TECHNOLOGY LICENSE AND SERVICES AGREEMENT

This Technology License and Services Agreement ("Agreement") is made and entered into by and between VisualOn, Inc. ("VisualOn") and the buyer of the HTML5+ SaaS Player on the AWS Marketplace ("Licensee"). Herein at times either VisualOn or Licensee may be referred to individually as a "Party" or together as the "Parties".

RECITALS

VisualOn is in the business of developing, marketing, licensing, and/or distributing technology for handling multimedia content in certain electronic products and/or services.

VisualOn wishes to grant to Licensee, and Licensee wishes to obtain, the right to integrate into certain electronic products and/or services of Licensee certain technology owned by VisualOn. Additionally, VisualOn wishes to grant to Licensee, and Licensee wishes to obtain, the right to sublicense, through multiple tiers, to End Users the use of said VisualOn technology as integrated into such products and/or services of Licensee.

Therefore, in consideration of the mutual covenants, terms, and conditions set forth below, the adequacy of said consideration hereby accepted and acknowledged, the Parties agree as follows.

TERMS AND CONDITIONS

1. DEFINITIONS

1.1.   **Affiliate** means any company that controls, is controlled by or is under common control with a Party, where control means (a) ownership of more than 50% of the equity of such legal entity or Party or (b) the power to direct or cause the direction of the management and policies of such legal entity or Party. Licensee hereby acknowledges and agrees that Licensee shall be liable for any breach of the terms and conditions of this Agreement by any of its Affiliates.

1.2.   **Agreement** means this Technology License and Services Agreement which may be hereafter amended from time to time according to the terms herein.

1.3.   **Content** means content for which Customer has obtained all necessary approvals, permissions and licenses to provide via a digital service.

1.4.   **Defect** means a nonconformity such that the Deliverables do not substantially perform as specified in the Documentation.

1.5.   **Deliverables** means VisualOn's proprietary HTML5+ SaaS Player and all Documentation pertaining thereto. Deliverables do not include Source Code.

1.6.   **Documentation** means any information in hardcopy or electronic form, or other format, provided with the Deliverables by VisualOn to Licensee, which information supports, explains, details, describes, or the like, the use of the Deliverables and/or the integration of the Deliverables into Licensee Products.

1.7.   **End User** means the consumer at the end of the distribution chain of the Licensee Products, which consumer uses functionality provided by the Licensed Technology.

1.8.   **Intellectual Property Rights** ("IPR") means all inventions and all other proprietary rights, including, but not limited to any patents, patent applications, copyrights, registrations or applications for copyright, trade secrets, research data, know-how and specifications excepting trademark rights and associated goodwill.

1.9.   **Licensee Products** means any and all hardware and/or software items and any and all services that are designed, manufactured, distributed, sublicensed or sold by Licensee that

integrate the Licensed Technology.

1.10. **Licensed Technology** means the Deliverables and all Intellectual Property Rights in and to the Deliverables.

1.11. **Maintenance Release** means a release of the Licensed Technology containing corrections, minor modifications, patches, bug fixes, or the like.

1.12. **Order** means the order made by the Licensee on the AWS Marketplace

1.13. **Prohibited Open Source Software** means any software, library, utility, tool, or other computer or program code (collectively, "POSS") that is licensed under any terms that require that any software using, linked with, incorporating, distributed with, based on, derived from or accessing the POSS: (i) be disclosed or distributed in source code form; (ii) be licensed for the purpose of making derivative works; or (iii) be redistributable at no or minimal charge**.**

1.14. **Source Code** means software in the form of source statements including, without limitation, all software in the form of electronic or printed human-readable program listings including printed and online descriptions of the design of such software including, without limitation, data definition models, indices, structure tables, system flow charts, program flow charts, defined terms, file layouts, program narratives, global documentation (including global variables) and program listings.

1.15. **Term** means the period of time as specified in Section 9 ("Term and Termination") during which this Agreement is in effect.

