This Software License Agreement (this “Agreement”) can be accepted by (i) clicking “I Agree” (or a similar link or control) during installation, (ii) installing a license key that was provided with a copy of this Agreement, or (iii) by using VISIX software that includes a link to a copy of this Agreement that is made available through a “help” or “about” link or command in the software. By performing any of the foregoing three acts, you are agreeing to be legally bound by the terms and conditions of this Agreement.

This agreement is by and between the customer that purchased the software license (either directly or through a VISIX reseller) (“Customer”) and Visix, Inc. (the “Licensor”). If you are installing this software for yourself, you are the “Customer.” If you are installing this software for an employer or a business, the “Customer” is the employer or business and you personally warrant and represent that you are authorized to accept the terms and conditions on this Agreement on behalf of that employer or business. If you are a reseller, service provider, or contractor installing the software for an end user, the “Customer” is the person or entity that purchased the software license and you warrant and represent, both personally and on behalf of your employer, that you are authorized to accept the terms and conditions on this Agreement on behalf of that person or entity.

This Agreement governs the Customer’s rights to install and use the VISIX software, so it is important that you read and understand all of its terms and conditions. If you do not agree to the terms and conditions of this Agreement, then you may not install or use the VISIX software, and must click “I do not agree” or immediately uninstall and return the Licensed Software to Licensor or its reseller. If you do not agree to the terms of this Agreement, do not install or use VISIX software, and contact your reseller or VISIX (either by mail or through the contact page available at www.visix.com) to request a refund.

1. DEFINITIONS.

“Licensed Software” means the Object Code of the Licensor software that is installed as a result of you clicking I Agree, or that you are otherwise using when you agree to this Agreement, and all enhancements to such software that the Licensor makes generally available to its users, in its sole discretion, for no additional cost during the term of this Agreement.

“Authorized Use” means use of the Licensed Software for Customer’s own internal business operations in accordance with the Documentation for Customer and its wholly owned affiliates. Authorized Use does not include Prohibited Uses such as reverse engineering or decompiling, use to create a competing product or service, any effort to remove or circumvent any security feature or copy protection feature, any use beyond the scope of the license granted in this Agreement, or any illegal, infringing or improper use.

“Confidential Information” means (i) non-public information that one party to this Agreement gives to the other party that is marked or designated in writing as “Confidential” or “Proprietary,” (ii) the Licensed Software and the Documentation, and (iii) all information relating to features and functions of the Licensed Software and its performance that is not released publicly by Licensor. Confidential Information does not include information that is shown by written documentation: (iv) to have been in the possession of, or rightfully known by, the recipient thereof without an obligation to maintain its confidentiality prior to receipt from disclosing party; (v) to be generally known to the public without violation of this Agreement or another obligation of confidentiality owed to the disclosing party at the time of disclosure; or (vi) is obtained by the recipient without obligations of confidentiality, in good faith, from a third party having the right to disclose it.

“Documentation” means the electronic and paper user, installation, technical, training, help files, and other documents delivered by Licensor or its reseller or representative in conjunction with Licensed Software or made available to Customer via Licensor’s website.

“Effective Date” means the earlier of (i) the date on which you agreed to the terms and conditions of this Agreement, and (ii) the earliest date on which you agreed to a prior version of this Agreement (if any).

“Employee” means an employee of Customer or a third-party consultant engaged by Customer and permitted to access the Licensed Software as permitted under this Agreement.

“Object Code” means computer programs assembled, compiled, or converted to magnetic or electronic binary, which are readable and usable by computer equipment, media files including video and audio files viewable on a computer, and computer-readable files containing documents, tests, and explanatory material that are provided by Licensor in connection with the Licensed Software.
2. LICENSE.

2.1 Grant of License. Subject to the terms, conditions and restrictions set forth in this Agreement, Licensor grants to Customer: a time-limited (beginning on the Effective Date and continuing until this Agreement is terminated or expires as set forth herein), limited, non-exclusive, non-transferable, license to use (for Customer’s own, legitimate internal business purposes) and copy for use (for Customer’s own, legitimate internal business purposes) the Licensed Software and Documentation on one machine, for the Authorized Use by Licensee’s Employees and customers (the “License”). Customer agrees that within seven (7) calendar days of the expiration of the License, Customer will uninstall or otherwise destroy all copies of the Licensed Software, Documentation, and any portion thereof, in the possession or control of Customer or Customer’s Employees. Customer may not make any use of any software for which Customer is not expressly obtaining a license under this Agreement. Customer understands and agrees that the Licensed Software and all copies thereof that Licensor provides to Customer are being licensed and not sold. Customer shall not own or have any rights in or to the Licensed Software, Documentation, or any copies thereof, by virtue of this Agreement, other than the rights expressly conferred in the License. Any and all rights not expressly granted in this Agreement are expressly reserved by Licensor.

