THE TERMS AND CONDITIONS SET FORTH BELOW CONSTITUTE THE ENTIRE AGREEMENT BETWEEN VISIX (“VISIX”) AND YOU (“CUSTOMER”) WITH RESPECT TO THE VISIX PROFESSIONAL SERVICES, UNLESS OTHERWISE AGREED TO IN WRITING BY AN AUTHORIZED REPRESENTATIVE OF VISIX. In the event that Customer issues any form of order to Visix authorizing the purchase of Visix Professional Services, it is agreed that such order is issued exclusively for the purpose of confirming Customer’s purchase of the specified service(s) and the price(s) thereof AND THAT NO OTHER TERMS AND CONDITIONS SPECIFIED OR PREPRINTED ON CUSTOMER’S ORDER SHALL ADD TO OR MODIFY THE TERMS AND CONDITIONS OF THIS AGREEMENT, nor shall such order terms and conditions affect either party’s responsibility to the other party as set forth herein. RECEIPT BY VISIX OF A CUSTOMER PURCHASE ORDER SHALL CONSTITUTE ACCEPTANCE OF VISIX’S OFFER AS SPECIFIED IN A VALID QUOTE, SUBJECT SOLELY TO THE TERMS OF THESE STANDARD TERMS & CONDITIONS OF SALE. Visix reserves the right to reject any order.

1. VISIX SERVICES TERMS

1.1. Visix agrees to provide and Customer agrees to take and pay for the services set out in a line-itemed quote (the “Services”) as such quotes may be provided to Customer from time-to-time (each a “Quote”) and at the rates or for the sum set out in quote from Visix or its authorized reseller.

1.2. The Services are provided at Customer’s request and Customer accepts that it is responsible for ensuring that the Services are suitable for its own needs.

1.3. Visix will provide to Customer an appropriately qualified agent(s) (the “Consultant”, or as the context so applies any of the agents). The Consultant will perform the Services in a timely and professional manner, during business hours, exercising due skill and care and will use reasonable endeavors to meet any agreed target dates.

1.4. Any scripts developed by Visix as part of the consulting Services, or scripts that are licensed by Visix to Customer, are incorporated into, form part of and work only in conjunction with the Visix software for which such scripts were developed. Visix licenses the scripts to Customer pursuant to the terms and conditions of the software license agreement under which such software was originally licensed to Customer, except that the scripts are provided “as is” and the warranty in such agreement will not apply to the scripts nor shall the terms of Visix Support for certain scripts.

1.5. All title, ownership rights and world-wide intellectual property rights (including all patents, copyright, trademarks, trade secrets and moral rights) in and to any scripts, software, documentation, materials, methodologies, knowhow or other such information or materials that are developed or provided by Visix in the course of delivering the Services (collectively, “Visix Intellectual Property”), is and will remain the exclusive property of Visix (or its affiliates and/or licensors as applicable). Customer may, however, subject to payment of all fees due under this Agreement, retain any deliverables provided to it under a Quote and may use such deliverables for its own internal purposes in accordance with terms and conditions of the software license noted above.

1.6. In the event that the Services are completed in less time than is estimated in the applicable Quote, the unused time shall expire and shall not be available for subsequent engagements.
1.7 In the event that Customer has pre-purchased a block of Services time, any unused time shall expire twelve months from the date of purchase of such time.

1.8. In the event that Customer cancels or requests a rescheduling of a mutually confirmed Services engagement date with less than one (1) week notice to Visix, the following shall result:

   1.8.1 with respect to onsite Services (i) if cancellation by the Customer occurs within one (1) week of the scheduled date for such Services then 25% of the scheduled Services time shall be forfeited, or (ii) if cancellation by the Customer occurs within twenty-four (24) hours of the scheduled date for such Services then 100% of the scheduled Services time shall be forfeited;

   1.8.2 with respect to remote Services (iii) if cancellation by the Customer occurs within forty-eight (48) hours of the scheduled date for such Services then 10% of the scheduled Services time shall be forfeited, or (iv) if cancellation by the Customer occurs within one (1) hour of the scheduled time for such Services then 100% of the scheduled Services time shall be forfeited; unless otherwise agreed by Visix at its sole discretion.

2. CUSTOMER OBLIGATIONS

2.1. If the Customer purchases via a third-party reseller, the pricing and payment terms will be determined between the reseller and the Customer and are at the reseller’s discretion.

2.2. If the Customer purchases from Visix directly:

   2.2.1 Customer shall pay for the Services at the rate set out in the relevant Quote or otherwise agreed in writing with Visix. The rates are exclusive of any value added tax that shall be payable by Customer at the rate and in the manner prescribed by law.