1.16. **Third Party Standards IPR** means Intellectual Property Rights that cover the AVC/H.264, HEVC/H.265, AAC, MPEG-DASH, and HLS technologies, which are implemented in the Licensed Technology, or additional standards listed in a separate document distributed in connection with the provision of a Maintenance Release.

2. LICENSE

2.1. **Grant of Rights**. Subject to the provisions of this Agreement, as well as payment of all applicable license fees, VisualOn grants to Licensee a nonexclusive, worldwide, and non-assignable (except as provided for in Section 10.7) license to:

2.1.1. reproduce and otherwise use the Licensed Technology solely for the purpose of designing, making, marketing, and demonstrating Licensee Products; and

2.1.2. distribute and sublicense to End Users the Licensed Technology in Licensee Products.

2.2. **Trademark License**. During the Term, VisualOn grants Licensee a non-exclusive, non-assignable, revocable license to use the VisualOn Trademarks solely in conjunction with Licensee Products. Licensee shall not register (or make any filing with respect to) any trademarks, names or other designations of VisualOn anywhere in the world. Licensee shall not contest anywhere in the world the use by or authorization by VisualOn of any trademarks, names or other designations of VisualOn.

2.3. **Ownership**. Copies of the Licensed Technology transferred or created by this Agreement are licensed, not sold. Licensee receives no title to or ownership of any copy of the Licensed Technology itself. Furthermore, Licensee receives no rights to the Licensed Technology other than those specifically granted in Section2.1 ("Grant of Rights"). Licensee shall not to delete, alter, add to or fail to reproduce in and on any of the Licensed Technology copy and media the name of the Licensed Technology and any copyright or other notices appearing in or on any copy, media or master or package materials provided by VisualOn or which may be required, in writing, by VisualOn at any time. All trademarks, trade names, services marks, logotypes and other commercial symbols as well as trade secrets, trade practices, copyrights, patents, manuals, operating practices and procedures, goodwill, and all other items tangible or intangible, used presently, or in the future are the assets of VisualOn and shall remain

the exclusive property of VisualOn and Licensee acquires no interest therein. Licensee agrees not to interfere with or cause any third party to interfere with VisualOn's intellectual property rights.

2.4.   **Third Party Standards IPR**. Licensee acknowledges and agrees that: (i) the Licensed Technology and/or any Maintenance Releases may use Third Party Standards IPR, (ii) this Agreement does not provide any representation or warranty as to any technologies covered by Third Party Standards IPR, (iii) this Agreement does not convey a license to any such Third Party Standards IPR, and (iv) Licensee is solely responsible for any claims, licenses, payments, or other requirements, under Third Party Standards IPR that relate to Licensee's use and/or distribution of Licensee Products.

3.   RESTRICTIONS

3.1.   Licensee's right to distribute the Licensed Technology is limited to distribution of the Licensed Technology as part of or in conjunction with Licensee Product. For clarity, Licensee has no right to distribute any part of the Licensed Technology on a stand-alone basis. Licensee shall not under any circumstances attempt, or knowingly cause or permit others to attempt, to modify, create derivative works from, distribute apart from Licensee Products, sublicense, decompile, decipher, disassemble, reverse engineer, reverse assemble, or otherwise determine the source code (or the underlying ideas, algorithms, structure or organization) for the Deliverables or Licensed Technology. Licensee further agrees not to: (i) include in or integrally incorporate the Licensed Technology into any other software or hardware other than Licensee Products, or (ii) make any copies of the Licensed Technology or copies of any portion thereof other than for the purposes authorized in Section 2.1.

3.2.   Prohibition on Reverse Engineering, Decompilation, and Disassembly. Licensee may not reverse engineer, decompile, or disassemble the Licensed Technologies, except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation.

3.3.   Nothing in this Agreement shall be construed to allow Licensee to sell any part of the Deliverables. Licensee hereby agrees to not take any actions that would amount to an exhaustion sale of VisualOn's rights in the Deliverables.

4.   CONSIDERATION AND PAYMENT

4.1   **Payment Terms**. Fees are per usage as set on AWS Marketplace. Payments are handled on a monthly basis through AWS Marketplace.

