# SOFTWARE LICENSE SUBSCRIPTION AGREEMENT

**IMPORTANT** – Read carefully before downloading, copying, installing or using. You may not access or use the software to which this Software License Subscription Agreement applies unless you agree to all of the terms and conditions of this Software License Agreement.

This Software License Subscription Agreement (this "Agreement") is a legal agreement between the entity by whom you are employed, or whom you represent ("Customer"), and VisioLogix Corporation. ("VisioLogix"), regarding the use of the VisioLogix software identified in a "Sales Order" (defined below) to this Agreement, and VisioLogix's provision of related services for the software.

BY INDICATING YOUR ASSENT TO THIS AGREEMENT (FOR EXAMPLE, BY SIGNING A SALES ORDER THAT REFERENCES THIS AGREEMENT, OR BY INDICATING YOUR AGREEMENT BY CLICKING ON AN "ACCEPT", "AGREE" OR SIMILAR BUTTON, OR CHECKING A BOX INDICATING YOUR AGREEMENT TO THESE TERMS, IN A WEB FORM OR AS PART OF YOUR DOWNLOAD OR INSTALLATION OF VISIOLOGIX SOFTWARE OR AN ACTIVATION KEY, YOU ARE REPRESENTING AND AGREEING THAT: (1) YOU HAVE THE AUTHORITY TO BIND THE ENTITY BY WHOM YOU ARE EMPLOYED, OR WHOM YOU REPRESENT, TO THIS AGREEMENT; AND (2) THE ENTITY BY WHOM YOU ARE EMPLOYED, OR WHOM YOU REPRESENT, WILL BE BOUND BY, AND BECOMES A PARTY TO THIS AGREEMENT.

IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, (1) YOU MAY NOT SIGN THE SALES ORDER, OR INDICATE YOUR ASSENT IN A WEB FORM OR AS PART OF THE DOWNLOAD OR INSTALLATION PROCESS, AND (2) YOU MAY NOT INSTALL, USE, COPY OR DISTRIBUTE THE VISIOLOGIX SOFTWARE.

If you already have possession of the software, but have chosen not to agree to the terms of this agreement, please destroy or delete all copies in your possession.

## Section 1. Definitions

For the purposes of this Agreement, the following capitalized words and phrases are ascribed the following meanings:

"Partner" means an entity that VisioLogix has authorized as an "Original Equipment Manufacturer (OEM)" or "distributor" or "reseller" of the Software.

"Partner Sale Agreement" means the order, agreement or other document between Customer and a Partner for Customer's purchase of a License and Support Program subscription. Terms that apply to Customer's use of the Software and Support Program when purchased from a Partner are specified in Section 10.

"Confidential Information" has the meaning ascribed to it in Section 9.
"Documentation" means the Software user manuals and other Software documentation, including updated or revised documentation, provided to Customer by VisioLogix.

"Free Trial" means non-commercial use of the Software for evaluation

"Intellectual Property Rights" means all trade secrets, patents and patent applications, trademarks (whether registered or unregistered and including any goodwill acquired in such trade marks), service marks, trade names, copyrights, moral rights, database rights, design rights, rights in know-how, rights in confidential information, rights in inventions (whether patentable or not) and all other intellectual property and proprietary rights (whether registered or unregistered, any application for the foregoing, and all rights to enforce the foregoing), and all other equivalent or similar rights which may subsist anywhere in the world.

"License" means a license to use the Software as specified in the applicable Sales Order and this Agreement.

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"License Term" means (i) with respect to a Free Trial, the period beginning on the Sales Order Effective Date, and ending on the later to occur of (a) the 30th day following the Sales Order Effective Date, and (b) the Free Trial expiration date specified in the Sales Order, and (ii) with respect to a fee-based License, the term of each License, as specified in the applicable Sales Order, subject to renewal in accordance with Section 8.1.

"Sales Order" means a completed version of VisioLogix's standard form of sales order for the Software and related services, or other form of order acceptable to VisioLogix, that has been submitted to VisioLogix by Customer or a Partner from whom Customer is purchasing Software license rights, and that VisioLogix has accepted in writing. If Customer subscribes via VisioLogix's online checkout, then the checkout form submitted by Customer and accepted by VisioLogix constitutes the applicable Sales Order for purposes of this Agreement. Each Sales Order will specify: (i) a description of the Software to be licensed, (ii) the Scope Limitations applicable to the License, (iii) the term of the License and the term of Customer's subscription to the Support Program, (iv) the fees to be paid for the License and related services, (iv) whether the License is for a Free Trial, and (vi) any additional terms and conditions as may be mutually agreed upon by VisioLogix and the respective Customer or Partner.

