



VISUALVAULT SUBSCRIPTION AGREEMENT

THIS SUBSCRIPTION AGREEMENT (“Agreement”) is made as of [Month] [Day], 2024 (the “Effective Date”) by and between **VisualVault, LLC** (“VisualVault”), a Delaware limited liability company, having its principal place of business at 2050 East ASU Circle – Suite 103, Tempe, AZ 85284 and [**Customer Legal Name**], a [State/Jurisdiction] [Entity Type], having its principal place of business at [Customer Address] (“Subscriber”);

WHEREAS, VisualVault provides subscription hosting services through a secure, cloud-based enterprise content management software solution (“Hosting Services”), known as VisualVault (“Software”), which allows Subscriber to access and retrieve Subscriber’s stored content and information (“Data”) via an internet connection.

WHEREAS, in the delivery of the Hosting Services, VisualVault may provide consulting, professional and other ancillary services related to the implementation of the Software to assist its customers in, among other things, capturing, transferring, and retaining its customers’ data; workflow creation; and business process improvement (“Professional Services”).

WHEREAS, upon the complete implementation of the Hosting Services, VisualVault shall provide Software maintenance and technical support services (“Support Services”). The Hosting Services, Professional Services, and Support Services are collectively referred to as the “Services”); and,

WHEREAS, the Subscriber has a need for such Services.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein, the parties agree as follows:

1. **Subscription Services and License**. VisualVault shall provide Subscriber the Hosting Services, Software, any Professional Services, Support Services in a Statement of Work. “Statement of Work” shall mean an agreement signed by both parties for Subscriber to received the Hosting Services, Software, Professional Services and Support Services from VisualVault. Any changes or amendments to a Statement of Work shall only be valid if a written change request (“Change Request”) is executed between the parties. All Statements of Work and Change Requests shall be deemed part of and subject to the terms and conditions of this Agreement. To the extent that any provision contained in a Statement of Work or Change Request is inconsistent with a provision set forth in this Agreement, the provision in this Agreement shall control. Each Statement of Work or Change Request will be non-cancelable and non-refundable, except to the extent expressly provided in this Agreement, a Statement of Work, Change Request, or under applicable law.
2. **Term**. This Agreement shall commence as of the Effective Date. Unless otherwise specified in this initial Statement of Work, the term of this Agreement shall continue for a period of five (5) years immediately following the Effective Date (“Initial Term”), and shall be automatically renewed for successive one (1) year terms (each, a “Renewal Term” and together with the Initial Term, the “Term”), unless either party gives the other parties notice of non-renewal at least sixty (60) days before the expiration of the then-current Term.
3. **Payment for Services**. Subscriber shall receive written invoices from VisualVault and Subscriber shall pay VisualVault the then applicable fees described in the Statement of Work for the Services (the “Fees”). Unless otherwise provided for in an applicable Statement of Work, payments for any Professional Services shall be invoiced upon delivery of those Professional Services to the Subscriber. Payment for all Fees must be made within thirty (30) days of the invoice date. Any payment not received by the due date shall bear interest at 1.5% per month or the highest legal rate then in effect, if lower, from the due date until fully paid, and Subscriber shall be responsible for reimbursing the VisualVault for all expenses incurred by VisualVault in connection with any efforts to collect any outstanding amounts due. If Subscriber fails to pay any invoiced amounts when due, VisualVault may, upon written notice, declare the Subscriber in breach and, in addition to all other remedies available to VisualVault at law and under this Agreement, suspend the provision of some or all of the Services to Subscriber. Subscriber shall pay all taxes, which may be levied or assessed in connection with Subscriber’s receipt and/or use of the Services. If Subscriber believes that VisualVault billed Subscriber incorrectly, Subscriber must contact VisualVault in writing no later than sixty (60) days after the due date on the invoice in which the error or problem appeared in order to receive an adjustment or credit. Subscriber acknowledges that the Software is subject to certain usage and data capacities specified in the Statement of Work. If Subscriber’s use of the Software exceeds the usage and data capacities set forth on an applicable Statement of Work or any other use of the Services or Software that would otherwise require the payment of additional Fees, Subscriber will be notified of such excess usage and will be invoiced by VisualVault therefor. Unless otherwise set forth in this Agreement or applicable Statement of Work, VisualVault reserves the right to change Fees or applicable charges, and to institute new Fees and charges, upon thirty (30) days’ prior notice to Subscriber, and Subscriber’s continued use of the Services shall be deemed an acceptance of such changes to the Fees or applicable charges.
4. **Access to Data**. VisualVault shall use commercially reasonable efforts to make the Software available for use twenty-four (24) hours a day, seven (7) days per week. Software availability may be modified to provide for (i) regularly scheduled maintenance, (ii) maintenance required as a result of matters beyond the VisualVault’s reasonable control, or (iii) events beyond VisualVault’s reasonable control. VisualVault shall endeavor to give Subscriber at least twenty-four (24) hours’ notice of scheduled maintenance by email to Subscriber’s designated point of contact.
5. **Special Terms Relating to Professional Services**. VisualVault may utilize various subcontractors for the provision of its Professional Services under this Agreement. VisualVault will remain liable for all responsibilities and obligations of VisualVault under the terms of this Agreement, even if some of such responsibilities and obligations are performed by VisualVault’s subcontractors. VisualVault represents and warrants that all of its subcontractors and other representatives who perform any Professional Services for VisualVault will be competent to perform the Professional Services, will exercise their best efforts in performing the Professional Services, and will comply with all terms and conditions applicable to VisualVault in performance of the Professional Services pursuant to this Agreement. The consulting and professional personnel provided by VisualVault will have appropriate technical and application skills to enable them



