

# ACE CLOUD AND SOFTWARE AS A SERVICE AGREEMENT



By using VisioLogix Services, you agree to the **ACE Cloud and Software as a Service Agreement** (the "Agreement").

**WHEREAS**, VisioLogix is in the business of supplying software applications and related services to law enforcement agencies in the physical security industry, including, among other things, body-worn cameras, In-Car Video system, Early Warning System and Evidence Management System utilizing a combination of hardware, software and artificial intelligent (AI) development;

**WHEREAS**, Customer is a client company that desires the use of VisioLogix software application products and services;

**WHEREAS**, Customer desires to have VisioLogix provide Cloud Applications, Standard Infrastructure Hosting, or Software as a Service; and

**WHEREAS**, VisioLogix and Customer desire to enter into this Agreement defining their respective rights and responsibilities and memorializing the terms and conditions pursuant to which VisioLogix will provide to Customer the Services for a fee.

**NOW, THEREFORE**, in consideration of the mutual promises and agreements contained herein, the parties intending to be legally bound hereby agree as follows:

## Definitions

- a. **"aaS"** is an acronym for "As A Service" and means the combined hosting and support services provided in this Agreement.
- b. **"aaS Materials"** shall mean the written materials relating to the operation and use of the VisioLogix Software including, but not limited to, user manuals, user guides, technical manuals, release notes, and online help files regarding use of the VisioLogix Software provided as part of the Service, and any other materials prepared in connection with any VisioLogix Software modification, correction, or enhancement, and shall include any updated versions of aaS Materials as may be provided by VisioLogix from time to time (1) in the course of providing the Service; (2) as part of an online tutorials or help files provided with the Service; or (3) in the course of providing web seminars in which Customer or Customer's Users enroll.
- c. **"Application Support Services"** shall mean the support not included in the Product Support Services and defined in Schedule C.
- d. **"Base Components"** means the hardware, software, and hosting environment as specified in Schedule D that VisioLogix makes available for use by Customer as part of the Service.
- e. **"Cloud, Standard Infrastructure Hosting, Software as a Service"** means the provision of products and services in a hosted, virtualized environment, accessible via the internet.
- f. **"Sales Order"** means a completed version of VisioLogix's standard form of sales order for the Software aaS 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 aaS 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 aaS 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.
- g. **"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.

- h. **"VisioLogix Software"** means VisioLogix proprietary software applications and user interfaces as defined in Schedule A and made available to Customer by VisioLogix as part of the Service. VisioLogix Software may contain third-party components licensed to VisioLogix.
- i. **"Partner"** means an entity that VisioLogix has authorized as an "Original Equipment Manufacturer (OEM)" or "distributor" or "reseller" of the Software aaS.
- j. **"Customer Data"** means all data, files, including hypertext markup language files, documents, audio and visual information, graphics, scripts, programs, applets or servlets that Customer creates, installs, uploads to or transfers in or through the Service or provides in the course of using the Service, excluding identification and other information provided by Customer relative to Customer Users.
- k. **"Electronic Communications"** shall mean any transfer of signs, signals, text, images, sounds, data or intelligence of any nature transmitted in whole or part electronically to or from the Service.
- l. **"Infrastructure Support Services"** shall mean the support provided by VisioLogix for the maintenance and stability of the computer hardware and hosting environment provided as part of the Service.
- m. **"Product Support Services"** shall mean the support provided by VisioLogix to remediate, correct, or abate errors in the out of the box VisioLogix Software that is provided as part of the Service as defined in Schedule B. Support for customer specific configurations and customizations (if any) are handled by Application Support Services defined in schedule C.
- n. **"Purchase Order Form(s)"** refers to a Customer document, in either electronic or written form, issued by Customer to confirm Customer's purchase of the Service. The parties acknowledge and agree that the terms and conditions of any such Purchase Order Form shall not be binding upon the parties or in any way modify, amend, or supersede the terms and conditions of this Agreement.
- o. **"Service"** shall mean the software and infrastructure in a hosted environment provided and maintained by VisioLogix to which Customer is being granted access under this Agreement via a web site or another designated IP address. Service or Services includes Product Support Services and Application Support Services described in this Agreement.
- p. **"Term"** means any Initial Term and/or Renewal Term as defined in Section 6 of this Agreement.
- q. **"Third Party Products"** means application software products provided by third party vendors, including operating system and application software with which the VisioLogix Software interfaces and which provides certain functionality essential to the operation of the VisioLogix Software. Third Party Products are licensed to VisioLogix for incorporation and use in the hosted environment as part of the Service as set forth in the Statement of Work. For the sake of clarity, the term Third-Party Products does not refer to third-party software components, if any, incorporated into VisioLogix Software.
- r. **"User(s)"** means Customer's employees, representatives, consultants, contractors or agents who are authorized to use the Service and have been supplied user identifications and passwords by Customer or on Customer's behalf.

## 1 PROVISION OF SERVICES

In consideration of the fees paid by Customer under this Agreement, VisioLogix agrees to provide Customer access to the Service. Specific components of the Service to be provided to Customer are as outlined in the Schedules annexed hereto.

## 2 INSTALLATION SCHEDULE

VisioLogix will implement the infrastructure described in Schedule D in conformance with the Statement of Work entered into by separate agreement between the Parties and dated on the Sales Order, to provide Customer the Services described in this Agreement.

This schedule is contingent on:

- (i) the VisioLogix Software having been installed and accepted by Customer

- (ii) Customer providing: all data required by VisioLogix in order to implement the infrastructure as defined in the Statement of Work between the Parties and dated on the Sales Order.
- (iii) Customer completing all tasks and activities required as a prerequisite in order for the system to be placed into production use. Example of these types of activities are, but not limited to, validation activities, document approval, data migration, user training etc.
- (iv) Customer providing their internal infrastructure and connectivity needed to access the Services.

Failure of Customer to achieve all the contingencies described above as well as all other reasonable tasks required of Customer will require an adjustment in the schedule and may require the payment of additional fees by Customer.