"Sales Order Effective Date" means, with respect to each Sales Order, (i) the effective date specified in the Sale Order or, if none, the date on which the last of VisioLogix and Customer executes the Sales Order, (ii) in the case of an online checkout form, the date on which VisioLogix enters the completed online checkout form into its system, or (iii) if Customer purchases Services through a Partner, upon VisioLogix's acceptance of the Sales Order following its submission by the Partner.

"Scope Limitations" means the license metrics and other scope limitations applicable to the License.

"Software" means the executable code version of VisioLogix's computer software programs specified in the applicable Sales Order, including any modifications or future releases of such software that VisioLogix may provide to Customer as part of the Support Program.

"Support Program" means the technical support and maintenance services specified in VisioLogix's then current Support Program description, published at https://vlxweb.visiologix.com/terms-notices/.

"User" means any individual who is an employee or contractor of Customer and who is authorized by Customer to use the Software pursuant to the applicable Sales Order and this Agreement.

The following words will be interpreted as designated: (i) "or" connotes any combination of all or any of the items listed; (ii) where "including" is used to refer to an example or begins a list of items, such example or items will not be exclusive; (iii) "specified" requires that an express statement is contained in the relevant document; and (iv) "will" is, unless the context requires otherwise, an expression of command, not merely an expression of future intent or expectation.

## Section 2. Rights to Use Software

2.1 Copying, Installation and Operation. VisioLogix hereby grants Customer the following non-exclusive, non-transferable, worldwide licenses, without right to sub-license, for the License Term, and subject to the Scope Limitations and the provisions of this Agreement, to: (a) reproduce the Software to the extent permitted within the Scope Limitations; (b) to distribute such copies to and install them on computers owned by Customer or under its control; (c) to run the Software on the computers described in Section 2.1(b) above; and (d) to reproduce copies of the Documentation to the extent reasonably necessary for Users to use the Software, and to distribute and display such copies internally within Customer to Users. If Customer has acquired the Software under a Free Trial arrangement, then the License is conditioned upon Customer's use of the Software solely for its internal, non-production purposes, and solely to evaluate whether Customer wishes to acquire a fee-based license to the Software.

2.2 Open Source Components. The Software includes software components provided by third parties that are subject to open-source copyright license agreements ("Open Source Components"). These Open Source components are identified in the Documentation. Customer's use of the Open Source Components will be governed by and subject to the applicable open source license and not this Agreement.

2.3 Reservations. All rights to the Software, Documentation and all related and other Intellectual Property Rights of VisioLogix not expressly granted to Customer are reserved to VisioLogix. Customer may not make the Software or Documentation available to any third parties as part of any rental, leasing, time-sharing, ASP, SaaS, or service bureau arrangement. Except to the extent otherwise specified in the Sales Order, Customer may use the Software and Documentation only for its internal business purposes. Customer may in addition reproduce the Software, but solely to the extent necessary for bona fide non-production testing, back-up or archival purposes. All Software provided under this Agreement is licensed, not sold.

2.4 Proprietary Rights; Reverse Engineering. As between VisioLogix and Customer, VisioLogix will own all Intellectual Property Rights in or to the Software and Documentation, and any derivative works of or improvements or enhancements to any of the foregoing created or developed by or on behalf of VisioLogix, or created or developed by or on behalf of Customer in violation of any of VisioLogix's Intellectual Property Rights. Customer acknowledges that the Software (including its structure, organization and code) and the Documentation constitute trade secrets and are the valuable property of VisioLogix Customer will not remove, obscure or alter any notice of copyright, patent, trade secret, trademark or other proprietary right or disclaimer appearing in or on any Software or Documentation. Except to the extent (if any) permitted by applicable law or required by VisioLogix's licensors, Customer will not decompile, or create or attempt to create, by reverse engineering or otherwise, the source code from the executable code supplied under this Agreement or use it to create a derivative work.

## Section 3. Delivery of Software

3.1 Software Delivery. If the Software is licensed for on premise use, VisioLogix will make the Software and Documentation available for download from its California offices, on or before the delivery date, as specified in the applicable Sales Order, or as otherwise agreed to by the Parties and confirmed in writing. For purposes of this Agreement, the delivery date for the Software will be the first to occur of the date on which VisioLogix notifies Customer that the Software is available for download, or the date on which Customer downloads the Software. If the Software is licensed for use in an environment operated by or on behalf of VisioLogix, then VisioLogix will make the Software available to Customer within such environment.

