

# TERMS OF SERVICE

## Individuals

### for

# 11Sight Hosted Services

READ CAREFULLY: These Terms of Service ("Terms of Service"), together with our Privacy Policy ("Privacy Policy") which can be found at <http://app.11Sight.com/legal/>, govern your use of the 11Sight ("us," "we," or "11Sight") website located at app.11sight.com (the "Site"), the 11Sight native applications and clients (the "Native Application"), and our related video interaction and messaging services (together with the Site and Native Applications, the "Services"). By accessing or using the Services, you as an individual and any organizational entity through which you are employed ("you" or the "User") agree to be bound by these Terms of Service and our Privacy Policy. If you are an individual signing up for a Member Account or otherwise using the Service on behalf of an organizational entity, you hereby agree that you have the authorization to bind such entity and such entity shall be liable for your use of the Service. If you are originating a call as an Anonymous user to an 11Sight member, you agree to the applicable portions of this agreement and the Privacy Policy Agreement.

YOUR USE OF THE SERVICE IS CONDITIONED UPON YOUR COMPLIANCE WITH AND ACCEPTANCE OF THESE TERMS OF SERVICE. BY CLICKING THE "I AGREE" BUTTON OR SIMILAR BUTTONS OR LINKS THAT INDICATE THAT YOU ARE AGREEING TO THESE TERMS OF SERVICE, BY CREATING A MEMBER ACCOUNT, EXECUTING AN ORDER FORM, OR OTHERWISE SUBSCRIBING FOR THE SERVICE, OR BY OTHERWISE USING THE SERVICE, YOU AGREE TO BE BOUND BY THESE TERMS OF SERVICE AND YOU REPRESENT TO US THAT YOU ARE 13 YEARS OF AGE OR OLDER AND ARE LEGALLY COMPETENT TO ENTER INTO AND AGREE TO THESE TERMS OF SERVICE AND THE PRIVACY POLICY. YOU ARE ENCOURAGED TO PRINT OR DOWNLOAD A COPY OF THESE TERMS OF SERVICE AND KEEP THEM IN YOUR RECORDS.

THESE TERMS OF SERVICE INCLUDE (1) AN ARBITRATION PROVISION; (2) A WAIVER OF RIGHTS TO BRING A CLASS ACTION AGAINST US; AND (3) A RELEASE BY YOU OF ALL CLAIMS FOR DAMAGE AGAINST US THAT MAY ARISE OUT OF YOUR USE OF THE SERVICES. BY USING THE SERVICES, YOU AGREE TO THESE PROVISIONS.

UNLESS YOU RECEIVE OUR PRIOR WRITTEN CONSENT, YOU MAY NOT ACCESS THE SERVICE IF YOU ARE A DIRECT COMPETITOR OF 11SIGHT IN THE AREA OF VIDEO COMMUNICATIONS OR COLLABORATION SOLUTIONS OR OTHERWISE. IN ADDITION, YOU MAY NOT ACCESS THE SERVICE FOR PURPOSES OF MONITORING ITS AVAILABILITY, PERFORMANCE OR

FUNCTIONALITY, OR FOR ANY OTHER BENCHMARKING OR COMPETITIVE PURPOSES. YOU AGREE THAT IF YOU ARE LOCATED OUTSIDE OF THE UNITED STATES YOU WILL COMPLY WITH THE LOCAL RULES REGARDING ONLINE CONDUCT AND ACCEPTABLE CONTENT, INCLUDING LAWS REGULATING THE EXPORT OF DATA TO AND FROM THE UNITED STATES OR THEIR COUNTRY OF RESIDENCE (INCLUDING BY SECURING ANY REQUIRED CONSENTS RELATING THERETO.

YOU UNCONDITIONALLY AGREE (A) THAT THESE TERMS OF SERVICE ARE AN AGREEMENT THAT IS ENFORCEABLE LIKE ANY WRITTEN CONTRACT SIGNED BY YOU, AND (B) TO BE BOUND BY AND TO BECOME A PARTY TO THIS AGREEMENT WITH 11SIGHT. IF YOU DO NOT UNCONDITIONALLY AGREE TO ALL OF THE TERMS SET FORTH IN THESE TERMS OF SERVICE, YOUR USE OF THE SERVICE IS STRICTLY PROHIBITED. TO THE EXTENT THAT THE TERMS OF THIS TERMS OF SERVICE ARE CONSIDERED AN OFFER, YOUR ACCEPTANCE THEREOF IS EXPRESSLY LIMITED TO THESE TERMS.