### 3 LICENSE GRANTS

Subject to the terms and conditions of this Agreement, VisioLogix grants to Customer during the Term of this Agreement the nontransferable, nonexclusive worldwide right to permit Users to (a) use the Service, including the Base Components thereof, (b) display and print Customer Data, and (c) use the aaS Materials solely in connection with the Service, all solely for Customer's own internal business operations, provided such internal business operations shall not include commercial time-sharing, rental, outsourcing, service bureau or similar use. For purpose of this license grant, "Customer" shall include any outsourced or other third-party consultants or similar personnel supporting Customer as part of its typical business practices, acting under Customer's direction and for whom Customer is fully responsible hereunder. Customer acknowledges and agrees that the license granted, for the items listed in Schedule A herein, is not a concurrent user license and that the rights granted to Customer in this Agreement are subject to all of the following agreements and restrictions: (i) the maximum number of Users that Customer authorizes to access the Service shall not exceed the number of licenses Customer has been granted, as set forth in Schedule A; (ii) licenses cannot be shared or used by more than one individual User but may be reassigned from time to time to new Users who are replacing former Users who are no longer permitted to access the Service; (iii) Customer shall not license, sell, rent, lease, transfer, assign, distribute, display, host, outsource, disclose or otherwise commercially exploit or make the Service or the aaS Materials available to any third party other than an authorized User; (iv) Customer shall not modify, make derivative works of, disassemble, reverse compile, or reverse engineer any part of the Service, including without limitation the VisioLogix Software and or aaS Materials that are provided as a part thereof, or access the Service or aaS Materials in order to build a similar or competitive product or service; (v) Customer shall not create Internet "links" to the Service or "frame" or "mirror" any part of the Service, including any content contained in the Service, on any other server or device; (vi) except as expressly stated herein, no part of the Service or aaS Materials may be copied, reproduced, distributed, republished, downloaded, displayed, posted or transmitted in any form or by any means, including but not limited to electronic, mechanical, photocopying, recording, or other means; (vii) Customer agrees to make every reasonable effort to prevent unauthorized third parties from accessing the Service; (viii) Customer acknowledges and agrees that VisioLogix or its Third Party Vendors shall own all right, title and interest in and to all intellectual property rights in the Service and the aaS Materials and any suggestions, enhancement requests, feedback, or recommendations provided by Customer or its Users relating to the Service or the aaS Materials, including all unpatented inventions, patent applications, patents, design rights, copyrights, trademarks, service marks, trade names, know-how and other trade secret rights, and all other intellectual property rights, derivatives or improvements thereof; (ix) unauthorized use, resale or commercial exploitation of any part of the Service or aaS Materials in any way is expressly prohibited; (x) Customer does not acquire any rights in the Service or aaS Materials, express or implied, other than those expressly granted in this Agreement and all rights not expressly granted to Customer are reserved by VisioLogix and Third Party Vendors; and (xi) this Agreement is not a sale and does not convey any rights of ownership in or related to the Service, VisioLogix Software, Third Party Products, or aaS Materials to Customer.

### 4 LICENSES FROM CUSTOMER

Subject to the terms and conditions of this Agreement, Customer grants to VisioLogix and its Third Party Vendors the non-exclusive, nontransferable worldwide right to copy, store, record, transmit, display, view, print or otherwise use (a) Customer Data solely to the extent necessary to provide the Service and aaS Materials to Customer, and (b) any trademarks that Customer provides VisioLogix for the purpose of including them in Customer's user interface of the Service ("Customer Trademarks"). Customer acknowledges and agrees that Customer Data and information

regarding Customer and Customer's Users that is provided to VisioLogix and its Third-Party Vendors in connection with this Agreement may be (a) processed by VisioLogix and its Third-Party Vendors to the extent necessary to provide the Service and (b) transferred outside of the country or any other jurisdiction where Customer and Customer's Users are located. In addition, Customer acknowledges and agrees that it is Customer's obligation to inform Customer's Users and customers of the processing of Customer Data and information regarding Customer and Customer's Users pursuant to this Agreement and to ensure that such Users and customers have given any necessary consent to such processing as required by all applicable data protection legislation. Customer shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness and copyright of all Customer Data and information regarding Customer and Customer's Users. Customer agrees that the license to the Customer Data shall survive termination of this Agreement solely for the purpose of storing backup Customer Data in accordance with the terms of this Agreement.

By providing Customer with the Services, VisioLogix does not acquire any right, title and/or interest in the content material (including but not limited to text, Customer-provided software, scripts, trademarks, logos, HTML coding, domain names, links, graphics, audio, video, and any data) that Customer makes available for use by Users by means of the Services (collectively "Content"). Except as expressly set forth in the Schedules as being the responsibility of VisioLogix, Customer is solely responsible for all Content.

## 5 PROPRIETARY RIGHTS

Customer acknowledges and agrees that the Service and any necessary software used in connection with the Service contain proprietary and confidential information that is protected by applicable intellectual property and other laws. Customer further acknowledges and agrees that the content or information presented to the Customer through the Service may be protected by copyrights, trademarks, service marks, patents or other proprietary rights and laws. Except where expressly provided otherwise by VisioLogix, nothing in the Service, theaaS Materials, or the Agreement shall be construed to confer any license to any of VisioLogix's (or its third-party manufacturer's, author's, developer's, VisioLogix's, and service provider's ("Third Party Vendors"), intellectual property rights, whether by estoppel, implication, or otherwise. Without limiting the generality of the foregoing, any names or trademarks of the VisioLogix Software listed on Schedule A and other VisioLogix service marks, logos and product service names are marks of VisioLogix (the "VisioLogix Marks"). Customer agrees not to display or use the VisioLogix marks, or the marks of any Third Party VisioLogix, in any manner without the owner's express prior written permission. VisioLogix reserves the right to subcontract any or all services provided hereunder to third parties.