3.2 Related Services. VisioLogix will provide Customer with the Support Program throughout the License Term.

## Section 4. Fees

4.1 Payment of Fees. Customer will pay VisioLogix the fees for the License to the Software and the subscription to the Support Program (collectively, "Subscription Fees"), by check, EFT or, as specified or required in the applicable Sales Order. If Customer subscribes via VisioLogix's online checkout, then Customer will pay the Subscription Fees by credit card. Unless specified otherwise in the applicable Sales Order, Customer will make all payments in US dollars within thirty (30) days of receipt of VisioLogix's invoice. VisioLogix may impose a finance charge of 1.5% per month on amounts unpaid by Customer on their due date. No fees are due from Customer for authorized use of the Software under a Free Trial License.

4.2 Taxes, Etc. Customer will be responsible for any applicable sales, use, or any value added or similar taxes ("Taxes") payable with respect to the licensing of the Software to Customer, provision of the Support Program, or otherwise arising out of or in connection with this Agreement, other than taxes based upon VisioLogix's personal property ownership or net income. Unless expressly specified otherwise in any Sales Order, all

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Subscription Fees, rates and estimates exclude Taxes. If Customer has tax-exempt status, Customer will provide written evidence of such status with its purchase orders.

4.3 Verification. Upon request by VisioLogix, Customer will provide VisioLogix with, or permit VisioLogix to generate, a report generated by the Software indicating Customer's compliance with the Scope Limitations for the period specified in the request. Unless there is a material discrepancy showing that Customer has exceeded the Scope Limitations, VisioLogix may make such requests no more than once in any 12 month period. In the event of any use in excess of the License rights for which Customer has paid, Customer will promptly pay VisioLogix Subscription Fees for such excess use at the rates specified in the applicable Sales Order. Upon receipt of such Subscription Fees, VisioLogix will extend the License to cover the excess.

## Section 5. Additional Rights and Obligations

5.1 Protection Against Unauthorized Use. Customer will promptly notify VisioLogix of any unauthorized use of any Software of which Customer becomes aware. In the event of any unauthorized use by any User, Customer will use all commercially reasonable efforts to immediately terminate and prevent further occurrences of such unauthorized use.

## Section 6. VisioLogix's Warranties

6.1 Warranties. VisioLogix warrants to Customer that:

6.1.1 Performance. The Software, in the form provided by VisioLogix to Customer under this Agreement, will perform in all material respects in accordance with its applicable specifications set forth in the Documentation, for a period of 30 days following delivery, or such other warranty period as may be specified in the applicable Sales Order.

6.1.2 Viruses and Lock-Outs. VisioLogix will use all commercially reasonable efforts, using then current versions of industry standard anti-virus software and tools, to ensure that the Software, in the form provided by VisioLogix to Customer under this Agreement, contains no computer virus, Trojan horse, worm, time bomb, lock-out device, cancelbot, or other similar malicious code. VisioLogix and Customer each acknowledge that the Software may require a license key from VisioLogix to be operable by Customer; upon request, VisioLogix will promptly provide keys as necessary for Customer to exercise its License rights.

6.1.3 Services. VisioLogix will perform its obligations under the Support Program in a competent and professional manner, consistent with industry standards.

6.1.4 Infringement. The Software, as provided by VisioLogix to Customer under this Agreement, does not infringe any Intellectual Property Rights of any third party existing under the laws of the United States and Canada.

6.1.5 Scope. The warranties in this Agreement are for the sole benefit of Customer, and may not be extended to any other person or entity.

6.2 Performance Remedy. If any Software fails to conform to the warranty set forth in Section 6.1.1 and Customer wishes to exercise its warranty rights, then Customer must notify VisioLogix of the non-conformance within the warranty period. VisioLogix will have 30 days from receipt of such notice in which to either repair or, at its option, replace any non-conforming Software with functionally equivalent Software at no additional charge, failing which Customer may exercise any of its rights under this Agreement and applicable law.

6.3 Services Remedy. If VisioLogix's performance of its obligations under the Support Program fails to conform to the warranty set forth in Section 6.1.3 above, then Customer's exclusive remedy and VisioLogix's sole obligation will be as follows: (a) following notice of non-conformance, VisioLogix will have 30 days in which to

correct the non-conformance at no additional charge; and (b) if VisioLogix has not corrected the non-conformance within such period, then VisioLogix will refund Customer the fees paid to VisioLogix for the non-conforming services.