4.2   **Taxes.** The fees listed on the AWS Marketplace are exclusive of any taxes, customs, levies, tariffs, duties or other charges, domestic or foreign imposed by any federal, state, governmental or local tax authority including but not limited to import and export duties, stamp taxes, registration taxes, turnover taxes, customs fees, sales taxes and value added taxes (except for taxes imposed on VisualOn's net income) with respect to any payments to be made by Licensee under this Agreement ("Taxes"). Taxes, if any, shall be paid by Licensee. Taxes, if paid by VisualOn as applicable, will appear as separate items on its invoice and shall be fully reimbursed by Licensee. If applicable law requires Licensee to withhold any Taxes levied on payments to be made pursuant to this Agreement ("Withholding Tax"), the prices in Exhibit B shall be adjusted upwards to reimburse VisualOn for the Withholding Tax.

4.3   **Free Trial.** An interested party who has not used the Deliverables within the last two (2) years is eligible to a forty-five day (45) free trial including up to ten thousand (10,000) impressions. During the Free Trial, VisualOn shall report zero (0) usage on Licensee's account with AWS Marketplace. After the expiration of the 45 days or reaching of 10,000 impressions by Licensee, whichever occurs first, Licensee will automatically be invoiced for the use of the Services based on the pricing as set on AWS Marketplace. Licensee is bound by the terms of this

Agreement during the Free Trial period. Termination is governed by the rules for termination of the Agreement as set by AWS Marketplace.

5.   LICENSEE'S RESPONSIBILITIES

5.1. **Licensee Products.** Licensee is solely responsible for the development, content, operation, maintenance, and use of Licensee Products. Licensee must comply with any and all current technical documentation applicable to the Deliverables as provided by VisualOn and updated by VisualOn from time to time. Licensee shall ensure that all information it provides to VisualOn (including via applicable APIs) is accurate, complete and not misleading. Licensee shall reasonably cooperate with VisualOn to identify the source of any problem with the Licensee Products that VisualOn reasonably believes may be attributable to the Content, the Licensee Product, Licensee App or any other technology, or data that Licensee controls.

5.2. **No Circumvention.** Licensee shall not circumvent, or attempt to circumvent, any license management, security devices, access logs, or other measures provided in connection with the Deliverables, or permit or assist any End User or any third party to do the same. Licensee must follow the required procedures for each Deliverable licensed under the Agreement. Licensee's failure to follow the required procedures is a breach of the Agreement and, among other things, may result in inaccurate invoices for additional usage of the Licensee Products. Licensee shall not access or use the Licensee Products in a way intended to avoid incurring fees or exceeding usage limits or quotas. Licensee shall not attempt to deactivate or tamper with any security, encryption or rights management features of the Deliverables.

5.3. **Development Protocols.** The Deliverables may only be used by subcontractors and employees who (a) have a reasonable "need to know" for Licensee to reasonably exercise its rights and comply with its obligations hereunder, (b) are under a suitable written agreement that enabling Licensee to fully comply with all of its obligations hereunder, including compliance with confidentiality and intellectual property obligations and provisions hereunder. Licensee shall be deemed fully responsible and liable for any actions made or omitted to be made by any independent contractor or employee of Licensee, with all such actions or omissions to be deemed to have been made by Licensee hereunder.

5.4. **Open Source.** Licensee shall not modify, distribute or otherwise use the Deliverables in any manner that causes any portion of the Deliverables that is not already subject to an open source license to become subject to the terms of any open source license. Licensee understands and agrees that the Deliverables are provided under strict proprietary licensing terms, and are not subject to nor compatible with open-license or public license agreements such as the GNU Public License (GPL). Licensee agrees not to use Deliverables in connection with software containing GPL (or LGPL or any similar open source license) software that requires the source code be provided.

