

MASTER SERVICE AGREEMENT

The following visp.net Service Agreement is a legal agreement between you (hereafter "Service Recipient") and VISP Limited, a Hong Kong company, located at 6F St. John's Building, 33 Garden Road, Central, Hong Kong, (hereafter "Visp.net"). **VISP.NET EXTENDS TO SERVICE RECIPIENT THE RIGHTS AND BENEFITS OUTLINED IN THIS SERVICE AGREEMENT AND THESE POLICIES AND PROCEDURES ONLY UPON THE CONDITION THAT YOU ACCEPT ALL OF THE TERMS CONTAINED IN THE FOLLOWING POLICIES AND PROCEDURES. FURTHER, YOUR USE OF VISP.NET SERVICES CONSTITUTES YOUR AGREEMENT TO BE BOUND BY THE TERMS OF THIS SERVICE AGREEMENT AND THESE POLICIES AND PROCEDURES IN THEIR ENTIRETY.**

THIS AGREEMENT GOVERNS YOUR ACQUISITION AND USE OF OUR SERVICES. IF YOU REGISTER FOR A FREE TRIAL FOR OUR SERVICES, THIS AGREEMENT WILL ALSO GOVERN THAT FREE TRIAL.

BY ACCEPTING THIS AGREEMENT, EITHER BY CLICKING A BOX INDICATING YOUR ACCEPTANCE OR BY USING VISP.NET SERVICES, YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERMS "YOU" OR "YOUR" SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SERVICES.

POLICIES AND PROCEDURES

1. DEFINITIONS

"Affiliate" means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. "Control," for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

"Agreement" means this Master Service Agreement and these Policies and Procedures.

"Beta Services" means Our services that are not generally available to customers.

"Documentation" means Our online user guides, documentation, and help and training materials, as updated from time to time, accessible via Visp.net or login to the applicable Service.

"ICC" means the International Chamber of Commerce

"Malicious Code" means code, files, scripts, agents or programs intended to do harm, including, for example, viruses, worms, time bombs and Trojan horses.

"Purchased Services" means Services that You or Your Affiliate purchase through visp.net, as distinguished from those provided pursuant to a free trial.

"Services" means the services that are ordered by You through visp.net.

"Software" means any software made available by Us for use by You in accessing or using the Services.

"Subscribers" means Your subscribers who may interface with the Services or about whom you submit information to the Purchased Services.

"User" means an individual who is authorized by You to use a Service. Users may include, for example, Your employees, consultants, contractors and agents, and third parties with which You transact business.

"We," "Us" or "Our" means VISP Limited, a Hong Kong company.

"You" or "Your" means the company or other legal entity for which you are accepting this Agreement, and Affiliates of that company or entity.

"Your Data" means electronic data and information submitted by or for You to the Purchased Services or collected and processed by or for You using the Purchased Services, including data submitted by Your Subscribers.

2. OUR SERVICES

- 2.1 **Description of Services.** We provide services to assist ISPs in managing and delivering services to their customers. Our services include system administration, billing and payment reminders, and support services. You may order our services through the visp.net website or through Our sales or service channels.
- 2.2 **Our Guarantees.**
- (a) **100% Subscriber Satisfaction Guarantee** – If for any reason Your Subscriber is not satisfied with services you provide through a Purchased Service and You provide the Subscriber a refund, We will provide you a full refund for the cost you paid Us for that Subscriber's Services for up to 60 days prior to your written request for refund not to exceed the same period you refunded the Subscriber. Such requests can be made to billing@visp.net.
 - (b) **100% Uptime Guarantee** – We employ a wide array of redundancy technologies to maximize uptime of Our network. At your request, We will provide you with a pro-rated refund for downtime that negatively impacted your Subscribers according to the terms of this Agreement (see the Service Outages section below).
 - (c) **100% Onboarding Retention Guarantee** – If a Subscriber imported to a Purchased Service terminates due to dissatisfaction with the Purchased Services during or up to 90 days from the start of the migration process, We will credit You 12 months of the amount You would have paid to Us for that Subscriber over the following 12 months. To exercise the guarantee, You will provide a copy of a verifiable written cancellation notice from the Subscriber stating the reason for the Subscriber's termination, which must be attributable to the migration.
 - (d) **Total Satisfaction Guarantee** – If for any reason you are not completely satisfied with the Purchased Services, simply let us know in writing and delete your UBO account within 90 days from the date your Service is setup and you'll receive a full refund of the amounts you paid during that period. After 90 days, in the event you cancel a Purchased Service, you will receive a full, prorated refund of any unused, prepaid amount.

