



TERMS OF SERVICE

Welcome to Lifesize!

These Terms of Service (“Terms”) govern the use of and access to services provided by Lifesize, Inc. (“Lifesize”), including the Lifesize cloud-based video conferencing and collaboration service accessible through web, mobile and desktop applications, including any features or functionalities thereof (collectively, the “Lifesize App”), Device Software Subscription (“DSS”), support services, professional services, and any applicable software, features or functionalities of such services (collectively, the “Services”). In addition to these Terms, use of the Services is subject to Lifesize’s Privacy Policy and Acceptable Use Policy located at www.lifesize.com, each of which is incorporated into these Terms. By using or accessing the Services, Customer agrees to be bound by these Terms. Defined terms have the respective meanings assigned throughout these Terms, including Section 12 below.

If you do not agree to these Terms, please do not use the Services.

1. **Parties**

These Terms constitute an agreement between Lifesize and the entity using the Services or initiating a “Free Trial” account for the Services for its internal business purposes (the “Customer”). In addition, by accessing and using the Services, each individual end user accessing the Services through Customer’s account, including Customer’s employees and guest users (each, an “Authorized User”), agrees to be bound by Lifesize’s Privacy Policy and Acceptable Use Policy. Except as stated in the Acceptable Use Policy, no individual Authorized User will be personally liable to Lifesize for any breach of these Terms. Customer will be liable for any breach of these Terms by an Authorized User using or accessing the Services through Customer’s account, as further described in Section 5.3 below.

2. **Services**

- 2.1. **Orders.** Upon acceptance of Customer’s Order for Services or initiating Free Service, Lifesize will provide such Services to Customer for its internal business purposes during the Service Term in accordance with these Terms. These Terms will control in the event of a conflict with an Order. Customer cannot cancel or change an Order that has been accepted by Lifesize without Lifesize’s written consent.
- 2.2. **Software.** To the extent use of the Services requires Customer to download Software, and so long as Customer is not in breach of these Terms, Lifesize grants Customer a revocable, non-exclusive, non-transferable (except to a successor-in-interest as permitted by these Terms), limited right and license to access and use the Software, and any update thereto provided by Lifesize, during the Service Term. Lifesize may periodically update the Software to provide bug fixes, security patches, feature enhancements, etc., which may install automatically. In addition, to the extent any component of the Software is offered under an open source license, Lifesize will make such license available to Customer at www.lifesize.com. These Terms do not modify or abridge any rights or obligations Customer may have in open source software under any open source license, and the provisions of such open source license may expressly override some of these Terms. Any provisions in these terms which differ from any open source license are offered by Lifesize alone and not by any other party.
- 2.3. **Access to Services.** The Services may be accessed and used by Customer’s Authorized Users, including employees, guests, contractors, and consultants of Customer and its Affiliates, provided that (a) Customer remains responsible for compliance with these Terms and the Acceptable Use Policy by each Authorized User, and (b) any use of the Services by each Authorized User is solely for Customer’s benefit. Lifesize may terminate access to Free Services at any time at Lifesize’s discretion.
- 2.4. **User Accounts.** When Customer’s account for the Lifesize App is activated, Customer’s Account Administrator will have the ability to register User Accounts for each of its Authorized Users. A User Account that has been assigned to a specific Authorized User may be reassigned by the Account Administrator to another Authorized User at any time if the original Authorized User no longer has access to the Services. In addition, an Account Administrator may delete a User Account rather than reassigning it to another Authorized User. However, traffic data (including call history) associated with a specific User Account is only accessible while the User Account exists. If necessary, Customer should retain copies of the traffic data records prior to deleting a User Account.
- 2.5. **Passwords.** Each User Account is protected by a password selected by the Authorized User during registration. Each Authorized User is responsible for maintaining the confidentiality of his or her password. Lifesize is not

responsible for any loss or damage arising from an Authorized User's failure keep his or her password secure or confidential.

