

SIGHTWORKS / BRANDLX - CLOUD SERVICES AGREEMENT

Welcome to the SightWorks / BrandLX Cloud Services Terms of Use. It is important that you read these terms as a condition of opening your account and accessing the Services, as they supplement all Order Forms and control your subscription.

These SightWorks / BrandLX Cloud Services Terms of Use serve as the agreement ("Agreement") that governs your use of the [list] services ("Services," as defined below) provided by SightWorks, Inc. ("Vendor") or its resellers via a cloud-based platform. This Agreement is a legally binding contract between Vendor and you, either you an individual user or an entity user acting through its authorized individuals ("you" and "your"). Read this Agreement carefully before logging in and accessing the Services, as it governs your use of the Services. You may not use the Services except under the terms of this Agreement. By accessing the Services and/or clicking an "I Accept" button after being presented with these terms, you agree to be bound by this Agreement. You represent to us that you are lawfully able to enter into contracts (e.g., you are not a minor). If you are entering into this Agreement for an entity, such as the company you work for, you represent to us that you have legal authority to bind that entity.

Vendor will create your initial account by assigning you a login username and password. You acknowledge and agree that Vendor will maintain administrative access to your account and account resources to ensure that you receive quality Services, to assist with technical issues, and to audit your usage levels for compliance with your orders and this Agreement. Unless explicitly permitted by this Agreement, you may only create one account per email address. You are responsible for all activities that occur under your account, regardless of whether the activities are undertaken by you, your employees, your customers or a third party (including your contractors or agents) and, except to the extent caused by our breach of this Agreement, Vendor and its affiliates are not responsible for unauthorized access to your account by others. You must contact us immediately if you believe an unauthorized third party may be using your account or if your account information is lost or stolen.

The following terms of this Agreement supplement all Order Forms and govern your access to the Services, unless a separate signed agreement between you and Vendor expressly governs your use of the Services. To the extent of a conflict between the provisions of the foregoing documents, the order of precedence will be (1) the signed agreement, (2) an Order Form, and (3) this Agreement. Any additional or conflicting terms and conditions appearing in your separate purchase order or order confirmation will not be effective unless agreed in writing by both parties' authorized representatives.

1. DEFINITIONS.

1.1 **"Customer Data"** means all electronic data, content and information submitted by you for processing or delivery to enable your use of the Services.

1.2 **"Account Data"** means your contact and billing information and may include personally identifiable information, submitted by or collected from you in conjunction with opening, administering or closing your account.

1.3 **"System Data"** means all data, content and information in the nature of de-identified or aggregate system administrative data, statistical and demographical data, and operational information and data generated by or characterizing the use of the Services.

1.4 **“Services” and “Service”** means the online, web-based applications and platform provided by Vendor to which you subscribe through an Order Form, and all enhancements, upgrades, and extensions thereto that may be provided by Vendor from time to time.

1.5 **“Order Form”** means a purchase order, signed proposal, Services quotation or other written or electronic document in which you subscribe to the Services, specific geographic platforms, number of users or usage limits and/or choice of features, together with any other applicable requirements and restrictions. The Order Form is part of this Agreement, and its terms prevail in the event of any conflict with this Agreement.

1.6 **“Malicious Code”** means unauthorized data, malware, viruses, Trojan horses, spyware, worms, or other malicious or harmful code.

2. **SERVICES.**

2.1 **Right to Use the Services.** Vendor hereby grants you the non-exclusive, non-transferable, non-sublicensable right to access and use the Services, pursuant to this Agreement and the applicable Order Forms during each subscription term. You agree that your subscription hereunder is neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by Vendor regarding future functionality or features. Your use is further subject to any limitations set forth in the Order Form. You may use the Services for your own internal benefit and for providing goods or services for the benefit of your customers and users. You may not use your subscription to offer use of the Services to third parties in the manner of a service bureau or shared resource.