## 1 Terminology

When referring to our services, we use the terminology in our Service Description Document in [11sight.com/legal](http://11sight.com/legal). Any capitalized terms used but not otherwise defined herein shall have the meaning set forth in the Service Description Document.

## 2 Access and Use of the Service

**The Service:** The Service allows individuals to enter into a one-to-one video/audio/text [Conversation] interactive session, an 11 Call. The Callee has to be a Member of 11Sight. The Caller can be a Member or any Anonymous Caller. An 11 Call can be originated from an IBC (In Browser Client) or from a Native Application. In either case the Caller can be a Member, or an Anonymous Caller. A Member can be an individual, or it can be part of an Organization with multiple Members. In an Organization there are three roles, Organization Owner, Organization Manager, and Organization User.

A Call Log is created for every 11 Call which includes Call-Images and Call-Video and associated comments. Members have the Call Log placed in their Call History.

**Purchase through Partner:** These Terms of Service will apply whether you subscribed for the Service directly from 11Sight or through an entity other than 11Sight (a "Partner").

**Fees; Scope of Use:** If you are using features of the Service for which fees are imposed by 11Sight (the "Paid Service"), your use of the Paid Services is subject to the payment of the fees set forth on the online Order Form ([app.11sight.com/sign-up](http://app.11sight.com/sign-up)) , and is limited to the term and to the limitations in volume (e.g., concurrent connections, 11-Buttons, number of Callees, etc.) set forth on the online Order Form. If your use of the Paid Service exceeds the limits set forth on the Order Form or otherwise requires the payment of additional fees (per the Order Form), you will be billed for such usage in the following 11Sight or Partner billing

cycle and you agree to pay such additional fees within 30 days of your receipt of the applicable invoice.

11Sight reserves the right to change any fees or applicable charges and to institute new charges and fees at any time, provided that if you have executed an Order Form for Paid Services, changes to fees for Services ordered under such Order Form shall not be effective until the end of the Initial Term or any Renewal Term (as applicable).

All fees paid to 11Sight for subscriptions to the Service are non-refundable. No refunds or credits will be granted for partial periods of Service or unused portions of the Service or in the event of a price reduction or promotional offering.

Your continued use of the Service after any price change made in accordance with these Terms of Service is hereby deemed to constitute your agreement to pay the changed amount. You agree that 11Sight may take any steps it deems necessary to collect the fees from you and that you will be responsible for all costs and expenses incurred by 11Sight in connection with such collection activity, including collection fees, court costs and attorneys' fees. You further agree that 11Sight may collect interest at the lesser of 1% per month or the highest amount permitted by law on any amounts not paid when due.

All fees are exclusive of any sales, use, service, value-added, withholding tax or other tax levied or incurred by any government authority on account of the Service ("Taxes"). You will be responsible for all Taxes associated with the Service other than taxes based on 11Sight's net income. If 11Sight is legally obligated to pay or collect Taxes for which you are responsible, 11Sight may invoice and you will promptly pay such amounts (or you will reimburse 11Sight for any Taxes paid on your behalf) which 11Sight will then remit to the appropriate authorities on your behalf. If either party is audited by a taxing or other governmental authority in connection with the Service, the other party shall reasonably cooperate with the party being audited in an appropriate and timely manner.

**Registration and Set-Up:** In order to use the Service, other than as an Anonymous Caller, you will have to register and create a Member Account. As part of that process, you will provide a user name and password. Your user name has to be your e-mail address. You are responsible for ensuring that your contact information is accurate and updated at all times. 11Sight reserves the right to refuse registration of an individual, to cancel a Member Account or to require change of passwords it deems inappropriate in its sole discretion.

Your Member Account will give you access to the Site and to our Native Applications. While our Native Applications can be used to initiate 11 Calls as Anonymous Users, initiating an 11 Call as a Member will result you having your Call Log placed in your Call History.

**Call History Storage:** We will store your Call History up to one year so long your total storage usage is below [200 Megabytes]. 11Sight reserves the right to modify these time and size limits with 30 days of notice, which may be given by updating these Terms of Service.