2.2 Restrictions.

(a) Licensed Software. Customer shall not, or permit any Employee or third party to, directly or indirectly: (i) reverse engineer, disassemble, or decompile the Licensed Software or any portion thereof; (ii) sublicense, rent, lease or otherwise transfer the Licensed Software, Documentation or any portion thereof; (iii) use the Licensed Software for any third-party use including, but not limited to, training, facilities management, time-sharing, service bureau use, or data processing; or (iv) combine the Licensed Software or any portion thereof with any unauthorized third party software.

(b) Access to / Use of Licensed Software. Customer shall be responsible and liable for the acts and omissions of all users arising from the access to the Licensed Software provided by Customer. The Licensed Software may contain license protection procedures or technologies intended to limit access to the Licensed Software to that use permitted under this Agreement. Customer shall not circumvent or render inoperative any such protection procedures or technology or attempt, on its own or through any third party, to do so, and shall not assist any third party attempting to do so.

(c) Installation. The Licensed Software will be installed (by or for Customer) and used by Customer on only one machine. Customer may install and use the Licensed Software on a second machine only if one of the following applies: (i) the first machine is destroyed or otherwise physically rendered incapable of executing the Licensed Software, (ii) the Licensed Software is securely deleted from the first machine prior to installation on the second machine, or (iii) Customer obtains and valid license to install and use the Licensed Software on the second machine from Licensor.

2.3 Disaster Recovery. Customer may maintain a single copy of the Licensed Software on a backup media or a backup computer system for disaster recovery purposes; provided, however, (i) such copy may not be used by Customer in any manner except in the event of a disaster and (ii) Customer must stop using such copy immediately after the equipment affected by the disaster is restored to service or replaced.

2.4 Certification. On Licensor’s request, but not more than once per year, Customer shall furnish Licensor with a signed certification verifying that Customer’s use of the Licensed Software and Documentation is consistent with the terms and conditions of this Agreement, which certification shall include information reasonably requested by Licensor.

2.5 Obligations. Customer shall provide reasonable assistance to Licensor, as requested by Licensor when performing hereunder. The parties acknowledge and agree that Licensor shall not be liable for any delay which results from Licensor’s inability to perform where Customer has failed to reasonably respond to a request from Licensor.

3. RESERVED.

4. PAYMENT.

4.1 Fees. The rights and licenses granted by Licensor in this Agreement are in consideration of payments made to Licensor or Licensor’s authorized reseller. To the extent Customer has agreed to pay any amounts to Licensor or Licensor’s authorized reseller, and fails to do so promptly and in full, Licensor may, in its sole discretion, terminate this Agreement and any licenses granted herein.
Software EULA
(End User License Agreement)

4.2 Taxes. Customer is liable for any and all sales, use, excise, value added, customs fees, or other similar taxes Licensor must pay (other than employment and income taxes) relating to the Licensed Software provided to Customer under this Agreement. If Customer is exempt from the payment of any such taxes, Customer must provide Licensor or Licensor’s reseller with a valid tax exemption certificate; otherwise, absent proof of Customer’s direct payment of such taxes to the applicable taxing authority, Licensor or Licensor’s reseller will invoice Customer for and Customer will pay all such taxes.

5. PROPRIETARY RIGHTS.

5.1 Ownership. Customer acknowledges and agrees that Licensor owns, or is a licensee of, all right, title and interest in and to all Licensed Software (including all Source Code, Enhancements, and Modifications) and related Documentation and Licensor Confidential Information (and the media containing such Confidential Information) including, without limitation, all patent, trademark, copyright, trade secret, and other intellectual property rights related thereto. Licensee agrees that it shall obtain no rights in or to the Licensed Software, Documentation, Licensor Confidential Information or any intellectual property relating to the foregoing by virtue of this Agreement or Licensee’s use of the Licensed Software, Documentation, or Licensor Confidential Information.

5.2 Modifications. Customer may not make modifications to, or derivative works based on, the Licensed Software or Documentation except to the extent such modifications or derivative works result from use of documented features of the Licensed Software as described in the Documentation.

