

1. WHAT FORMS THE AGREEMENT

- 1.1. By applying for our Services, you agree that this Agreement shall apply to and govern those Services. This Agreement shall come into force if and when we email you to confirm acceptance of your application.
- 1.2. This Agreement sets out all the terms agreed between us about the subject matter of this Agreement. This Agreement takes the place of all previous negotiations, understandings and representations.

2. DEFINITIONS

- 2.1. In these Terms, certain words and phrases have defined meanings. These words and phrases include:
- 2.2. Agreement - These terms and conditions within the Master Service Agreement, together with any Specific Terms;
- 2.3. Confidential - Trade secrets, operations, processes, information plans, intentions, product information, prices, know-how, designs, customer lists, market opportunities, transactions, affairs and/or business of you or us. This Agreement is our Confidential Information;
- 2.4. Intellectual Property Rights - Copyrights, database rights, patents, registered and unregistered design rights, registered and unregistered trademarks, and all other industrial, commercial or intellectual property rights existing in any jurisdiction in the world and all the rights to apply for any of these;
- 2.5. Interest Rate - 2% above the prime base rate per annum;
- 2.6. Month - A period of one calendar-month from the Start Date or any monthly anniversary of the Start Date;
- 2.7. Us; Our; We - Vision 108 Inc., a private corporation registered in the state of Pennsylvania.
- 2.8. Server - Any server that we allow you to access or in which we allocate you resources, as described in the Specification;
- 2.9. Services - The services provided by us to you under these Terms or the applicable Specific Terms;
- 2.10. Software - Any software that we provide to you under this Agreement;
- 2.11. Specific Terms - Any of our Specific Terms that are applicable for particular Services;
- 2.12. Start Date - The date on which we email you to confirm acceptance of your application;
- 2.13. Terms - These Standard Terms & Conditions;
- 2.14. Year - A twelve calendar-month period from the Start Date and anniversaries of the Start Date;

2.15. You; Your - the customer.

3. INTERPRETATION

- 3.1. In these Terms:
 - 3.1.1. References to clauses are to the clauses of these Terms;
 - 3.1.2. References to paragraphs are to the paragraphs of Specific Terms;
 - 3.1.3. Headings are for ease of reference only;
 - 3.1.4. Wherever the words “including”, “include”, or “includes” or are used they shall be deemed to be followed by the words “without limitation” unless the context otherwise requires;
 - 3.1.5. If there is any conflict or inconsistency between these Terms and Specific Terms in relation to particular Services, the Specific Terms shall have precedence for the relevant Services.
 - 3.1.6. All rights and remedies referred to in this Agreement are cumulative and not to the exclusion of other rights and remedies, unless expressly stated otherwise.

4. GOVERNING LAW

- 4.1. This Agreement is governed by U.S. law.

5. HOW WE VARY THIS AGREEMENT OR A SERVICE

- 5.1. We, but not you, may vary this Agreement or the Services by notifying you of the change by email or in writing. We will give you a reasonable period of notice of the variation.
- 5.2. If we vary the Services, we may increase the fees for the Services.
- 5.3. If we notify you of variation of the Services (or part of the Services), you may cancel the varied parts of the Services for any reason by giving not less than 14 days’ notice from the date on which you receive notice of the variation from us. We shall refund you a proportion of the fees representing the number of paid-for days of the Services that you will not be receiving due to termination.

6. WE DEPEND ON EACH OTHER

- 6.1. If we fail to do something that we ought to do under this Agreement and that directly causes you to fail to do something that you ought to do under this Agreement then we will not treat your failure as a breach of contract in those circumstances. You will treat us in the same way.