## 6 LICENSE FEE, TERM AND PAYMENT

The initial term ("Initial Term") of this Agreement will commence on the Effective Date and will terminate on the anniversary of the Effective Date. Each 12 month period after the Effective Date will be defined as a "Service Year", e.g. Months 1-12 will constitute Service Year 1 and months 13-24 will constitute Service Year 2, etc.). Following the expiration of the Initial Term, the Agreement shall automatically continue on a month-to-month basis, until such time as either party provides thirty (30) days' written notice to the other party of its intent to cancel the Agreement. Additionally, the Initial Term may be renewed (a "Renewal Term") upon mutual agreement of the parties in writing. For the Initial Term Customer shall pay fees as detailed in the Payment Schedule set forth below. Invoices shall be payable within thirty (30) days after receipt thereof. In addition to any remedies VisioLogix may have pursuant to this Agreement or at law for non-payment, delinquency in payment may result in a delay or suspension of the right to use the Service. In the event VisioLogix incurs any costs (including reasonable attorney's fees) from efforts collecting overdue fees from Customer, Customer agrees to pay such costs. Customer further agrees to pay all foreign, federal, states, and local taxes, if applicable, to Customer's access to, use, or receipt of the Service.

The monthly recurring charges shown above do not include the usage-based archive and storage service fees. Data Archival is a separate service which allows archiving data based on customer's requirements.

Pricing for backup services includes restores for the purpose of system recovery only. System Recovery is defined as the restoration of Operating system and software tools that has been lost or corrupted due to system crashes, erroneous deletions, or other unplanned events from a recent copy of the previously backed-up.

## 7 TERMS OF SERVICE

### 7.1 *Service Extensions or Updates*

Customer further agrees that, unless explicitly stated otherwise, any new features that augment or enhance the Service, and or any new service subsequently purchased by Customer pursuant to an amendment accepted by VisioLogix referencing this Agreement will be subject to this Agreement.

### 7.2 *Customer Must Have Internet Access*

In order to use the Service, Customer must have or must obtain access to the World Wide Web, either directly or through devices that access Web-based Content. Customer must also provide all equipment necessary to make (and maintain) such connection to the World Wide Web in accordance with the requirements set out in Schedule D.

### 7.3 *Email and Notices*

Customer agrees to provide VisioLogix with Customer's e-mail address (es), and to accept emails (or other Electronic Communications) from VisioLogix at the e-mail address Customer specifies. Notwithstanding any provision in the Agreement to the contrary, acknowledgement by an officer of Customer is not required with respect to e-mail communications pertaining to the Customer's routine use of the Service, including without limitation communications relating to the support, maintenance, or the updating of the Service. Customer further agrees the VisioLogix may provide any and all required notices including legal notices to Customer through either e-mail (or other electronic transmission), or by mail or express delivery service in accordance with Section 14.

### 7.4 *Passwords, Access, and Notification*

Customer may designate up to the number of Users that corresponds to the number of permitted Users set forth in Schedule A. Customer will provide and assign unique password and user names to each authorized User for each license purchased. Customer acknowledges and agrees that Customer is prohibited from sharing passwords and or user names with unauthorized users. Customer will be responsible for the confidentiality and use of Customer's (including its employees') passwords and user names. Customer will also be responsible for all Electronic Communications, including those containing business information, account registration, account holder information, financial information, Customer Data, and all other data of any kind contained within emails or otherwise entered electronically through the Service or under Customer's account. VisioLogix will act as though any Electronic Communications it receives under Customer's passwords, User name, and/or account number will have been sent by Customer. Customer agrees to notify VisioLogix if Customer becomes aware of any loss or theft or unauthorized use of any of Customer's passwords, user names, and/or account number. The foregoing shall also apply to any Purchase Order Forms submitted by the Customer for further User licenses.

### 7.5 *Customer's Responsibilities*

Customer agrees to comply with all applicable local, state, national and foreign laws, treaties, regulations and conventions in connection with its use of the Service, including without limitation those related to data privacy, international communications, and the exportation of technical or personal data. Customer will ensure that any use of the Service by Customer's Users is in accordance with the terms of this Agreement. Customer agree to notify VisioLogix immediately of any unauthorized use of any password or account or any other known or suspected breach of security or any known or suspected distribution of Customer Data. Customer acknowledges and agrees that the Service is subject to the U.S. Export Administration Laws and Regulations. Customer agrees that no part of the Service or information obtained through use of the Service, is being or will be acquired for, shipped, transferred, or re-exported, directly or indirectly, to proscribed or embargoed countries or their nationals, nor be used for nuclear activities, chemical biological weapons, or missile projects unless authorized by the U.S. Government. Proscribed countries are set forth in the U.S. Export Administration Regulations and are subject to

change without notice, and Customer must comply with the list as it exists in fact. Customer certifies that neither Customer nor any Users are on the U.S. Department of Commerce's Denied Persons List or affiliated lists or on the U.S. Department of Treasury's Specially Designated Nationals List. Customer agrees to comply strictly with all U.S. export laws and assumes sole responsibility for obtaining licenses to export or re-export as may be required. Any unauthorized use of the Service may violate copyright laws, trademark laws, the laws of privacy and publicity, and communications regulations and statutes. The Service may use encryption technology that is subject to licensing requirements under the U.S. Export Administration Regulations, 15 C.F.R. Parts 730-774 and Council Regulation (EC) No. 1334/2000.

In addition to its responsibilities in this Agreement, Customer is responsible for all Customer responsibilities indicated in the Schedules attached hereto or entered into pursuant hereto and all other responsibilities not designated as responsibilities of VisioLogix.

Customer is solely responsible for obtaining all licenses and permissions necessary related to the Content, including without limitation licenses for any third-party software included in the Content.

Customer shall not resell the Services directly or indirectly to third parties.

## *7.6 Transmission of Data*

Customer understands that the technical processing and transmission of Customer's Electronic Communications is fundamentally necessary to Customer's use of the Service. Customer expressly consents to VisioLogix's interception and storage of Electronic Communications and/or Customer Data, and Customer acknowledges and understands that Customer's Electronic Communications will involve transmission over the internet, and over various networks, only part of which may be owned and/or operated by VisioLogix. Customer acknowledges and understands that changes to Customer's Electronic Communications may occur in order to conform and adapt such data to the technical requirements of connecting networks or devices. Customer further understands that Electronic Communications may be accessed by unauthorized parties when communicated across the Internet, network communications facilities, telephone, or other electronic means. Customer agrees that VisioLogix is not responsible for any Electronic Communications and/or Customer Data which are lost, altered, intercepted or stored without authorizations during the transmission of any data whatsoever across networks not owned and/or operated by VisioLogix.

