THIS HOSTING SERVICES AGREEMENT (this “Agreement”) is entered into as of ________________, 201___ (the “Effective Date”), between Visix, Inc. (“Visix”) and __________________ (“Company”). Visix and Company may each be referred to as a “Party” or may be referred to jointly as the “Parties.”

WHEREAS, Visix is the developer and owner of certain digital signage software (the “Software”);

WHEREAS, the Software will be provided in a cloud-based platform for the Company (the “Platform”);

WHEREAS, Company desires to obtain access to a version of the Software customized for its needs via the Platform;

WHEREAS, Visix and Company desire to enter into a binding legal agreement under which Visix shall provide support and maintain a version of the Software for the Company via the Platform (the “Virtual Software”) for the benefit of the Company;

NOW THEREFORE, in consideration of the foregoing premises, the mutual covenants set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. DEFINITIONS.

“Authorized End User” means a person authorized by Visix to access the Virtual Software pursuant to and as set forth in this Agreement.

“Authorized Use” means use of the Virtual Software by an Authorized End User located in the Territory for the purposes of delivering, developing, receiving, supporting or administering digital signage and content within the Territory during the Term of this Agreement. Authorized Use expressly excludes any and all Prohibited Uses.

“Content” means content for delivery to Authorized End Users through the Virtual Software that Visix makes accessible to Company. Content may include materials or data from third parties licensed to Visix through an open source license, or content licensed to Visix through a non-open-source license. Use and access to all Content shall be subject to the restrictions and limitations of the applicable third-party license agreements, this Agreement and all Website Usage Agreements.

“Customizations” means features and capabilities added to the Virtual Software by Visix for the purposes of supporting Authorized End Users. Customizations may include configuration of the Virtual Software through settings and features, custom software that communicates with the Virtual Software, or custom software that accesses data or features of the Virtual Software developed by Visix pursuant to a separate agreement between Visix and Company.

“Designated Affiliates” means, if applicable, the affiliated companies listed on Exhibit A.

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

“Go Live Date” means the date when the Virtual Software is launched for use by the Authorized End Users.

“Hosting Services” means the professional services Visix provides under this Agreement to host and maintain the Virtual Software during the term of this Agreement, all or some of which may be purchased by Visix from a third-party in its sole discretion.

“Implementation Services” means the professional services Visix provides under this Agreement to develop and implement the Virtual Software.

“Maintenance Services” means the professional services Visix provides under this Agreement to maintain the Virtual Software during the term of this Agreement and the support services Visix is obligated to provide to Authorized End Users during the term of this Agreement.

“Platform” shall have the meaning set forth in the above recitals.
“Prohibited Use” means any use of the Content, the Platform or the Virtual Software not expressly authorized under this Agreement including, without limitation, any access to the Platform, Virtual Software or Content outside of the Territory, any attempt to reverse engineer the Platform, Virtual Software or gain access to the Platform, Content, or the source code or object code of the Virtual Software, any attempt to bypass any use limitation or security or privacy feature or protection of the Platform or Virtual Software, any attempt to access, use or copy any feature, data, content or materials within or underlying the Platform or Virtual Software by any means other than the user interface provided by the Platform or Virtual Software, any attempt to interfere with the use or operation of the Platform or Virtual Software, any attempt to access, hack, derive or utilize any password of any Authorized End User without the Authorized End User’s express written permission, any use of the Platform or Virtual Software using a password or other credential by any person other than the Authorized End User to whom that password or other credential was given by the Platform or Virtual Software, any use or attempted use of the Platform or Virtual Software for any illegal purpose, any use or attempted use of the Platform or Virtual Software that is expressly prohibited by the Documentation, the Website Usage Documents, the online documentation accessible through the Virtual Software, which documentation may be updated from time to time by Visix.

“Virtual Software” shall have the meaning set forth in the above recitals.

“Territory” means the United States as of the Effective Date.

“Website Usage Agreements” means a usage agreement, privacy policy, or similar agreement to which users of Virtual Software are bound through an account creation or similar process. All Website Usage Agreements may be updated from time to time by Visix in its reasonable discretion.