**Eligibility:** The Service is not directed at children younger than 13 years of age. The Service is intended solely for users who are 13 years of age or older, and any use or access to the Service by anyone under 13 is strictly prohibited and in violation of these Terms of Service. If you are under 18 years of age, you should review these Terms of Service with your parent or guardian and ensure that you both understand it, and by using the Service, both you and your parent(s) or guardian(s) consent to these Terms of Service and your parent(s) or guardian(s) are responsible for your use of the Service and any breach of these Terms of Service by you. 11Sight does not knowingly collect, use or solicit personal information about or from children aged 13 or younger. If we learn that 11Sight has collected information from a child aged 13 or younger, we will delete that information as quickly as possible.

**Beta Services:** You understand and acknowledge that some Services are being provided as a private and/or public beta (the "Beta Services"), and are made available on an "AS IS" and "AS AVAILABLE" basis for the purpose of providing us with feedback on the quality and usability of the Service. Such Beta Services may contain errors or inaccuracies that could cause failures, corruption or loss of data and/or information from your device and from peripherals (including, without limitation, servers and computers) connected thereto. 11Sight strongly encourages you to back-up all data and information on your device and any peripherals prior to using the Beta Service. You assume all risks and all costs associated with your use of any Beta Service. In addition, 11Sight is not obligated to provide any maintenance, technical or other support for any Beta Service. 11Sight reserves the right to modify, suspend or stop the Beta Service (or any part thereof), either temporarily or permanently, at any time or from time to time, with or without prior notice to you.

**Service Availability:** The Services offered through the 11Sight may be unavailable from time to time, may be offered for a limited time, or may vary depending on your region or device. If you change the location associated with your Member Account, you may need to re-acquire Services that were available to you and paid for in your previous region. We use commercially reasonable efforts to keep the Services up and running; however, all online services suffer occasional disruptions and outages, and 11Sight is not liable for any disruption or loss you may suffer as a result. In the event of an outage, you may not be able to retrieve your Call History, Call Logs or any Call-Images, Call-Videos, Messages or other data that is stored or transmitted by 11Sight (the "Content"). We recommend that you regularly backup Your Content that you store on the Services or store using third-party apps and services.

**Platform Support:** 11Sight strives to be a true any-platform to any-platform call solution. However, practicality limits us to support Android, iOS, Windows, Mac environments and we can only test with a representative subset of the plethora of device, OS, browser, combinations that exists. To that end we make an Interoperability Matrix availability to our

Members that they can reach through their account that informs you of supported and tested platforms.

**NO EMERGENCY CALLS:** THE SERVICE IS NOT INTENDED TO SUPPORT OR CARRY EMERGENCY CALLS TO ANY TYPE OF HOSPITALS, LAW ENFORCEMENT AGENCIES, MEDICAL CARE UNIT OR ANY OTHER KIND OF SERVICES THAT CONNECT A USER TO EMERGENCY SERVICES PERSONNEL OR PUBLIC SAFETY ANSWERING POINTS ("EMERGENCY SERVICES"). THERE ARE IMPORTANT DIFFERENCES BETWEEN TRADITIONAL TELEPHONE SERVICES AND THE SERVICE. YOU ACKNOWLEDGE AND AGREE THAT: (I) 11SIGHT IS NOT REQUIRED TO OFFER ACCESS TO EMERGENCY SERVICES UNDER ANY APPLICABLE LOCAL AND/OR NATIONAL RULES, REGULATIONS OR LAW; (II) IT IS YOUR RESPONSIBILITY TO PURCHASE, SEPARATELY FROM THE SERVICE TRADITIONAL WIRELESS (MOBILE) OR FIXED LINE TELEPHONE SERVICES THAT OFFER ACCESS TO EMERGENCY SERVICES, AND (III) THE SERVICE NOT A REPLACEMENT FOR YOUR PRIMARY TELEPHONE SERVICE.

### 3 OWNERSHIP; LICENSES

**Ownership by 11Sight:** All right, title, and interest in and to Service, including the Site, 11 Buttons and Native Applications (but excluding Content provided by Users), are and will remain the exclusive property of 11Sight and its licensors. The Service is protected by copyright, trademark, and other laws of both the United States and foreign countries. 11Sight reserves all rights not expressly granted in these Terms of Service. As part of using the Service (including any Beta Service), 11Sight will provide you with the opportunity to submit comments, suggestions, or other feedback regarding your use of the Services ("Feedback"). You agree that 11Sight shall own all right, title and interest in and to any Feedback and that 11Sight will be free to use any Feedback you provide for any purpose.