6.4 Infringement Remedy. Customer's sole and exclusive remedy for any non-conformance with the warranty in Section 6.1.4 above will be VisioLogix's defense and indemnification obligations under Section 7 below.

6.5 Disclaimer of Implied Warranties. VisioLogix makes no representation or warranty in connection with the Software or the Support Program, except as set forth in Section 6.1. The warranties in Section 6.1.1 and 6.1.3 do not apply to a Free Trial. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT AS SPECIFICALLY SET FORTH IN THIS SECTION 6 OR OTHERWISE EXPRESSLY WARRANTED BY VISIOLOGIX TO CUSTOMER, VISIOLOGIX DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ANY IMPLIED WARRANTY OF NON-INFRINGEMENT OR IMPLIED OBLIGATION TO INDEMNIFY FOR INFRINGEMENT, ANY IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE AND ANY STATUTORY REMEDY.

## Section 7. VisioLogix's Infringement Indemnification

7.1 Defense and Indemnity. If any third party makes any claim against Customer that the Software, in the form provided by VisioLogix to Customer, infringes any patent or trademark existing under the laws of the United States or Canada, or infringes any copyright, or results from any misappropriation of such third party's trade secrets by VisioLogix (collectively, an "Infringement") then, upon notification of such claim, VisioLogix will, at its sole cost and expense, defend Customer against such claim and any related proceeding brought by such third party against Customer. VisioLogix will indemnify Customer from and against damages, (including taxes, fees, fines, penalties, and interest) (collectively "Damages") required to be paid by Customer to the third party as a result of the Infringement. VisioLogix's obligations under this Section 7.1 are conditioned upon Customer's compliance with the "Indemnification Conditions" (defined below).
"Indemnification Conditions" means the following obligations of a party entitled to defense or indemnification under this Agreement: (i) the indemnified party notifies the indemnifying party in writing of any claim that might be the subject of indemnification promptly after any executive officer of the indemnified party or member of the indemnified party's legal department first knows of the claim, provided, however, that no failure to so notify an indemnifying party will relieve the indemnifying party of its obligations under this Agreement except to the extent that such failure materially prejudices defense of the claim, and except to the extent of damages incurred by the indemnifying party as a result of the delay; (ii) the indemnifying party is given primary control over the defense and settlement of the claim (subject to the foregoing, the indemnified party may nonetheless participate in the defense at its sole cost and expense); (iii) the indemnified party makes no admission of liability (except as required by applicable law) nor enters into any settlement without the indemnifying party's prior written agreement; (iv) the indemnified party provides such assistance in defense of the proceeding as the indemnifying party may reasonably request, at the indemnifying party's reasonable expense; and (v) the indemnified party complies with any court order or reasonable settlement made in connection with the proceeding.

7.2 VisioLogix's Mitigation Rights. If use of the Software is, or in VisioLogix's reasonable opinion is likely to become, the subject of a claim of infringement of any Intellectual Property Right of any third party, then VisioLogix may: (i) procure the continuing right for Customer to use the Software; (ii) replace or modify the Software in a functionally equivalent manner so that it no longer infringes; or (iii) if the rights under (i) and (ii) above are not available on terms that are commercially reasonable for VisioLogix, terminate the applicable Sales Order and refund to Customer any Subscription Fees prepaid to VisioLogix and applicable to the unutilized portion of the License Term.

7.3 Exclusions. Notwithstanding the foregoing, VisioLogix will have no obligation under this Section 7 or otherwise with respect to any infringement or misappropriation claim to the extent based upon (a) any use of the Software

not in accordance with this Agreement or the Documentation, (b) the combination of the Software with other equipment, software, services or data not supplied by VisioLogix, to the extent the infringement would not have occurred but for such combination, (c) VisioLogix's compliance with Customer's requirements, specifications or instructions, (d) any use of any release of the Software other than the most current release made available to Customer after notice from VisioLogix that Customer must upgrade to such release to avoid an infringement or misappropriation claim and Customer has had a reasonable time in which to implement such upgrade, (e) any third party open source software, or (f) any modification of the Software not made by VisioLogix or at its express direction.

## Section 8. Term and Termination

8.1 Term – Sales Orders. Each Sales Order will commence on the Sales Order Effective Date, and will continue for the period specified in the Sales Order or, if not so specified, one year (the "Initial License Term"), unless sooner terminated in accordance with Sections 8.2 or 8.3 below. Unless otherwise specified in the Sales Order, the Initial License Term will automatically renew for additional terms of the same length as the Initial License Term (each a "Renewal License Term") unless either party declines renewal by notice in writing to that effect delivered to the other party at least 30 days prior to expiration of the then current License Term. The Initial Term and each Renewal Term are individually referred to in this Agreement as the "License Term". With respect to a Free Trial License, either party may terminate the License at any time, immediately upon notice to the other, for any reason or no reason.