2.2 **Availability of Service.** Vendor will provide the Service on Vendor’s servers, or the servers of selected third-parties, and will use commercially reasonable efforts to make the Service available to you twenty four hours a day, seven days per week, three hundred sixty five days per year, except for certain scheduled service and maintenance or in the event of emergency or events of force majeure. Notwithstanding the foregoing, Vendor will not be responsible for any downtime or failure to meet such Service availability goals. Vendor will make good faith efforts to perform service and maintenance to the Service outside peak usage hours. You acknowledge that availability of the Service may be affected by: (i) telecommunication network activity or capacity; (ii) hardware failures; and/or (iii) compatibility with third party communication equipment, Internet access software and/or browsers not in accordance with the Service requirements. Vendor disclaims any and all responsibility for any service interruption in connection with such activity, capacity, failure and/or compatibility

2.3 **User Subscriptions.** Unless otherwise specified in the applicable Order Form, (i) Services are purchased as subscriptions based on the options and usage plan that you agree to; and (ii) upgraded options and usage limits may be purchased during the subscription term at the pricing contained on the Order Form, and prorated for the remainder of the subscription term in effect at the time the upgraded options and usage limits are added. Any of your unused Service hours from a subscription billing period will not roll-over to the next billing period. You may permit your third-party authorized users (“Authorized Users”) to access the Services solely for your benefit in accordance with the Agreement, provided that you (a) will be fully responsible for the acts and omissions of your Authorized Users with respect to the Services; (b) ensure that any access to the Services by your Authorized Users is completely disabled upon completion of the Authorized Users’ services requiring use of the Services; and (c) you have an agreement in

place with each Authorized User substantively requiring that the Authorized User protect the Services, confidential information and intellectual property at least to the same extent as set forth in this Agreement. You acknowledge that Vendor makes no warranty and has no other obligations to the Authorized Users. Any breach of this Agreement by your Authorized Users will be deemed to be a breach by you.

2.4 Vendor Responsibilities. Vendor shall provide the Services (i) as specified in an Order Form and (ii) in accordance with applicable laws, regulations and government orders.

2.5 Your Responsibilities. As between you and Vendor, you agree to be solely responsible for and assume all liability relating to the following:

- a) All aspects of your business, including your obligations to end users or other third parties and all business or financial results obtained by you from using the Services;
- b) All technology, equipment, content and data provided by or through you for use with the Services, including performance of software applications provided by you;
- c) Decisions about your computer and communications systems needed to access the Services;
- d) Decisions made by you with respect to maintenance, remote assistance, or other actions taken by Vendor at your direction or according to event scripts or specifications provided or used by you;
- e) Compliance with all applicable laws and governmental regulations regarding your business or use of the Services;
- f) The results of your use of the Services provided to third parties or your customers and users, and their compliance with this Agreement and Vendor's acceptable use standards contained in Section 2.5;
- g) Your commercially reasonable efforts to prevent unauthorized access to or use of the Services, and your responsibility to notify Vendor promptly of any such unauthorized access or use;
- h) The accuracy, quality, integrity and legality of Customer Data and of the means by which you acquire Customer Data; and
- i) The proper handling and processing of notices sent to you (or any of your affiliates) by any person claiming that your content violates such person's rights, including notices pursuant to the Digital Millennium Copyright Act.

2.6 Acceptable Use Standards. You agree to comply with the following acceptable use standards of Vendor. You will not:

- (a) sell, resell, rent, lend, share or lease the Services;
- (b) use or allow the use of the Services to store or transmit Malicious Code;
- (c) interfere with or disrupt the integrity or performance of the Services or third-party data or accounts contained therein;

(d) attempt to gain unauthorized access to the Services or their related systems or networks;

(e) use the Services in the operation of any nuclear facility, aircraft navigation, medical or communications systems or air traffic control machines, or any other use in which the failure of the Services could lead to death, personal injury or severe physical or environmental damage;

(f) use the Services to promote, facilitate or permit gambling, promote or facilitate child pornography or other illegal activities, including without limitation, activities that might be libelous or defamatory, invasive of privacy or publicity rights, abusive, or otherwise malicious or harmful to any person or entity, or that discriminate based on race, gender, religion, nationality, disability, sexual orientation or age.