**Native Application License:** Subject to your compliance with the terms and conditions of this Terms of Service, we grant you a non-transferable, non-exclusive license to download, install and use the Native Application in object code form only on a mobile device or computer that you own or control solely for your own communication purposes. You may not derive or attempt to derive the source code of all or any portion of the Native Application, permit any third party to derive or attempt to derive such source code, or reverse engineer, decompile, disassemble, or translate the Native Applications or any part thereof.

**11 Buttons:** Subject to your compliance with the terms and conditions of this Terms of Service, we grant you a non-transferable, non-exclusive license to download, install and use 11-Buttons on your personal websites and applications in object code form and solely for communication purposes. You may not derive or attempt to derive the source code of all or any portion of the 11-Button, permit any third party to derive or attempt to derive such

source code, or reverse engineer, decompile, disassemble, or translate the 11-Buttons or any part thereof.

**Apple App Store:** The following terms and conditions apply to you only if you are using Native Applications from the Apple App Store. To the extent the other terms and conditions of these Terms of Service are less restrictive than, or otherwise conflict with, the terms and conditions of this paragraph, the more restrictive or conflicting terms and conditions in this paragraph apply, but solely with respect to Native Applications from the Apple App Store. You acknowledge and agree that these Terms of Service are solely between you and 11Sight, not Apple, and that Apple has no responsibility for the Native Applications or content thereof. Your use of the Native Applications must comply with the App Store Terms of Service. You acknowledge that Apple has no obligation whatsoever to furnish any maintenance and support services with respect to the Native Applications. In the event of any failure of the Native Applications to conform to any applicable warranty, you may notify Apple, and Apple will refund the purchase price, if any, for the Native Applications to you; to the maximum extent permitted by applicable law, Apple will have no other warranty obligation whatsoever with respect to the Native Applications, and any other claims, losses, liabilities, damages, costs or expenses attributable to any failure to conform to any warranty will be solely governed by these. You and 11Sight acknowledge that Apple is not responsible for addressing any claims of you or any third party relating to the Native Applications or your possession and/or use of the Native Applications, including, but not limited to: (a) product liability claims; (b) any claim that the Native Applications fail to conform to any applicable legal or regulatory requirement; and (c) claims arising under consumer protection or similar legislation. You and 11Sight acknowledge that, in the event of any third party claim that the Native Applications or your possession and use of that Native Applications infringes that third party's intellectual property rights, 11Sight, not Apple, will be solely responsible for the investigation, defense, settlement and discharge of any such intellectual property infringement claim to the extent required by these Terms of Service. You must comply with applicable third party terms of agreement when using the Terms of Service. You and 11Sight acknowledge and agree that Apple, and Apple's subsidiaries, are third party beneficiaries of these Terms of Service as they relate to your license of the Native Applications, and that, upon your acceptance of the Terms of Service, Apple will have the right (and will be deemed to have accepted the right) to enforce these Terms of Service against you as a third party beneficiary thereof.

**License to 11Sight:** Subject to the terms of the Privacy Policy, you hereby grant to 11Sight a nonexclusive, perpetual, irrevocable, royalty-free, worldwide, transferable, sub-licenseable license to access, use, reproduce, transmit, perform, display, modify, translate, excerpt (in whole or in part) adapt, publish and distribute any Content that you upload, publish, submit or transmit via the Services. By transmitting or otherwise submitting your Content via the

Services, you hereby represent and warrant (1) that you own or otherwise control all of the rights to your Content, including without limitation, all copyrights; and (2) that your Content does not violate these Terms of Use or the Privacy Policy and will not cause injury to any person or entity. We take no responsibility and assume no liability for any Content transmitted or stored via the Services by you or any third party. WE RESERVE THE RIGHT TO REMOVE ANY CONTENT THAT WE DETERMINE IN OUR SOLE DISCRETION VIOLATES ANY LAW OR RIGHT OF ANY PERSON, INFRINGES THE RIGHTS OF ANY PERSON, OR IS OTHERWISE INAPPROPRIATE FOR THE SERVICES

## 4 CODE OF CONDUCT

By using the Services, you hereby agree to follow these rules:

- Don't do anything illegal.
- Don't engage in any activity that exploits, harms, or threatens to harm children.
- Don't send spam. Spam is unwanted or unsolicited bulk email, postings, contact requests, SMS (text messages), or instant messages.
- Don't publicly display or use the Services to share inappropriate Content or material (involving, for example, bestiality, graphic violence, or criminal activity).
- Don't engage in activity that is false or misleading (e.g., asking for money under false pretenses, impersonating someone else, manipulating the Services to increase play count, or affect rankings, ratings, or comments).
- Don't circumvent any restrictions on access to or availability of the Services.
- Don't engage in activity that is harmful to you, the Services, or others (e.g., transmitting viruses, stalking, communicating hate speech, or advocating violence against others).
- Don't infringe upon the rights of others (e.g., unauthorized sharing of copyrighted music or other copyrighted material, resale or other distribution of Bing maps, or photographs).
- Don't engage in activity that violates the privacy of others.
- Don't help others break these rules.