8.2 Annual Fee Increases. Fees for Customer's License and Support Program subscription are subject to annual increases, which will be effective beginning upon the first day of each Renewal Term. VisioLogix will notify Customer of any increase before its becoming effective; notice may be in the form of an invoice. If Customer objects to the increase, then Customer may terminate its License; any such termination will be effective on expiration of the then current License Term. Customer acknowledges that expiration of any discount or incentive programs to which Customer was previously entitled do not constitute fee increases.

8.3 Customer's Termination for Convenience. Customer may terminate any Sales Order for convenience following expiration of all minimum terms specified in the Sales Order, upon not less than 30 days prior written notice to VisioLogix. If Customer terminates any Sales Order under this Section 8.3, Customer will not be entitled to any refund of Subscription Fees paid or relief from Subscription Fees payable under such Sales Order.

8.4 Termination for Cause. If either Party materially breaches any of its obligations under this Agreement and fails to cure such breach within 30 days from the date it receives from the non-breaching Party a notice of the breach and a demand for cure, then the non-breaching Party may terminate all or any affected Sales Orders, Licenses or related services immediately on notice. Without limiting the foregoing, Customer's failure to pay past due Subscription Fees within 15 days of receipt of a written notice of late payment will constitute a material breach of the applicable Sales Order and of the License. If Customer has not cured a material breach within the applicable cure period then, until Customer has cured the breach in full, VisioLogix may, in its sole discretion, and without prejudice to its other rights following material breach and failure to cure, (i) suspend performance of some or all of VisioLogix's obligations under the applicable Sales Order, including obligations to provide the Support Program or Installation Services; and (ii) suspend the Licenses granted pursuant to the applicable Sales Order. Notice of termination for any Sales Order will not be interpreted to be notice of termination for any other Sales Order.

8.5 Obligations on Termination. Upon any termination or expiration of a License Customer will destroy all copies of the Software and the Documentation within its custody or control within 30 days of such termination, and immediately provide VisioLogix with a written statement signed by an authorized representative of Customer certifying that all copies of the Software have been destroyed and all use of the Software has been discontinued; and (ii) each Party will return or destroy all copies of any Confidential Information of the other, as certified by an authorized representative of the returning party.

8.6 Effect of Termination. No expiration or termination of this Agreement or of any Sales Order will relieve Customer of its obligation to pay any amounts accruing under such Sales Order prior to such expiration or termination.

8.7 Survival. The provisions of Sections 1, 2.2-2.3, 4.2-4.3, 5, 7, 8.5-8.7, and 9-13 of this Agreement will survive any termination or expiration of this Agreement.

**Section 9. Confidential Information**

9.1 Restrictions on Use and Disclosure. "Confidential Information" means all information transmitted by either party to the other pursuant to or in connection with this Agreement that the disclosing party identifies as being proprietary or confidential or that, by the nature of the circumstances surrounding the disclosure, ought in good faith to be treated as proprietary or confidential. The receiving party will not disclose the disclosing party's Confidential Information to any third party, and will protect the disclosing party's Confidential Information using the same degree of care it uses to protect its own Confidential Information, and in no event less than a reasonable standard of care. The receiving party will make no use of such Confidential Information except under the terms and during the term of this Agreement. VisioLogix's Confidential Information includes information regarding products, pre-release products, software, services, pricing, marketing and business plans and financial information. VisioLogix and Customer will treat the terms and conditions of this Agreement as confidential; however, either party may disclose such information in confidence to its immediate legal and financial consultants as required in the ordinary course of that party's business.

9.2 Exclusions. Confidential Information will not include information that the receiving party can establish: (i) has entered the public domain without the receiving party's breach of any obligation owed to the disclosing party; (ii) has been rightfully received by the receiving party from a third party without confidentiality restrictions; (iii) is known to the receiving party without any restriction as to use or disclosure prior to first receipt by the receiving party from the disclosing party hereunder; or (iv) has been independently developed by the receiving party.