2.7 Audit and Certification. Vendor reserves the right to monitor use of the Services to ensure compliance with your Order Forms, account limitations and other terms of this Agreement. If Vendor determines that you are not in compliance with this Agreement, Vendor reserves the right to take appropriate action including, but not limited to, suspension or cancellation of your account. You agree that within thirty (30) days of a written request from Vendor or Vendor's authorized representative, you will fully document and certify that your use of the Services conforms to this Agreement.

3. CONFIDENTIALITY. "Confidential Information" means all non-public confidential information pertaining to Vendor's business and the Services. You agree to comply with this Section 3 when receiving Confidential Information under this Agreement. Confidential Information will be designated and/or marked as confidential when disclosed, provided that any such information you receive and know or reasonably should have known, under the circumstances, was considered confidential or proprietary by Vendor, will be considered Confidential Information even if not designated or marked as such. You agree to preserve the confidentiality of Confidential Information and treat such Confidential Information with at least the same degree of care that you use to protect your own confidential information, but not less than a reasonable standard of care. You agree to use the Confidential Information only to exercise rights and perform obligations under this Agreement. You agree to disclose Confidential Information only to your employees and contractors with a need to know such information. You will not be liable to Vendor for the release of Confidential Information if such information: (a) was previously known to you without restriction as to use or disclosure; (b) is released into the public domain through no fault of your own; (c) was independently developed solely by your employees who have not had access to Confidential Information; or (d) is divulged pursuant to any legal proceeding or otherwise required by law, provided that, to the extent legally permissible, you will notify Vendor promptly of such required disclosure and reasonably assist Vendor in efforts to limit such required disclosure.

4. INTELLECTUAL PROPERTY.

4.1 Vendor's Intellectual Property. You acknowledge that the Services, and the underlying source code, algorithms, data structures, methods, processes, screen formats, report formats, ideas and concepts used to provide the Services, are valuable intellectual property owned by Vendor and its resellers and licensors, including all associated patent, copyright, trade secret, trademark, and other intellectual property rights. You agree not to, except as expressly authorized and only to the extent established by applicable statutory law, attempt (or permit others) to decompile, disassemble or otherwise reverse engineer or attempt to

reconstruct or discover any source code, underlying ideas and concepts, algorithms, data structures, methods, processes or file formats used to provide the Services by any means. You agree not to develop methods to enable unauthorized parties to use the Services, or access and use the Services to develop any other product based on any of the concepts and ideas contained in the Services. You agree not to modify the Services or incorporate any portion of the Services into any other software or create a derivative work of any portion of the Services. You agree not to access the Services in order to build a competitive product or service, or copy any features, functions or graphics of the Services without the express written permission of Vendor. In the event that you are developing a product or service to compete with the Services contemporaneously with maintaining an account and subscription for the Services, you shall be required to certify, upon the request of Vendor, that all such competitive product and service development has occurred independently of your use of the Services, and such proof shall be through written certification of your development procedures. You agree not to remove any copyright or other proprietary notices displayed through your use of or placed in conjunction with the Services. Vendor reserves all rights not expressly granted hereunder. The rights granted herein do not constitute a sale of any software or tangible product. You agree not to challenge the ownership or rights in and to the Services and related materials, including without limitation, all copyrights and other proprietary rights. You acknowledge and agree that any violation of the terms of this Section 4.1 would irreparably harm Vendor and that Vendor may enforce the terms of this Section 4.1 through injunctive relief, without limitation to any other rights and remedies available to Vendor.