2. SERVICES.

During the Term, Visix shall use its commercially reasonable best efforts to provide Implementation Services, Hosting Services, and Maintenance Services to Company, and Company shall assist Visix in these efforts, as follows:

2.1. Implementation Services. Visix will utilize the Platform to establish the Virtual Software for use with the Designated Affiliates as set forth in the Statement of Work attached hereto as Exhibit A. Company shall cause its personnel to cooperate in good faith and provide Visix with such assistance as it may reasonably request in connection with the establishment and implementation of the Virtual Software. In particular, Company shall designate a project manager who shall work directly with Visix.

2.2. Hosting Services. Visix will provide cloud-based hosting of the Virtual Software during the Term to allow Authorized End Users within the Territory to access and use the Virtual Software for Authorized Uses. Hosting Services shall be provided pursuant to the service level agreement (the “SLA”) attached hereto as Exhibit B.

2.3. Maintenance Services. Visix will provide maintenance and support services for the Virtual Software during the Term as set forth in the maintenance terms attached hereto as Exhibit C.

3. TERM AND TERMINATION.

3.1. This Agreement shall commence on the Effective Date and shall remain in effect as set forth in the Statement of Work attached hereto as Exhibit A (the “Term”), unless terminated earlier as provided in this Section 3.

3.2. 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 Company 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, Visix reserves the right to terminate any and all agreements between Visix and Company and all licenses granted by Visix under this Agreement or otherwise.

3.3. Upon termination of this Agreement for any reason: (a) all amounts due and owing by Company to Visix or Visix’s reseller will be immediately payable; (b) use of the Virtual Software and Platform will immediately cease; and (c) Company will delete and/or remove all Virtual Software that may have been installed from all computer hardware and storage media within Company’s possession or control. Within seven (7) days after termination of this Agreement, Company will return all Visix Confidential Information in any form, including, but not limited to, partial copies thereof, and will certify to Visix that all copies and portions thereof have been destroyed or returned.
3.4. Upon any termination or expiration of this Agreement, all terms and provisions of this Agreement that by their nature should survive termination shall so survive including without limitation all limitations on liability, dispute resolution, indemnification of Visix, and obligations of confidentiality.

4. FEES.

4.1. Payment. Company shall pay Visix for the Implementation Services, Hosting Services, and Maintenance Services as set forth in the Statement of Work attached hereto as Exhibit A. Company shall cause each invoice to be paid in full within 30 days of the invoice date in immediately available funds in U.S. dollars. AMOUNTS DUE ON INVOICES SHALL NOT BE SUBJECT TO ANY WITHHOLDING, ABATEMENT, REDUCTION, SETOFF, OR RECOUPMENT FOR ANY REASON WHATSOEVER.

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

5. PROPRIETARY RIGHTS.

5.1. Ownership. Company acknowledges and agrees that Visix owns, or is a licensee of, all right, title and interest in and to all software, source code, object code, web pages, database designs, documentation, data and related intellectual property that make up the Virtual Software (including without limitation (i) all copyrights and related rights in all source code, object code, web pages, documentation, and enhancements (ii) all patent, trademark, copyright, trade secret, and other intellectual property rights related thereto, and (iii) all rights in and to all Confidential Information of Visix). Company agrees that neither it, nor the Authorized End Users, shall obtain any rights in or to the Platform, the Virtual Software or related intellectual property by virtue of this Agreement. Notwithstanding the foregoing, the Parties acknowledge and agree that data posted to the Platform by Authorized End Users (“User Data”), shall be owned by Company and/or such Authorized End Users as set forth in the Website Usage Agreements. Company, on behalf of itself, and the Authorized End Users, hereby grants to Visix an unlimited, perpetual, royalty free, fully paid up, irrevocable worldwide right and license to use all User Data in the development of the Platform and the Virtual Software and in the performance of services under this Agreement, subject to the applicable terms and conditions of the Website Usage Agreements and all applicable laws and regulations.

5.2. Modifications. To the extent Visix creates Customizations, all such Customizations shall be owned solely by Visix, subject to a royalty free license to Company and the Authorized End Users to utilize such Customizations solely for Authorized Uses during the Term of this Agreement. Company may not make modifications to, or derivative works based on, the Virtual Software or Platform except to the extent such modifications or derivative works result from use of documented features of the Virtual Software as described in the Documentation.