to perform their duties, which duties will be performed in a workmanlike manner and in accordance with industry standards and all applicable laws and regulations

6. **Service Availability and Support.** Upon full implementation of the Software in a go-live, full production environment, VisualVault support specialists shall provide Customer's authorized customer contact with supplemental support for the Software throughout the Term. Such support services shall be provided and subject to the availability of VisualVault's support specialists at VisualVault's premises.
7. **Acceptable Use; Subscriber Responsibilities and Restrictions.** All uses of the Software and the Services must comply with all applicable laws and regulations and with VisualVault's [Acceptable Use Policy](https://docs.VisualVault.com/docs/acceptable-use-policy) ("Use Policy"), available at <https://docs.VisualVault.com/docs/acceptable-use-policy>, made a part hereof and which may be amended from time-to-time. VisualVault has no obligation to monitor Subscriber's use of the Services, but reserves its right to do so, and Subscriber hereby authorizes same.
 - a. Notwithstanding anything contained herein to the contrary, VisualVault reserves the right to suspend the Services or terminate this Agreement effective immediately, upon notice to Subscriber, in the event of Subscriber's violation of the Use Policy. Subscriber (including Subscriber's authorized users) shall not engage or permit any unacceptable use of the Services including, but is not limited to, (i) dissemination or transmission (or establishment of links with the Software therefor) of material that, to a reasonable person, may be abusive, obscene, pornographic, defamatory, harassing, grossly offensive, vulgar, threatening or malicious; (ii) dissemination or transmission of files, graphics, software or other material that actually or potentially infringes upon the copyright, trademark, patent, trade secret, or other intellectual property right of any person; (iii) interference with, disruption of, or attempt to gain unauthorized access to other accounts of VisualVault or any other third party computer network; (iv) dissemination or transmission of viruses, Trojan horses or any other malicious codes or programs; or (v) engaging in any other activity reasonably considered by VisualVault to conflict with the spirit and intent of this Agreement and/or the Services being rendered. Subscriber will not make any Services available to, or use any Services for the benefit of, anyone other than Subscriber, unless otherwise expressly stated in this Agreement or Statement of Work.
 - b. Subscriber will not sell, resell, license, distribute, make available, rent or lease any Service, or use any Service for timesharing or service bureau purposes or otherwise for the benefit of a third party. Subscriber will not directly or indirectly reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas, know-how or algorithms relevant to the Services, the Software, or any Materials (hereinafter defined); modify, translate, or create derivative works based on the Services or any Software; remove any proprietary notices or labels; access or use any of VisualVault's Proprietary Information (as defined herein) or intellectual property except as expressly permitted under this Agreement; or frame or mirror any part of the Services, other than framing on Subscriber's own intranets or otherwise for its own internal business purposes. Subscriber shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise utilize the Services, including, without limitation, computer hardware, web browsers, and internet utility services.
 - c. When a user previously authorized by Subscriber is no longer authorized to access the Software, Subscriber shall immediately notify VisualVault of the revocation of such user's authority, and ensure that each such user ceases accessing the Software. Subscriber owns and accepts all responsibility for its Data, shall at all times retain ownership of its Data, and agrees to insure all Data. Subscriber shall provide notices to, and obtain any consents from third parties as may be required by applicable law, rule, regulation, or Statement of Work in connection with the VisualVault's processing of the Data via the Services.
8. **Confidential and Proprietary Information; Security.**
 - a. Each party (the "Receiving Party") will regard any information provided to it by the other party (the "Disclosing Party") as proprietary or confidential ("Proprietary Information"), including, without limitation, non-public information regarding features, functionality and performance of the Services, and non-public data provided by Subscriber to enable the provision of the Services. The Receiving Party agrees to take reasonable precautions to protect such Proprietary Information, and not to use (except in its performance under this Agreement or as otherwise permitted herein) or divulge to any third person any such Proprietary Information. Proprietary Information does not include any information (i) that is or becomes generally available to the public, (ii) was known or in the possession of the Receiving Party prior to receipt from the Disclosing Party, (iii) was rightfully disclosed to Receiving Party without restriction by a third party, or (iv) was independently developed by Receiving Party without use or reference to any of the Proprietary Information of the Disclosing Party. The Receiving Party may disclose Proprietary Information pursuant to the requirements of applicable law, legal process or government regulation, provided that it gives the Disclosing Party reasonable prior written notice (where lawful to do so) to permit the Disclosing Party a reasonable time within which to contest such disclosure, and such disclosure is otherwise limited to the required disclosure. Each party will protect the confidentiality of the other party's Proprietary Information in the same manner as it protects its own valuable proprietary or confidential information, provided that such protection shall in no event be less than that level of protection that is reasonable under the circumstances.
 - b. Subscriber acknowledges and agrees that all right, title, and interest, including but not limited to Intellectual Property Rights (as defined herein), in and to the Software, Software components, documentation, training materials, source code, object code or underlying structure, algorithms, templates, features, enhancements, modifications, patches, updates, data, related fields programs, tools, systems, and any VisualVault data or other materials made available to Subscriber in connection with this Agreement, including, without limitation, the Software and the Services, as well as any information, materials or feedback provided by Subscriber to VisualVault relating to any of the foregoing (collectively the "Company Materials") are and shall at all times be and remain the sole and exclusive property of VisualVault. Subscriber does not and will not be deemed to acquire any right, title or interest therein, except as expressly granted in this Agreement. All improvements, updates, modifications, or enhancements to the Software and/or Services (each a "Derivative Work" and together with Company's Proprietary Information, the "Company Intellectual Property"), whether or not conceived or made in the course of or as a result of Subscriber's use of the Software and/or Services under this Agreement, are and shall remain the property of Company unless otherwise agreed to by the parties in writing; and any developments or expenditures made by Subscriber in connection with the Software, Services, or Derivative Works shall not give or vest Subscriber with any right, title, or interest in the Software, Services, or any Derivative Works unless otherwise agreed to by the parties in writing. If any such