## *7.7 VisioLogix's Support*

VisioLogix will make commercially reasonable efforts to promote Customer's successful utilization of the Service, including but not limited to maintenance and support of the Base Components, providing Customer with user guides and on-line help, and product support as set forth in Schedule B. Infrastructure Support Services shall be provided as set forth in Schedule D. Infrastructure Support Services pertain to the maintenance of the computer hardware and hosting environment provided as part of the Service. VisioLogix will also provide Product Support for VisioLogix Software employed as part of the Service as set forth in Schedule B annexed hereto. Product Support pertains to support designed to remedy errors in VisioLogix Software that cause it to deviate from the specifications as described in the aaS Materials. VisioLogix also offers "for fee" extended support options and Professional Services consultation, which services may include, among other things, training services, business and regulatory process consulting, submission processing support, submission migration services and system configuration.

## *7.8 Confidential Information*

Each party may have access to information that is confidential to the other party ("Confidential Information"). For purposes of this Agreement, Confidential Information shall include any information that is clearly identified in writing at the time of disclosure as confidential as well as any information that, based on the circumstances under which it was disclosed, a reasonable person would believe to be confidential. Customer's Confidential Information shall include, but not be limited to, Customer Data. A party's Confidential Information shall not include information that (i) is or becomes a part of the public domain through no act or omission of the other party; (ii) was in the other party's lawful possession prior to the disclosure without any obligation of confidentiality and had not been obtained by the other party either directly or indirectly from the disclosing party; (iii) is lawfully disclosed to the other party by a third party without restriction on disclosure; (iv) is independently developed by the other party without use of

or reference to the other party's Confidential Information, as established by written records. The parties agree to use commercially reasonable efforts not to make each other's Confidential Information available in any form to any third party. Notwithstanding the foregoing, Customer acknowledges and agrees that VisioLogix may disclose Customer's Confidential Information to its Third-Party Vendors solely to the extent necessary to provide products or services under this Agreement. This Section will not be construed to prohibit disclosure of Confidential Information to the extent that such disclosure is required by law or valid order of a court or other governmental authority; provided, however, that a party who has been subpoenaed or otherwise compelled by a valid law or court order to disclose Confidential Information (the "Responding Party") shall first have given sufficient and prompt written notice to the other party of the receipt of any subpoena or other request for such disclosure, so as to permit such party an opportunity to obtain a protective order or take other appropriate action. The Responding Party will cooperate in the other party's efforts to obtain a protective order or other reasonable assurance that confidential treatment will be afforded the Confidential Information. If the Responding Party is compelled as a matter of law to disclose the Confidential Information, it may disclose to the party compelling the disclosure only that part of the Confidential Information as is required by law to be disclosed.

Notwithstanding anything to the contrary in this Agreement, Content is not included in Confidential Information as defined above. To the extent VisioLogix has any access to Content in the course of providing the Services, VisioLogix's entire obligation to keep Content confidential is stated in this Section below. VisioLogix shall not, intentionally (i) access Customer's Content or (ii) disclose Customer's Content to any third party, except to the extent: (a) Customer makes its Content publicly available, (b) as necessary for VisioLogix to provide, or obtain third-party supplier support for, the Services or to provide information requested by Customer, or (c) as specifically authorized by Customer in writing. VisioLogix's obligation to protect Content from unauthorized use, access or disclosure is: (i) to provide the Security Services specifically set forth in this Agreement and (ii) maintain and enforce the then-current standard VisioLogix security policies and standards applicable to the Services as practiced at the service locations from which VisioLogix is providing the Services to Customer.

The obligations in this Section shall not apply to the recipient of Confidential Information and/or VisioLogix with respect to Content to the extent disclosure of Confidential Information or Content is required to comply with laws or respond to requests by a regulatory or judicial body and/or as otherwise required for legal process. In the event that any such disclosure is required, the recipient, and/or VisioLogix with respect to Content, reserves the right to charge the other party on a time-and-materials basis for recipient's/VisioLogix's reasonable efforts related to its compliance and response, including, if applicable, reasonable attorney's fees.

## 8 SUSPENSION/TERMINATION

### 8.1 *Suspension for Delinquent Account*

VisioLogix reserves the right to suspend Customer's access and/or use of the Service for any account for which any payment is due but remains unpaid after thirty day's written notice of such delinquency. Customer agrees that VisioLogix shall not be liable to Customer, or to any third party, for any suspension of the Service resulting from Customer's non-payment of the fees as described in this Section.

### 8.2 *Suspension for Ongoing Harm*

Customer agrees that VisioLogix may, with reasonably contemporaneous telephonic or electronic mail notice to Customer, suspend Customer's access to the Service if VisioLogix reasonably concludes that Customer's use of the Service is causing immediate and ongoing harm to VisioLogix or others. VisioLogix will use commercially reasonable efforts to resolve the issues causing the suspension of Service. Customer agrees that VisioLogix will not be liable to Customer or to any third party for any suspension of the Service under such circumstances as described in this Section.

### 8.3 *In the Event of a Breach*

A. Either party may terminate this Agreement upon sixty (60) days' written notice to the other party in the event of a breach of any material obligation under this Agreement, provided that the alleged breach is not cured

during the sixty (60) day notice period. Upon termination or expiration of this Agreement, Customer shall have no rights to continue use of the Service.