5.3. Definition of Confidential Information. To the extent that any such information, materials or documents are not otherwise excepted pursuant to Section 5.5 herein, “Confidential and Information” shall mean:

(i) all information, material and documents designated confidential or proprietary by the disclosing party, all documents marked “Confidential” or “Proprietary” by the disclosing party, and all information, materials and documents of the disclosing party that, based upon their content, would reasonably be deemed confidential or proprietary;

(ii) all source code, object code, database designs, documentation, interfaces, application programming interfaces, ideas, discoveries, formulas and formulations, drawings, specifications, methods, techniques, models, data, software, website designs, flow charts, processes and procedures, marketing techniques and materials, marketing and business plans, relating to the Platform and the Virtual Software; and

(iii) the terms and conditions of this Agreement.

5.4. Protection of Confidential Information. Company and Visix may furnish Confidential Information pursuant to this Agreement. The Parties agree that, during the term of this Agreement and thereafter, each Party will hold Confidential Information of the other Party 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. The terms of this confidentiality section shall survive termination or expiration of this Agreement as follows: for trade secrets, until such information is no longer deemed a trade secret under applicable law or five years from the termination or expiration of this Agreement, whichever is longer and for all other Confidential Information, it shall be treated confidential for five years from the termination or expiration of this Agreement.
5.5. **Exceptions to Confidential Information.** The receiving party shall not be liable for disclosure or use of Confidential Information of the disclosing party in a manner not permitted under this Agreement if the same (i) becomes publicly known without breach of this Agreement and through no wrongful action or inaction by any person under an obligation of confidentiality with respect to such Confidential Information including, without limitation, the receiving party or any employee, contractor, subcontractor, jobber, or agent of the receiving party; (ii) is approved in writing for disclosure without restriction by a duly authorized officer of the disclosing party; (iii) is released by the disclosing party to the general public; (iv) is independently developed by the receiving party without reference to, or use of, any Confidential Information of the disclosing party; (v) is required by law to be disclosed (provided that the receiving party has used reasonable efforts to make such disclosure subject to an appropriate protective order or confidentiality agreement and has given prior written notice to the disclosing party); (vi) was lawfully in the possession of the receiving party prior to disclosure by the disclosing party; or (vii) is disclosed to the receiving party by a third party who is not under an obligation of confidence with respect to the Confidential Information disclosed.

5.6 **Copies and Return.** If, in order to utilize the Confidential Information, it becomes necessary for the receiving party to copy, in whole or in part, any of the Confidential Information, the receiving party may do so, but only for the purpose(s) described in this Agreement. However, upon achieving the purpose intended hereunder, or in the event of the termination of this Agreement by expiration or otherwise, whichever is earlier, the receiving party shall return to the disclosing party all copies of the Confidential Information of such party including all originals and all summaries and partial and complete copies thereof. In addition, when, in the sole opinion of the disclosing party, the disclosing party’s interest in the Confidential Information are in jeopardy, the disclosing party may notify the receiving party of such circumstances and the receiving party shall immediately return the Confidential Information, including originals and all summaries and partial and complete copies thereof, regardless of whether such notice is given prior or subsequent to the termination or expiration of this Agreement.

6. **LIMITED WARRANTY; DISCLAIMER.**

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

6.2. **Obligations of Visix.** For any claim under the warranty in Section 6.1, Visix’s sole obligation shall be to correct the Licensed Software so that it will perform in accordance with the applicable Documentation or, at Visix’s option, either (a) immediately provide Company with substituted Virtual Software or portions thereof which do not breach such warranty, or (b) refund a pro rata portion of the fees paid by Company to Visix for the affected Virtual Software, or portion thereof straight line basis (based on the three year term). Company shall promptly return all applicable copies of the Virtual Software to the extent it has any (and related Documentation) to Visix upon issuance of any such refund, or, if preapproved in writing by Visix, destroy all copies of the Virtual Software in Company’s possession or control.

6.3. **Limitations.** Visix’s obligations in Section 6.2 shall not apply: (a) to any authorized or unauthorized modifications to the Virtual Software or Platform; (b) if the Virtual Software or Platform is not used in accordance with the Documentation or this Agreement; (c) if Company is not using the most recent version of the Virtual Software or Platform; or (d) to any error or defect caused by Company, an Employee, any third party, or any third party software.