4.2 Suggestions. You may choose to, but are not required to, provide suggestions, data or other information (“Suggestions”) to Vendor regarding possible improvements in the operation, functionality or use of the Services. If you provide any Suggestions to Vendor, Vendor will own all right, title, and interest in and to the Suggestions, even if you have designated them as confidential. Vendor will be entitled to use the Suggestions without restriction. You hereby irrevocably assign to Vendor all right, title, and interest in and to the Suggestions.

4.3 Implementation and Integration Services. Upon your request Vendor may provide you with Implementation and Integration Services. Such services will be defined and agreed upon in a separate Order Form. Vendor will own all right, title, and interest in all concepts, designs, processes and product updates produced through delivery of the Implementation and Integration Services, even if you have designated them as confidential. Vendor will be entitled to use these concepts, designs, processes and product updates without restriction. You hereby irrevocably assign to Vendor all right, title, and interest in and to the concepts, designs, processes and product updates produced through delivery of the Implementation and Integration Services.

5. DATA OWNERSHIP AND USE.

5.1 Ownership of Customer Data. As between Vendor and you, you exclusively own all rights, title and interest in and to all Customer Data. You are solely responsible for the content of your Customer Data. You will secure rights in Customer Data necessary for us to provide you the Services without violating the rights of any third party, or otherwise obligating Vendor to you or to any third party.

5.2 License to Use Customer Data. You hereby grant to Vendor a worldwide, royalty-free, non-exclusive, sublicensable right and license to use, copy, display, perform, and modify Customer Data as necessary to perform the Services.

5.3 Protection of Customer Data. Although total security does not exist on the Internet, Vendor shall make commercially reasonable efforts to safeguard the information that you submit by maintaining appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Customer Data. Vendor shall not (i) modify Customer Data, or (ii) disclose Customer Data except as compelled by law or as expressly permitted in writing by you.

5.4 Vendor's Use of System Data. All System Data is owned exclusively by Vendor. Vendor may make any legal use of such System Data without notifying you or sharing such data with you. Specifically, Vendor may publish and share System Data with others in aggregate or statistical form to promote the Services and for evaluating the efficiency, utility and functionality of the Services. Vendor, however, agrees that no System Data will be disclosed to others in any way that would identify you or your personnel or disclose any Customer Data, unless approved by you in writing or unless such System Data is provided to a third party who is under agreement with Vendor to protect and limit the use of such System Data.

5.5 Compliance with Laws. Notwithstanding anything to the contrary in this Agreement, Vendor may preserve or disclose all information that is or comes into Vendor's possession or control, including Customer Data, Account Data, and/or System Data, if Vendor believes that it is reasonably necessary to comply with applicable law, regulation or a lawful order from a competent judicial, administrative or law enforcement authority with jurisdiction over Vendor or such information. U.S. law authorizes Vendor to respond to requests for user information from foreign law enforcement agencies that are issued via U.S. courts either by way of a mutual legal assistance treaty or a letter rogatory. It is Vendor's policy to respond to such U.S. court ordered requests when properly served.

6. MAINTENANCE, SUPPORT AND SECURITY.

6.1 Maintenance and Support. You will receive standard support under this Agreement, including (i) automatic product upgrades of the Services; (ii) maintenance updates of the Services; (iii) online self help and training designed to assist you with implementation and use of the Services; and (iv) access to support by phone and web. Vendor will provide maintenance and support in accordance with Vendor's then current Service Plan.

6.2 Your Responsibilities. You are responsible for properly configuring and using the Services and for taking your own steps to maintain appropriate security, protection and backup of Customer Data. This may include routine archiving and the use of encryption technology to protect your content from unauthorized access.

6.3 Customer Service to End Users. You are responsible for providing customer service (if any) to your end users. Vendor does not provide any support or services to your customers and users unless we have a separate agreement with you or an end user obligating us to provide such support or services.