**Enforcement.** If you violate these Terms of Service, we may stop providing Services to you and we may close your Member Account. We may also block delivery of a communication (like email or instant message) to or from the Services at any time and for any reason or we may remove or refuse to publish, store or transmit Your Content for any reason. When investigating alleged violations of these Terms of Service, 11Sight reserves the right to review Your Content in order to resolve the issue. However, we cannot monitor the entire Service and make no attempt to do so.

## 5 PRIVACY; SECURITY; CONFIDENTIALITY

We collect certain information from Users, the specifics of which are outlined in our Privacy Policy. We will collect, store and use all such information in substantial accordance with such Privacy Policy, as it may be amended from time to time in accordance with its terms.

You expressly acknowledge that all such information is transferred to and retained on servers located in the United States and/or Canada. As our services expand, we plan on having storage servers in other countries.

In the course of doing business with you, we necessarily may disclose to you Confidential Information. Confidential Information is information that derives economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use ("Confidential Information"). You shall not: (a) use the Confidential Information, including internally within your own organization, except to the extent necessary to make authorized use of the Service; or (b) disclose the Confidential Information to any third party without our express written consent, except to those with a need to know who have signed an agreement at least as protective of the Confidential Information as these Terms of Service. You always shall handle Confidential Information with at least reasonable care and shall be responsible for the actions of those persons to whom disclosure is made. The non-use and non-disclosure obligations under this Section shall not apply to Confidential Information demonstrated by reasonable contemporaneous written evidence to be: (i) already known or independently developed by you prior to receipt; (ii) lawfully made available to the public by us without restriction or breach of confidentiality obligation; or (iii) lawfully independently obtained by you from a third party. If you are required by a court to disclose the Confidential Information, so much as is legally required may be disclosed but only after providing us with written notice and reasonable assistance in obtaining and enforcing means of safeguarding the Confidential Information. If you have previously entered into a non-disclosure or other agreement for confidentiality with 11Sight, the more restrictive terms shall prevail.

## 6 PAYMENTS

**Billing.** By providing 11Sight with a payment method, you (i) represent that you are authorized to use the payment method that you provided and that any payment information you provide is true and accurate; (ii) authorize 11Sight to charge you for the Services using the payment method you provided; and (iii) authorize 11Sight to charge you for any paid feature of the Services that you choose to sign up for or use. Based on the Order Form, we may bill you (a) in advance; (b) at the time of purchase; (c) shortly after purchase; or (d) on a recurring basis for subscription Services. Also, we may charge you up to the amount you have approved, and we will notify you in advance of any change in the amount to be charged for recurring subscription Services. We may bill you at the same time for more than one of your prior billing periods for amounts that haven't previously been processed.

**Recurring Payments.** When you purchase the Services on a subscription basis (e.g., monthly, every 3 months or annually (as applicable)), you acknowledge and agree that you are



authorizing recurring payment, and payments shall be made to 11Sight by the method you have chosen at the recurring intervals chosen in the Order Form, until the subscription for that Service is terminated by you or by 11Sight. By authorizing recurring payments, you are authorizing 11Sight to process such payments as either electronic debits or fund transfers, or as electronic drafts from your designated account (in the case of Automated Clearing House or similar payments), or as charges to your designated account (in the case of credit card or similar payments) (collectively, "Electronic Payments"). Subscription fees are generally billed or charged in advance of the applicable subscription period. If any payment is returned unpaid or if any credit card or similar transaction is rejected or denied, 11Sight or its service providers reserve the right to collect any applicable return item, rejection or insufficient funds fee and to process any such payment as an Electronic Payment.

**Automatic Renewal.** Currently all services provided are renewed automatically. If we introduce another class of service, provided that automatic renewals are allowed in your state, we will inform you by email before automatically renewing your Services, unless purchased on a subscription basis, in which case notice shall not be provided. Once we have informed you that the Services will be automatically renewed, we may automatically renew your Services and charge you the then current price for the Renewal Term. We will also remind you that we will bill your chosen payment method for the Services renewal, whether it was on file on the renewal date or provided later. We will also provide you with instructions on how you may cancel the Services. You must cancel the Services before the renewal date to avoid being billed for the Renewal Term.