5.5. **End Users.** EULAs. Licensee shall ensure that all End Users comply with Licensee's obligations under this Agreement and that the terms of Licensee's agreements with each End User are consistent with these GTC. If Licensee becomes aware of any violation of

Licensee's obligations under these GTC by an End User, Licensee shall immediately terminate such End User's access to the Content and the Licensee Products. Licensee is responsible for providing Licensee Product (if any) to End Users. VisualOn does not and shall not be obligated to provide any support or Licensee Products directly to End Users.

6. WARRANTIES REPRESENTATIONS, AND INDEMNITIES

6.1 **Defects.** VisualOn warrants that the Deliverables will function substantially in conformity with the Documentation. If Licensee finds a Defect, Licensee shall promptly notify VisualOn of such Defect and provide sufficient information to VisualOn to enable VisualOn to reproduce the Defect before VisualOn' response obligations will commence. VisualOn shall use commercially reasonable efforts to correct any such Defect that is capable of reproduction within a reasonable period of time taking into account the nature of the Defect after receipt of Licensee's notice of the Defect. This obligation is the sole and exclusive remedy of Licensee with respect to any such Defect. VisualOn is not required to correct any Defect caused by: (a) the unauthorized modification of the Deliverables by Licensee or any third party that is a contractor of Licensee that performed such modification at Licensee's instruction, (b) use of the Deliverables for other than the specific purpose for which they were designed and provided hereunder, (c) the use of a release version other than a current release of the Deliverables (or any API or SDK with respect thereto) or failure of Licensee to use replacement technology or comply with operational, technical or other guidelines provided by VisualOn in a timely manner, if such current release or replacement technology would not have caused such Defect, (d) modifications, additions or changes made to the Deliverables by or at the request of Licensee.

6.2 **Mutual Representations and Warranties**. Each party hereby represents and warrants to the other party that: (a) it has the full corporate right, power and authority to enter into the Agreement and to perform the acts required of it under the Agreement, (b) the Agreement constitutes the legal, valid and binding obligation of such party when executed and delivered and (c) any and all activities it undertakes in connection with the Agreement shall be performed in compliance with all applicable laws, rules and regulations.

6.3 **By VisualOn**. Subject to Section 2.4 ("Third Party Standards IPR"), VisualOn hereby represents and warrants that (a) Licensee's use of Deliverables as authorized herein will not infringe or misappropriate any patent, copyright or trade secret rights or any intellectual property right of any third party, and (b) to its knowledge, Licensee's use of Deliverables as authorized herein will not infringe any patent issued as of the date of the Order.

6.4 By Licensee. Licensee hereby represents and warrants that (a) Licensee and Licensee's licensors own or have licensed all right, title, and interest in and to the Content and the Licensee Products, and have all necessary third party licenses and authorizations with respect thereto, (b) Licensee has all rights in the Content and the Licensee Products necessary to grant the rights contemplated by the Agreement, (c) Licensee will use Licensee Products in compliance with all applicable laws, rules and regulations, including properly handling and processing notices sent to Licensee (or any of Licensee's affiliates) by any person claiming that Content violates such person's rights, (e) 's or any End Users' use of, access to or interoperation with Content and the Licensee Products will not infringe or misappropriate any copyright or trade secret rights of any third party, and (f) to its knowledge, VisualOn's or End Users' access to, use of or interoperation with the Content and the Licensee Products will not infringe any patent.

6.5 **DISCLAIMERS**. EXCEPT FOR THE EXPRESS WARRANTIES SPECIFIED IN THIS SECTION 6, VISUALON MAKES NO WARRANTIES, EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING WITHOUT LIMITATION, ANY IMPLIED

WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR THE STATUTORY WARRANTY AGAINST NONINFRINGEMENT, REGARDING THE LICENSED TECHNOLOGY OR SERVICES PROVIDED UNDER THIS AGREEMENT. EXCEPT FOR THE EXPRESS WARRANTY PROVIDED UNDER SECTION 6.1 ALL LICENSED TECHNOLOGY (INCLUDING ANY SOFTWARE AND DOCUMENTATION) AND SERVICES ARE PROVIDED "AS IS" AND WITHOUT WARRANTY OF ANY KIND. VisualOn does not warrant that the Licensed Technology at all times will perform without error or run without material interruption. VisualOn provides no warranty regarding, and will have no responsibility for, any claim arising out of: (i) a modification of the Licensed Technology made by anyone other than VisualOn; or (ii) use of the Licensed Technology in combination with any operating system other than those specified in the Documentation.