- 2.6. *Equipment and Network Services.* Customer is responsible for obtaining and maintaining any equipment and network services needed to connect to, access and use the Services. For example, in order to use the Lifesize App, Customer must ensure that it has appropriate equipment with audio and video-enabled capabilities (such as computers, mobile devices, cameras and speaker phones). In addition, Customer must obtain and maintain internet services capable of supporting video traffic from a third party provider (high speed internet service is recommended). For the avoidance of doubt, Lifesize is not responsible for providing internet access, or for addressing any network-related issues. Customer understands that its use of the Services may be affected by the performance of equipment, software and internet service provided by third parties other than Lifesize.
- 2.7. *Device Software Subscription (DSS).* Unless otherwise prohibited by law, Customer must purchase a minimum one (1) year subscription for DSS with the purchase of any Device. The DSS Service Term will automatically renew as long as a Device is registered to Customer's Lifesize App account. In the event Customer has not obtained DSS for a newly purchased Device or for a Device registered to Customer's Lifesize App account, Lifesize will invoice Customer (or its designated reseller) for one (1) year of DSS, and Customer (or its designated reseller) will pay such invoice in accordance with these Terms.
- 2.8. *Modifications to the Services.* Lifesize may update and modify the Services (or any part thereof) from time to time, provided that no such modifications or updates will materially degrade the functionality, security, or availability of the Services for the duration of the applicable Service Term. Lifesize will use reasonable efforts to notify Customer prior to implementing Services updates or modifications that are reasonably expected to materially affect Customer's use of the Services. The restrictions on modifying the Services do not apply to Free Service and Lifesize is not obligated to provide Free Service or support with respect to any Free Service.
- 2.9. *Lifesize's Proprietary Rights.* The Services and Software contain proprietary and confidential information of Lifesize and its licensors that is protected by applicable United States, foreign laws and treaties. Lifesize retains ownership of all proprietary rights in all copyrights, trade names, trademarks, service marks, logos, domain names, patents, rights of publicity, and any other proprietary rights of Lifesize associated with or displayed with the Services or Software. All such rights are valid and protected in all media existing now or later developed. Customer will not (and will not allow any Authorized User or third party to) remove any copyright or other proprietary or product identification notices contained in or displayed by the Services or Software or contained in any written material which may relate to the Services or Software. Any comments, suggestions or ideas provided by Customer or an Authorized User may be used by Lifesize without any obligation to the person or organization who made them. The Software is protected by United States copyright law and international treaty. Unauthorized reproduction or distribution of the Software is subject to civil and criminal penalties.
- 2.10. *Professional Services Statement of Work.* In the event Customer purchases Lifesize professional service, such as a network readiness assessment or deployment project management, Customer may be required to sign a written Statement of Work ("SOW") with additional terms applicable to such Services. Any such SOW will be incorporated into and deemed a part of these Terms.
- 2.11. *Beta Test.* From time to time, at Lifesize's election and in its sole discretion, Customer may be invited to use Beta-versions of the Services and/or Software (the "Beta Products") in connection with a Beta test ("Beta Test"). In this instance, Customer's use of the Beta Products will be subject to the terms and conditions governing the Beta Test (provided at the commencement of such Beta Test) in addition to these Terms.

3. Service Term

- 3.1. *Service Term.* Unless otherwise specified in the applicable Order or SOW, the Service Term commences on the Effective Date and continues until either party terminates the Services in accordance with these Terms.
- 3.2. *Subscription Auto-Renewal.* Provided that neither party has terminated the Services, and subject to Section 2.7 above, the Service Term of any Subscription Service will automatically renew for additional one (1) year periods until either party notifies the other of non-renewal of such Services at least thirty (30) days prior to the end of the then-current Service Term.

3.3. *Service Term of a Free Trial or Free Service.* The Service Term for a Free Trial commences on the date on which Lifesize activates Customer's Free Trial account and terminates when Lifesize de-activates such account or converts it into a paid subscription. The Service Term for a Free Service is while the Customer accesses the Free Service. Customer will not incur fees for using such Services during the Free Trial or while using the Free Service. However, Customer's use of such Services is subject to all other terms and conditions of these Terms, the Privacy Policy and the Acceptable Use Policy during the Free Trial or while using the Free Service.

4. **Fees**

4.1. *Purchases from a Reseller.* If Customer purchases Services from a reseller, Customer will pay such reseller the fees associated with the Services in accordance with the terms and conditions agreed to by such parties (the "Reseller Agreement"). Lifesize has no ability to modify the prices charged by a reseller or any other terms of a Reseller Agreement. In addition, Lifesize has no ability to refund any fees paid to a reseller that are not in turn paid by the reseller to Lifesize. Any terms of a Reseller Agreement that conflict with or seek to modify these Terms will not be binding on Lifesize.

4.2. *Purchases from Lifesize.* If Customer purchases Services directly from Lifesize, Customer will pay Lifesize all fees specified in the Order. Fees are payable in full in advance at the commencement of the Service Term and upon each renewal or extension thereof. Lifesize will bill Customer by invoice or charge the fees to Customer's credit card. Unless otherwise specified in the Order, fees billed by invoice must be received by Lifesize within thirty (30) days of the invoice date. Any payment not received by the due date will accrue interest at the rate of one and one half percent (1.5%) of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid. Failure to pay fees on time may result in the suspension of Services. Customer is responsible for all reasonable costs and expenses incurred by Lifesize in connection with any collection activities, including court costs and attorneys' fees.

4.3. *No Refunds.* Except as otherwise provided in these Terms or agreed to by Lifesize in writing, payment obligations are non-cancellable and fees are non-refundable.

4.4. *Taxes.* Fees for Services do not include taxes, levies, duties or similar governmental assessments of any kind. Customer is responsible for payment of all such taxes and assessments. In the event taxes are deducted from payments to Lifesize as required by law, the amount payable shall be increased as necessary so that after making all required deductions and withholdings, Lifesize receives and retains (free from any tax liability) an amount equal to the amount it would have received had no such deductions or withholdings been made. Unless Customer provides Lifesize with a valid tax exemption certificate, Lifesize may be required to collect taxes from Customer in accordance with applicable law. In no event will either party be responsible for taxes levied against the other party's net income.

4.5. *Price Changes.* Lifesize may change the price it charges for a Service at any time, including changing from a free service to a paid service. However, price changes will not be effective with respect to Customer's existing Services until the next renewal of a Service Term. Fees applicable to the renewal of a Service Term will be charged at the then-current list price.