- B. Customer may cancel this Agreement, to be effective at the end of the then current Term, by providing VisioLogix with at least thirty (30) days' prior written notice

#### 8.4 *Handling of Customer Data In the Event of Termination*

Customer acknowledges and agrees that following termination of this Agreement, Customer shall return all aaS Materials (except that it may retain a copy for archival purposes or as otherwise provided in this Agreement) to VisioLogix and VisioLogix may immediately deactivate Customer's account. Furthermore, unless otherwise agreed-upon by the Parties in writing, VisioLogix shall remove or overwrite all applicable Content from VisioLogix's systems following the effective date of termination or cancellation, in accordance with VisioLogix's standard procedures. Customer shall provide VisioLogix with reasonable and prompt access to Customer's premises to allow VisioLogix to retrieve the hardware and software and /or, in accordance with VisioLogix's instructions, return to VisioLogix all hardware and software that VisioLogix has provided to Customer in connection with the Services (other than hardware and software that Customer has purchased from VisioLogix). In the event that Customer fails to either return the hardware or software, or allow VisioLogix to retrieve it, within thirty (30) days of the effective date of termination or cancellation, VisioLogix may charge Customer the then-current fair market value of the hardware and software, and Customer shall be responsible for any costs/damages arising from any breach of VisioLogix's third-party license agreement. Prior to any such deletion or destruction, however, VisioLogix shall either (1) grant Customer reasonable access to the Service for the sole purpose of Customer retrieving Customer Data or (2) transfer all Customer Data to other media for delivery to Customer, additional fees apply. Customer agrees that VisioLogix shall not be liable to Customer or to any third party for any termination of Customer access to the Service or deletion of Customer Data, provided that VisioLogix is in compliance with the terms of this Section. Notwithstanding the foregoing, nothing shall preclude VisioLogix from maintaining one copy of Customer Data if required by law.

#### 8.5 *Handling of Application In the Event of Termination*

Customer data, Customer license keys used in hosting and Customer application documentation updated during the hosting period by application support would be returned to the Customer as defined in the Disentanglement section of this Agreement.

## 9 MODIFICATION/DISCONTINUATION/MAINTENANCE

#### 9.1 *Modification to or Discontinuation of the Service*

VisioLogix reserves the right at any time and from time to time to modify, temporarily or permanently, the Service (or any part thereof), provided such modification does not diminish the functionality of the Service to the Customer on which the Customer materially relies. Notwithstanding the foregoing, except for routinely scheduled down time, or as otherwise provided in this Agreement, VisioLogix shall use commercially reasonable efforts to notify Customer prior to any such modification; further, VisioLogix shall consider the Customer's validation needs and requirements in connection with any modification of the Service and, except as otherwise noted in Section 9.3, shall validate the Service as modified to the same extent provided in the Schedules. Customer acknowledges that VisioLogix reserves the right to discontinue offering the Service at the conclusion of Customer's then current Term. Customer agrees that VisioLogix will not be liable to Customer or any third party for any modification or discontinuance of the Service as described in this Section 9.

#### 9.2 *Modification to Third Party Software and Support Cost*

In the event that VisioLogix incur any increased cost from Third party software licenses or annual support fees during the term of this agreement, VisioLogix reserves the right to pass these costs onto the Customer.

#### 9.3 *Maintenance*

In order to perform maintenance, including infrastructure and application upgrades, there will be routinely scheduled down time as set forth in Schedule D. Customer shall give VisioLogix one (1) week notice in the event



that such routinely schedule maintenance conflicts with its operations at a critical time. Upon the receipt of such notice, the parties shall work together to find a mutually convenient time to perform such maintenance. VisioLogix further reserves the right on approximately a quarterly basis to issue new releases in which VisioLogix adds functionality to the Service. Customer acknowledges that these periodic major releases can take several hours to complete (up to eight hours). The time necessary to provide such periodic releases shall not be counted in any System Availability calculations. VisioLogix shall consult with the Customer and, unless otherwise agreed upon, shall install such major releases during routinely scheduled down time as set forth above. Customer shall be apprised of software upgrades and or patch releases to the Service; in addition, VisioLogix shall perform IQ validation with respect thereto, and provide Customer with copies of any applicable validation reports. In the event of a patch release, a full IQ validation may not be undertaken. It shall be the Customer's responsibility to perform any required UAT/PQ validation. These patches, fixes and service releases shall be performed in accordance with the Application Support Services described in Schedule C – Application Support and in accordance with the change control process.

In the event that VisioLogix, in its sole discretion, determines that any unscheduled maintenance is necessary, VisioLogix will use commercially reasonable efforts to notify Customer as soon as it becomes aware of such need.

## 10 WARRANTIES

### 10.1 *Warranty of Functionality*

VisioLogix warrants to Customer during the Term of this Agreement that the Service will comply with the material functionality described in the aaS Materials and that such functionality will be maintained in all material respects in subsequent upgrades to the Service. Customer's sole and exclusive remedy for VisioLogix's breach of this warranty shall be that VisioLogix shall use commercially reasonable efforts to correct such errors or modify the Service to achieve the material functionality described in the aaS Materials within a reasonable period of time. However, VisioLogix shall have no obligation with respect to this warranty claim unless notified of such claim within (30) days of the first material functionality problem. Further, VisioLogix shall have no obligation with respect to this warranty claim, and Customer may not terminate the Agreement, where any alleged nonconformity is due to User error as reasonably determined by the parties after investigation and analysis by VisioLogix's Product Support Center. VisioLogix does not warrant that the Service will be free of non-material errors, bugs, or minor interruption, or that all such errors will be corrected.

### 10.2 *Data Maintenance and Backup Warranty*

VisioLogix warrants during the Term of this Agreement, that it will, at a minimum, utilize and maintain the backup procedures listed in Schedule D annexed hereto (and hereby incorporated by reference). In the event of a breach of this provision, VisioLogix will use commercially reasonable efforts to correct Customer Data or restore Customer Data within three (3) business days (or as otherwise agreed in writing between the parties depending upon the back-up options selected by Customer). Provided VisioLogix complies with the procedures set forth in Schedule D, it shall be deemed to have satisfied its obligation with respect to this warranty.

### 10.3 *Non-Infringement Warranty*

VisioLogix warrants that it is the sole owner of and or has full power and authority to grant the license and use of the Service and other rights granted by the Agreement to Customer with respect to the Service and that neither the performance by Customer in its utilization of the Service, nor the license of and authorized use by Customer of the Service as described herein, will in any way constitute an infringement or other violation of any U. S. copyright, trade secret, trademark, patent, invention, proprietary information, non-disclosure, or other rights of any third party.