9.3 Disclosure Required by Law. If any applicable law, regulation or judicial or administrative order requires the receiving party to disclose any of the disclosing party's Confidential Information (a "Disclosure Order") then, unless otherwise required by the Disclosure Order, the receiving party will promptly notify the disclosing party in writing prior to making any such disclosure, in order to facilitate the disclosing party's efforts to protect its Confidential Information. Following such notification, the receiving party will cooperate with the disclosing party, at the disclosing party's reasonable expense, in seeking and obtaining protection for the disclosing party's Confidential Information.

9.4 Independent Development. The terms of confidentiality under this Agreement will not limit either party's right to independently develop or acquire products without use of the other party's Confidential Information.

Section 10. Purchase Through Partners
10.1. Applicability. This section 10 only applies to Customers purchasing Licenses and subscriptions to the Support Program through an authorized Partner. If Customer is uncertain as to the applicability of this section to its purchase, Customer should contact VisioLogix for further information.

10.2. Partners. If Customer ordered its License or Support Program subscription from a Partner, then this Agreement is not exclusive of any rights Customer obtains under the Partner Sale Agreement; however, if there is any conflict between the provisions of this Agreement and the Partner Sale Agreement, then the provisions of this Agreement prevail. If a Partner has granted Customer any rights that VisioLogix does not also directly grant to Customer in this Agreement, or that conflict with this Agreement, then Customer's sole recourse with respect to such rights is against the Partner.

10.3. Purchase Through a Partner. If Customer ordered the Services through a Partner, then Sections 8.1-8.3 are inapplicable, and the License term will begin on the Sales Order Effective Date and, subject to the remainder of Section 8, it will expire, renew and terminate in accordance with the terms of the Partner Sale Agreement.

10.4. Purchases Through a Partner. If Customer ordered its License or Support Program subscription through a Partner, then Sections 4.1 and 4.2 do not apply to Customer, and Customer's billing and payment rights and obligations are governed by the Partner Sale Agreement. However, if the Partner from whom Customer purchased the its License or Support Program subscription fails to pay VisioLogix any amounts due in connection with Customer's License or Support Program subscription, then VisioLogix may suspend Customer's License or Support Program subscription, with or without notice to Customer. Customer agrees that Customer's remedy in the event of such suspension is solely against the Partner and that VisioLogix is not liable to Customer in any manner for such suspension.

## Section 11. Limitations and Exclusions of Liability

11.1 Exclusion of Certain Claims. SUBJECT TO SECTION 11.3, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY, OR TO ANY THIRD PARTY FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, INCIDENTAL OR EXEMPLARY DAMAGES, WHETHER FORESEEABLE OR UNFORESEEABLE (INCLUDING DAMAGES FOR LOSS OF DATA OR PROFITS), EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, ARISING OUT OF (i) THE PERFORMANCE OR NON-PERFORMANCE OF THIS AGREEMENT, THE SOFTWARE OR ANY SERVICES, OR (ii) ANY CLAIM OR CAUSE OF ACTION UNDER THIS AGREEMENT, MISREPRESENTATION, STRICT LIABILITY, OR OTHER TORT.

11.2 Limitation of Liability. Subject to Section 11.3, neither party's entire liability arising out of each Sales Order will in any event exceed the fees paid to VisioLogix under such Sales Order during the 12 month period immediately preceding the injured Party's first assertion against the other of any claim under such Sales Order, regardless of whether any action or claim is based in contract, misrepresentation, strict liability, or other tort.

11.3 Exceptions. Sections 11.1 and 11.2 do not apply to either party's willful misconduct or gross negligence, or infringement or misappropriation of any of the other party's Intellectual Property Rights. Any amounts payable by an indemnified party to a third party pursuant to a judgment or to a settlement agreement approved in writing by an indemnifying party, liability for which is subject to indemnification rights under this Agreement, will be deemed direct damages for purposes of Section 11.1. Section 11.2 does not apply to (i) indemnification obligations, (ii) Customer's obligations to pay fees and expenses when due and payable under this Agreement, nor (iii) each party's obligations under Section 9 (Confidential Information), provided, however, that except to the extent resulting from willful misconduct or gross negligence of VisioLogix, VisioLogix's liability under Section 9 with respect to unauthorized access to or use of Customer Confidential Information by any person or entity other than VisioLogix or its employees will not exceed the fees paid by Customer to VisioLogix under the affected Sales Order in the 12 month period immediately preceding VisioLogix's breach.

11.4 Free Trial. With respect to any Free Trial, VisioLogix's aggregate liability will in no event exceed one hundred US dollars, regardless of any theory of liability, and notwithstanding any provision of this Agreement to the contrary, including Sections 11.1-11.3.