6.6   **GDPR Non-Compliance.** The User Experience Monitor portion of the Licensed Technology is not GDPR compliant and not to be used within the European Union.

6.7   **Response to an Injunction Against Use of the Licensed Technology**. Licensee's sole and exclusive remedy for any actual or alleged breach of the warranties in Section 6.3 above is that VisualOn shall use commercially reasonable efforts, at its expense, to: (i) obtain all rights required to permit the distribution, sale or use of the Licensed Technology by Licensee; or (ii) modify or replace such Licensed Technology to make it non-infringing. If VisualOn is unable to achieve either of said options within a reasonable period of time after the issuance of said injunction then: (x) Licensee shall not sell or distribute the Licensed Technology and/or Licensee Products other than as permitted by the terms of said injunction, and (y) VisualOn may terminate this Agreement, in which case VisualOn shall refund on a prorated basis any fees paid to VisualOn by Licensee for the then-current renewal period.

6.8   **Indemnification by Licensee**. Licensee shall indemnify and hold harmless VisualOn, its affiliates, directors, and employees from and pay any final judgment or settlement and associated costs (including all court costs and reasonable attorneys' fees) in connection with any action, claim or demand by a third party alleging that the Content including, without limitation, any action for infringement of any trademark, copyright, trade secret, right of publicity or privacy (including defamation), patent or other proprietary right with respect to the Content ("Legal Claim"). VisualOn shall give Licensee written notice promptly after receiving notice of a Legal Claim, and shall give copies to Licensee of all communications, notices and/or other actions relating to the Legal Claim. VisualOn shall give Licensee the sole control of the defense of any Legal claim, shall act in accordance with reasonable instructions by Licensee and shall give Licensee such assistance as Licensee reasonably requests to defend or settle such claim. Licensee shall conduct its defense at all times in a manner that is not adverse to VisualOn's interests. VisualOn may employ its own counsel to assist it with respect to any such claim. VisualOn shall bear all costs of employing its own counsel, unless engagement of counsel is necessary because of a conflict of interest with Licensee or its counsel, or because Licensee fails to assume control of the defense. Licensee may not settle or compromise any Legal Claim without VisualOn's express written consent.

7.   LIMITATION OF LIABILITY

NOTWITHSTANDING ANYTHING ELSE IN THIS AGREEMENT OR OTHERWISE, VISUALON SHALL NOT BE LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR: (i) ANY AMOUNTS IN EXCESS, IN THE AGGREGATE, OF THE LICENSE FEES PAID TO VISUALON HEREUNDER DURING THE TWELVE-MONTH PERIOD PRIOR TO THE DATE THE CAUSE OF ACTION

AROSE, (ii) LOSS OR CORRUPTION OF DATA, (iii) COST OF PROCUREMENT OF SUBSTITUTE GOODS, TECHNOLOGY OR SERVICES, OR (iv) INTERRUPTION OF USE. IN NO EVENT SHALL VISUALON BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES. THE LIABILITIES LIMITED BY THIS SECTION 7 APPLY EVEN IF (a) VISUALON IS ADVISED IN ADVANCE OF THE POSSIBILITY OF THE DAMAGES IN QUESTION, (b) SUCH DAMAGES WERE FORESEEABLE, AND (c) LICENSEE'S REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE.

8. NONDISCLOSURE

8.1. **Confidential Information**. The Parties agree that all information provided by one Party ("Discloser") to the other Party ("Recipient") under this Agreement shall be deemed Confidential Information of Discloser. Notwithstanding the foregoing, Confidential Information does not include information that: (A) is in Recipient's possession at the time of disclosure; (B) is independently developed by Recipient without the use of or reference to Confidential Information; (C) becomes known publicly, before or after disclosure, other than as a result of Recipient's improper action or inaction or breach of this Agreement; or (D) is approved for release in writing by Discloser.