3. OUR RESPONSIBILITIES

- 3.1 **Provision of Purchased Services.** We will (a) make the Services available to You pursuant to this Agreement, (b) provide Our standard support for the Purchased Services to You at no additional charge, and/or upgraded support if purchased, and (c) use commercially reasonable efforts to make the online Purchased Services available 24 hours a day, 7 days a week, except for: (i) planned downtime (of which We shall give at least 8 hours electronic notice and which We shall schedule to the extent practicable during a window We believe is least likely to impact subscribers), and (ii) any unavailability caused by circumstances beyond Our reasonable control, including, for example, an act of government, flood, fire, earthquake or other natural disaster, civil unrest, act of terror, strike or other labor problem (other than one involving Our employees) or denial of service attack (a "Force Majeure event").
- 3.2 **ICC Force Majeure Clause 2003**
- (a) Parties to this Agreement are bound to perform its contractual duties even if events have rendered performance more onerous than could reasonably have been anticipated at the time of the conclusion of the contract.
 - (b) Notwithstanding paragraph 1 of this Clause, where a party to this Agreement proves that:
 - (i) the continued performance of its contractual duties has become excessively onerous due to an event beyond its reasonable control which it could not reasonably have been expected to have taken into account at the time of the conclusion of the contract; and that
 - (ii) it could not reasonably have avoided or overcome the event or its consequences, the parties are bound, within a reasonable time of the invocation of this Clause, to negotiate alternative contractual terms which reasonably allow for the consequences of the event.
 - (c) Where paragraph 2 of this Clause applies, but where alternative contractual terms which reasonably allow for the consequences of the event are not agreed by the other party to the contract as provided in that paragraph, the party invoking this Clause is entitled to termination of the contract.

- 3.3 **Protection of Your Data.** We will maintain commercially reasonable administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Your Data, including information about Your Accounts, as described in the Documentation. Those safeguards will include, but will not be limited to, measures for preventing access, use, modification or disclosure of Your Data by Our personnel except (a) to provide the Purchased Services and prevent or address service or technical problems, (b) as compelled by law in accordance with Section 7.3 (Compelled Disclosure) below, or (c) as You expressly permit in writing.
- 3.4 **Our Personnel.** We will be responsible for the performance of Our personnel (including Our employees and contractors) and their compliance with Our obligations under this Agreement, except as otherwise specified herein.
- 3.5 **Beta Services.** From time to time, We may invite You to try Beta Services at no charge. You may accept or decline any such trial in Your sole discretion. Beta Services will be clearly designated as beta, pilot, limited release, developer preview, non-production, evaluation or by a description of similar import. Beta Services are for evaluation purposes and not for production use, are not considered “Services” under this Agreement. Such services may be billable, but may not be supported, and may be subject to additional terms. Unless otherwise stated, any Beta Services trial period will expire upon the earlier of one year from the trial start date or the date that a version of the Beta Services becomes generally available. We may discontinue Beta Services at any time in Our sole discretion and may never make them generally available. We will have no liability for any harm or damage arising out of or in connection with a Beta Service.