11.5 General. Customer agrees that the exclusions and limitations specified in this Agreement apply even if the remedies are insufficient to cover all of Customer's losses or damages, or fail of their essential purpose and that without these limitations the fees for the License and Support Program subscription would be significantly higher. Except with respect to infringement or misappropriation by either party of any of the other party's Intellectual Property Rights, neither party may commence any action or proceeding under this Agreement more than two years after the occurrence of the applicable cause of action.

## Section 12. Dispute Resolution

12.1 Governing Law. This Agreement will be governed by and interpreted in accordance with the internal laws of the State of Texas, and, where such laws are preempted by the laws of the United States, by the internal laws of the United States, in each case without regard to (a) conflicts of laws principles, and (b) the applicability, if any, of the United Nations Convention on Contracts for the International Sale of Goods.

12.2 Disputes. Any disputes arising under this Agreement will be referred to an appropriate senior manager of Customer and an appropriate senior manager of VisioLogix who will, within 10 days of written notice of a dispute being served by one on the other, meet by telephone or videoconference in a good faith effort to resolve the dispute without recourse to legal proceedings. Any dispute, controversy or claim arising out of or relating to this Agreement, or the breach, termination or invalidity thereof that cannot be resolved by the parties, will be finally settled by binding arbitration conducted in the English language in Houston, Texas, U.S.A. under the Commercial Arbitration Rules and the Optional Rules for Emergency Measures of Protection of the American Arbitration Association ("AAA"). The arbitration will be heard by one arbitrator if the total amount in controversy is less than one million dollars ($1,000,000.00); otherwise the parties will jointly agree to three neutral arbitrators. Provided, however, that if the parties cannot agree to one or more arbitrators, (or if one party refuses to appoint an arbitrator) within 30 days after the initiation of the arbitration, then such arbitrators will be appointed by the AAA. Disputes about arbitration procedure will be resolved by the arbitrators, or failing agreement, by the AAA. The arbitrator(s) may proceed to an award notwithstanding the failure of the either party to participate in the proceedings. Discovery will be limited to mutual exchange of documents relevant to the dispute, controversy or claim; depositions will not be permitted unless agreed to by both parties. The arbitrator(s) will be authorized to grant interim relief, including to prevent the destruction of materials or documents involved in the dispute, protect trade secrets and provide for security for a prospective monetary award. The prevailing party will be entitled to an award of reasonable attorney fees incurred in connection with the arbitration in such amount as may be determined by the arbitrators. The award of the arbitrators will be the sole and exclusive remedy of the parties and will be enforceable in any court of competent jurisdiction, subject only to revocation on grounds of fraud or clear bias on the part of the arbitrator(s). Notwithstanding this, application may be made to any court for a judicial acceptance of the award or order of enforcement.

**Section 13. Miscellaneous Provisions**

13.1 Publicity; References. Provided that VisioLogix complies with any trademark usage requirements notified to it by Customer, VisioLogix may refer to Customer as one of VisioLogix's customers and use Customer's logo as part of such reference. With Customer's prior written approval, not to be unreasonably withheld, VisioLogix may issue a press release announcing the relationship between VisioLogix and Customer.

13.2 Compliance with Laws; Export Control. Customer agrees to comply with all applicable export and re-export control laws and regulations, including the Export Administration Regulations ("EAR") maintained by the U.S. Department of Commerce, trade and economic sanctions maintained by the Treasury Department's Office of Foreign Assets Control, and the International Traffic in Arms Regulations ("ITAR") maintained by the Department of State. Specifically, Customer covenants that it will not, directly or indirectly, sell, export, re-export, transfer, divert, or otherwise dispose of any products, software, or technology (including products derived from or based on such technology) received from VisioLogix under this Agreement to any destination, entity, or person prohibited by the laws or regulations of the United States, without obtaining prior authorization from the competent government authorities as required by those laws and regulations. Customer agrees to indemnify, to the fullest extent permitted by law, VisioLogix from and against any fines or penalties that may arise as a result of Customer's breach of this provision.

13.3 Equitable Relief. Each of Customer and VisioLogix acknowledges that damages will be an inadequate remedy if the other violates the terms of this Agreement pertaining to protection of a Party's Intellectual Property Rights or Confidential Information. Accordingly, each of them will have the right, in addition to any other rights each of them may have, to obtain in any court of competent jurisdiction, temporary, preliminary and permanent

injunctive relief to restrain any breach, threatened breach, or otherwise to specifically enforce any of such obligations in this Agreement.