5.3 Protection of Confidential Information. Each party to this Agreement may furnish the other party with Confidential Information. The parties agree that, during the term of this Agreement and thereafter, each party will hold Confidential Information in a fiduciary capacity for the benefit of the other party and shall not (a) directly or indirectly use, copy, reproduce, distribute, manufacture, duplicate, reveal, report, publish, disclose or cause to be disclosed, or otherwise transfer any Confidential Information of the other party to any third party, or (b) utilize Confidential Information for any purpose, except as expressly contemplated by this Agreement or authorized in writing by the other party. Customer will limit the disclosure of Licensor’s Confidential Information to Employees with a need-to-know and who have been advised of the confidential nature thereof. No third-party consultant shall be considered an Employee under this Agreement unless such consultant has been contractually obligated to maintain such confidentiality through signature of a nondisclosure agreement acknowledging the non-disclosure obligations of this Agreement. Customer shall provide copies of these agreements upon the written request of Licensor. Customer shall be liable for any breach by any Employee of the confidentiality obligations contained herein by any Employee, contractor, or other person for whom Customer is otherwise responsible. The terms of this confidentiality section shall survive termination or expiration of this Agreement as follows: for trade secrets (as defined under the Uniform Trade Secrets Act), until such information is no longer deemed a trade secret under applicable law or 5 years from the termination or expiration of this Agreement, whichever is longer, and for all other Confidential Information, it shall be treated confidential for 5 years from the termination or expiration of this Agreement.

5.4 Required Disclosures. In the event a party is required under applicable law, rule, regulation, court or administrative order to disclose Confidential Information of the other party, the first party shall use commercially reasonable efforts to: (a) notify the other party of the planned disclosure in time for the other party to seek a protective order or similar protection from disclosure; (b) limit such disclosure to the extent practicable; (c) make such disclosure only to the extent so required; and (d) reasonably cooperate with the disclosing party in any effort by the disclosing party to seek judicial or equivalent protection from disclosure.

6. LIMITED WARRANTY; DISCLAIMER.

6.1 Limited Warranty. Licensor warrants that, subject to this Section 6, for a period of ninety days from the date of delivery (the “Warranty Period”), the Licensed Software will materially perform in accordance with the Documentation provided it is used in accordance with the terms of this Agreement and the Documentation. Licensor does not warrant that the Licensed Software shall be uninterrupted or error free or will satisfy Customer’s requirements.

6.2 Obligations of Licensor. For any claim under the warranty in Section 6.1, Licensor’s sole obligation shall be to correct the Licensed Software so that it will perform in accordance with the applicable Documentation or, at Licensor’s option, either (a) immediately provide Customer with substituted Licensor Software or portions thereof which do not breach such warranty, or (b) refund a pro-rated portion of the license fees paid by Customer to Licensor for the affected Licensed Software, or portion thereof straight line basis (based on the three year term). Customer shall promptly return all applicable Licensed Software (and related Documentation) to Licensor upon issuance of any such refund, or, if preapproved in writing by Licensor, destroy all copies of the Licensed Software in Customer’s possession or control.
6.3 Limitations. Licensor’s obligations in Section 6.2 shall not apply: (a) to any authorized or unauthorized modifications to the Licensed Software; (b) if the Licensed Software is not used in accordance with the Documentation or this Agreement; (c) if Customer is not using the most recent version of the Licensed Software; or (d) to any error or defect caused by Customer, an Employee, any third party or any third party software.

6.4 Disclaimer. EXCEPT AS EXPRESSLY STATED IN THIS SECTION 6, LICENSOR MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED WITH RESPECT TO THIS AGREEMENT OR THE LICENSED SOFTWARE OR ANY SERVICES PROVIDED TO CUSTOMER INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT AND LICENSOR EXPRESSLY DISCLAIMS ANY AND ALL SUCH WARRANTIES. LICENSOR DOES NOT WARRANT THAT: (a) THE LICENSED SOFTWARE WILL OPERATE UNINTERRUPTED; (b) ALL LICENSED SOFTWARE ERRORS CAN BE CORRECTED; OR (c) THE APPLICATIONS CONTAINED IN THE LICENSED SOFTWARE ARE DESIGNED TO MEET ALL OF CUSTOMER’S BUSINESS REQUIREMENTS.

6.5 Exclusive Remedy. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT OR ANY ORDER FORM TO THE CONTRARY, THIS SECTION 6 SETS FORTH CUSTOMER’S SOLE AND EXCLUSIVE REMEDY FOR ANY BREACH OF THE WARRANTY SET FORTH IN SECTION 6.1 ABOVE.