4. USE OF SERVICES

- 4.1 **Subscriptions.** Unless otherwise provided in the Service description on visp.net, (a) Services are purchased as subscriptions, (b) subscriptions may be added during a subscription term at the same pricing as the underlying subscription pricing, prorated for the portion of that subscription term remaining at the time the subscriptions are added, and (c) any added subscriptions will terminate on the same date as the underlying subscriptions.
- 4.2 **Technical Support and Customer Service.**
- (a) Unless you have purchased Our technical support services, You shall be responsible for providing customer support and technical assistance to your Subscribers at Your cost and expense. We will not be responsible for responding directly to technical support inquiries from your Subscribers. We will provide advanced support and technical assistance to Your staff during regular business hours.
- (b) If you have purchased Our technical support services, such Services that exceed acceptable use according to our third-party support provider(s) may be subject to overage charges.
- 4.3 **Service Outages.** If You experience an outage of Purchased Services other than due to planned downtime or a Force Majeure event, You may be entitled to a Service Outage Credit. Service Outage Credits are available for “mission critical” Services, including Radius, DNS, Qwest DSL, spam filtering, dial-up access, and email. Credits are provided for interruptions of such Services lasting more than one hour, and take the form of a pro-rated deduction from the next monthly billing equal to the outage time and for the portion of Service that was unavailable. No credit will be given for outages caused by You or Your Users or Subscribers, or due to third-party network shutdowns. To apply for a Service Outage Credit, You must submit a written request via email to success@visp.net within 10 days after the applicable interruption of Service.
- 4.4 **Your Responsibilities.** You will (a) be responsible for Users’ and Subscribers’ compliance with this Agreement, (b) be responsible for the accuracy, quality and legality of Your Data and the means by which You acquired Your Data, (c) use commercially reasonable efforts to prevent unauthorized access to or use of Services, and notify Us promptly of any such unauthorized access or use, and (d) use Services only in accordance with the Documentation and applicable laws and government regulations.
- 4.5 **Acceptable Use of Software** The license to use Our software, whether on Your server or on Our website is restricted to only Our defined acceptable uses.
- (a) This includes only:
- (i) Billing and administration of subscribers
 - (ii) Control and management of Internet access and other services
 - (iii) Streamlining of Service Recipient’s operations
 - (iv) Troubleshooting and technical Support

(b) Any use of Our software or services aside from the specific uses mentioned above represents Abuse and is prohibited and will not be supported. In addition, Abuse of Our software and / or services may result in cancelation of Your account, fines, or legal action. The specific use of Our software and services may only be modified by specific, written permission of Visp's CEO.

4.6 Personal Conduct - Restricted Uses. You will not:

- (a) upload or distribute of any files that contain viruses, corrupted files, or any other similar software or programs that may damage the operation of the Service,
- (b) cause or permit reverse engineering or decomposition of the software programs; create new products, programs or software that are derived from our Licensed Products or Services.,
- (c) probe, scan, test the vulnerability of, or circumvent any security mechanisms used by, the sites, servers, or networks connected to the Service,
- (d) take any action that imposes an unreasonably or disproportionately large load on the sites, servers, or networks connected to the Service,
- (e) copy, reproduce, or the Service or any of our licensed products without express, written permission,
- (f) access or use any other clients' or their users' data through the Service,
- (g) maliciously reduce or impair the accessibility of the Service,
- (h) use the service to post, promote, or transmit any unlawful, misleading, harassing, libelous, abusive, threatening, harmful, hateful, otherwise objectionable material, or,
- (i) transmit or post any material that encourages conduct that could constitute a criminal offense or give rise to civil liability,
- (j) remove or modify any trademarks, copyrights or any other notice of our proprietary rights, this extends to any Internet domain names that you may register or purchase,
- (k) assign or transfer this agreement or give an interest in the Licensed Products and Services to any individual or entity except as provided under this agreement,
- (l) translate License Products and Services into non-English language without written permission. We retain all ownership and intellectual property rights to translated materials,
- (m)

4.7 Terms of Use. Services furnished by Us are subject to the Terms of Use, a copy of which is located at <http://www.smartwire.net/main/terms.htm>. Each of Your Users and Subscribers, by using services provided through Us, are deemed to have accepted the Terms of Use. If You use a subscriber portal other than Our subscriber portal, You agree to post the Terms of Use on such portal. You agree to indemnify and hold Us harmless from any liability resulting from a User or Subscriber who does not comply with the Terms of Use, and will assist Us in enforcing the Terms of Use as We reasonably request. We may change the Terms of Use from time to time; any new Terms of Use will be effective thirty (30) days after posting a notice of change on Our website.

4.8 Privacy Policy. All websites and portals operated by Us are subject to Our privacy policy posted at www.visp.net. If you receive Subscriber information submitted via any such website or portal, then You shall not (a) share any personally identifiable Subscriber information with any third party; (b) share Subscriber profile information with any third party; (c) market or promote or attempt to market or promote, via electronic mail or otherwise, the products or services of any third party to any Subscriber; or (d) use clear gifs, web beacons, or web bugs to verify Subscriber email addresses or to otherwise gather Subscriber or user information. You may market or promote products or services that are offered by You, provided that You honor all opt-out or unsubscribe requests submitted by Subscribers to You.