## 11 DISCLAIMER OF WARRANTIES

EXCEPT AS OTHERWISE STATED IN SECTION 10 ABOVE, VISIOLOGIX DOES NOT REPRESENT THAT CUSTOMER'S USE OF THE SERVICE WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR FREE, OR THAT THE SERVICE WILL MEET CUSTOMER REQUIREMENTS OR THAT ALL ERRORS IN THE SERVICE AND/OR DOCUMENTATION WILL BE CORRECTED OR THAT THE SYSTEM THAT MAKES THE SERVICE AVAILABLE WILL BE FREE OF VIRUSES OR OTHER

HARMFUL COMPONENTS OR THE SERVICE WILL OPERATE IN COMBINATION WITH OTHER HARDWARE, SOFTWARE, SYSTEMS OR DATA NOT PROVIDED BY VISOLOGIX OR THE OPERATION OF THE SERVICES WILL BE SECURE OR THAT VISOLOGIX AND ITS THIRD PARTY VISOLOGIXS WILL BE ABLE TO PREVENT THIRD PARTIES FROM ACCESSING CUSTOMER DATA OR CUSTOMER'S CONFIDENTIAL INFORMATION, OR ANY ERRORS WILL BE CORRECTED OR ANY STORED CUSTOMER DATA WILL BE ACCURATE OR RELIABLE. THE WARRANTIES STATED IN SECTION 10 ABOVE ARE THE SOLE AND EXCLUSIVE WARRANTIES OFFERED BY VISOLOGIX. THERE ARE NO OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THOSE OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. EXCEPT AS STATED IN SECTION 10 ABOVE, THE SERVICE IS PROVIDED TO CUSTOMER ON AN "AS IS" AND "AS AVAILABLE" BASIS, AND IS FOR COMMERCIAL USE ONLY. CUSTOMER ASSUMES ALL RESPONSIBILITY FOR DETERMINING WHETHER THE SERVICE OR THE INFORMATION GENERATED THEREBY IS ACCURATE OR SUFFICIENT FOR THE CUSTOMER'S PURPOSE.

## 12 LIMITATIONS OF LIABILITY

### 12.1 *No Consequential Damages*

NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR EXEMPLARY, PUNITIVE, SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES INCLUDING WITHOUT LIMITATION, INTERRUPTION OF BUSINESS, LOST PROFITS, LOST OR CORRUPTED DATA OR CONTENT, LOST REVENUE ARISING OUT OF THIS AGREEMENT (INCLUDING WITHOUT LIMITATION THE SERVICE, THE USE OF THE SERVICE OR THE INABILITY TO USE SERVICE), EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

### 12.2 *DIRECT DAMAGE LIMITATIONS*

12.2.1 IN NO EVENT SHALL THE AGGREGATE LIABILITY OF VISOLOGIX OR ANY THIRD-PARTY VENDORS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, INCLUDING ANY LICENSE, USE, OR OTHER EMPLOYMENT OF THE SERVICE, WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED ON BREACH OR REPUDIATION OF CONTRACT, BREACH OF WARRANTY, TORT, OR OTHERWISE, EXCEED THE TOTAL AMOUNTS ACTUALLY PAID BY CUSTOMER IN THE SIX (6) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM. THERE SHALL BE ONLY ONE AGGREGATE LIABILITY CAP UNDER THIS AGREEMENT EVEN IF THERE ARE MULTIPLE CLAIMS; EACH CLAIM SHALL REDUCE THE AMOUNT AVAILABLE IN THE AGGREGATE LIABILITY CAP.

12.2.2 EXCEPT FOR A FAILURE OF VISOLOGIX TO COMPLY WITH ITS OBLIGATIONS WITH RESPECT TO BACKUP SERVICES, AND SUBJECT TO SECTION 12.2.1 ABOVE, VISOLOGIX SHALL NOT BE LIABLE FOR ANY DAMAGES RESULTING FROM THE LOSS OR CORRUPTION OF ANY DATA OR CONTENT WHETHER RESULTING FROM DELAYS, NONDELIVERIES, MISDELIVERIES, SERVICE INTERRUPTIONS OR OTHERWISE.

### 12.3 *EXCLUSIONS*

THE LIMITATIONS OF LIABILITY SET FORTH IN SECTIONS 12.1 AND 12.2 SHALL NOT APPLY WITH RESPECT TO: (I) DAMAGES TO PERSONS AND/OR TANGIBLE PROPERTY OCCASIONED BY THE WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF A PARTY, (II) BREACHES BY CUSTOMER OF LICENSE TERMS APPLICABLE TO VISOLOGIX PROVIDED SOFTWARE AND THIRD PARTY PRODUCTS AS SET FORTH IN SECTION 2 ABOVE, (III) CUSTOMER'S UNAUTHORIZED USE OF VISOLOGIX'S OR THIRD PARTY VENDOR'S INTELLECTUAL PROPERTY, MATERIALS OR ASSETS; (IV) DAMAGES INCURRED AS A RESULT OF A BREACH BY A PARTY OF ITS OBLIGATIONS UNDER SECTION 7.8 THAT RESULT IN THE DISCLOSURE OF CONFIDENTIAL INFORMATION OF THE OTHER PARTY, OR (V) CLAIMS THAT ARE THE SUBJECT OF INDEMNIFICATION PURSUANT TO SECTION 13 (WHICH ARE SUBJECT TO THE LIMITS, IF ANY CONTAINED THEREIN). DAMAGES AS LIMITED BY THIS SECTION 12 ARE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY IF ANOTHER REMEDY IS PROVIDED AND SUCH REMEDY IS DEEMED TO FAIL OF ITS ESSENTIAL PURPOSE.

## 13 INDEMNIFICATION

### 13.1 *Personal Injury and Property Damage*

Each party (the “**Indemnifying Party**”) agrees to defend at its expense and indemnify and hold harmless the other party and its affiliates, directors, officers, employees, agents, successors and assigns (each an “**Indemnified Party**”), in accordance with the procedures described in this Section, from and against any and all losses, costs, damages, liabilities and expenses including without limitation, reasonable legal fees and expenses paid to or for the benefit of an unaffiliated third party (collectively, “**Losses**”) arising from or in connection with any such third party claim for: (i) the death or bodily injury of any person caused by the negligence or willful misconduct of the Indemnifying Party; or (ii) the damage, loss or destruction of any real or tangible personal property caused by the negligence or willful misconduct of the Indemnifying Party.