4.6. *Overage Charges.* Customer's account for the Lifesize App is limited to the number of User Accounts specified in the applicable Order. At Customer's option, Customer may purchase additional User Accounts during the Service Term at the then-current list price. However, Customer may only reduce the number of User Accounts upon renewal of the Service Term, but not during a Service Term. If Lifesize determines that Customer's number of User Accounts exceeds the quantity purchased by Customer, or if Customer exceeds any other limits relating to any feature or functionality of the Lifesize App (for example, Recorded Content storage limits, Live Stream hours, etc.), then Lifesize may bill Customer and Customer agrees to pay the overage charges relating to such excess usage at the then-current list price. In the case of excess User Accounts, Customer will pay for each additional User Account from the time such User Account was activated through the remainder of the applicable Service Term. Lifesize reserves the right to bill Customer in the next payment cycle for any overage charges incurred during the previous Service Term, even if Customer's account has been cancelled.

4.7. *Free Service.* If a Customer uses only Free Service, Lifesize will not charge such Customer any fees for use of Free Service. Such Customer may discontinue using the Free Service at any time and must immediately remove any Software from its devices.

5. Customer Content and Data Security

- 5.1. *Customer Content.* When using the Services, Customer and its Authorized Users may provide Lifesize with access to certain content owned by Customer and/or such Authorized Users, including information, images, files, data, communications, text messages, audio messages, videos, graphics, sounds and other materials (collectively, the “Customer Content”). As between the parties, Customer Content remains the property of Customer and/or its Authorized Users at all times. Nothing in these Terms gives Lifesize any rights to Customer Content except for the limited rights that enable Lifesize to provide the Services to Customer.
- 5.2. *Lifesize’s Limited License to Use Customer Content to Provide the Services.* By using the Services, Customer and its Authorized Users grant (and warrant and represent that such party has the right to grant) a non-exclusive, worldwide, royalty free, transferable, sub-licensable, perpetual, irrevocable license to Lifesize, its Affiliates and trusted third parties to access, process, copy, display, transmit, distribute, store and otherwise use Customer Content **solely** in connection with the provision and operation of the Services for Customer’s benefit.
- 5.3. *Customer’s Responsibilities.* Customer is responsible for its conduct and the conduct of its Authorized Users when using the Services, even if any such conduct occurs without Customer’s knowledge or permission. Customer is also responsible for the accuracy, content and legality of all Customer Content and data displayed, transmitted, distributed or stored by or on behalf of Customer and its Authorized Users when using the Services. All Customer Content must comply with Lifesize’s Acceptable Use Policy. Customer is solely responsible for ensuring that Customer’s use of the Services and all Customer Content complies with Customer’s own privacy policies and all applicable local, state, federal and international laws, regulations and conventions, including, without limitation, those related to data privacy and data transfer, international communications, and the export of technical or personal data.
- 5.4. *Recorded Content.* Customer is solely liable for complying with applicable laws requiring consent of participants prior to recording any audio or video content using the Lifesize App. In addition, Customer will comply with general policies established by Lifesize governing Customer’s use of the Lifesize App’s recording features, including, without limitation, the maximum period of time that Recorded Content may be retained in a User Account and the maximum storage limits. Lifesize has no responsibility or liability for the deletion or failure to store any Recorded Content. Lifesize will use reasonable efforts to notify Customer prior to deleting Recorded Content or changing any policies relating to Recorded Content but will not be liable for failure to do so if such deletion is in accordance with Lifesize policies. In addition, Lifesize will take appropriate technical, administrative and security measures to protect Recorded Content from unauthorized access and/or use.
- 5.5. *Data Security.*
- a. *Account Data.* Lifesize and its third party suppliers may process, store and use account data wherever they do business to enable product features, administer use, personalize user experience, and otherwise support or improve Customer’s use of the Services. Account data is information about Customer or its Authorized Users (such as user names, email addresses and call log records) provided to or collected by Lifesize or its third party service providers (including through tracking and other technologies, such as cookies) which is processed in accordance with Lifesize’s Privacy Policy. The Services are provided by Lifesize, Inc., a Delaware corporation headquartered in the United States. Any account data processed in connection with the provision of Services may be transferred to and stored in the United States. Use of the Services by Customer is deemed consent to this transfer.
 - b. *EU Privacy and Data Security Compliance.* *This provision applies only to the extent Customer is subject to data security and privacy laws of the European Union.* Except for account data, Customer is considered the sole controller of any personal data included in Customer Content, and, to the extent applicable, appoints Lifesize and its authorized third party service providers as processors to process such personal data (as those terms are defined in EU Directive 95/46/EC) solely to the extent required to deliver the Services. Customer agrees, and will ensure that its Authorized Users accessing the Services through Customer’s account agree, that Lifesize and its subprocessors are permitted to process personal data as contemplated by these Terms and may transfer personal data across a country border, including outside the European Economic Area (“EEA”), and use processors and subprocessors (including personnel and resources) in locations worldwide to deliver the Services. Lifesize will reasonably cooperate with Customer or an Authorized User, as applicable, in its fulfillment of any legal requirement, including providing an Authorized User with access to their personal data. Upon request by either party, Lifesize and Customer

may enter into additional agreements required by law for the protection of personal data, including but not limited to, Lifesize's standard data processing addendum incorporating the EU Model Clauses pursuant to EC Decision 2010/87/EU, with optional clauses removed ("MCCs"). The parties agree that any such MCCs will be subject to the limitations and exclusions of liability in these Terms, such that the total liability of each party and its Affiliates, in the aggregate, will not exceed the limitations set out in these Terms. If either Lifesize or its subprocessors makes a change to the way it processes or secures personal data as part of the Services and such change causes Customer to be noncompliant with applicable data protection laws, Customer may terminate the affected Service by providing written notice to Lifesize within thirty (30) days of Lifesize's notification of the change to Customer.