- 4.9 **Usage Restrictions.** You will not (a) make any Service available to, or use any Service for any purpose other than providing services to Your Subscribers, (b) sell, resell, license, sublicense, distribute, rent or lease any Service or Software, or include any Service or Software in a service bureau or outsourcing offering, (c) use a Service to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (d) use a Service to store or transmit Malicious Code, (e) interfere with or disrupt the integrity or performance of any Service or third-party data contained therein, (f) attempt to gain unauthorized access to any Service or its related systems or networks, (g) permit direct or indirect access to or use of any Service in a way that circumvents a contractual usage limit, (h) copy a Service or any part, feature, function or user interface thereof, (i) frame or mirror any part of any Service, other than framing on Your own intranets or otherwise for Your own internal business purposes or as permitted in the Documentation, (j) access any Service or Software in order to build a similar or competitive product or service, or (k) reverse engineer any Service or Software (to the extent such restriction is permitted by law). These restrictions apply to all versions of Visp-provided software, including, but not limited to, production, beta, development, or demo versions of Visp software..
- 4.10 **Removal of Software.** If We are required by a licensor to remove Software, or receive information that Software provided to You may violate applicable law or third-party rights, We may so notify You and in such event You will promptly remove such Software from Your systems. If You do not take required action in accordance with this Section, We may disable the applicable Service or Software until the potential violation is resolved.

5. FEES AND PAYMENT FOR PURCHASED SERVICES

- 5.1 **Fees.** You will pay all fees specified for the Services ordered. Except as otherwise specified herein or in the Documentation, fees are based on Services purchased and not actual usage, (ii) payment obligations are non-cancelable and fees paid are non-refundable, and (iii) quantities purchased cannot be decreased during the relevant subscription term. For fees based on a count of active Subscribers, Subscribers will be considered active if the Services have been used or made available to a Subscriber, or are reflected as such in Your Data.
- 5.2 **Invoicing and Payment.** We will invoice you monthly for Services provided. You will provide Us with valid and updated credit card information or electronic check, and by entering into this Agreement, You authorize Us to charge the credit card or echeck account provided for all Purchased Services for the initial subscription term and any renewal subscription term(s) as set forth in Section 11.2 (Term of Purchased Subscriptions). Such charges shall be made in advance, either monthly or in accordance with any different billing frequency stated in an addendum hereto. If payment will be by a method other than a credit card, We will invoice You in advance and invoiced charges are due net 30 days from the invoice date. You are responsible for providing complete and accurate billing and contact information to Us and notifying Us of any changes to such information.
- 5.3 **Payment of Invoice Indicates Acceptance of Charges** Payment of an invoice indicates Your acceptance of the charges on that invoice. You are responsible to view your invoice charges Please review each invoice carefully to avoid incorrect charges. In no case will We will be liable for more than 60 days' of incorrect charges.
- 5.4 **Accounting Fees.** Service Recipient's subscribers may utilize visp.net's online automated payment processing to pay for visp.net provided Products and Services which may be subject to a processing fee determined by visp.net.
- 5.5 **Overdue Charges.** If any invoiced amount is not received by Us by the due date, then without limiting Our rights or remedies, (a) those charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, and/or (b) We may condition future subscription renewals and Order Forms on payment terms shorter than those specified in Section 5.2 (Invoicing and Payment)
- 5.6 **Commissions.** There may be instances where Visp Limited may pay commission on sales of the visp.net Products and Services, when sales are made substantially through your efforts during the Term (or any extension of the Term) of this Agreement. The eligibility, terms and conditions for the payment of such sale or services commissions shall be determined at the sole discretion of Visp Limited.