rights should become vested in Subscriber by operation of law or otherwise, Subscriber agrees that it will and does hereby irrevocably assign any and all such rights to Company (or its affiliates) and agrees to execute all necessary and appropriate documents to register or otherwise protect Company's or its affiliates' rights. "Intellectual Property Rights" shall mean all (i) patents, patent applications, patent disclosures and inventions, (ii) internet domain names, trademarks, service marks, trade dress, trade names, logos and corporate names and registrations and applications for registration thereof together with all of the goodwill associated therewith, (iii) copyrights (registered or unregistered) and copyrightable works and registrations and applications thereof, (iv) software, data, databases, and all systems documentation thereof, and (v) trade secrets and know-how.

- c. Subscriber agrees to implement appropriate security measures and procedures relating to Subscriber's access to the Software and use of the Services, including but not limited to those relating to the assignment, administration, and safe-keeping of all login information authorizing access to the Software on behalf of or for the benefit of Subscriber. Subscriber shall be solely responsible for any and all acts or omissions that occur under any account or password issued to Subscriber (and its authorized users). Notwithstanding anything to the contrary, VisualVault shall have the right to collect and analyze Data and other information relating to the provision, use and performance of various aspects of the Services and related systems and technologies (including, without limitation, information concerning storage usage, data transfers, login activity, API transactions, creation of unique logins, and data derived therefrom), and VisualVault will be free (during and after the Term) to use such information and data to improve and enhance the Services and for other development, diagnostic and corrective purposes in connection with the Services and their other offerings, and disclose such data solely in aggregate or other de-identified form in connection with their businesses.
9. **Representations, Warranties and Disclaimers.** The Subscriber represents and warrants that it has the legal right and authority to enter into this Agreement and perform its obligations hereunder, and the performance of its obligations will not cause a breach of any agreements between Subscriber and any third parties. VisualVault represents and warrants it has the legal right and authority to enter into this Agreement and perform its obligations hereunder. VisualVault shall use reasonable efforts consistent with prevailing industry standards to provide and maintain the Services in a professional and workmanlike manner. **VISUALVAULT DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE; NOR DOES VISUALVAULT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM SUBSCRIBER'S USE OF THE SERVICES. THE SERVICES ARE PROVIDED "AS IS" AND VISUALVAULT DISCLAIMS ALL WARRANTIES OF ANY TYPE, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**
10. **Termination of Agreement.**
 - a. A party may only terminate this Agreement (i) in the event that the other party materially breaches any term of this Agreement and fails to cure such breach within sixty (60) days following the breaching party's receipt of written notice from the other party specifying the nature of such breach, 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.
 - b. If this Agreement is terminated by Subscriber in accordance with the terms of this Agreement, VisualVault will refund Subscriber any prepaid Fees for the Software, if any, covering the remainder of the then-current Term, or portion thereof, within thirty (30) days following termination. If this Agreement is terminated by VisualVault in accordance with Section 10.a, or if this Agreement is terminated by Subscriber for any other reason other than that provided in Section 10.a, Subscriber will pay all subscription hosting charges through the remainder of the then-current Term, and in no event will termination relieve Subscriber of its obligation to pay any Fees payable to the VisualVault for the period prior to the effective date of termination.
 - c. Upon the expiration of this Agreement or its sooner termination of this Agreement under this Section 10 (i) Subscriber shall pay all outstanding Fees and additional charges incurred prior thereto; (ii) Subscriber agrees to cease accessing and using the Software; (iii) Subscriber shall work with VisualVault to determine the method, format and timing of any data extraction and return of Subscriber Data; and (iv) Upon full payment by Subscriber to VisualVault of any and all charges, costs and expenses related to or in connection with the extraction and return of Subscriber's Data to Subscriber, VisualVault shall make all Data available to Subscriber for electronic retrieval for a period of thirty (30) consecutive days thereafter, after which VisualVault shall delete or destroy all copies of Data in its systems or otherwise in its possession or control.
11. **Mutual Indemnification.**
 - a. Subscriber hereby agrees to indemnify, defend, and hold harmless VisualVault, and any VisualVault Affiliates from and against any damages, settlements, liabilities, actions, losses, costs, expenses (including reasonable attorneys' fees and court costs) in connection with any claim or action alleging (i) the use or misuse of the Software or the Services by Subscriber, its agents, employees and/or authorized users, including but not limited to Subscriber's use of the Services in an unlawful manner or in violation of this Agreement, or (ii) that any Data or Subscriber's use of the Data infringes or misappropriates a third party's intellectual property rights.
 - b. VisualVault hereby agrees to indemnify, defend and hold harmless Subscriber from and against any damages, settlements, liabilities, actions, losses, costs, expenses (including reasonable attorneys' fees and court costs) in connection with any claim or action alleging that any of the Software, the Materials, or the Services infringe upon or misappropriate any third parties' intellectual property rights. In the event that any of the Services, Software, or Materials become, or, in the opinion of VisualVault, are likely to become, the subject of an infringement claim, VisualVault may, at its option and expense, (i) procure for Subscriber the right to use the Services, Software, or Materials free of any liability, or (ii) modify, in whole or in part, the Services, Software or Materials to make them non-infringing, provided that the replaced or modified portion(s) is substantially equivalent in functionality and performance.
 - c. This Section 11 states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any third party claims described in this Section 11.
12. **Limitation on Liability and Limitation on Damages.** In no event shall VisualVault, or its members, managers, officers, directors, employees, agents, suppliers or affiliates be liable to subscriber for any indirect, incidental, special, exemplary, punitive or consequential damages, including, without limitation, damages for loss of profits, loss of goodwill, loss of data or use of the services (or portion thereof), delay of delivery or completion of the services, inaccuracy or misrepresentation of data, or any business interruption or