- c. *HIPAA Compliance.* This provision applies only to the extent Customer is subject to the U.S. Health Insurance Portability and Accountability Act of 1996 and the rules and regulations thereunder, all as amended from time to time ("HIPAA"). Customer will not use the Services to transmit any protected health information as defined in §160.103 of HIPAA ("PHI") unless Customer has entered into Lifesize's standard Business Associate Agreement ("BAA"). Unless the parties mutually execute a BAA, Lifesize will have no liability under these Terms for PHI, notwithstanding anything to the contrary in HIPAA or any similar federal or state laws, rules or regulations. Customer further agrees that such BAA will extend to Services involving real-time communication only, unless otherwise designated by Lifesize in the BAA or written agreement with Customer. In particular, Customer agrees that it will not use the Services to record or store PHI. Customer will ensure that all recording features, including Lifesize Record and Share, Live Stream, and Chat, are not used for PHI. If purchased and enabled by Customer, these features may only be used for purposes unrelated to PHI. Customer will not request Lifesize, or use the Services, to use or disclose PHI in any manner that would not be permissible under HIPAA if done by Customer itself (unless otherwise expressly permitted under HIPAA for a Business Associate, as such term is defined therein). Customer is responsible for using the available controls and features within the Services to support its HIPAA compliance requirements. Customer agrees and acknowledges that Lifesize does not use or disclose PHI under these Terms and Customer is responsible for compliance with Customer's minimum necessary policies and procedures in its use of the Services. Any mutually executed BAA between the parties is subject to and hereby incorporated by reference into these Terms.

6. Warranties and Disclaimer

- 6.1. *Services and Software are provided "AS IS."* Lifesize aims to provide excellent service to all Customers, but there are some things that Lifesize cannot guaranty. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ALL SERVICES AND SOFTWARE ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITH ALL FAULTS AND WITHOUT WARRANTY, CONDITION AND REPRESENTATION OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR USE OR PURPOSE, AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS. LIFESIZE FURTHER DISCLAIMS ANY WARRANTY THAT THE SERVICES AND SOFTWARE WILL MEET CUSTOMER'S REQUIREMENTS OR EXPECTATIONS, THAT THEY WILL BE UNINTERRUPTED, TIMELY, SECURE OR ERROR-FREE, OR THAT DEFECTS WILL BE CORRECTED. NO RESELLER, AGENT, OR EMPLOYEE IS AUTHORIZED TO MAKE ANY MODIFICATION, EXTENSION, OR ADDITION TO THIS DISCLAIMER OF WARRANTY. Some jurisdictions do not allow exclusions of implied warranties or limitations on applicable statutory rights, so the above exclusions and limitations may not apply to Customer. To the extent warranties cannot be disclaimed or excluded, they are limited to the duration of the minimum warranty period required by law.
- 6.2. *Disclaimer of Warranties for Network-Related Issues.* USE OF THE SERVICES MAY INVOLVE TRANSMISSION OF DATA OVER THE INTERNET AND VARIOUS NETWORKS, ONLY PART OF WHICH MAY BE OWNED AND/OR OPERATED BY LIFESIZE. CUSTOMER CONTENT MAY BE ACCESSED BY UNAUTHORIZED PARTIES WHEN COMMUNICATED OVER THE INTERNET, NETWORK COMMUNICATIONS FACILITIES, TELEPHONE OR OTHER ELECTRONIC MEANS. LIFESIZE IS NOT RESPONSIBLE FOR ANY CONTENT AND/OR DATA WHICH ARE DELAYED, LOST, ALTERED, INTERCEPTED OR STORED DURING THE TRANSMISSION OVER NETWORKS NOT OWNED AND/OR OPERATED BY LIFESIZE, INCLUDING, BUT NOT LIMITED TO, THE INTERNET AND CUSTOMER'S LOCAL NETWORK.
- 6.3. *Specific Disclaimer for High Risk Activities.* Customer acknowledges and agree that the Services and Software are not fault-tolerant and are not designed or intended for use in connection with any hazardous environments or high risk applications regarding fail-safe performance, such as use in or with any medical applications, direct life support

machines, safety equipment, nuclear facilities, or any application where performance or failure of the Services or Software (either alone or in conjunction with other components or third party services) could lead directly to death, personal injury, or severe physical, property or environmental damage ("High Risk Activities"). Lifesize specifically disclaims any express or implied warranty, representation and condition of fitness for High Risk Activities.