7. YOUR OBLIGATIONS

- 7.1. While this Agreement is in force, you shall:
 - 7.1.1. Comply with our reasonable instructions, guidelines and directions about the use of the Services, and;

- 7.1.2. Not sell, deal, transfer, or otherwise make available the Software or the Services to any third party for any purposes except as expressly permitted by this Agreement.
- 7.2. You agree that you shall ensure that you comply with your obligations under US law.
- 7.3. You warrant that you have the full power and authority to enter into this Agreement.
8. CONNECTIVITY AND SERVICE ACCESS
- 8.1. Unless any Specific Terms states otherwise where the Services include the provision of connectivity to the Internet or access to a Server, you shall not be entitled to such Services until we notify you (by email, telephone or in writing) that it is ready for use.
9. CONFIDENTIALITY
- 9.1. Each of us shall, for the Confidential Information for which each of us is the recipient:
- 9.1.1. Keep the Confidential Information strictly confidential and not disclose any part of it to any person except as permitted by or as required for the performance of the recipient's obligations under this Agreement;
- 9.1.2. Take all reasonable steps to prevent unauthorized access to the Confidential Information;
- 9.1.3. Not use the Confidential Information other than for the purposes set out in this Agreement.
- 9.2. Each of us may disclose the Confidential Information to, and allow its use in accordance with this Agreement by the following (as long as the conditions in clause 9.3 are met):
- 9.2.1. Employees and officers of the recipient who require it for the recipient to perform its obligations under this Agreement;
- 9.2.2. The recipient's auditors and professional advisors solely for the purposes of providing professional advice.
- 9.3. As a condition of the rights set out in clause 9.2 the party wishing to exercise the rights must:
- 9.3.1. Ensure that any party to whom it discloses Confidential Information is under an obligation of confidentiality about such Confidential Information; and
- 9.3.2. Procure that such persons observe the restrictions in this clause 9.
- 9.4. With the exception of the Software and the Services, the restrictions in clause 9.1 do not apply to any information to the extent that it:
- 9.4.1. Is or comes within the public domain other than through a breach of clause 9.1; or
- 9.4.2. Is in the recipient's possession (with full right to disclose) before receiving it from the other party; or
- 9.4.3. Is lawfully received from a third party (with full right to disclose); or
- 9.4.4. Is independently developed by the recipient without access to or use of the Confidential Information.
10. INTELLECTUAL PROPERTY RIGHTS
- 10.1. We, or our licensors, own all Intellectual Property Rights in the Services and the Software. You shall acquire no rights in the Services or Software.
- 10.2. You shall indemnify and keep us indemnified against any and all losses, costs, damages, liabilities, claims, demands and expenses suffered or incurred by us (including legal expenses reasonably and properly incurred) arising out of any claim brought against us by any third party alleging that its Intellectual Property Rights are infringed by the use by you of the Services or Software, to the extent that such a claim arises out of your modification of the Software or Services, or the use of the Software or Services in any software, services or materials not provided to you by us.
11. SOFTWARE
- 11.1. Where we license Software owned by third parties to you, you agree that you shall comply with any license terms of such third parties.
12. DOMAIN NAMES
- 12.1. If you buy a domain name from us, you acknowledge and agree that once you have paid for the domain name, we will register that domain name. We cannot amend that domain name following purchase. It is therefore your responsibility to ensure that you enter the domain name correctly when you apply for it.
- 12.2. You agree that you accept and shall comply with the terms of the domain name registrar applicable for the purchased domain name.
13. INDEMNITIES
- 13.1. You agree to fully indemnify and keep us fully indemnified from and against all actions, demands, costs (on a full indemnity basis), losses, penalties, damages, liability, claims and expenses (including legal fees) whatsoever incurred by us and arising from any of the following:
- 13.1.1. Your breach of this Agreement, your negligence or other act, omission or default;