disruption arising out of the performance, attempted performance or non-performance of the services (or portion thereof) (even if VisualVault has been advised of the possibility of such damages), incurred by either subscriber or any third party, whether in an action in contract, tort, or statutory claim. Further, VisualVault shall not be responsible for any losses, costs, liabilities, or damages arising in connection with: (i) subscriber's inability to use the services, including as a result of any (a) termination of this agreement, (b) discontinuation of any or all the services, or (c) any unanticipated or unscheduled downtime of all or a portion of the services for any reason whatsoever, including as a result of power outages, system failures or other interruptions; (ii) the cost of procurement of substitute goods or services; or (iii) any investments, expenditures or commitments by subscriber to any third parties in connection with this agreement or subscriber's use of or access to the services. VisualVault shall only be liable for any losses, costs, liabilities, or damages to the extent same are proximately caused by VisualVault's failure to use commercially reasonable care. The combined aggregate and cumulative total liability of VisualVault for damages, including for direct damages, under this agreement shall in no event exceed the amount of fees paid by subscriber under this agreement during the twelve (12) months preceding the incident giving rise to such liability. Subscriber acknowledges that the fees for the services reflect the allocation of risk set forth in this agreement and that VisualVault would not have entered into this agreement without the disclaimers of warranty and limitations of both liability and damages set forth in this agreement including, without limitation, the provisions of this Section 12.

13. **Miscellaneous.**

- a. **Non-Solicitation.** Neither party will hire or contract with, either as an employee or an independent contractor (either directly or through a third party), any Covered Personnel of the other party. The term "Covered Personnel" of a party will mean that party's employees or any contractors retained by that party who are professional services personnel or who were involved in the performance of this Agreement within the preceding six-month period, or any person who would have been considered Covered Personnel but for having terminated employment or contractual relationship within the past six (6) months. Any breach of this will constitute a material breach of this Agreement.
- b. **Compliance with Export Controls Laws.** The export and re-export of the VisualVault is subject to the export control and sanctions laws, regulations, and orders of the United States, including but not limited to the Export Administration Regulations ("EAR"), International Traffic in Arms Regulations ("ITAR"), and regulations and orders administered by the Treasury Department's Office of Foreign Assets Control ("OFAC") (collectively, "Export Control Laws"). Subscriber agrees that it will not export, reexport, transfer, or allow access to the VisualVault: (a) to or by parties on lists of sanctioned or restricted parties maintained by the U.S. government, including but not limited to OFAC, the U.S. Department of Commerce, or the U.S. Department of State; (b) to or by parties in or relating to certain countries or territories that are the target of U.S. sanctions (currently, Cuba, Iran, Syria, North Korea, and the Crimea region of Ukraine); or (c) otherwise in violation of Export Control Laws. The export and re-export of the VisualVault may also be subject to export and import controls under the laws and regulations of other countries. Subscriber agrees, at all times, to comply fully with the Export Control Laws and the local export and import controls of other countries.