7. Indemnification

- 7.1. *Indemnification by Lifesize.* Lifesize will indemnify, defend, and hold Customer and its Related Parties harmless from and against any claim by a third party alleging that the Services or Software, when used as authorized by these Terms, infringes a U.S. patent, U.S. copyright, or U.S. trademark, and Lifesize will indemnify and hold Customer and its Related Parties harmless from all damages and costs finally awarded against Customer and its Related Parties resulting from such claim (including reasonable attorneys' fees). Notwithstanding the above, in no event will Lifesize have any obligation or liability under this Section for third party claims relating to any Customer Content or Customer's use of any Services or Software in a modified form or in combination with materials not furnished by Lifesize. Lifesize will not be obligated to indemnify Customer and its Related Parties pursuant to this Section unless Customer: (a) promptly notifies Lifesize of such claim, (b) provides Lifesize sole control over the defense of such claim, and (c) reasonably cooperates with Lifesize in the defense of such claim. Any settlement requiring Customer or its Related Parties to admit liability will require prior written consent by Customer and its Related Parties, which consent will not be unreasonably withheld. Customer and its Related Parties may join in the defense with its own counsel at its own expense. THIS SECTION SETS FORTH THE SOLE LIABILITY OF LIFESIZE AND ITS RELATED PARTIES, AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY, WITH RESPECT TO ANY THIRD PARTY CLAIM OF INTELLECTUAL PROPERTY INFRINGEMENT. Lifesize's obligations under this Section 7.1 and Section 7.2 do not apply to Customer's use of Free Service.
- 7.2. *Potential Injunction.* If Customer's use of the Services or Software is (or in Lifesize's sole judgment likely to be) enjoined, Lifesize may, in its sole discretion: (a) obtain the right for Customer, at Lifesize's expense, to continue using the Services or Software, (b) substitute non-infringing functionally equivalent or better replacement Services or Software, or (c) modify the Services or Software so that they are functionally equivalent or better and no longer infringing. If Lifesize does not believe the foregoing options are commercially feasible, then Lifesize may suspend or terminate Customer's use of the Services or Software. In such event, Lifesize will notify Customer and will provide a pro-rata refund of the fees attributable to the unused portion of the Service Term that were actually paid to Lifesize by Customer or the reseller from which Customer purchased the Services (as applicable). If Customer purchased the Services from a reseller, Lifesize's obligation to provide such refund will be fully satisfied upon payment of the refund amount to the reseller or other party from which Lifesize originally received payment. Such party will be solely liable for ensuring Customer receives the refund amount in accordance with any applicable Reseller Agreement.
- 7.3. *Indemnification by Customer.* Customer will indemnify and hold Lifesize and its Related Parties harmless from and against all defense costs (including reasonable attorneys' fees) and damages and costs finally awarded against Lifesize and its Related Parties resulting from or associated with any claim, action or proceeding arising from Customer's or its Authorized User's breach of these Terms or the Acceptable Use Policy, or Customer Content, provided Lifesize promptly notifies customer of such claim. Customer and its Related Parties will reasonably cooperate with Lifesize in the defense of such claim.

8. Limitation of Liability

- 8.1. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES. IN ADDITION, LIFESIZE WILL NOT BE LIABLE FOR ANY LOSS OF USE, DATA, BUSINESS, PROFITS, OR COSTS OF PROCUREMENT OF SUBSTITUTE SERVICES. THESE EXCLUSIONS AND LIMITATIONS APPLY REGARDLESS OF LEGAL THEORY, AND WHETHER OR NOT A PARTY HAS BEEN WARNED OF THE POSSIBILITY OF SUCH DAMAGES. LIFESIZE WILL NOT BE RESPONSIBLE FOR THE CONDUCT OF ANY USER OF THE SERVICES.
- 8.2. EXCEPT FOR LIABILITY THAT LIFESIZE CANNOT LIMIT BY LAW (AS DESCRIBED BELOW), THE TOTAL LIABILITY OF LIFESIZE WILL NOT EXCEED THE ACTUAL AMOUNT OF FEES PAID BY CUSTOMER FOR THE SERVICES GIVING RISE TO THE LIABILITY ATTRIBUTABLE TO THE PRIOR 12 MONTH PERIOD. MULTIPLE CLAIMS WILL NOT EXPAND THIS LIMITATION.

8.3. THIS PROVISION DOES NOT EXCLUDE OR LIMIT LIFESIZE'S LIABILITY TO CUSTOMER IN JURISDICTIONS WHERE IT WOULD BE ILLEGAL TO DO SO. IN SUCH JURISDICTIONS, LIFESIZE IS LIABLE ONLY FOR LOSSES AND DAMAGES THAT ARE A REASONABLY FORESEEABLE RESULT OF LIFESIZE'S NEGLIGENCE OR ITS BREACH OF CONTRACT WITH CUSTOMER. THIS SECTION DOES NOT AFFECT RIGHTS PROTECTED BY STATUTE THAT CANNOT BE WAIVED OR LIMITED BY CONTRACT OR AGREEMENT. ONLY THOSE LIMITATIONS AND EXCLUSIONS THAT ARE LAWFUL IN CUSTOMER'S JURISDICTION WILL APPLY TO CUSTOMER AND, IN SUCH INSTANCES, LIFESIZE'S LIABILITY WILL BE LIMITED TO THE MAXIMUM EXTENT PERMITTED BY LAW.