- 5.7 **Suspension of Service and Acceleration.** If any amount owing by You under this or any other agreement for Our services is 30 or more days overdue (or 10 or more days overdue in the case of amounts You have authorized Us to charge to Your credit card), We may, without limiting Our other rights and remedies, accelerate Your unpaid fee obligations under such agreements so that all such obligations become immediately due and payable, and suspend Our services to You until such amounts are paid in full.
- 5.8 **Payment Disputes.** We will not exercise Our rights under Section 5.3 (Overdue Charges) or 5.4 (Suspension of Service and Acceleration) above if You are disputing the applicable charges reasonably and in good faith and are cooperating diligently to resolve the dispute.
- 5.9 **Collection.** Notwithstanding any other provision in these Policies and Procedures requiring the arbitration of disputes, visp.net may take any collection measures as may be permitted under law for the recovery of amounts due, including without limitation filing suit in the appropriate courts. Service Recipient agrees to pay visp.net's costs of collecting overdue amounts from Service Recipient, including court costs, and visp.net's reasonable attorney fees, regardless of whether suit or action is required.
- 5.10 **Returned Checks.** All checks returned by Service Recipient's or Subscriber's bank for insufficient funds will be re-submitted for payment. A \$35.00 returned check fee will be charged to the account of the Service Recipient or Subscriber. After receiving a returned check from a Service Recipient or Subscriber, visp.net may require that all future payments be made by Credit Card, money order or cashier's check. Any fees resulting from Service Recipient's (or Service Recipient's Subscriber's) NSF check (or returned check fees) will be charged to Service Recipient.
- 5.11 **Taxes.** Our fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction whatsoever (collectively, "Taxes"). You are responsible for paying all Taxes associated with Your purchases hereunder. If We have the legal obligation to pay or collect Taxes for which You are responsible under this Section 5.6, We will invoice You and You will pay that amount unless You provide Us with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, We are solely responsible for taxes assessable against Us based on Our income, property and employees.
- 5.12 **Future Functionality.** You agree that Your purchases are not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by Us regarding future functionality or features.

6. PROPRIETARY RIGHTS AND LICENSES

- 6.1 **Reservation of Rights.** Subject to the limited rights expressly granted hereunder, We and Our licensors reserve all of Our/their right, title and interest in and to the Services and Software, including all of Our/their related intellectual property rights. No rights are granted to You hereunder other than as expressly set forth herein.
- 6.2 **License by Us to Use Software.** We grant to You a limited-term license, under Our applicable intellectual property rights and licenses, to use Software provided by Us solely for the purpose of accessing and using Services, subject to the terms of this Agreement.
- 6.3 **License by Us to Use Our Website.** If applicable, We grant to You a limited-term license, under Our relevant intellectual property rights and licenses, to use Our website(s) provided by Us solely for the purpose of accessing and using Our Services and Software, subject to the terms of this Agreement.
- 6.4 **Third Party Software.** The Software may contain third-party software that requires notices or additional terms and conditions. By accepting this Agreement, You also accept the additional terms and conditions, if any, provided to you in connection with such software.
- 6.5 **License by You to Host Your Data.** You grant Us and Our Affiliates a worldwide, limited-term license to host, copy, transmit and display Your Data, as necessary for Us to provide the Services in accordance with this Agreement. Subject to the limited licenses granted herein, We acquire no right, title or interest from You or Your licensors under this Agreement in or to Your Data.
- 6.6 **License by You to Use Feedback.** You grant to Us and Our Affiliates a worldwide, perpetual, irrevocable, royalty-free license to use and incorporate into the Services any suggestion, enhancement request, recommendation, correction or other feedback provided by You or Users or Your Accounts relating to the operation of the Services.

- 6.7 **Federal Government End Use Provisions.** We provide 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 granted under these terms, it must negotiate with Us to determine if there are acceptable terms for granting those rights, and a mutually acceptable written addendum specifically granting those rights must be included in any applicable agreement.

7. CONFIDENTIALITY

- 7.1 **Definition of Confidential Information.** “Confidential Information” means all information disclosed by a party (“Disclosing Party”) to the other party (“Receiving Party”), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Your Confidential Information includes Your Data, business and marketing plans, technology and technical information, product plans and designs. Our Confidential Information includes any intangible property created by Visp, not limited to Our business and marketing plans, technology and technical information, product plans, inventions, literary and artistic works, symbols, names, images, and designs. This also includes the computer data, source and object code, website design and layout, know-how and technical information. In addition, You agree that, without Our express, written permission, You will not disclose Your credentials used to login into or access Visp software or websites to a third party.

Confidential Information does not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party.

- 7.2 **Protection of Confidential Information.** The Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care) (i) not to use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (ii) except as otherwise authorized by the Disclosing Party in writing, to limit access to Confidential Information of the Disclosing Party to those of its and its Affiliates’ employees and contractors who need that access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein. Neither party will disclose the terms of this Agreement to any third party other than its Affiliates, legal counsel and accountants without the other party’s prior written consent, provided that a party that makes any such disclosure to its Affiliate, legal counsel or accountants will remain responsible for such Affiliate’s, legal counsel’s or accountant’s compliance with this Section 7.2.
- 7.3 **Compelled Disclosure.** The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party’s cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party’s Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to that Confidential Information.