- c. **U.S. Government Contracts.** This subsection applies when any Software is acquired directly or indirectly by or on behalf of the United States Government: The Software is a commercial product, licensed on the open market; developed entirely at private expense; and without the use of any U.S. Government funds. Use, duplication or disclosure by the U.S. Government is subject to restrictions as set forth in subparagraph (c) of the Commercial Computer Software Restricted Rights clause at FAR 52.227-19. Use, duplication and disclosure by DOD agencies is subject solely to the terms of this Agreement as stated in DFARS 227.7202.
- d. **Anti-Corruption.** VisualVault and Subscriber each represent and warrant to the other: (i) that it is aware of all anti-corruption legislation that applies to this Agreement and in particular the US Foreign Corrupt Practices Act 1977 and the U.K. Bribery Act 2010; (ii) it has implemented rules and procedures that enable it to comply with this legislation and adapt to any future amendments thereto; (iii) it has implemented appropriate rules, systems, procedures and controls for preventing the commission of Corrupt Acts, either by itself or its staff, and for ensuring that any evidence or suspicion of the commission of a Corrupt Act will be thoroughly investigated and unless prohibited by confidentiality or law, reported to the other party; (iv) its records relating to its business, including accounting documents, are maintained and kept so as to ensure their accuracy and integrity; and (v) it has not made or offered or received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from any of the other party's 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 a party learns of any violation of the above restriction, it will use reasonable efforts to promptly notify the other party at the address for notices above.
- e. **Cooperation; Usage Validation.** VisualVault and Subscriber agree that each will execute and deliver documents, including confirmations to VisualVault auditors, and take such other actions as may reasonably be requested to effect the transactions contemplated by this Agreement. VisualVault reserves the right to validate Subscriber's usage of the Software and/or Subscription Services and its compliance under this Agreement. If applicable, Subscriber will use reporting functionality included in the Software and provide usage logs generated by the Software in connection with this usage validation.
- f. **Reports and Certifications.** For Subscription Services, upon request and not more than once annually, VisualVault will deliver to Subscriber (i) the current SSAE 18 SOC II Type 2 report or equivalent, (ii) the current HIPAA compliance opinion letter, (iii) the current PCI-DSS Attestation of Compliance, (iv) a current penetration testing summary, (v) an executive summary of VisualVault's Written Information Security Program and (vi) executive summaries of the security, data backup, and monitoring events for the Subscriber's Environment(s) that are currently available.
- g. **Entire Agreement.** This Agreement, together with the Exhibits attached hereto and incorporated herein, constitutes the entire agreement of the parties with respect to the subject matter hereof, and supersedes all previous proposals, negotiations, agreements, or discussions between the parties related to this Agreement. Each party acknowledges that it has not been induced to enter into this Agreement by any representation or statements, oral or written, not expressly contained herein and in any attachments, schedules, exhibits or addenda not attached hereto.
- h. **Governing Law; Arbitration.** This Agreement will be governed by and interpreted in accordance with the laws of the State of Arizona, without regard to its conflict of laws principles. Any and all matters of dispute between the parties to this Agreement, whether arising