## 7 TERM AND TERMINATION

**Term:** If you execute an Order Form for Paid Services, Paid Services will be provided for the initial period set forth in the Order Form unless terminated earlier as set forth below (the "Initial Term"). Thereafter, the service is automatically renewed unless cancelled prior to renewal date (each such extension, a "Renewal Term" and together with the Initial Term, and subject to earlier termination as set forth below, the "Term").

**Termination by You:** You may terminate your relationship with 11Sight at any time by ceasing to use the Service, provided that you will not be refunded for any pre-paid fees for unused portions of the Service. You understand and agree that it is your responsibility to cancel any recurring payments for subscriptions to the Service via your Member Account.

**Termination by 11Sight:** 11Sight may terminate your access to the Paid Service with or without cause at any time and effective immediately upon the provision of notice to you. If 11Sight terminates the Paid Services for convenience, 11Sight will provide you with 30 days' prior notice via email and will refund and pre-paid fees for unused portions of the Service on

a pro-rata basis. 11Sight may also terminate your access to any free or trial Service or Beta Service at any time effective immediately and without liability.

**Effect of Termination:** Upon the termination of your access to the Service, all licenses and rights granted to you shall be immediately revoked and you shall not make any further attempt to use the Service.

## 8 DISCLAIMER OF WARRANTIES

**YOUR USE OF THE SERVICE IS AT YOUR SOLE RISK. WE MAKE NO REPRESENTATION OR WARRANTY OF ANY KIND TO YOU OR ANY OTHER PERSON OR ENTITY, EITHER EXPRESS OR IMPLIED, AS TO ANY MATTER RELATING TO THE SERVICE OR THESE TERMS OF SERVICE, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF QUALITY, PERFORMANCE, SERVICE AVAILABILITY, FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, NON-INFRINGEMENT, TITLE, SUITABILITY, COURSE OF DEALING, USAGE OF TRADE, TIMELINESS, ACCURACY OF RESULTS OF ANYONE'S USE OF THE SERVICE, SERVICE SECURITY, SERVICE RELIABILITY, FREEDOM FROM ERROR, COMPLETENESS, SATISFACTION OF USER REQUIREMENTS OR EXPECTATIONS, OR OTHERWISE. THE SERVICE IS PROVIDED ON AN "AS IS", "AS AVAILABLE" BASIS ONLY. NO ADVICE OR INFORMATION THAT WE PROVIDE YOU OR ANY OTHER PERSON OR ENTITY SHALL CREATE ANY REPRESENTATION OR WARRANTY ON OUR PART.**

## 9 LIMITATION OF LIABILITY

**UNDER NO CIRCUMSTANCES SHALL WE BE LIABLE TO YOU OR ANY OTHER PERSON OR ENTITY WHO USES, OR ATTEMPTS TO USE, ANY ASPECT OF THE SERVICE UNDER ANY THEORY OF LIABILITY FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR EXEMPLARY DAMAGES (EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES) ARISING FROM OUR PERFORMANCE OR FAILURE OF PERFORMANCE OF ANY PROVISION OF THESE TERMS OF SERVICE (INCLUDING SUCH DAMAGES INCURRED BY THIRD PARTIES), SUCH AS, WITHOUT LIMITATION, LOSS OF REVENUE OR ANTICIPATED PROFITS OR LOST BUSINESS. NOR SHALL WE BE LIABLE TO YOU OR ANY OTHER PERSON OR ENTITY WHO USES, OR ATTEMPTS TO USE, ANY ASPECT OF THE SERVICE FOR ANY INJURY THAT YOU, ANY USER OR ANY OTHER PERSON OR ENTITY SUFFERS AS A RESULT OF (A) ANY UNAUTHORIZED ACCESS TO, OR ALTERATION OF ANY CALL, OR ANY LOSS, INACCURACY OR CORRUPTION OF CONTENT TRANSMITTED ON ANY CALL, (B) ANY FAILURE OF THE SERVICE, (C) ANY ACTS OR OMISSIONS OF ANY THIRD PARTY, (D) ANY OTHER INJURY SUFFERED AS A RESULT OF THE USE OF OR OPERATION OF THE SERVICE, OR (E) ANY INFRINGEMENT CLAIM THAT ARISES OUT OF YOUR APPLICATIONS OR OUT OF CONTENT THAT IS TRANSMITTED BY THE SERVICE.**