8.2. **Nondisclosure Obligations**. Recipient shall not use any Confidential Information for its own use or for any purpose other than as necessary to perform or enforce its rights and/or obligations under this Agreement. Recipient shall not disclose Confidential Information to any third party and shall restrict the possession, knowledge, development and use of Confidential Information to its employees, agents, subcontractors and entities that it controls (collectively, "Personnel") and that have a need to know such information in connection with the purposes stated herein. Personnel will have access only to the Confidential Information they need for such purposes and Recipient shall ensure that its Personnel comply with its obligations under this Agreement, including without limitation this Section 8. Without limiting the foregoing and except as authorized in writing by Discloser, Recipient shall not (i) copy or modify any Confidential Information received from Discloser, or any copy, adaptation, transcription, or merged portion thereof, or (ii) reverse-engineer or reverse-compile object code versions of software programs. Recipient agrees not to disclose any Confidential Information to third parties without Discloser's prior written consent. Recipient shall take all reasonable measures to protect the secrecy of and avoid disclosure of Confidential Information, including any trade secrets, and to prevent it from falling into the public domain or the possession of persons not authorized to possess such information under this Agreement. These measures shall be no less than reasonable care. Recipient shall immediately notify Discloser in writing of any breach of its obligations under this Section 8. Notwithstanding the foregoing, Recipient may disclose Confidential Information as required by applicable law or by proper legal governmental demand and reasonably cooperate with Discloser in any effort to seek a protective order or otherwise to contest such required disclosure.

8.3. **Injunctive Relief**. Each Party acknowledges and agrees that any breach of its obligations with respect to this Section 8 and any use or disclosure of Confidential Information in a manner inconsistent with the provisions of this Agreement may cause or threaten irreparable harm to the other Party. Recipient further acknowledges and agrees that in the event of such actual or threatened breach or misuse Discloser may have no adequate remedy at law and shall be entitled to seek immediate injunctive and other equitable relief. Any right to obtain an injunction, restraining order or other equitable relief shall not be deemed a waiver of any right to assert any other remedy that may be available in law or in equity.

8.4.   **Duration and Return**. The confidentiality obligations set forth in this Section 8 shall be effective during the Term and shall survive thereafter for a period of two (2) years from the disclosure date of Confidential Information. Upon termination of this Agreement Recipient shall immediately destroy or return all copies of the Licensed Technology and all Confidential Information and shall certify in writing to Discloser that all such materials have been returned or destroyed.

8.5.   **Retention of Rights**. This section 8 does not transfer ownership of Confidential Information. Discloser retains all right, title, and interest to its Confidential Information.

9.   TERM, SUSPENSION, AND TERMINATION

9.1.   **Term**. This Agreement shall begin upon the Customer's Order at the AWS Marketplace and shall remain in effect for thirty (30) days from that date. This Agreement renews automatically for additional thirty (30) day periods (hereinafter: each a "Renewal Term") unless either Party provides the other Party a written notice of termination at least fifteen (15) days prior to the end of the Initial Term or Renewal Term, as applicable, or unless terminated under Section 9.3 before the expiry of the Initial Term or of the Renewal Term. The Initial Term, together with the Renewal Term, if any, comprise the "Term". Except for sublicenses to End Users, Licensee shall not grant sublicenses that extend beyond the Term.

9.2.   Suspension

9.2.1.   Generally. VisualOn may suspend use of Services if continued use may result in material harm to VisualOn interests. In such case, VisualOn will promptly notify Licensee of the suspension.

9.2.2.   Effect of Suspension. If VisualOn suspends Licensee's right to access or use any portion or all of Deliverables: (a) Licensee remains responsible for all fees and charges Licensee has incurred through the date of suspension,(b) Licensee remains responsible for any applicable fees and charges for any Deliverables to which Licensee continues to have access, (d) VisualOn' right to suspend Licensee's or any End User's right to access or use the Deliverables is in addition to its right to terminate the Agreement pursuant to Section 9.3 below.