from or related to the Agreement itself or arising from alleged extra-contractual facts, shall be decided by arbitration. Notice of the demand for arbitration must be provided to the other party in writing. The arbitration proceeding shall be conducted under the applicable rules of the American Arbitration Association (or a similar, nationally-recognized association) in Maricopa County, Arizona. The award rendered by the arbitrators will be in writing, with written findings of fact, and shall be final and binding on all parties; judgment upon the award rendered may be entered and enforced in any court of competent jurisdiction. The prevailing party shall be entitled to recover from the other party its own expenses for the arbitrator's fees, attorney's fees, and expert testimony, if any.

- i. Notices. All notices hereunder shall be in writing and shall be delivered in person or may be sent by courier, express mail, or postage prepaid certified or registered air mail, addressed to the party for whom it is intended, at the address set forth herein.
- j. Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, such provision shall, to such extent as it shall be determined to be invalid or unenforceable, be deemed to be null and void, but the remaining terms of this Agreement shall otherwise remain in full force and effect.
- k. Assignment. Either party may assign this Agreement as part of a corporate reorganization, consolidation, merger, or sale of substantially all of its assets upon prior written notice to the other party. Any other assignment of this Agreement on the part of either party, whether in whole or in part, shall require the prior written consent of the other party. This Agreement will bind and inure to the benefit of each party's successors and permitted assigns.
- l. Waiver and Amendment. Any waiver, supplement or modification of this Agreement will not be effective unless set forth in writing and signed by an authorized representative of all parties. The failure of either party to exercise any of its rights under this Agreement will not be deemed a waiver or forfeiture of such rights.
- m. Counterparts. This Agreement may be executed in counterparts, which taken together, will constitute one Agreement, and any party hereto may execute this Agreement by signing such counterpart.
- n. Surviving Provisions. The provisions of Sections 3, 7 through 13, inclusive, (and any other obligations in this Agreement that by their nature are continuing) shall survive the termination of this Agreement. The parties agree that the limitations and exclusions of liability and disclaimers specified in this Agreement will survive breach or termination and apply even if found to have failed of their essential purpose.
- o. Force Majeure. Except with respect to Subscriber's monetary obligations herein, neither party hereto will be liable for any failure or delay in the performance of its obligations hereunder by reason of any event or circumstance beyond its reasonable control, including without limitation acts of God, war, terrorism, fire, flood, shortage or failure of suppliers, riots or civil disorder, pandemics, epidemics, interruptions of or delays in transportation or communications, or decisions or requirements of any government agency, board, official or other public body, including public health orders; provided, however, that for any force majeure event extending for more than sixty (60) days, the party not claiming the existence of a force majeure event will have the right to terminate this Agreement upon written notice to the other parties.
- p. Anti-Corruption. Neither party has received or been offered any illegal or improper bribe, kickback, payment, gift or thing of value from an employee or agent of the other parties in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the aforesaid restriction.
- q. 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. Each party will be solely responsible for payment of all compensation owed to its employees, as well as all employment-related taxes.
- r. Third Party Beneficiaries. There are no third party beneficiaries under this Agreement.
- s. Not Construed Against Drafter. Both parties have had full opportunity to negotiate the terms of this Agreement, and neither party intends that this Agreement be construed for or against either party because of that party's role in drafting this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Hosting Subscription Agreement to be executed as of the Effective Date.

VISUALVAULT, LLC

[SUBSCRIBER LEGAL NAME]

By: _____
Its: _____

By: _____
Its: _____