6.4. **Disclaimer.** EXCEPT AS EXPRESSLY STATED IN THIS SECTION 6, VISIX MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED WITH RESPECT TO THIS AGREEMENT OR THE VIRTUAL SOFTWARE OR PLATFORM OR ANY SERVICES PROVIDED TO CUSTOMER INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT AND VISIX EXPRESSLY DISCLAIMS ANY AND ALL SUCH WARRANTIES. VISIX DOES NOT WARRANT THAT: (A) THE VIRTUAL SOFTWARE OR PLATFORM WILL OPERATE UNINTERRUPTED; (B) THE VIRTUAL SOFTWARE OR PLATFORM ERRORS, TO THE EXTENT THEY EXIST, CAN BE CORRECTED; OR (C) THE APPLICATIONS CONTAINED IN THE VIRTUAL SOFTWARE OR PLATFORM ARE DESIGNED TO MEET ALL OF COMPANY’S BUSINESS REQUIREMENTS. COMPANY AGREES THAT VISIX IS NOT RESPONSIBLE FOR ANY LOSS OF DATA OR SECURITY BREACHES OF ANY KIND.

6.5. **Exclusive Remedy.** NOTWITHSTANDING ANYTHING IN THIS AGREEMENT OR ANY ORDER FORM OR STATEMENT OR WORK TO THE CONTRARY, THIS SECTION 6 SETS FORTH COMPANY’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, Visix 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, security breaches 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 statement of work or order form to the contrary, under no circumstances will Visix be liable to Company or any other person or entity for an amount of damages in excess of the fees paid by Company to Visix 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 the virtual 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. **INDEMNIFICATION.**

Company shall indemnify, defend and hold harmless Visix from and against any (i) claim of infringement of a patent, copyright, or trademark asserted against Visix based upon any materials or Content or User Data posted to the Platform or used in connection with the Virtual Software by the Company or any end user, (ii) claim arising from any Prohibited Use or any use of the Virtual Software, the Platform, or any content that exceeds the express licenses granted in this Agreement, (iii) claim arising from Visix’s implementation of any design or feature, or inclusion of any content, requested or required by Company, (iv) negligent, grossly negligent, reckless, or intentional act or omission of Company, any person for whom Company is responsible, or any end user of the Platform or Virtual Software, or (v) any breach of this Agreement by Company or any person for whom Company is responsible.

9. **GENERAL PROVISIONS.**

9.1. **Assignment.** Company 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 Visix.

9.2. **Protection of Visix.** Company acknowledges and agrees that Visix may not have an adequate remedy in monetary damages in the event of a breach of this Agreement or any license granted hereunder and, accordingly, the aggrieved party shall, in addition to other available legal or equitable remedies, be entitled to suspend services to be provided under this Agreement to protect its rights and intellectual property, and may be entitled to an injunction against such breach or any threatened breach.

9.3. **Waiver; Amendment.** Failure or delay by either Party to enforce any provisions of this Agreement or exercise any rights or options 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.

9.4. **General.** This Agreement, all attachments and exhibits hereto, constitute the entire agreement between the Parties with respect to the subject matter of this Agreement and all licenses granted herein, and supersede all prior negotiations and agreements, whether oral or written, with respect to these matters. If any provision of this Agreement is held invalid or unenforceable, the provision shall be deemed modified to render it enforceable, but only to the limited 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. All notices or other communications under this Agreement must be in writing and will be deemed to have been duly given when delivered by hand (with written confirmation of receipt), sent by facsimile (with written confirmation of receipt), or one business day after being deposited for overnight delivery with a nationally recognized delivery service and addressed or sent, as the case may be, to the appropriate addresses or facsimile numbers set forth in this Agreement (or to such other addresses or facsimile numbers as a party may designate by notice to the other party).

9.5. **Force Majeure.** No party to this Agreement will be liable to any 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. Notwithstanding the foregoing, a lack of funds to make required payments shall not under any circumstances be deemed force majeure.
9.6. **Counterparts.** This Agreement may be signed in counterparts, each of which shall be deemed an original and which shall together constitute one Agreement.

9.7. **Relationship of the Parties.** Nothing in this Agreement or in the course of dealing between the Company and Visix shall be deemed to create a partnership, joint venture, association, employment relationship or any other relationship other than an independent contractor relationship.

9.8. **Construction.** The Parties acknowledge that each has had reasonable opportunity to consult with counsel prior to entering into this Agreement and, therefore, no rule of construction or interpretation will apply against any particular Party based on a contention that the Agreement was drafted by one of the Parties.