9.2.3.   Lifting Of Suspension. Suspension shall be immediately lifted if the reasons for suspension specified in VisualOn' notice of suspension have been fully or substantially cured.

9.2.4.   Defensive Suspension. In the event Licensee brings an action against VisualOn and/or any of its licensors alleging that some portion of the Deliverables infringes a Licensee patent, copyright, trade secret or other intellectual property right of Licensee, VisualOn may suspend any or all of the licenses granted to Licensee under the Agreement.

9.3.   **Termination**

9.3.1.   **General**. Either Party may terminate this Agreement by giving a fifteen (15) days notice to the other party before the beginning of a Renewal Term.

9.3.2.   **By VisualOn.** VisualOn may also terminate the Agreement immediately upon notice to Licensee (reserving cumulatively all other remedies and rights under the Agreement and in law and in equity) (a) for cause, if any act or omission by Licensee or any End User results in a suspension described in Section 9.2; (b) if its relationship with a third party partner, including pursuant to Section 2.4 above, who provides software or other technology VisualOn uses to provide Deliverables expires, terminates or requires VisualOn to change the way VisualOn provides the software or other technology as part of Deliverables; (c) if VisualOn believes providing the Deliverables could create a substantial economic or technical burden or material security risk for VisualOn; (d) in order to comply with the law or requests of governmental

entities; or (e) if VisualOn determines use of Deliverables by Licensee or any End Users or its provision of any of Deliverables to Licensee or any End Users has become impractical or unfeasible for any legal or regulatory reason.

9.3.3. **Termination Due to Insolvency or Bankruptcy**. If either Party (i) institutes or otherwise becomes a party, voluntarily or involuntarily, to a proceeding alleging or pertaining to the insolvency or bankruptcy of that Party; (ii) is dissolved or liquidated; (iii) makes an assignment of its material assets for the benefit of creditors; and/or (iv) initiates or is subject to reorganization proceedings, this Agreement shall be terminable on the date written notice is deemed given to such Party.

9.4. **Effect of Termination or Expiration**. Upon termination or expiration of this Agreement, this Agreement becomes void and any and all licenses granted under this Agreement terminate immediately, Licensee shall cease all use of the Licensed Technology and delete all copies in its possession or control, Licensee shall by explicit notice terminate any sublicenses granted, Licensee shall cease supporting and/or enabling the use of Licensee Products, and each Party shall promptly return any property of the other Party. Licensee recognizes and accepts that Licensee shall have no rights to any Maintenance Releases available after the termination or expiration of this Agreement. Nothing herein shall be construed to release either Party from any obligation which matured prior to the effective date of such termination or expiration (or which may continue beyond such termination or expiration) or to relieve the defaulting Party from any and all liabilities at law or in equity to the other for breach of this Agreement. Upon termination under Section 9.3.1, any unpaid amounts due under this Agreement shall become immediately due and payable. The following provisions shall survive termination or expiration of this Agreement: (i) any obligation of Licensee to pay for services rendered before termination; (ii) Sections 1, 2.3, 2.4, 3, 4, 5 through 9, 10.8, 10.11, and 10.12 of this Agreement; and (iii) any other provision of this Agreement that must survive termination to fulfill its essential purpose.

10. MISCELLANEOUS

10.1. **Notices**. All notices shall be in writing and shall be delivered by email, Any notice sent hereunder shall be deemed given when sent.

10.2. **No Waiver**. Waiver by either Party of a single breach or default or a succession of breaches or defaults shall not deprive such Party of the right to terminate this Agreement by reason of any subsequent breach or default.

