approximate those originally intended.

**15.4 Relationship of the Parties**

The Customer and ViSenze are independent contractors and no agency, partnership, joint venture, employee-employer or franchiser-franchisee relationship is intended or created by this Agreement.

**15.5 Assignment**

Neither Party may assign this Agreement or any rights and/or obligations under this Agreement without the express prior written consent of the other Party. Any purported assignment, subcontract, transfer or disposition of rights or obligations under this Agreement, or of any part of them, without such express prior written consent shall be void and of no effect.

**15.6 Force Majeure**

Neither Party is liable to the other Party for any failure to perform its obligations under this Agreement to the extent caused by Force Majeure, provided that the affected Party:

- (a) immediately notifies the other Party and provides full information about the Force Majeure
- (b) uses best efforts to overcome the Force Majeure and
- (c) continues to perform its obligations under this Agreement to the extent reasonably practicable.

**15.7 Rights of third parties**

A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act (Cap. 53B) to enforce any term of this Agreement, but this does not affect any right or remedy of a third party that exists or is available apart from such Act.

**15.8 Counterparts**

This Agreement may be executed in any number of counterparts or duplicates, each of which shall be an original. Such counterparts of duplicates will together constitute one and the same agreement.

**15.9 Signature**

An original signature transmitted by facsimile or email shall be deemed to be original for purposes of this Agreement.

**15.10 Interpretation**

This Agreement will be interpreted in accordance with its plain meaning and not against or in favour of the Party primarily responsible for drafting it.

**15.11 English language**

If this Agreement is signed in both English and another language into which it is translated and there are any inconsistencies between the English language version and such translation, the Parties agree that the English language version shall prevail to the extent of such inconsistencies.

**15.12 Future assurances**

Each Party will use its best efforts to cooperate with the other in obtaining required permits and otherwise causing the transactions contemplated by this Agreement to be effected in accordance with its terms.

Each Party will sign and deliver and further certificates, applications, notices, agreements and other documents that any other Party may reasonably request to facilitate performance under this Agreement and compliance with applicable law.

**15.13 Remedies cumulative**

All remedies, rights, undertakings, obligations and agreements contained in this Agreement are cumulative and in addition to the respective Party's other rights and remedies available at law and/or equity.

**15.14 Expenses and taxes**

Each Party will be responsible for its own expenses incurred in entering into and performing this Agreement, including taxes (except GST, as set out in clause 6.3), governmental filing fees and other governmental charges payable in connection with the Party's performance of this Agreement.

**15.15 Notices**

Any Notice under this Agreement may be delivered or sent to the recipient's address set out in the relevant Order Form of this Agreement. In any such case, the sending Party may:

- (a) have the notice delivered to such address and it will be deemed to have been received on the day of delivery if it is a business day in the Receiving Party's place of business and, if not, on the next business day in the Receiving Party's place of business or
- (b) send the notice by prepaid mail to such address and it will be deemed to have been received on the second business day after posting.