- 13.1.2. The operation or break down of any equipment or software owned or used by you (except for the Server and Software);
- 13.1.3. Your use or misuse of the Services and/or the Server.
14. LIMITS ON LIABILITY
- 14.1. Each party's liability to the other for any claim for breach of contract, negligence, breach of statutory duty or under any indemnity or otherwise shall be limited as follows:
- 14.1.1. For any claim for personal injury or death caused by the other party's negligence, or for fraudulent misrepresentation, no limit shall apply;
- 14.1.2. For other claims for personal injury or death and claims for the damage to or loss of tangible property (except claims relating to data contained on any tangible media), liability shall be limited to \$1 million per claim or series of claims arising from any one incident.
- 14.1.3. For any other claim, each party's liability to the other shall be limited to the amount of fees paid under this Agreement in the Year in which the claim arose.
- 14.2. We shall not be liable for the following types of loss, whether direct, indirect or consequential, and even if we were notified that you would incur any of these losses:
- 14.2.1. Financial loss, including loss of profits, earnings, business, goodwill, business interruption;
- 14.2.2. Expected or incidental losses; loss of expected savings; loss of sales; failure to reduce bad debt; reduction in the value of an asset.
15. PAYMENT AND INVOICING
- 15.1. You shall pay the fees for the Services, including any applicable setup fees. All the prices and charges that we quote are exclusive of taxes and we shall charge these in addition where applicable.
- 15.2. We operate an online invoicing system. We will notify you by email when an invoice is ready. It is then your responsibility to log on to our system and arrange payment. Payment must be by a credit or debit card accepted by our online payment system.
- 15.3. You will pay all of our invoices in cleared funds by the due date set out on the invoice. If you do not pay any sum by its due date:
- 15.3.1. We shall be entitled to charge interest on the overdue amount at the Interest Rate from the due date up to the date of actual payment (whether before or after any court judgment); and
- 15.3.2. We shall be entitled to suspend Services. We shall not be obliged to reactive the Services; reactivation shall be at our sole discretion; and
- 15.3.3. In addition to the above, if an invoice remains unpaid 7 days after its due date, we shall be entitled to send you reminders by email and post at regular intervals. We shall charge you a fee of \$5 per letter to cover a small proportion of the costs we incur in seeking payment of the overdue amount;
- 15.3.4. In addition to the above, you shall be liable to pay our reasonable legal costs and expenses for seeking payment of the overdue amount.
- 15.3.5. We shall not be liable for any losses to you caused by our suspension of the Services in accordance with clause 15.3.
- 15.3.6. We are entitled to charge you a reasonable fee for reactivating any Services suspended in accordance with clause 15.3.
- 15.3.7. We shall be entitled to increase our fees for any or all Services once in each Year. However, we shall limit any such increase to a percentage not greater than the percentage increase in the Consumer Prices Index published by the Bureau of Labor Statistics.
16. EXCEEDING USAGE LIMITS & OVERAGE CHARGES
- 16.1. If you exceed the prescribed usage limits for data transferred per Month, we reserve the right to charge you the overage charges that are applicable for the excess usage during that Month. For shared hosting services, we also reserve the right to suspend the Connection until the beginning of the next Month. Certain services have fixed storage limits, and you shall not be able to exceed such limits.
- 16.2. We may also (but are not obliged to) email you, at the end of the Month, and give you the option of upgrading the Services. If you notify us that you wish to upgrade, you will pay the fees for the upgraded Services from the day on which we upgrade them. Any service upgrade does not constitute a variation of our Agreement with you.
17. EVENTS OUTSIDE REASONABLE CONTROL
- 17.1. Neither of us will be liable to the other for any delay or failure in the performance of our contractual obligations caused by events outside our reasonable control. However, for either of us to rely on this clause, we must promptly notify the other of the circumstances of the event. This clause 17.1 does not apply to your obligation to pay the fees for the Services.