7. LIMITATIONS OF LIABILITY.

7.1 NOTWITHSTANDING ANYTHING IN THIS AGREEMENT, LICENSOR WILL NOT BE LIABLE IN ANY AMOUNT FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR INDIRECT DAMAGES, LOSS OF GOODWILL OR BUSINESS PROFITS, WORK STOPPAGE, DATA LOSS, COMPUTER FAILURE OR MALFUNCTION, OR EXEMPLARY OR PUNITIVE DAMAGES OF ANY KIND, HOWEVER ARISING, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

7.2 NOTWITHSTANDING ANYTHING IN THIS AGREEMENT OR ANY ORDER FORM TO THE CONTRARY, UNDER NO CIRCUMSTANCES WILL LICENSOR BE LIABLE TO CUSTOMER OR ANY OTHER PERSON OR ENTITY FOR AN AMOUNT OF DAMAGES IN EXCESS OF THE FEES PAID BY CUSTOMER TO LICENSOR HEREUNDER DURING THE SIX (6) MONTHS PRECEDING THE FIRST DATE SUCH CLAIM AROSE, AND IF SUCH DAMAGES RESULT FROM A SPECIFIC MODULE OR MODULES OF LICENSED SOFTWARE, SUCH LIABILITY WILL BE LIMITED TO FEES PAID FOR THE RELEVANT MODULE GIVING RISE TO THE LIABILITY FROM WHICH THE CLAIM AROSE DURING THE SIX (6) MONTHS PRECEDING THE DATE SUCH CLAIM FIRST AROSE.

8. TERM AND TERMINATION.

8.1 Term. This Agreement and the licenses granted hereunder shall become effective as of the Effective Date and shall continue in effect perpetually unless sooner terminated under Section 8.2 below.

8.2 Termination. This Agreement will terminate upon the earliest to occur of the following: (a) thirty (30) days after one party gives the other party notice of the other party’s material breach of any provision of the Agreement, unless such other party has cured such breach during such thirty (30) day period; or (b) immediately if Customer becomes insolvent, makes an assignment for the benefit of creditors, appoints (or has appointed on its behalf) a trustee, receiver or similar officer, or commences a proceeding seeking reorganization, liquidation or similar relief under any bankruptcy, insolvency or similar debtor-relief statute, or (c) attempts to assign this Agreement or any license granted hereunder in any manner not explicitly permitted hereunder. In the event of termination hereunder, Licensor reserves the right to terminate any and all agreements between Licensor and Customer and all licenses granted by Licensor under this Agreement or otherwise.

8.3 Effect of Termination. Upon termination of this Agreement for any reason: (a) all amounts due and owing by Customer to Licensor or Licensor’s reseller will be immediately payable; (b) use of the Licensed Software and Documentation will immediately cease; and (c) Customer will delete and/or remove all Licensed Software from all computer hardware and storage media within Customer’s possession or control. Within seven (7) days after termination of this Agreement, Customer will return to Licensor all copies of the Licensed Software, Documentation and any other Licensor Confidential Information in any form, including but not limited to partial copies thereof, and will certify to Licensor that all copies and portions thereof have been destroyed or returned. The terms of this Agreement that by their nature should survive termination of this Agreement shall survive termination of this Agreement including, without limitation, the provisions concerning protection of Confidential Information, and limitations of liability.
9. GENERAL PROVISIONS.

9.1 Assignment. Customer may not assign any of its rights or obligations under this Agreement or any license granted hereunder, and any attempt at such assignment will be void without the prior written consent of Licensor. For purposes of this Agreement, “assignment” shall include a merger, acquisition or other consolidation by, with or of Customer, including any new or surviving entity that results from such merger, acquisition or other consolidation.

9.2 Informal Dispute Resolution. In the case of disputes under this Agreement, the parties shall first attempt in good faith to resolve their dispute informally, or by means of commercial mediation, without the necessity of a formal proceeding.