7. FEES AND TAXES.

7.1 Subscription Fees. All subscription fees are non-refundable and non-cancelable except as expressly provided in this Agreement or an Order Form. Monthly or annual subscription fees are invoiced in advance; usage and overage fees are invoiced monthly in arrears. All amounts payable under this Agreement will be made without setoff or counterclaim, and without any deduction or withholding. Fees and charges for any new Service

or new feature of a Service will be effective when we notify you or post updated fees and charges to the Vendor web site, unless we expressly state otherwise in a notice. We may increase or add new fees and charges for any existing Services by giving you at least 30 days' advance notice. We may charge you interest at the rate of 1.0% per month (or the highest rate permitted by law, if less) on all late payments.

7.2 Taxes. Unless provided with a certificate of exemption, Vendor will invoice you for all applicable U.S. sales, use taxes and duties. You are responsible for all Value Added Tax ("VAT"). Vendor will collect and pay VAT or other taxes only if Vendor is required by law to collect such taxes. If Vendor is required by law to collect such taxes, then you agree to provide Vendor with any information Vendor reasonably requests in order to comply with such laws. If any deduction or withholding is required by law, you will notify us and will pay us any additional amounts necessary to ensure that the net amount that we receive, after any deduction and withholding, equals the amount we would have received if no deduction or withholding had been required. Additionally, you will provide us with documentation showing that the withheld and deducted amounts have been paid to the relevant taxing authority.

8. TERM, TERMINATION AND SUSPENSION.

8.1 Term of Agreement. This Agreement commences on the earlier of when you first access the Services or when you click an "I Accept" button after being presented with these terms and continues until all user subscriptions granted in accordance with this Agreement have expired or been terminated.

8.2 Term of Users Subscriptions. User subscriptions commence on the start date specified in the applicable Order Form and continue for the subscription term specified therein. Except as otherwise specified in the applicable Order Form, all user subscriptions shall automatically renew for additional periods equal to the expiring subscription term, unless either party gives the other written notice of non-renewal 30 days before the end of the relevant subscription term.

8.3 Termination for Cause. A party may terminate this Agreement for cause (i) upon 30 days' written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

8.4 Refund or Payment upon Termination. Upon any termination for cause by you, Vendor will refund any prepaid fees covering the remainder of the term of all subscriptions after the effective date of termination. Upon any termination for cause by Vendor, you agree to pay any unpaid fees covering the remainder of the term of all outstanding Order Forms after the effective date of termination. In no event shall any termination relieve you of the obligation to pay any fees payable to Vendor for the subscription period up to and including the effective date of termination.

8.5 Vendor's Additional Rights to Terminate or Restrict Services.

Vendor reserves the right (but has no obligation) to take additional action, up to and including termination, in the following limited circumstances:

a) With or without notice, Vendor may modify or terminate any or all Services or restrict your use in whole or in part if, in Vendor's sole judgment, use of the Services by you or

as provided to your end users (i) presents a material security risk or will interfere materially with the proper continued operation of a data center, equipment, telecommunications network, or related equipment or services, or (ii) is subject to an order from a court or governmental entity stating that such use generally or for certain activities must stop. Where permitted under the relevant court or governmental order, Vendor will notify you of such order promptly so that you will have an opportunity to respond to the order. Vendor also will notify you promptly of any security risks identified under clause (i) above and any action taken by Vendor with respect to such security risks.

b) Upon notice of not less than seven (7) days and failure to cure within the notice period, Vendor may modify or terminate any or all Services or restrict your use in whole or in part if, in Vendor's reasonable judgment, your use of the Services or for the benefit of your customers or end users (i) violates applicable laws or governmental regulations, including, without limitation, consumer protection, securities regulation, child pornography, obscenity, data privacy, data transfer and telecommunications laws; (ii) violates or infringes any intellectual property right of Vendor or a third party; (iii) violates export control regulations of the United States or other applicable countries; or (iv) otherwise violates Vendor's acceptable use standards in Section 2.5 above.