8. REPRESENTATIONS, WARRANTIES, EXCLUSIVE REMEDIES AND DISCLAIMERS

- 8.1 **Representations.** Each party represents that it has validly entered into this Agreement and has the legal power to do so.
- 8.2 **Our Warranties.** We warrant that we will use commercially reasonable efforts to protect the security, confidentiality and integrity of Your Data, and to ensure that the Purchased Services will not introduce Malicious Code into Your systems. For any breach of an above warranty, Your exclusive remedies are those described in Sections 11.3 (Termination) and 11.4 (Refund or Payment upon Termination).

- 8.3 **Disclaimers.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. SOFTWARE AND BETA SERVICES ARE PROVIDED “AS IS,” EXCLUSIVE OF ANY WARRANTY WHATSOEVER. EACH PARTY DISCLAIMS ALL LIABILITY AND INDEMNIFICATION OBLIGATIONS FOR ANY HARM OR DAMAGES CAUSED BY ANY THIRD-PARTY HOSTING PROVIDERS. THE SERVICES AND SOFTWARE ARE NOT DESIGNED, INTENDED OR LICENSED FOR USE IN HAZARDOUS ENVIRONMENTS REQUIRING FAIL-SAFE CONTROLS, INCLUDING WITHOUT LIMITATION, THE DESIGN, CONSTRUCTION, MAINTENANCE OR OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL, AND LIFE SUPPORT OR WEAPONS SYSTEMS. WE SPECIFICALLY DISCLAIM ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS FOR SUCH PURPOSES.

9. MUTUAL INDEMNIFICATION

- 9.1 **Indemnification by Us.** We will defend You against any claim, demand, suit or proceeding made or brought against You by a third party alleging that the use of a Purchased Service in accordance with this Agreement infringes or misappropriates such third party’s intellectual property rights (a “Claim Against You”), and will indemnify You from any damages, attorney fees and costs finally awarded against You as a result of, or for amounts paid by You under a court-approved settlement of, a Claim Against You, provided You (a) promptly give Us written notice of the Claim Against You, (b) give Us sole control of the defense and settlement of the Claim Against You (except that We may not settle any Claim Against You unless it unconditionally releases You of all liability), and (c) give Us all reasonable assistance, at Our expense. If We receive information about an infringement or misappropriation claim related to a Service, We may in Our discretion and at no cost to You (i) modify the Service so that it no longer infringes or misappropriates, (ii) obtain a license for Your continued use of that Service in accordance with this Agreement, or (iii) terminate Your subscriptions for that Service and refund You any prepaid fees covering the remainder of the term of the terminated subscriptions. The above defense and indemnification obligations do not apply to the extent a Claim Against You arises from Your breach of this Agreement.
- 9.2 **Indemnification by You.** You will defend Us against any claim, demand, suit or proceeding made or brought against Us by a third party alleging that Your Data, or Your use of any Service in breach of this Agreement, infringes or misappropriates such third party’s intellectual property rights or violates applicable law (a “Claim Against Us”), and will indemnify Us from any damages, attorney fees and costs finally awarded against Us as a result of, or for any amounts paid by Us under a court-approved settlement of, a Claim Against Us, provided We (a) promptly give You written notice of the Claim Against Us, (b) give You sole control of the defense and settlement of the Claim Against Us (except that You may not settle any Claim Against Us unless it unconditionally releases Us of all liability), and (c) give You all reasonable assistance, at Your expense.
- 9.3 **Exclusive Remedy.** This Section 9 states the indemnifying party’s sole liability to, and the indemnified party’s exclusive remedy against, the other party for any type of claim described in this Section 9.