### 13.2 *Infringement*

VisioLogix will indemnify, defend and hold harmless Customer for Losses Customer incurs as a direct result of any unaffiliated third party claim based on any claim that the Service infringes any U.S. copyright, trademark or trade secret, except to the extent resulting from (i) Customer’s modification of the Service or combination by Customer the Services with other products or services if the Service would not have been infringing but for such combination or modification, (ii) Customer’s use of the Service in a manner not authorized herein or for which it was not designed, (iii) Customer’s failure to use an updated non-infringing version of the applicable intellectual property to the extent Customer was notified that the update cured an infringement, (iv) changes to the Service made by VisioLogix at the direction of the Customer or (v) Customer Data. If any item for which VisioLogix has an indemnification obligation under this Section becomes, or in VisioLogix’s reasonable opinion is likely to become, the subject of an infringement or misappropriation claim or proceeding, VisioLogix will, in addition to indemnifying Customer as provided in this Section, promptly take the following actions, at no additional charge to Customer, in the listed order of priority: (a) secure the right to continue using the item or (b) replace or modify the item to make it non-infringing. If neither of such actions can be accomplished by VisioLogix using commercially reasonable efforts, and only in such event, VisioLogix will remove the item from the Service and the applicable Service fee will be equitably adjusted to reflect such removal. This Section 13.2 states Customer’s sole and exclusive remedy for VisioLogix’s infringement or misappropriation of intellectual property of a third party.

### 13.3 *Customer’s Indemnity*

Customer shall defend and indemnify VisioLogix and its Third-Party Vendors against any and all Losses incurred by VisioLogix and its Third-Party Vendors arising out of or in connection with a claim by a third party (i) alleging that the Customer Data or the Customer Trademarks, or any use thereof, infringes the rights of, or has caused harm to, a third party, or (ii) arising out of Customer’s breach of Sections 7.5 and 7.8.

Customer will indemnify, defend and hold harmless VisioLogix, its affiliates, successors, and assigns, including the applicable officers, directors, employees, and agents thereof for damages, costs and attorneys’ fees VisioLogix incurs from any unaffiliated third-party claim arising from Customer’s Content or Customer’s or any end user’s use of the Services.

### 13.4 *Indemnification Procedures*

The party seeking indemnification shall give prompt notice of the claim and will tender the defense; provided, however, that such party’s failure to provide notification shall not affect the indemnifying party’s indemnification obligations except to the extent that the failure to notify delays or prejudices the indemnifying party’s ability to defend the applicable claim. The indemnifying party shall conduct the defense and shall have control of the litigation, and the indemnified party shall cooperate in defending against the claim. The indemnified party shall have the right, at any time and at its own expense, to participate in the defense of the claim with counsel of its own choosing. The indemnifying party shall not make any settlement of the claim that results in any liability or imposes any obligation on the indemnified party without the prior written consent of the indemnified party. If the indemnifying party fails to (i) respond to the notice of a claim, or (ii) assume the defense of a claim, the party seeking indemnification shall have the right to defend the claim in such manner as it may deem appropriate, at the reasonable cost, expense, and risk of the indemnifying party, and the indemnifying shall promptly reimburse the indemnified party for all such costs and expenses.

## 14 NOTICES

Except as otherwise provided in Section 7.4 above, any notice required or permitted under the terms of this Agreement or required by law must be in writing and must be (a) delivered in person, (b) sent by registered or certified mail return receipt requested, (c) sent by overnight courier, (d) by email whose receipt is acknowledged by an officer of the receiving Party. If to VisioLogix, a notice shall be forwarded to [info@visiologix.com](mailto:info@visiologix.com), Attn. Product Support Manager, with a copy to [support@visiologix.com](mailto:support@visiologix.com), Attn: Technical Support Team, and if to Customer, a notice shall be forwarded to Customer at the address provided on the signature page herein. Notices shall be considered to have been given at the time of actual delivery in person, five business days after posting if by mail, one business day if by overnight courier service, or upon receipt of machine confirmation of successful transmission by facsimile or email as described herein.

## 15 SURVIVAL

The following provisions shall survive any termination of this Agreement: Sections 5, 7.8, 11, 12, 13, 14, 15, 20 and 21.

## 16 NO ASSIGNMENT

Customer may not assign this Agreement without the prior written approval of VisioLogix. Any purported assignment in violation of this section shall be void.

## 17 U.S. GOVERNMENT RESTRICTED RIGHTS

Any use of the Service by or on behalf of the United States of America, its agencies and/or instrumentalities ("U.S. Government"), is provided with Restricted Rights. Use, duplication, or disclosure by the U.S. Government is subject to restrictions as set forth in subparagraph I(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 or subparagraphs I(1) and (2) of the Commercial Computer Software – Restricted Rights at 48 CFR 52.227-19, as applicable.

## 18 FORCE MAJEURE

Neither party will be liable to the other for any failure or delay in the performance of such party's non-monetary obligations due to causes beyond its control, such as failure or delay caused, directly or indirectly, by fire, flood, earthquakes, other elements of nature, acts of war, terrorism, riots, civil disorders, rebellions or revolutions, epidemics, communications line or power failures, or governmental laws, court orders, and regulations imposed after the fact.

## 19 SECURITY AND SECURITY POLICIES

VisioLogix will provide the security services set forth in the Schedules (the "Security Services"). Except to the extent caused by VisioLogix's failure to provide Security Services, VisioLogix is not responsible for (i) unauthorized access to Customer's Content, or (ii) damages arising out of unauthorized access.

Customer acknowledges that some of the Services may be performed by VisioLogix or its third-party suppliers outside the country(ies) where the Services are obtained, and information pertaining to Customer's use of the Services may be incorporated into VisioLogix's global database(s) to assist VisioLogix in providing the Services. Customer shall be solely responsible for obtaining any required consents to such off-shore support from Customer's employees and other end users of the Services.

VisioLogix will provide the Services at the Service Levels set forth in the Schedules, if any, subject to all requirements and exceptions provided in the Schedules for each Service Level. CREDITS ASSOCIATED WITH THE FAILURE TO



MEET A PARTICULAR CRITICAL SERVICE LEVEL, IF ANY, ARE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR VISIOLOGIX'S FAILURE TO MEET THAT PARTICULAR CRITICAL SERVICE LEVEL.