Notwithstanding anything to the contrary in this Agreement, Vendor reserves the right to take whatever steps are necessary to comply with the shorter notice periods or other requirements of the Digital Millennium Copyright Act ("DMCA") or any applicable law or regulation of the jurisdiction where Services are performed.

9. EFFECT OF TERMINATION

9.1 **Account.** After your account is terminated, Vendor may keep your account open with limited account access and without Service access for a reasonable amount of time to complete processing of all payments, billing and administration of the account termination.

9.2 **Surviving Provisions.** The sections titled "Your Responsibilities," "Confidentiality," "Intellectual Property," "Data Ownership and Use," "Fees and Taxes," "Refund or Payment upon Termination," "Effect of Termination," "Disclaimer," "Limitation on Liability," "Indemnification," "High Risk Applications," "Other Terms," "Audit and Certification," and "Governing Law and Venue" shall survive termination or expiration of this Agreement.

10. **NOTICE TO U.S. GOVERNMENT USERS:** Vendor provides the Services, including related software and technology, for ultimate federal government end use solely in accordance with the following: Government technical data and software rights related to the Services include only those rights customarily provided to the public as defined in this Agreement. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data – Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If a government agency has a need for rights not conveyed under these terms, it must negotiate with Vendor to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written addendum specifically conveying such rights must be included in any applicable contract or agreement.

11. LIMITED WARRANTY, WARRANTY DISCLAIMERS AND LIMITATION OF LIABILITY

11.1 Vendor's Warranties. Vendor warrants that the Services will be provided in conformity with professional standards applicable in the online training industry. Vendor's entire liability and your exclusive remedy shall be, at Vendor's option, either: (i) return of all or a portion, as applicable, of the subscription fee paid to Vendor for the Services and termination of this Agreement, or (ii) correction of the error and re-performance of the Service. This warranty is void if the error results from your negligence, accident, abuse, or misuse.

11.2 Your Warranties. You represent and warrant to us that: (i) you or your licensors own all right, title, and interest in and to the Customer Data and (ii) you have all rights in the Customer Data necessary to grant the rights contemplated by this Agreement.

11.3 Disclaimer. EXCEPT FOR THE LIMITED WARRANTIES PROVIDED HEREIN, THE SERVICES ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, BOTH EXPRESSED AND IMPLIED. VENDOR, ITS SUPPLIERS AND LICENSORS DO NOT WARRANT THAT THE SERVICES WILL MEET YOUR REQUIREMENTS OR THAT THEIR OPERATION WILL BE UNINTERRUPTED OR ERROR FREE. VENDOR DOES NOT WARRANT THAT THE SERVICES ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS, OR THAT THEY WILL BE ACCESSIBLE ON A PERMANENT BASIS OR WITHOUT INTERRUPTION OR THAT THE CUSTOMER DATA WILL NOT BE LOST OR DAMAGED. YOU EXPRESSLY ACKNOWLEDGE AND AGREE THAT YOUR USE OF THE SERVICES IS AT YOUR SOLE RISK. VENDOR, ITS SUPPLIERS AND LICENSORS DISCLAIM AND EXCLUDE ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, SATISFACTORY QUALITY OR ARISING FROM A COURSE OF DEALING, LAW, USAGE, OR TRADE PRACTICE TO THE EXTENT ALLOWED BY APPLICABLE LAW. TO THE EXTENT AN IMPLIED WARRANTY CANNOT BE EXCLUDED, SUCH WARRANTY IS LIMITED IN DURATION TO THE WARRANTY PERIOD. BECAUSE SOME STATES OR JURISDICTIONS DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, THE ABOVE LIMITATION MAY NOT APPLY. THIS WARRANTY GIVES CUSTOMER SPECIFIC LEGAL RIGHTS, AND CUSTOMER MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM JURISDICTION TO JURISDICTION. THIS DISCLAIMER AND EXCLUSION SHALL APPLY EVEN IF THE EXPRESS WARRANTY SET FORTH ABOVE FAILS OF ITS ESSENTIAL PURPOSE. VENDOR MAKES NO WARRANTIES WITH RESPECT TO SERVICES WHICH ARE PROVIDED AT NO CHARGE, ALL OF WHICH ARE PROVIDED "AS IS."