**IN NO EVENT SHALL OUR CUMULATIVE LIABILITY HEREUNDER TO YOU, ANY USER OR ANY OTHER PERSON OR ENTITY FOR ANY INJURY, DAMAGES OR LOSS THAT YOU OR ANY OTHER PERSON**

**OR ENTITY SUFFER AS RESULT OF, OR IN CONNECTION WITH, YOUR OF THE SERVICE EXCEED (A) \$500.**

**SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES. ACCORDINGLY, SOME OF THE ABOVE LIMITATIONS SET FORTH ABOVE MAY NOT APPLY TO YOU.**

**IF YOU ARE DISSATISFIED WITH ANY PORTION OF THE SERVICE OR WITH THESE TERMS OF SERVICE, YOUR SOLE AND EXCLUSIVE REMEDY IS TO DISCONTINUE USE OF THE SERVICE.**

**YOU ARE SOLELY RESPONSIBLE AND LIABLE FOR ALL ACTIVITIES CONDUCTED THROUGH YOUR MEMBER ACCOUNT, EVEN IF SUCH ACTIVITIES OCCURRED WITHOUT YOUR PERMISSION.**

## **10 INDEMNIFICATION**

You release us, and agree to indemnify, defend and hold harmless us, or subsidiaries and affiliates and their respective officers, employees, directors, employees, agents, advisors, successors and assigns from and against any and all claims, damages, liabilities, losses, government fines, costs and expenses (including reasonable attorney's fees and litigation expenses) suffered or incurred thereby that arise out of or relate to (i) your use of the Service, (ii) violation by you of any of the prohibitions set forth in these Terms of Service, (iii) any Content transmitted on any 11-Call or stored by 11Sight which you or any other User initiate or on which you or any other User participate, (iv) the reliance by anyone on any Content transmitted or stored by means of the Service, or your connection to the Service.

## **11 ARBITRATION; NO CLASS ACTIONS**

**THIS SECTION INCLUDES AN ARBITRATION AGREEMENT AND AN AGREEMENT THAT ALL CLAIMS WILL BE BROUGHT ONLY IN AN INDIVIDUAL CAPACITY (AND NOT AS A CLASS ACTION OR OTHER REPRESENTATIVE PROCEEDING). PLEASE READ IT CAREFULLY. YOU MAY OPT OUT OF THE ARBITRATION AGREEMENT BY FOLLOWING THE OPT OUT PROCEDURE DESCRIBED BELOW.**

**Informal Process First.** You agree that if you have any dispute with 11Sight, relating in any way to these Terms of Service or from access to or use of the Service, you will first contact us and attempt to resolve the dispute with us informally.

**Arbitration (“Arbitration Agreement”).** If we are unable to resolve the dispute informally, we each agree to resolve any claim, dispute, or controversy (excluding claims for injunctive or other equitable relief) arising out of or in connection with or relating to these Terms of Service by binding arbitration. If you are an individual you may opt out of this Arbitration Agreement within 30 days of the first of the date you access or use the Service by following the procedure described below.

Arbitration is more informal than a lawsuit in court. There is no judge or jury in arbitration. Instead, the dispute is resolved by a neutral arbitrator. Court review of an arbitration award is limited. Except to the extent the parties agree otherwise, arbitrators can award the same damages and relief that a court can award. You agree that the U.S. Federal Arbitration Act governs the interpretation and enforcement of this provision, and that you and 11Sight are each waiving the right to a trial by jury or to participate in a class action. This Arbitration Agreement will survive any termination of these Terms.

If you intend to seek arbitration, after following the informal dispute resolution procedure, you must first send written notice to 11Sight of your intent to arbitrate ("Notice"). The Notice should be sent by registered or certified mail to [legal@11sight.com](mailto:legal@11sight.com). The Notice must (a) describe the nature and basis of the claim or dispute; and (b) set forth the specific relief sought. The arbitration will be administered by the International Institute for Conflict Prevention and Resolution ("CPR") under the CPR Rules for Administered Arbitration by a single arbitrator. The arbitration will be conducted in the County of Alameda.

Each party will be responsible for paying any CPR, administrative and arbitrator fees (other than the initial filing fees) in accordance with CPR Rules, except that we will pay for your reasonable filing, administrative, and arbitrator fees if your claim for damages does not exceed \$75,000 and is non-frivolous (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b)). Nothing in this Arbitration Agreement shall prevent either party from seeking injunctive or other equitable relief from the courts for matters related to data security, intellectual property, or unauthorized access to the Service.