13.4 Force Majeure. If the performance of this Agreement is adversely restricted or if either party is unable to conform to any warranty by reason of any circumstances beyond the reasonable control and without the fault or negligence of the party affected, then the party affected, upon giving prompt written notice to the other party, will be excused from such performance on a day-to-day basis to the extent of such restriction (and the other party will likewise be excused from performance of its obligations on a day-to-day basis to the extent such party's obligations relate to the performance so restricted); provided, however, that the party so affected will use all commercially reasonable efforts to avoid or remove such causes of non-performance and both parties will proceed whenever such causes are removed or cease.

13.5 Enhancement Analysis. VisioLogix may analyze Customer's usage history and statistics (collectively, "Enhancement Data") for VisioLogix's internal purposes, including to improve and enhance the Software and related services. Unless otherwise specified in the Sales Order, Customer authorizes and will not interfere with the Software's transmission of Enhancement Data to VisioLogix. VisioLogix may make information derived from its analysis of Enhancement Data publicly available, provided that the publicized information does not include any Enhancement Data that has not been aggregated and anonymized. For the purposes of this Agreement, aggregated and anonymized Enhancement Data means Enhancement Data that (i) has been aggregated with other data, and (ii) does not contain information that identifies Customer or its Users. For the sake of clarity, aggregated and anonymized data is not Confidential Information of Customer.

13.6 Captions and Headings. The captions and headings are inserted in this Agreement for convenience only, and will not be deemed to limit or describe the scope or intent of any provision of this Agreement.

13.7 Severability; Invalidity. If any provision of this Agreement is held to be invalid, such invalidity will not render invalid the remainder of this Agreement or the remainder of which such invalid provision is a part. If any provision of this Agreement is so broad as to be held unenforceable, such provision will be interpreted to be only so broad as is enforceable.

13.8 Waiver. No waiver of or with respect to any provision of this Agreement, nor consent by a party to the breach of or departure from any provision of this Agreement, will in any event be binding on or effective against such party unless it be in writing and signed by such party, and then such waiver will be effective only in the specific instance and for the purpose for which given.

13.9 Third-Party Beneficiaries. Except as expressly set forth in this Agreement, no provisions of this Agreement are intended nor will be interpreted to provide or create any third-party beneficiary rights or any other rights of any kind in any other party.

13.10 Assignment. Customer will not assign any of its rights under this Agreement without the prior written consent of VisioLogix, which will not be unreasonably withheld. Subject to the foregoing restriction on assignment by Customer, this Agreement will be binding upon, inure to the benefit of and be enforceable by the parties and their respective successors and assigns.

13.11 U.S. Government Rights in The Software. VisioLogix provides the Software and related services for ultimate federal government end use solely in accordance with the following: Government technical data and software rights related to the Services include only those rights customarily provided to the public as defined in this Agreement. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data – Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If a government agency has a need for rights not conveyed under these terms, it must negotiate

with VisioLogix to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written addendum specifically conveying such rights must be included in any applicable contract or agreement

13.12 Notices. Any notice or other communication under this Agreement given by either party to the other party will be deemed to be properly given if given in writing and delivered by (i) US Mail, certified or registered, return receipt requested, or (ii) nationally recognized air express courier (e.g., Federal Express), properly addressed and prepaid, to the recipient at the address identified in the Sales Order. If VisioLogix's address is not identified in the Sales Order, then notices to VisioLogix must be delivered to its main office address, as published at http://www.visiologix.com, Attention: Legal Department. Notice periods will begin on the day following delivery. Either party may from time to time change its address by giving the other party notice of the change in accordance with this Section.

13.13 Entire Agreement; Amendments; Conflicts. This Agreement constitutes and embodies the entire agreement and understanding between the parties with respect to the subject matter hereof and supersedes all prior or contemporaneous written, electronic or oral communications, representations, agreements or understandings between the parties with respect thereto. This Agreement may not be modified or amended except by a written instrument executed by both parties. All Software and related services licensed or purchased, as applicable, by Customer under this Agreement will be subject to the terms and conditions of this Agreement. With the exception of order quantities and Subscription Fees, any terms or conditions appearing on the face or reverse side of any purchase order, acknowledgment, or confirmation that are different from or in addition to those specified in this Agreement will not be binding on the Parties, even if signed and returned, unless both Parties agree in a separate writing to be bound by such different or additional terms and conditions. In the event of any conflict between the terms of this Agreement and any Sales Order, the following order of precedence will apply: (a) the Agreement, and (b) the applicable Sales Order.

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