- 17.2. If the event persists for 28 days or more, the party not effected by the event may give notice to the other to terminate this Agreement with effect from a date specified in the notice without penalty or other liability (except for any liability on your part to pay our invoices and for work carried out but invoiced at the date of termination).
18. NOTICES
- 18.1. Any notice (except for the service of court proceedings) shall be sent to the other party's nominated email address for service. In our case, this will be the helpdesk email address that we notify you of or is stated on our website.
- 18.2. If either of us wants to change our email address for service, we must notify the other party of the change of email address in accordance with clause 18.1. In the case of you notifying us, the change will take effect from the date on which you change your email address via our secure client portal.
- 18.3. We both consider that notice has been given
- 18.3.1. In the case of us notifying you, one clear day after the time of sending the email;
- 18.3.2. In the case of you notifying us, one clear day after you update contact details via our secure client portal.
19. DISPUTE RESOLUTION PROCEDURE
- 19.1. We both agree that we shall deal with any disputes about this Agreement as follows:
- 19.1.1. The issue in dispute shall be referred for discussion to, in your case, the name of the main account holder, and in our case, the customer services manager that we notify to you. You should email us at management@vision108.com;
- 19.1.2. If the dispute is not resolved, the executive management (or equivalent) of each of us shall discuss the issue;
- 19.1.3. If the issue is not resolved then we shall refer it to a mediator that we jointly appoint. If we cannot agree on the mediator, we shall ask the Better Business Bureau (BBB) of Eastern PA to appoint a mediator;
- 19.1.4. If the dispute is still not resolved, then we both agree that the U.S. courts have exclusive jurisdiction to settle the dispute.
- 19.2. We shall both bear our own costs for elements of the dispute resolution procedure up to the involvement of the courts under clause 19.1.4.
20. COOLING-OFF PERIOD
- 20.1. You have a cooling-off period in which you can cancel Services.
- 20.2. The cooling-off period begins:
- 20.2.1. In the case of Services that you apply for before the Start Date, on the Start Date;
- 20.2.2. In the case of Services that you apply for after the Start Date, on the date on which we notify you that we have accepted your application for the Services.
- 20.3. Subject to clause 20.2, the cooling-off period expires 30 days after the date on which the Services begin.
- 20.4. The cooling-off period does not apply to any Services for which we have to set-up, build hardware, or customize hardware or resources to your specification (e.g. a managed dedicated server). If you are a consumer, you also agree that:
- 20.4.1. For the purposes of the Consumer Protection (Distance Selling) Regulations 2000, the Services begin on the day on which we begin to set-up, build or customize the hardware or resources (as appropriate); and
- 20.4.2. We may begin set-up, building or customization within the first 7 days after you enter into an agreement with us for the Services.
21. TERMINATION
- 21.1. This Agreement takes effect on the Start Date. Subject to clause 20 and the remainder of this clause 21, and any Special Terms, it shall continue for the period stated in the applicable Specific Terms.
- 21.2. Either of us can terminate this Agreement immediately by serving written notice on the other party if:
- 21.2.1. The other party commits a material breach of an obligation under this Agreement or any Specific Terms which is not capable of remedy;
- 21.2.2. The other party commits a material breach of an obligation under this Agreement or any Specific Terms which is not remedied within 28 days after receipt of a notice from the party not in breach specifying the breach, requiring its remedy and making clear that failure to remedy may result in termination;
- 21.2.3. If the other party becomes insolvent.
- 21.3. We, but not you, may terminate this Agreement and/or any Services at any time and for any reason whatsoever by giving you reasonable notice of such termination. Unless termination is for your breach of an obligation under this Agreement or any Specific Terms, we will refund you a proportion of the fees representing the number of paid-for days of Services that you will not be receiving due to termination.

21.4. Termination of this Agreement (or of any element of it) shall not affect any rights, obligations or liabilities of either party that have accrued before termination or that are intended to continue to have effect beyond termination.

22. MISCELLANEOUS TERMS

22.1. Persons who are not a party to this Agreement shall not have any rights under this Agreement.

22.2. If any part of this Agreement is found to be invalid or unenforceable by any court, such invalidity or unenforceability shall not affect the other provisions of this Agreement and such other provisions shall remain in full force and effect.

22.3. If either of us fails to exercise a right or remedy that it has or which arises under this Agreement, such failure shall not prevent us from exercising that right or remedy subsequently for that or any other incident.

22.4. A waiver of any breach or provision of this Agreement shall only be effective if made by email or in writing.

22.5. You may not assign nor transfer any part of this Agreement without obtaining our consent in writing or by email beforehand.