9.9. **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.

9.10. **Choice of Law.** This Agreement shall be governed by the laws of the State of Georgia without giving effect to its choice of law principles. Company and Visix 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.

9.11. **Further Assurances; Right of first Refusal.** The Parties shall cooperate in good faith and execute and deliver such documents, take such action and provide such further assurances as shall be reasonably required to establish and carry out the business relationship and transactions contemplated hereby. In the event that Company wishes to provide access to the Virtual Software at additional locations, the Parties shall negotiate in good faith a separate agreement to cover those locations. Visix shall have a right of first refusal with respect to providing digital signage to the Company and any of its related or affiliate companies.

IN WITNESS WHEREOF, the undersigned, intending to be legally bound, have duly executed this Agreement.

VISIX, INC. 

By: _________________________________
Printed Name: __________________________
Title: ___________________________ Date: ________________

_______________________ (COMPANY) 

By: _________________________________
Printed Name: __________________________
Title: ___________________________ Date: ________________
EXHIBIT A

STATEMENT OF WORK

This Statement of Work is part of, and is incorporated by reference into, the Hosting Services Agreement (the “Agreement”) between Visix, Inc. and __________________ (“Company”).

PROJECT DESCRIPTION:

DESIGNATED AFFILIATES:

PROJECT COST:

PAYMENT TERMS:

TERM:

GO LIVE DATE:

LICENSE:

Subject to the terms, conditions and restrictions set forth in this Agreement and any applicable End User License Agreement, Visix grants to Company for the Term and any applicable renewals, a limited, non-exclusive, non-transferable, license to use (for Company’s own, legitimate internal business purposes) and copy for use (for Company’s own, legitimate internal business purposes) the Virtual Software and Documentation for the following Authorized End Users and/or Designated Affiliates: ________________.

VISIX, INC. (COMPANY)

By: ___________________________ By: ___________________________

Printed Name: ______________________ Printed Name: ______________________

Title: ______________________ Date: ________________ Title: ______________________ Date: ________________
EXHIBIT B

SERVICE LEVEL AGREEMENT

This Service Level Agreement (this “SLA”) is part of, and is incorporated by reference into, the Hosting Services Agreement (the “Agreement”) between Visix, Inc. (“Visix”) and _______________ (“Company”).

1. DEFINITIONS.

Capitalized terms in this SLA shall have the meaning set forth below. Where a capitalized term is used that is not expressly defined below, that term shall have the meaning set forth in the Agreement and, in the event such term is not defined in this SLA or the Agreement, that term shall have the customary meaning the field of online application hosting and software development.

“Company Content” means Platform Content provided by Company for use in connection with the Virtual Software.

“Planned Downtime” means periods of time during which the Hosting Services are suspended or are otherwise unavailable so Visix or its third-party vendor can perform maintenance, correct faults, and implement updates to the Platform or Virtual Software.

“Third-Party Applications” means online, Web-based applications or offline software products that are provided by third parties and included in the Hosting Services.

“Unscheduled Downtime” means periods of time during which the Hosting Services are unavailable due to circumstances beyond Visix’s reasonable control, including without limitation, (i) acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems, cable or satellite failures or disruptions, unforeseen software errors, malware or security breaches or Internet service provider failures or delays, and (ii) unavailability required by law or government regulation.

“User Data” means all electronic data or information submitted by Authorized End Users to the Platform during the term of the Agreement.

2. USE OF THE SERVICES.

2.1. Visix Responsibilities. Visix shall: (i) use commercially reasonable efforts to make the Hosting Services available 24 hours a day, 7 days a week during the term of the Agreement, except for: Planned Downtime, or Unscheduled Downtime. Visix shall give at least 8 hours’ notice prior to Planned Downtime by posting a notice on the Platform and shall use commercially reasonable efforts to complete all necessary maintenance, fault correction and updating during the time period set forth in such notice. To the extent practical, Visix shall schedule Planned Downtime during weekend hours or between the hours of midnight and 5:00AM. Visix shall also use commercially reasonable efforts to minimize any Unscheduled Downtime.