8.4. AS USED IN THIS SECTION, REFERENCE TO LIFESIZE INCLUDES LIFESIZE'S RELATED PARTIES.

9. Termination

9.1. *Termination by Lifesize.* Lifesize may terminate the Services (or any part thereof) and these Terms, and/or suspend Customer's account under the following circumstances:

- a. Customer, any of its Authorized Users, or the reseller from which Customer purchased the Services (if applicable) remains in breach of these Terms or the Acceptable Use Policy after Lifesize provides notice and a reasonable period of time in which to comply with these Terms, including, without limitation, failure by Customer or the reseller (as applicable) to pay fees for the Services during the Service Term and any extension or renewal thereof in accordance with these Terms; or
- b. Lifesize determines, in its sole judgment, that Customer's continued use of the Services may cause material risk of harm or loss to Lifesize, other users or other third parties; or
- c. Upon the institution by or against Customer of insolvency, receivership or bankruptcy proceedings or any other proceedings for the settlement of debts, dissolution, liquidation or winding up.

In any such event, Customer will not be entitled to a refund of fees.

Notwithstanding anything in this Agreement to the contrary, Lifesize may, without penalty or liability and with or without notice, modify or discontinue its provision of Free Service at any time and to the extent Customer is only using Free Service immediately terminate this Agreement.

9.2. *Termination by Customer.* Customer may stop using the Services and terminate these Terms at any time and for any reason by providing notice to Lifesize. If Customer terminates these Terms as the result of Lifesize's material breach of these Terms that remains uncured for a reasonable period of time after receipt of Customer's written notice of such breach, then Lifesize will provide a pro-rata refund of the fees attributable to the unused portion of the Service Term that were actually paid to Lifesize by Customer or the reseller from which Customer purchased the Services (as applicable). If Customer purchased the Services from a reseller, Lifesize's obligation to provide such refund will be fully satisfied upon payment of the refund amount to the reseller or other party from which Lifesize originally received payment. Such party will be solely liable for ensuring Customer receives the refund amount in accordance with any applicable Reseller Agreement. If Customer terminates these Terms for any other reason, then Customer will not be entitled to a refund of any fees. Customer's exclusive remedy for Lifesize's breach of these Terms is to stop using the Services and terminate these Terms as set forth above.

9.3. *Effect of Termination.* Upon termination by either party, Customer's license and right to use the Services and Software will terminate, and Customer will cease, and will cause its Authorized Users to cease, any and all use of the Services. Following termination (or, if applicable, the transition period described in Section 9.4 below), Customer will have no further access to any Customer Content stored using the Services, and Lifesize will delete such Customer Content promptly following such termination.

9.4. *Transition Period.* If these Terms are not terminated by Lifesize for Customer's breach, insolvency, liquidation, dissolution or a Free Service, then following such termination, there will be a 30-day transition period during which Customer may contact Lifesize regarding retrieval of Customer Content from the Services. Lifesize may allow Customer to access Customer Content from the Services during the transition period and may charge additional fees for Customer to do so, at Lifesize's sole discretion. Otherwise, Lifesize has no obligation to archive or make available Customer Content after termination of these Terms.

9.5. *Survival.* The following Sections will survive any termination of these Terms: 2.9 (Lifesize's Proprietary Rights), 4 (Fees), 5 (Customer Content and Data Security), 6 (Warranties and Disclaimer), 7 (Indemnification), 8 (Limitation of Liability), 9.3 (Effect of Termination), 9.4 (Transition Period), 9.5 (Survival), 10 (Dispute Resolution), 11 (General Terms), and 12 (Defined Terms).

10. Dispute Resolution

10.1. *Informal Resolutions.* Before filing a legal claim or proceeding against Lifesize, Customer will contact Lifesize's Customer Support team to discuss the issue giving rise to the dispute and to seek an informal resolution. If, after using good faith efforts to resolve the dispute, Lifesize and Customer cannot agree to an informal resolution within thirty (30) days, then either party may initiate a formal proceeding.

10.2. *Arbitration.* Except as otherwise expressly permitted by these Terms or by applicable law, Customer and Lifesize agree to settle any dispute, claim or controversy arising out of or in conjunction with these Terms ("Dispute") that cannot be resolved informally through final and binding arbitration. Unless otherwise agreed to by Customer and Lifesize, any arbitration will be held in Austin, Texas before a single arbitrator that Customer and Lifesize have mutually agreed upon. If the parties are unable to agree upon a single arbitrator, then one will be appointed by the American Arbitration Association (the "AAA"). Any arbitration hereunder will be conducted in accordance with the rules and regulations adopted by the AAA, including with regard to commencement and procedures. Arbitrator's award of damages will be subject to the limits of liability as set forth in these Terms. Payment of all filing, administration and arbitrator fees, costs and expenses, including attorneys' fees, related to this Section will be assessed in accordance with the rules and regulations adopted by the AAA. The Federal Arbitration Act and U.S. federal arbitration law apply to these Terms.