11.4 Limitation on Liability. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND REGARDLESS OF WHETHER ANY REMEDY HEREIN FAILS OF ITS ESSENTIAL PURPOSE, IN NO EVENT SHALL VENDOR OR ITS THIRD PARTY LICENSORS BE LIABLE TO YOU OR ANY THIRD PARTY ARISING OUT OF THE USE OF OR INABILITY TO USE THE PRODUCT OR ANY SERVICES UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY, FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES (INCLUDING LOST PROFITS), OR FOR LOSS OF OR CORRUPTION OF DATA, LOST PROFITS, OR FOR COST OF PROCUREMENT OF SUBSTITUTE GOODS OR TECHNOLOGY, IRRESPECTIVE OF WHETHER VENDOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. VENDOR'S MAXIMUM LIABILITY FOR DAMAGES SHALL BE LIMITED TO THE SUBSCRIPTION FEES ACTUALLY RECEIVED BY VENDOR UNDER THIS AGREEMENT FOR THE PARTICULAR SERVICE(S) WHICH CAUSED THE DAMAGES. BECAUSE SOME STATES OR JURISDICTIONS DO NOT ALLOW LIMITATION OR EXCLUSION OF CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE ABOVE LIMITATION MAY NOT APPLY TO YOU.

11.5 Indemnification. You agree to indemnify, defend and hold harmless Vendor against any claim, demand, suit, or proceeding ("Claim") made or brought against Vendor by a third party alleging that the Customer Data, or your use of the Services in violation of this Agreement, infringes or misappropriates the intellectual property rights of a third party or violates applicable law, and you agree to indemnify, defend and hold harmless Vendor for any damages finally awarded against, and for reasonable attorney's fees incurred by, Vendor in connection with any such Claim; provided that Vendor (i) promptly gives you written notice of the Claim, (ii) gives you sole control of the defense and settlement of the Claim (provided that you may not settle or defend any Claim unless it unconditionally releases Vendor of all liability), and (iii) provides you with all reasonable assistance, at your cost.

12. GOVERNMENT REGULATION: You acknowledge that the United States controls and limits the export of certain technical data and materials, including such information in textual, image and video formats. You agree that you will not use the Services in connection with any technical data or materials that require an export license, that involve blocked or restricted persons or entities, and that any restricted technical data and materials will not be shipped, transferred, or exported into any country or used in any manner prohibited by the United States or by other multi-lateral sanctions with which the United States participates. You will comply with all laws, regulations, permits, orders and other restrictions to the extent that they are applicable to the import or export of controlled technical data or materials.

13. HIGH RISK APPLICATIONS: THE SERVICE IS NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USE WITH DATA, CONTENT OR INFORMATION USED FOR OR REQUIRING FAIL-SAFE PERFORMANCE, SUCH AS IN THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL, DIRECT LIFE SUPPORT MACHINES, OR WEAPON SYSTEMS, IN WHICH THE FAILURE OF THE PRODUCT COULD LEAD DIRECTLY TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE ("HIGH RISK APPLICATIONS"). VENDOR AND ITS SUPPLIERS SPECIFICALLY DISCLAIM ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS FOR HIGH RISK APPLICATIONS.

14. THIRD-PARTY SOFTWARE PROGRAMS. The Services may contain software ("Third-Party Programs") licensed by third parties ("Third-Party Licensors"). Certain Third Party Programs are subject to additional third-party license terms as specified by their respective Third Party Licensors, and these terms may be included in the Order Form or presented for acceptance during your use of the Services. By using the Product, you agree to comply with these additional third-party terms for the benefit of the applicable Third-Party Licensor. VENDOR PROVIDES THIRD-PARTY PROGRAMS TO YOU "AS IS" and subject to all disclaimers in Section 11.3 and limitations of liability in Section 11.4.