2.2. Support Availability. During the term of the Agreement, Visix shall use commercially reasonable efforts to provide support to Company as follows (all times are in the Eastern Time Zone):

- Telephone support: 8:00 AM to 8:00 PM (EST/EDT) Monday – Thursday and 8:00 AM – 5:00 PM (EST/EDT) Friday with the exception of published holidays. All calls are collected as voice mail messages and responded to in accordance with the response times noted in section 2.3. Calls received outside office hours will be collected and responded to the next working day.

- Email support: Monitored 8:00 AM to 8:00 PM (EST/EDT) Monday – Thursday and 8:00 AM – 5:00 PM (EST/EDT) Friday with the exception of published holidays. Emails received outside of office hours will be collected, but may not be reviewed until the next working day.
2.3. **Response Times.** Upon receiving a support request, Visix shall promptly classify such request as “High Priority” (meaning that access to the Hosting Services is unavailable or that documented features of the Hosting Services are not functioning as documented and no work around is available), “Medium Priority” (meaning that the Hosting Services are not functioning as documented but that such malfunction does not prevent reasonable use of the Hosting Services or a work around is available), “Low Priority” (meaning all other deviations from the documented operational parameters of the Hosting Services), or “Not an Issue” (meaning a suggestion for alternative functionality or a misunderstanding of the documented operational parameters of the Hosting Services or an unavailability due to user hardware or networking components not under the control of Visix or an issue arising from the use of hardware or software not meeting the minimum usage requirements documented by Visix). Visix shall use commercially reasonable efforts to classify incidents submitted by Company within the following time frames:

- 0-8 hours (during business hours) for issues classified as High Priority.
- Within 48 hours for issues classified as Medium Priority.
- Within 5 working days for issues classified as Low Priority.
- For any incident that is classified as Not an Issue, within 5 working days Visix will notify Company of the basis of its classification. No further action shall be required for such incidents.

Incidents may be responded to remotely by email, remote support technology or telephone, or any other means that Visix determines is appropriate in its reasonable discretion. Onsite assistance shall only be provided when remote assistance is not feasible, in Visix’s sole discretion.

2.2. **Company Responsibilities.** Company shall (i) be responsible for Authorized End Users’ compliance with the Agreement and this SLA, (ii) be solely responsible for the accuracy, quality, integrity and legality of User Data and of the means by which User Data is acquired and used, (iii) be solely responsible for all licensing and other permissions necessary or prudent in connection with Company Content and User Data, (iv) use commercially reasonable efforts to prevent unauthorized access to or use of the Hosting Services, and notify Visix promptly of any such unauthorized access or use, and (v) use the Hosting Services only in accordance with the applicable laws and government regulations. Neither Company nor any person for whom Company is responsible shall (a) make the Services available to anyone other than Authorized End Users, (b) sell, resell, rent or lease any portion of the Hosting Services, (c) use the Hosting Services to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (d) use the Services to store or transmit malware or malicious code, (e) interfere with or disrupt, or allow any third party to interfere or disrupt, the integrity or performance of the Hosting Services, Platform, Virtual Software, Content or any third-party data contained therein, or (f) attempt to gain unauthorized access to the Hosting Services or their related software, data, content, systems or networks. Visix shall have no liability or responsibility for failures of user hardware or any hardware or networking system or component not under Visix’s direct control.

2.3. **Usage Limitations.** Hosting Services may be subject to other limitations, such as, for example, limits on disk storage space, and for Hosting Services that enable Company to provide public websites, limits on the number of page views by visitors to those websites.

3. **Proprietary Rights.**

3.1. **Ownership of Data.** Proprietary rights with respect to data, content, and software making up the Hosting Services are set forth in Section 5 of the Agreement. All suggestions and ideas communicated to Visix relating to the Hosting Services shall be deemed and treated as Customizations as set forth in Section 5.2 of the Agreement.

4. **Backup and Security.**

4.1. **Protection of Data.** Without limiting the above, Visix shall maintain commercially reasonable administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of the Hosting Services, Platform, Content, and User Data. Visix shall not (a) modify User Data, (b) disclose User Data except as compelled by law in accordance with Section 4.2 (Compelled Disclosure) or as expressly permitted by Company or the applicable Authorized End User or as necessary to meet the service level commitments in this SLA, or (c) access User Data or Company Content except to provide or improve the Services or prevent or address service or technical problems, or at Company’s request in connection with customer support matters.