10.3. *Exception for Injunctive Relief.* Notwithstanding the foregoing, a party may bring a lawsuit solely for injunctive relief without first engaging in the informal resolution process or arbitration under the following circumstances: (a) in order for Lifesize to stop unauthorized use of the Services, violations of the Acceptable Use Policy or infringement or misappropriation of Lifesize intellectual property rights, or (b) in order for Customer to stop infringement or misappropriation of any Customer Content.

10.4. *No Class Actions.* TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, CUSTOMER MAY NOT BRING A CLAIM AGAINST LIFESIZE AS A PLAINTIFF OR A CLASS MEMBER IN A CLASS, CONSOLIDATED OR REPRESENTATIVE ACTION. Customer may bring claims against Lifesize as an individual party only.

10.5. *Additional Provisions Concerning Arbitration.* Any decision or award by the arbitrator rendered in an arbitration proceeding will be final and binding on each party and may be entered as a judgment in any court of competent jurisdiction. If either party brings a Dispute in a court or other non-arbitration forum, the arbitrator or judge may award the other party its reasonable costs and expenses (including but not limited to attorneys' fees) incurred in enforcing compliance with this binding arbitration provision, including staying or dismissing such Dispute. Any arbitration will be confidential, and neither party nor the arbitrator may disclose the existence, content or results of any arbitration, except as may be required by law or for purposes of enforcement or appeal of the arbitration award. If any portion of this arbitration clause is determined by a court to be inapplicable or invalid, then the remainder will still be given full force and effect.

11. General Terms

11.1. *Relationship.* The parties are independent contractors. There is no partnership, joint venture, employment or agency relationship between the parties created by these Terms. Neither party will have the power to bind the other or incur obligations on the other party's behalf without the other party's prior written consent.

11.2. *Assignment.* Either party may assign or transfer its rights and delegate its obligations under these Terms to an Affiliate or to a third party in connection with any merger, consolidation, sale of all or substantially all of its assets to which these Terms pertain or any similar transaction, provided such party provides notice to the other party promptly following such assignment. Subject to the foregoing, these Terms will bind and inure to the benefit of the parties, their respective successors and permitted assigns.

- 11.3. *Severability.* In the event that any provision of these Terms is determined to be invalid or unenforceable by a body of competent jurisdiction, that provision will be limited or severed only as necessary to eliminate such invalidity or unenforceability, and the other provisions of these Terms will remain in full force and effect.
- 11.4. *Force Majeure.* Neither party will be liable to the other for any delay or failure to perform any obligation under these Terms (except for a failure to pay fees) if the delay or failure results from any cause beyond such party's reasonable control, including acts of God, labor disputes or other industrial disturbances, systemic electrical, telecommunications, or other utility failures, earthquake, storms or other elements of nature, blockages, embargoes, riots, acts or orders of government, acts of terrorism, or war.
- 11.5. *Non-Exclusive Remedy.* Except where an exclusive remedy is specified, the exercise of either party of any remedy under these Terms, including termination, will be without prejudice to any other remedies it may have hereunder, by law or otherwise. Except as otherwise expressly stated herein, rights and remedies are cumulative and not alternative.
- 11.6. *Waiver.* No waiver will be implied from Lifesize's conduct or failure to enforce its rights. Waiver by Lifesize of any default by Customer of any provision of these Term will not be deemed a waiver by Lifesize of any subsequent or other default by Customer.
- 11.7. *U.S. Government End Users.* To the extent Customer is considered a U.S. Government end user, the Software is a "Commercial Item," as that term is defined at 48 C.F.R. 2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation." Any such Software is being licensed to U.S. Government end users only as Commercial Items, and with only those rights as are granted to all other end users pursuant to these Terms. Unpublished rights are reserved under the copyright laws of the United States.
- 11.8. *Export Compliance.* The Services, including any Software, and the transmission of applicable data, if any, is subject to United States export controls. When using the Services and Software, Customer and each Authorized User must comply with import, export and economic sanction laws and regulations that prohibit or restrict the export, re-export, or transfer of products, technology, services or data, directly or indirectly, to or for certain countries, end uses or end users. In addition, Customer and any Authorized User accessing the Services outside of the United States must comply with local rules regarding online conduct and acceptable Customer Content.
- 11.9. *Publicity.* Lifesize may use and display Customer's name, logo, trademarks, and service marks on Lifesize's website and in Lifesize's marketing materials solely in connection with identifying Customer as a customer of Lifesize. Upon Customer's written request, Lifesize will promptly remove any such marks from its website and marketing materials.
- 11.10. *Governing Law and Venue.* These Terms and any Dispute will be exclusively governed by and construed in accordance with the laws of the United States and the State of Texas, without regard to or application of its choice of law rules or principles and without regard to the United Nations Convention on Contracts for the International Sale of Goods. The state and federal courts located in Austin, Texas will have exclusive jurisdiction and venue over all disputes arising out of these Terms. Each party hereby agrees and consents to the personal and exclusive jurisdiction and venue of such courts over it as to all such actions and further waives any claim that such action is brought in an improper or inconvenient forum.
- 11.11. *Entire Agreement.* These Terms, which incorporate the Order, Privacy Policy, Acceptable User Policy, and any applicable SOW, constitute the entire agreement between the parties with respect to the use of the Services and Software, and supersedes, terminates and replaces all prior or contemporaneous understandings, communications or agreements, whether written or oral, regarding such subject matter, including (without limitation) any previous version of the Lifesize Cloud Terms of Service, Lifesize Cloud End User License Agreement and Lifesize Cloud Privacy Statement in effect prior to the effective date of these Terms.
- 11.12. *Amendments and Modifications.* No amendment to or modification or waiver of any provisions of these Terms will be binding unless in writing and signed by Lifesize. In particular, no provision of any purchase order or other documentation submitted by Customer, including any forms required by Customer's electronic invoicing portal or vendor registration process (if any), will supersede, amend or modify these Terms. Lifesize may revise these Terms from time to time to reflect (a) changes in the law, including regulatory requirements, or (b) improvements or enhancements to the Services, provided however, that any such amendment or modification that materially reduces or alters Customer's rights, or increases Customer's liability, will not be effective against Customer until the next