10. LIMITATION OF LIABILITY

- 10.1 **Limitation of Liability.** NEITHER PARTY’S LIABILITY WITH RESPECT TO ANY SINGLE INCIDENT ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL EXCEED THE AMOUNT PAID BY YOU HEREUNDER IN THE 12 MONTHS PRECEDING THE INCIDENT, PROVIDED THAT IN NO EVENT WILL EITHER PARTY’S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT PAID BY YOU HEREUNDER. THE ABOVE LIMITATIONS WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY. HOWEVER, THE ABOVE LIMITATIONS WILL NOT LIMIT YOUR PAYMENT OBLIGATIONS UNDER SECTION 5 (FEES AND PAYMENT FOR PURCHASED SERVICES).
- 10.2 **Exclusion of Consequential and Related Damages.** IN NO EVENT WILL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS, REVENUES OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER OR PUNITIVE DAMAGES, WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.

11. TERM AND TERMINATION

- 11.1 **Term of Agreement.** This Agreement commences on the date You first accept it and continues until all subscriptions hereunder have expired or have been terminated.
- 11.2 **Term of Purchased Subscriptions.** The term of each subscription shall be one month, unless otherwise specified in the applicable order or addendum. Subscriptions will automatically renew for additional periods equal to the expiring subscription term, unless either party gives the other notice of non-renewal at least 30 days before the end of the relevant subscription term. The per-unit pricing during any automatic renewal term will be the same as that during the immediately prior term unless We have given You written notice of a pricing increase at least 60 days before the end of that prior term, in which case the pricing increase will be effective upon renewal and thereafter.
- 11.3 **Termination.** We may terminate this Agreement at any time if the fees for Purchased Services falls below \$100 per month or such other Monthly Minimum as we determine is necessary to maintain Your Services. Further, 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.
- 11.4 **Refund or Payment upon Termination.** If this Agreement is terminated by You in accordance with Section 11.3 (Termination), We will refund You any prepaid fees covering the remainder of the term after the effective date of termination. If this Agreement is terminated by Us in accordance with Section 11.3, You will pay any unpaid fees covering the remainder of the term of all Purchased Services. In no event will termination relieve You of Your obligation to pay any fees payable to Us for the period prior to the effective date of termination.
- 11.5 **Your Data Portability and Deletion.** Upon request by You made within 30 days after the effective date of termination or expiration of this Agreement, We will make Your Data available to You for export or download as provided in the Documentation. After that 30-day period, We will have no obligation to maintain or provide Your Data, and thereafter may delete or destroy all copies of Your Data in Our systems or otherwise in Our possession or control as provided in the Documentation, unless legally prohibited.
- 11.6 **Surviving Provisions.** The Sections titled "Fees and Payment for Purchase Services," "Proprietary Rights and Licenses," "Confidentiality," "Disclaimers," "Mutual Indemnification," "Limitation of Liability," "Refund or Payment upon Termination," "Portability and Deletion of Your Data," and "General Provisions" will survive any termination or expiration if this Agreement.

12. GENERAL PROVISIONS

12.1 Resolution of Disputes.

- (a) In the event of any dispute arising out of or in connection with the present contract, the parties shall first refer the dispute to proceedings under the ICC Mediation Rules. The commencement of proceedings under the ICC Mediation Rules shall not prevent any party from commencing arbitration in accordance with sub-clause below.
- (b) All disputes arising out of or in connection with the present contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules. Any such arbitration shall be conducted in English, and shall be held online unless parties agree otherwise. The arbitrators shall have the authority to grant specific performance and to allocate between the parties the costs of arbitration in such equitable manner as they determine. The parties agree that the findings of the expert shall be contractually binding upon them. Judgement upon the award rendered by the arbitrators may be entered in any court having jurisdiction or application may be made to such court for judicial acceptance of any award and an order of enforcement, as the case may be. In no event shall a demand for arbitration be made after the date when institution of a legal or equitable proceeding based upon such claim would be barred by the applicable statute of limitations.
- (c) Notwithstanding the foregoing, either party shall have the right, without waiving any right or remedy available to such party, to seek and obtain from any court of competent jurisdiction any interim or provisional relief to protect the rights or property of such party, pending the commencement or conclusion of mediation or arbitration proceedings.