   2.2.2 Customer agrees to pay valid Visix invoices within 30 days of the date of the invoice.

   2.2.3 In the event that the Quote does not state that expenses are included in the fee for the Onsite Services, then Customer shall reimburse Visix for any expenses reasonably and properly incurred by the Consultant in performing Onsite Services upon submission of copies of valid receipts, or as otherwise agreed in writing. Visix will maintain full and accurate records of the time spent and expenses incurred in providing the Onsite Services.

2.3. Customer shall provide the Consultant with all information and help reasonably required by the Consultant and shall make available such of its own appropriately qualified staff as may be reasonably required to assist the Consultant with the performance of the Services, including (a) providing the Consultant with such computer facilities, and office facilities at its premises as may reasonably be necessary to enable the Consultant to perform the Services including suitably equipped accommodation and facilities for making telephone calls to and from the Consultant’s offices in private; (b) providing full access to those areas of Customer’s premises that are required for performance of the Services; (c) authorizing the Consultant to have access to those computer systems to which it is reasonably necessary to have access for the provision of the Services; and Customer shall take all reasonable steps to ensure the health and safety of Visix employees while they are at Customer’s premises.
2.4. Customer undertakes that any computer hardware or software that the Consultant is asked to use or modify for the purpose of the Services are either the property of Customer or are legally licensed to Customer and to indemnify Visix in respect of any claims against Visix or its employees by third parties related to such use or modification, including all related costs, expenses or damages in the event of any actual or alleged violations of third party proprietary rights or software licenses.

2.5. Customer represents and warrants that neither Customer, nor any party that owns or controls or is owned or controlled by Customer, is (i) ordinarily resident in, located in, or organized under the laws of any country or region subject to economic or financial sanctions or trade embargoes imposed, administered, or enforced by the European Union, the United Kingdom, or the United States; (ii) an individual or entity on the Consolidated List of Persons, Groups, and Entities Subject to European Union Financial Sanctions; the U.S. Department of the Treasury's List of Specially Designated Nationals and Blocked Persons or Foreign Sanctions Evaders List; the U.S. Department of Commerce's Denied Persons List or Entity List; or any other sanctions or restricted persons lists maintained by the European Union, the United Kingdom, or the United States; or (iii) otherwise the target or subject of any Sanctions and Export Control Laws. Customer further represents and warrants that it will not, directly or indirectly, export, re-export, transfer, or otherwise make available (a) the Services, or (b) any data, information, software programs and/or materials resulting from the Services (or direct product thereof) to any country, region, or person described in this Clause or in violation of, or for purposes prohibited by, Sanctions and Export Control Laws, including for proliferation-related end uses. For purposes of this section, "Sanctions and Export Control Laws" means any law, regulation, statute, prohibition, or similar measure applicable to the Services and/or to either party relating to the adoption, application, implementation and enforcement of economic sanctions, export controls, trade embargoes or any other restrictive measures, including, but not limited to, those administered and enforced by the European Union, the United Kingdom, and the United States, each of which shall be considered applicable to the Services.

3. NON-SOLICITATION

During the term of Quote, and for 12 months after its expiry or termination, Customer undertakes not to solicit or seek to induce to leave the employ of Visix any person who was, during the period of Visix's undertaking the Services, an employee of Visix, and who worked with, or under the supervision of, Customer at any time during that period.

4. FORCE MAJEURE

Visix shall not be liable to Customer for any delay in or failure to perform the Services as a result of a Force Majeure Event. "Force Majeure Event " means any event affecting the performance by Visix of its obligations arising from any act, events, omissions, happenings or non-happenings beyond its reasonable control including (but without limiting the above) government regulations, fire, flood or any disaster or an industrial dispute affecting a third party.

5. LIMITATION OF LIABILITY

5.1. Save as expressly stated herein, Visix make no warranties, conditions, undertakings or representations of any kind, either express or implied, statutory or otherwise, in relation to the Services and/or any deliverables resulting from such Services, including without limitation any implied warranties or conditions of merchantability, satisfactory quality, fitness for a particular purpose, non-infringement or arising from course of dealing, usage or trade.
5.2. The liability of Visix to Customer in respect of any claim for breach of contract, negligence, breach of statutory duty or otherwise shall be limited as follows: (a) In respect of any claim for fraudulent misrepresentation, personal injury or death caused by the negligence of Visix, its employees, agents or sub-contractors, or any other liability that cannot be limited by applicable law, no limit shall apply; (b) In respect of all other claims, liability shall be limited to the amount of the fees paid to Visix under the relevant Quote(s) per claim or series of claims arising from one incident.

5.3. Visix shall not be liable to Customer for any indirect, consequential, incidental or special damage or loss of any kind including, but not limited to, loss of profits, loss of contracts, business interruptions, loss of or corruption of data however caused and whether arising under contract or tort, including without limitation negligence.

6. GOVERNING LAW & JURISDICTION

This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia and the courts of the State of Georgia shall have exclusive jurisdiction to determine any disputes, which may arise out of, under, or in connection with this Agreement.