4.2. **Compelled Disclosure.** Visix may disclose User Data or Company Content if it is compelled by law to do so, provided the it gives Company prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Company’s cost, if Company wishes to contest the disclosure. If Visix is compelled by law to disclose the Disclosing User Data or Company Content as part of a civil proceeding, the Company will reimburse Visix for its reasonable cost of compiling and providing secure access to such User Data or Company Content.
4.3. Backup and Disaster Recovery. Visix shall create and maintain commercially reasonable backups of the Hosting Services, User Data, Virtual Software, Platform Content and Company Content in connection with the provision of the Hosting Services. The parties recognize and agree that no system or data can be entirely secure, error free, or malware resistant, and that no computer, storage device, or network can be guaranteed to be error free of to operate without interruption. Accordingly, Visix’s sole and exclusive liability, and Company and Authorized End Users’ sole remedy, in the event of a failure of the Hosting Services for any reason shall be that Visix utilize commercially reasonable efforts to restore the Hosting Services from the most recent reliable backup. Visix shall have no liability for any lost data, lost Company Content, or lost User Data resulting from a hardware failure, software failure, security failure, network failure or attempt by any third party to deny service or otherwise attack or interfere with the Hosting Services.

5. OTHER TERMS.

5.1. Warranties and Limitations. All terms and conditions of the Agreement referring to warranties, limitations on liability, indemnification, and other limitations shall apply to all services delivered pursuant to this SLA. No additional warranties or representations are made in this SLA and all implied warranties and representations are expressly disclaimed. This SLA is not intended to expand in any way the allocation of liability or risk assigned to Visix under the Agreement and the Company agrees to assert no claim or action based in whole or in part that this SLA is a source of additional risk or liability to Visix.
MAINTENANCE TERMS

These maintenance terms (these “Maintenance Terms”) are part of, and are incorporated by reference into, the Hosting Services Agreement (the “Agreement”) between Visix, Inc. (“Visix”) and __________________ (“Company”).

1. DEFINITIONS.

Capitalized terms in these Maintenance Terms shall have the meaning set forth in the Agreement. Where a capitalized term is used that is not expressly defined in the Agreement, that term shall have the customary meaning the field of online application hosting and software development.

2. MAINTENANCE RESPONSIBILITIES.

2.1. **Infrastructure Updates.** During the Term of the Agreement, Visix or its agents shall be responsible for maintaining the hardware, software, and web hosting facilities in the data center(s) selected by Visix in its sole discretion and from which the Hosting Services are delivered. Such maintenance shall include installation of operating system and system software updates as reasonably determined are appropriate by Visix, installation and maintenance of any additional security or malware prevention software reasonably determined to be necessary by Visix, and hardware and networking service and support of hardware system within such data centers.

2.2. **Platform Updates.** To the extent new releases of the Platform or Virtual Software are made generally available by Visix during the term of the Agreement, Visix shall create and implement a migration plan to implement such releases to Company. To the extent any such update is incompatible with any Customization for any reason, Visix may provide a services proposal to Company under which such Customizations will be migrated to the new release at Company’s expense, or, in the event such migration is not feasible during the remaining Term of the Agreement or is cost prohibitive, Visix shall maintain the prior release of the Platform and/or Virtual Software for the remainder of the Term of the Agreement.

2.3. **Back Versions.** Notwithstanding the foregoing or anything else in the Agreement, the Statement of Work, the SLA, or these Maintenance Terms, in no event shall Visix be required to host or support any version of the Platform and/or Virtual Software for more than two years after a subsequent release of the Platform and/or Virtual Software is made generally available. In the event such new release is incompatible with any Customization and Company elects not to pay for migration of such Customization, Visix may, in its sole discretion, implement the new release of the Platform and/or Virtual Software without such Customization after two years of general availability.

2.4. **Minimum Requirements.** Company understands and agrees that Visix may, in its sole reasonable discretion, revise the Documentation, including any minimum hardware or software requirements for end users, in connection with ordinary maintenance activities including, without limitation, new releases of the Platform and/or Virtual Software.

2.5. **Scheduling.** All updates to hardware and software (including the Platform and Virtual Software) shall be scheduled by Visix in its sole discretion. Visix reserves the right to delay any maintenance activity for any period of time Visix determines is prudent, including to help ensure stability of the Hosting Services. To the extent reasonably possible, Visix agrees to perform all maintenance activities that require suspension of the Hosting Services during Planned Downtime (as set forth in the SLA).