renewal of the Service Term. Customer's continued use of the Services after such amendment or modification becomes effective constitutes Customer's agreement to be bound by such Terms. Lifesize will post the current version of the Terms at www.lifesize.com and will revise the "last updated" date at the beginning of these Terms accordingly.

- 11.13. *Notice.* Lifesize may provide Customer with notices, including those regarding changes to these Terms, by email, regular mail to the address provided by Customer to Lifesize, or postings on www.lifesize.com or the Lifesize Community website. The parties consent to the use of electronic transmissions for communications as a signed writing. An identification code or other user ID contained in an electronic document is sufficient to verify the sender's identity and the document's authenticity. Any reproduction of these Terms and evidence of Customer's consent made by reliable means is considered an original agreement enforceable against the parties. Any notice to Lifesize intended by Customer to constitute valid legal notice under these Terms must be sent by registered mail or a major commercial delivery service to Lifesize, Inc., 1601 S. Mopac Expressway, Suite 100, Austin, Texas 78746, USA, Attn: Legal.
- 11.14. *Third Party Beneficiaries.* Lifesize's Affiliates and licensors may be third party beneficiaries of these Terms. Except as expressly provided in these Terms, no other party is intended to be a beneficiary entitled to enforce these Terms directly.
- 11.15. *English Language.* Any translation of these Terms is done for local requirements, and in the event of a conflict or inconsistency between the English and any non-English version, the English version of these Terms will govern, to the extent not prohibited by local law in Customer's jurisdiction.
- 11.16. *Interpretation.* The section titles in these Terms are for convenience only and have no legal or contractual effect. These Terms will be interpreted without application of any strict construction in favor of or against Lifesize or Customer.

12. Defined Terms

- 12.1. "Account Administrator" means an Authorized User of Customer's account who has been designated by Customer as an administrator. Every Lifesize App account must have at least one Account Administrator.
- 12.2. "Affiliate" means any entity which now or hereafter, directly or indirectly, controls, is controlled by, or is under common control with, a party, where "control" means ownership of at least fifty percent (50%) of the outstanding shares or securities (representing the right to vote for the election of directors or other managing authority).
- 12.3. "Device" means Lifesize-branded video conferencing equipment, including Lifesize's Icon™ and 220™ series of high-definition conference room cameras, speaker phone systems, and related accessories and components. Customer's purchase and use of a Device is subject to the applicable end user license agreement available at www.lifesize.com.
- 12.4. "Device Software Subscription" or "DSS" means Lifesize's suite of services (including technical support and Software maintenance) for protecting Customer's investment in a Device and ensuring optimal performance through necessary Software updates and patches, which are delivered remotely through the Lifesize App platform. The terms "Assurance Maintenance Services" and "AMS" in Lifesize's product documentation, price lists, Orders, invoices, on-line resources and other materials refer to DSS.
- 12.5. "Effective Date" means the date on which Lifesize notifies Customer by email or other communication that the Order has been accepted and the Services are available for use.
- 12.6. "Free Service" means those aspects of the Services that are free and do not require payment, including beta features, or in the case of Services offered at no charge, the Services themselves.
- 12.7. "Free Trial" means a trial account of a Service or any add-on feature or functionality of such Service available to Customer at no cost for a limited period of time during which Customer may use and evaluate such Services.
- 12.8. "Related Parties" means, to the extent applicable, a party's respective officers, directors, employees, contractors, shareholders, agents, Affiliates, distributors, resellers, suppliers and licensors.

- 12.9. "Order" means any order issued by Customer or a reseller for a specific Customer to Lifesize that states the following (at a minimum): Customer name, Services description, quantity, Service Term, and if purchasing from Lifesize directly, fees and billing contact.
- 12.10. "Recorded Content" means any Customer Content recorded by an Authorized User using the Lifesize App and saved in such Authorized User's User Account.
- 12.11. "Service Term" means the period of time during which Lifesize authorizes Customer's access to and use of the applicable Services.
- 12.12. "Software" means any Lifesize software accessed and used in connection with the Services.
- 12.13. "Subscription Services" means Services offered by Lifesize on a subscription basis, including DSS and the Lifesize App, and any add-on features or functionalities of such Services.
- 12.14. "User Account" means an individual account for an Authorized User accessing the Services through Customer's account.