15. AMENDMENTS AND MODIFICATIONS. You agree that Vendor may amend the terms and conditions of this Agreement at any time by posting a revised version of the Agreement on the Vendor website. Any revised terms will be presented to you the next time you log in to access the Services. You must click the "I Accept" button after being presented with the amended Agreement in order to access the Services. Amendments and modifications become effective when you click the "I Accept" button. Vendor will also post any amendments or modifications to this Agreement on its website. By continuing to use the Services after the revised terms become effective, you agree to be bound to the revised terms.

16. NOTICE.

16.1 **To You.** We may provide any notice to you under this Agreement by sending a message to the e-mail address then associated with your account. Notices we provide by posting on the Vendor website will be effective upon posting and notices we provide by e-mail will be effective when we send the e-mail. It is your responsibility to keep your e-mail address and account information current. You will be deemed to have received any e-mail sent to the e-mail address then associated with your account when we send the e-mail, whether or not you actually receive the e-mail.

16.2 **To Us.** To give us notice under this Agreement, you must contact Vendor by personal delivery, overnight courier or registered or certified mail to SightWorks, Inc. 123 NE 3rd Ave Suite 110 Portland OR 97232 Attention: Director of Legal Affairs. We may update the address for notices to us by posting a notice on the Vendor website. Notices provided by personal delivery will be effective immediately. Notices provided by overnight courier will be effective one business day after they are sent. Notices provided registered or certified mail will be effective three business days after they are sent.

16.3 **Language.** All communications and notices to be made or given pursuant to this Agreement must be in the English language.

17. MISCELLANEOUS.

17.1 **Entire Agreement.** Except for any separately signed nondisclosure agreement between the parties or any contemporaneously signed agreement or click-accept agreement relating to the Services, this Agreement is the sole and exclusive agreement between the parties related to its subject matter, and supersedes and replaces all other prior agreements and communications related thereto, both oral and written.

17.2 **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.

17.3 **Governing Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon, without regard to its conflict of laws provisions, and all disputes shall have exclusive venue in the federal and state courts in Multnomah County and both parties consent to the jurisdiction of these courts. The United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act (USA) do not apply to this Agreement. The English language version of this Agreement shall be used for all legal interpretation and actions.

17.4 **Force majeure.** Neither party will be liable for any failure in performance due to causes beyond its reasonable control (such as fire, explosion, power blackout, earthquake, flood, severe storms, strike, embargo, labor disputes, acts of civil or military authority, war, terrorism (including cyber terrorism), acts of God, acts or omissions of Internet traffic carriers, actions or omissions of regulatory or governmental bodies (including the passage of laws or regulations or other acts of government that impact the delivery of Services).

17.5 **Waiver.** No waiver of any right under this Agreement shall be effective unless in writing, signed by a duly authorized representative of the waiving party; failure to insist upon

strict compliance with this Agreement shall not be deemed a waiver of any future right arising out of this Agreement.

17.6 **Assignment.** You may not assign this Agreement without Vendor's prior written consent; provided, however, that you may transfer this Agreement together with any Order Forms for subscription Services in the context of a reorganization, merger, acquisition or sale of the business assets to which the Order Forms and subscriptions belong without consent, but such transfer shall not be effective until the transferee opens a new account or takes over and updates your existing account, including accurate information for the full name and address of the transferee where communications about the Services may be sent, and the transferee shall be bound to all terms and conditions herein. As a condition to providing Services to your permitted assignee hereunder, Vendor may require your permitted assignee to acknowledge in writing that the assignee is bound by this Agreement and any Order Form for ongoing Services, and all related financial responsibility for them. Vendor is free to assign or transfer this Agreement at any time.

17.7 **Acknowledgement.** By accessing the Services, you further acknowledge that you have read this Agreement, understand it, and agree to be bound by its terms and conditions.