9.3 Restricted Rights. The Licensed Software and any accompanying documentation were developed at private expense and are deemed to be a “commercial item,” as that term is defined in 48 C.F.R. 2.101, consisting of “commercial computer software” and “commercial computer software documentation,” as such terms are used in 48 C.F.R. 12.212. Use, duplication, and disclosure by civilian agencies of the U.S. Government shall be in accordance with FAR 52.227-19(c) or other agency data rights provisions, as may be applicable. Use, duplication and disclosure by DOD agencies are subject solely to the terms of this Agreement as stated in DFAR 227.7202. All U.S. Government Users license the Licensed Software with only those rights set forth herein, including, without limitation, the following: Licensed Software may be transferred to the U.S. government only with the prior written consent of an officer of Licensor and solely as restricted computer software as provided in FAR 52.227-19 or subsequent citation (or DFAR 227-7202 or subsequent citation if the transfer is to a defense-related agency).

9.4 Export Control Notice. Customer acknowledges that the Licensed Software, or any part thereof, is being released or transferred to Customer in the United States and is therefore subject to United States export control laws. Customer acknowledges its exclusive obligation to ensure that its exports are in compliance with the applicable export control laws. Customer shall defend, indemnify, and hold Licensor and its licensors harmless from and against any and all claims, judgments, awards, and costs (including reasonable legal, including attorneys’ fees) arising out of Customer’s noncompliance with applicable export laws with respect to the use or transfer of the Licensed Software outside the United States by Customer.

9.5 RESERVED.

9.6 Independent Contractors. Nothing in this Agreement or in the course of dealing between Licensor and Customer shall be deemed to create between Licensor and Customer a partnership, joint venture, association, employment relationship or any other relationship other than an independent contractor relationship.

9.7 Severability. If any provision of this Agreement is held invalid or unenforceable, the provision shall be deemed modified only to the extent necessary to render it valid or eliminated from this Agreement, as the case may be, and this Agreement shall be enforced and construed as if the provision had been included in this Agreement as modified or as if it had not been included, as the case may be.

9.8 Waiver; Amendment. Failure or delay by either Party to enforce any of the provisions of this Agreement or any rights with respect to it or the failure to exercise any option provided under this Agreement shall in no way be considered to be a waiver of that provision, right or option, or in any way to affect the validity of this Agreement. No waiver of any rights under this Agreement, or any modification or amendment of this Agreement, shall be effective or enforceable, unless it is in writing and signed by both Parties.

9.9 Governing Law. This Agreement shall be governed by the laws of the State of Georgia without giving effect to its choice of law principles. Customer and Licensor agree that all actions to enforce or terminate this Agreement or any license granted hereunder shall be brought exclusively in courts located in Atlanta, Georgia, and the proper courts of appeal thereto. The Parties hereby acknowledge and agree that the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

9.10 Notices. All notices or other communications under this Agreement must be in writing and will be deemed to have been duly given when (a) delivered by hand (with written confirmation of receipt), (b) sent by facsimile (with written confirmation of receipt), or (c) two (2) calendar days after being deposited for delivery with a nationally recognized overnight delivery service and addressed or sent, as the case may be, to the appropriate addresses or facsimile numbers set forth on the first page of this Agreement (or to such other addresses or facsimile numbers as a party may designate by notice to the other party).
9.11 **Force Majeure.** Neither party to this Agreement, other than for payments due, will be liable to the other for any failure or delay in performance under this Agreement due to circumstances beyond its reasonable control including, without limitation, Acts of God, labor disruption, war, terrorist threat or government action; provided that if either party is unable to perform its obligations under this Agreement for one of these reasons it shall give prompt written notice thereof to the other party and the time for performance, if any, shall be deemed to be extended for a period equal to the duration of the conditions preventing performance.

9.12 **Entire Agreement.** This Agreement constitutes the entire agreement between Licensor and Customer with respect to the subject matter of this Agreement and all licenses granted herein, and supersedes all prior negotiations and agreements, whether oral or written, with respect to these matters.

9.13 **Acceptance and Binding Nature.** This Agreement may be accepted by either clicking an “I Accept” or equivalent link or control during installation of the Licensed Software, or by otherwise installing or using the Licensed Software. Customer acknowledges that this is intended to be, and is, a binding legal contract, whether it is accepted by Customer directly, or whether it is accepted by Licensor’s reseller or an agent of Customer on behalf of Customer. Customer understands and acknowledges that any copying or use of the Licensed Software without an acceptance of this Agreement or a separate license Agreement signed by Licensor is illegal and will infringe Licensor’s copyrights and other proprietary rights in the Licensed Software. Neither Licensor’s reseller nor any party other than Licensor may alter or amend this Agreement in any manner and any attempted amendment or alteration will be null and void unless it is signed by an officer of Licensor. If Customer does not agree to all terms and conditions of this Agreement, Customer may not install or use the Licensed Software.