If you do not want to arbitrate disputes with 11Sight and you are an individual, you may opt out of this Arbitration Agreement by sending an email to: [legal@11sight.com](mailto:legal@11sight.com) within 30 days of the first of the date you access or use the Services.

ALL CLAIMS MUST BE BROUGHT IN THE PARTIES' INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS GUEST IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING, AND, UNLESS WE AGREE OTHERWISE, THE ARBITRATOR MAY NOT CONSOLIDATE MORE THAN ONE PERSON'S CLAIMS. YOU AGREE THAT, BY ENTERING INTO THESE TERMS OF SERVICE, YOU AND 11SIGHT ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE IN A CLASS ACTION.

If the prohibition against class actions and other claims brought on behalf of third parties contained above is found to be unenforceable, then the entirety of this Arbitration Agreement will be null and void.

If for any reason a claim proceeds in court rather than in arbitration, the dispute will be governed by the laws of the State of California and the FAA without regard to or

application of its conflict of law provisions or your state or country of residence, and will be brought solely in the federal or state courts located in the County of Alameda. You consent to the jurisdiction of and venue in such courts and waive any objection as to inconvenient forum.

## 12 GENERAL

**Independent Contractors:** The parties to these Terms of Service are independent contractors and nothing herein shall be construed to create a partnership, joint venture or agency relationship.

**Assignment:** You may not assign your rights under these Terms of Service to any third party without our prior written consent and any such purported assignment will be null and void ab initio. We may freely assign these Terms of Service and any or all of our rights and obligations hereunder to any third party without your consent. These Terms of Service will inure to the **benefit of and shall be binding upon all successors and permitted assigns.**

**Governing Law:** These Terms of Service are governed by, and will be construed according to the laws of the State of California, United States of America, without regard to conflict of laws rules that would otherwise apply laws of any other state or jurisdiction.

**Waiver:** Neither party shall be deemed to have waived any right hereunder unless you or we do so in writing. The waiver by either party of a breach or a default of any provision shall not be construed as a waiver of any succeeding breach of the same or any other provision.

**Entire Agreement:** The Order Form, these Terms of Service and the Privacy Policy constitute the entire understanding of the parties hereto with respect to the matters contemplated hereby, supersedes all previous understandings and agreements between the parties concerning the subject matter hereof and cannot be amended except in writing, in accordance with their respective terms. To the extent of a conflict between the terms in an Order Form and terms in these Terms of Service, the terms in Order Form shall control. No terms or conditions set forth in any purchase order or other document provided by you shall apply to our relationship or your use of the Service.

**Third Party Beneficiaries:** You and we do not intend to have these Terms of Service confer any rights or privileges upon any third parties except our licensors and suppliers.

**Compliance with Governmental and Law Enforcement Requests:** 11Sight's performance of the Services is subject to existing laws and legal process, and nothing contained in these Terms of Service shall prevent 11Sight from complying with governmental, judicial and law enforcement requests or requirements relating to User's use of the Service or information provided to or gathered by 11Sight with respect to such use. .

**Notices:** Notices to 11Sight must be given in writing and delivered either by hand, e-mail (receipt confirmed), certified mail (return receipt requested, postage pre-paid) or nationally

recognized overnight delivery service (all delivery charges pre-paid) and addressed, to 11Sight Inc; Attention: Customer Support; 2363 Carquinez Av #301; El Cerrito CA 94530; or if by email, to support@11Sight.com. All such notices to 11Sight shall be effective on the date actually received, or in the case of mailed notices, 3 business days (or 7 business days in the case of an international mailing) after such mailing.

## **CHANGES TO THESE TERMS OF SERVICE**

We may change these Terms of Service at any time by posting the updated Terms of Service on our Site or Native Application. Such changes will be effective immediately upon posting. It is your sole responsibility to check the Site from time to time to view any such changes in the Terms of Service. If the revision, in our sole discretion, is determined to be material, we will notify you via e-mail. Your continued use of the Service shall constitute your acceptance of the then-current version of these Terms of Service. If you do not wish to be bound by any such revisions to the Terms of Service, you must cease using the service and terminate the Service through your Member Account and/or by sending e-mail to legal@11Sight.com.

**Last Updated: May 20<sup>th</sup>, 2018**