- 12.2 **Governing Law.** This Agreement shall be governed, construed and enforced in accordance with the laws of the State of New York, USA, without regard to its conflict of laws provisions, unless the laws of the state or nation in which You reside expressly requires the application of its laws, in which case that state's law shall govern all issues related to jurisdiction and venue. Alternatively, the parties may agree to allow the arbitrator to determine more appropriate Governing Law.
- 12.3 **Notices.** Any notice or communication required or permitted to be given hereunder must be in writing, signed or authorized by the party giving notice, and may be: (a) delivered by hand, deposited with an overnight courier; (b) sent by email or facsimile; or (c) mailed by registered or certified mail, return receipt requested, postage prepaid, to the following:
- (a) **Notices to You:** to the address or email contact information set forth in Your visp.net account.
 - (b) **Notices to Us:** to visp.net, 9450 SW Gemini Dr. #33000, Beaverton, OR 97008, Attn: Todd Grannis; email tgrannis@visp.net.
- 12.4 **Export Compliance.** The Services, Software, other technology We make available, and derivatives thereof may be subject to export laws and regulations of the United States and other jurisdictions. Each party represents that it is not named on any U.S. government denied-party list. You shall not permit Users or Subscribers to access or use any Service or Software in a U.S.-embargoed country (currently Iran, North Korea, Sudan or Syria) or in violation of any U.S. export law or regulation.
- 12.5 **Anti-Corruption.** You have not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from any of Our employees or agents in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction. If You learn of any violation of the above restriction, You will use reasonable efforts to promptly notify CEO, Todd Grannis at tgrannis@visp.net.
- 12.6 **Entire Agreement.** This Agreement, together with any addenda executed by the parties in connection therewith, is the entire agreement between You and Us regarding Your use of Services and Software and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. Except as expressly provided herein, no modification, amendment, or waiver of any provision of this Agreement will be effective unless in writing and signed by the party against whom the modification, amendment or waiver is to be asserted.
- 12.7 **Consent to Electronic Record.** This Agreement is an online agreement that is evidenced by an electronic record. By submitting the online Agreement, You consent to the use of electronic records as evidence of this Agreement. If You wish to obtain a paper copy of this Agreement, you may print a copy at www.visp.net/legal, or You may send a written request with a check for \$25 to Us at Visp Limited, 9450 SW Gemini Dr #33000, Beaverton, OR 97008. Any written request must include Your name, Tax I.D. number, mailing address and email address.
- 12.8 **Changes to Policies and Procedures.** Because federal, state, provincial, territorial and local laws, as well as the business environment, periodically change, We reserve the right to amend these Policies and Procedures, Our Privacy Policy, and Our prices at Our sole and absolute discretion. By entering into this Agreement, You agree to abide by all amendments or modifications that We elect to make. Amendments shall be effective upon notice that the Agreement has been modified. Notification of amendments will be published at www.visp.net/legal/. We will provide or make available to You a complete copy of the amended provisions by one or more of the following methods: (1) posting on visp.net's official web site; (2) electronic mail (email); (3) as a click-agree license at the when logging into visp.net; (4) inclusion in Our periodicals; or (5) special mailings.
- 12.9 **Assignment.** Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the other party's prior written consent (not to be unreasonably withheld); provided, however, either party may assign this Agreement in its entirety, without the other party's consent to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets. Notwithstanding the foregoing, if a party is acquired by, sells substantially all of its assets to, or undergoes a change of control in favor of, a direct competitor of the other party, then such other party may terminate this Agreement upon written notice. In the event of such a termination, We will refund to You any prepaid fees covering the remainder of the term of all subscriptions. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns.

- 12.10 **Non-Solicitation of Employees and Customers.** During the period starting on the Effective Date and ending three (3) years after the termination or expiration of this Agreement (the "Non-Solicitation Period"), You shall not directly or indirectly, on your own behalf or in the service or on behalf of others, in any capacity induce or attempt to induce any officer, director, or employee to leave Visp Limited, or solicit or accept, or attempt to solicit or accept, the business of any customer, consultant, contractor, vendor or patron of Visp Limited. You may be exempt from this Non-Solicitation obligation upon prior written consent by Visp Limited and upon payment of Fifty Thousand United State Dollars (USD50,000.00) as fee for our waiver.
- 12.11 **Headings** Headings and captions used in the agreement are for reference purposes only and should not have any effect on the interpretation of the agreement.
- 12.12 **Relationship of the Parties.** The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.
- 12.13 **Third-Party Beneficiaries.** There are no third-party beneficiaries under this Agreement.
- 12.14 **Waiver.** No failure or delay by either party in exercising any right under this Agreement will constitute a waiver of that right.
- 12.15 **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision will be deemed null and void, and the remaining provisions of this Agreement will remain in effect.