10.3. **Independence of the Parties**. This Agreement shall not constitute the designation of either Party as the representative or agent of the other, nor shall either Party by this Agreement have the right or authority to make any promise, guarantee, warranty, or representation, or to assume, create, or incur any liability or other obligation of any kind, express or implied, against or in the name of, or on behalf of, the other. In giving effect to this Agreement no Party shall be or be deemed to be an agent or employee of the other Party for any purposes whatsoever, and the relationship between the Parties are and shall be that of independent contractors. Nothing in this Agreement shall constitute a partnership, joint venture between the Parties.

10.4. **Authority**. Each Party represents and warrants that: i) the signatory shown below has the authority to bind the Party on whose behalf he/she is signing to the terms of this Agreement; ii) the execution and delivery of this Agreement and performance of such Party's obligations hereunder have been duly authorized; and iii) the Agreement is a valid and legal agreement binding on the Parties and enforceable in accordance with its terms

10.5. **Force Majeure**. To the extent caused by force majeure, no delay, failure, or default shall constitute a breach of this Agreement.

10.6. **Technology Export**. Licensee shall comply with the U.S. Foreign Corrupt Practices Act

and all applicable export laws, restrictions, and regulations of any United States or foreign agency or authority and not to export or re-export, or allow the export or re-export of any product, technology or information it obtains or learns pursuant to this Agreement (or any direct product thereof) in violation of any such laws, restrictions or regulations.

10.7. **Non-Assignability**. Licensee may not and shall not assign, transfer, convey or subcontract the Agreement or any rights or obligations hereunder, whether by operation of law or otherwise, to any other party without VisualOn' prior consent and any attempt to do so shall be void ab initio. VisualOn shall have the right to assign, transfer and convey the Agreement, or any rights or obligations hereunder, to any other party without Licensee's prior written consent, including in connection with an acquisition, merger, change of control, sale of all or substantially all of its assets, secured financing, securitization or similar transaction. The Agreement shall be binding upon, and enforceable by, and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

10.8. **Governing Law and Forum**. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of California (United States of America) without regard to its rules on conflict of laws or any other rules that would result in the application of a different body of law or to the United Nations Convention on Contracts for the International Sale of Goods or to UCITA. The Parties agree to bring any and all disputes arising out, in connection with, or relating to this Agreement and/or the transactions and relationships among the Parties contemplated by this Agreement exclusively in the state or federal courts located in California. For all purposes of this Section 10.8, the parties consent to the personal and exclusive jurisdiction and venue in the United States federal courts or state courts located within the County of Santa Clara, California.

10.9. **Severability**. If any provision of this Agreement, other than a provision going to the essence of the Agreement, is held to be unenforceable by a court of competent jurisdiction, such decision shall not affect the validity or enforceability of any other provision of this Agreement. Any provision of this Agreement held invalid or unenforceable shall, to the extent practicable, be substituted with a valid and enforceable provision that achieves the results contemplated by the parties in the original provision.

10.10. **Publicity**. Following the execution of this Agreement, the parties may issue a joint press release highlighting the relationship contemplated by this Agreement. Each party may use the name of the other party in press releases, product brochures, and financial reports and on its web site indicating the relationship contemplated by this Agreement subject to the other party's prior written approval, which shall not be unreasonably withheld.

10.11. **Expenses**. Except as otherwise expressly provided in this Agreement, each Party shall bear its respective expenses incurred in connection with the preparation, execution, and performance of this Agreement and the transactions contemplated hereby, including all fees and expenses of its agents and representatives.

10.12. **Attorney Fees**. In the event of any litigation or other proceeding concerning or relating to this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party its legal fees and costs, including without limitation attorney, expert witness and court fees and costs.

10.13. **Titles and Headings**. The headings of Sections in this Agreement are provided for convenience only and shall not affect its construction or interpretation.

10.14. **Entire Agreement; Amendment**. This Agreement supersedes all prior or contemporaneous negotiations and agreements (whether oral or written) between the parties with

respect to the subject matter thereof and constitutes, along with its Exhibits, a complete and exclusive statement of the terms and conditions of the Agreement between the parties with respect to such subject matter. This Agreement may not be amended or modified except by the written agreement of both parties.