**20 DISENTANGLEMENT**

As part of the implementation, VisioLogix will deliver a proposed termination assistance/data transfer plan to Customer within ninety (90) business days after the Effective Date. Customer will have five (5) business days from the date of receipt of such proposed plan to accept the plan as-is or to provide feedback regarding the proposed plan in writing. The parties will then cooperate in good faith to finalize the plan within ten (10) business days. The termination assistance/data transfer plan will not become part of this Agreement. Instead, it is intended to further describe aspects of the Services and in the event the final plan involves any changes in scope, such changes will be addressed as part of the change control process.

**21 GENERAL PROVISIONS**

Any action related to this Agreement will be governed by Texas law and controlling U.S. federal law. No choice of law rules of any jurisdiction will apply. Any disputes, actions, claims or causes of action arising out of or in connection with this Agreement or the Service shall be subject to the exclusive jurisdiction of the state and federal courts located in Houston, Texas. This Agreement, together with the Schedules annexed hereto, represents the parties' entire understanding relating to the use of the Service and supersedes any prior or contemporaneous, conflicting or additional, communications. No text or information set forth on any Purchase Order Form, preprinted form or document shall add to or vary the terms and conditions of this Agreement. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then such provision(s) shall be construed, as nearly as possible, to reflect the intentions of the invalid or unenforceable provision(s), with all other provisions remaining in full force and effect. No joint venture, partnership, employment, or agency relationship exists between VisioLogix and Customer as a result of this Agreement or use of the Service. The failure of VisioLogix to enforce any right or provision in this Agreement shall not constitute a waiver of such right or provision unless acknowledged and agreed to by VisioLogix in writing. VisioLogix reserves the right to assign its right to receive and collect payments hereunder. Any rights not expressly granted herein are reserved by VisioLogix.

**IN WITNESS WHEREOF**, this Agreement is duly executed by an authorized representative of both parties as of the Effective Date.

VISIOLOGIX

CUSTOMER

By: \_\_\_\_\_

By: \_\_\_\_\_

**Customer Mailing Address:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_



**SCHEDULE B – PRODUCT SUPPORT**

During the Term of this Agreement and for so long as Customer is entitled to receive the Service hereunder, VisioLogix shall provide the following Product Support Services through its Product Support Team (“PST”) for the Service infrastructure and VisioLogix Software as follows

- a. The PST will be the primary point of contact for all product support inquiries. The PST may be contacted via email at [support@visiologix.com](mailto:support@visiologix.com).
- b. The PST will receive, log, and respond to inquiries from the Customer concerning errors or defects in the VisioLogix Software that cause the VisioLogix Software to deviate from the applicable aaS Materials.
- c. The PST is and will be staffed with qualified product support engineers who have experience with the VisioLogix Software and aaS Materials and are familiar with the environments in which they operate. The PST will endeavor to provide timely and accurate answers to the Customer’s inquiries through VisioLogix’s Product Support team. The PST shall endeavor to rectify VisioLogix Software errors that impact Customer’s use and operation of the VisioLogix Software as set forth below. However, VisioLogix does not warrant that the VisioLogix Software will be error free, will work in combination with third party software not provided by VisioLogix, or will perform in an uninterrupted manner.
- d. For as long as the Agreement remains in effect, Customer shall have unlimited telephone, e-mail, Website forum, and, where applicable, remote access support for the VisioLogix Software during the hours of operation of the PST. Excluding legal holidays in the respective geography, telephone support shall be available Monday through Friday. Telephone and electronic mail support for both Product and Infrastructure inquiries will be during normal business hours as set forth below:

Phone: 1.713.590.4544	<a href="mailto:support@visiologix.com">support@visiologix.com</a>	<a href="https://visiologix.teamwork.com/support">https://visiologix.teamwork.com/support</a>
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- e. Support inquiries, whether initiated by electronic mail, telephone, or otherwise, will be recorded by VisioLogix in the PST call-tracking system. All inquiries will be assigned a tracking number that will be used to communicate with the Customer and to track the progress of a specific support call or inquiry.
- f. Product Support inquiries shall be limited to Level 3 support. As used herein below, the following definitions apply:

Support Level	Description	Provided by
Level 1	Level 1 support includes the following activities: receipt, logging, tracking and managing support requests from end users; initial assessment of issues; escalation to Level 2 issues requiring application and business expertise.	Customer
Level 2	Level 2 support includes the following activities: receipt of issues escalated from Level 1; replication of issues; troubleshooting and diagnosis of issues; resolving issues; and escalation to Level 3 issues requiring development expertise. Level 2 will also include the receipt, logging, tracking and managing support requests.  Application Support handles Level 2 questions, typically those required in-depth knowledge of the support applications.	VisioLogix as part of Application Support Coverage, further described in Schedule C

Support Level	Description	Provided by
Level 3	<p>Level 3 support includes the following activities: receipt of and the diagnosis of complex issues escalated from Level 2. Level 3 issues are those that require developer level expertise or product questions that are not answered in the product documentation.</p> <p>Level 3 support is provided by the Product Support Team working in tandem with the Application Support Team.</p>	VisioLogix

- g. The Customer and the PST contact will work together to assign a priority level when the support inquiry is initiated in accordance with the Priority Level descriptions herein. The Priority Level describes the impact that the problem is having on the Customer’s ability to effectively use the VisioLogix Software. The Priority Level initially assigned can be modified if circumstances warrant it and the appropriate representatives of the Customer and VisioLogix agree. In this instance, VisioLogix will agree to a target time-scale with the Customer for recovery of Services, although it may take longer to effectuate a resolution. As used herein below, the following definitions apply:

**Response Time** is the average time within which VisioLogix will take to first respond to a support inquiry.

**Service Restoration** is defined as the period of time until service is restored to a usable state. The service may not be restored to 100% of its original functionality or capacity but is restored to a sufficient state to reasonably continue business operations via corrective action or development of a workaround. A workaround is defined as a nonstandard method for performing a given operation which produces the same result that would be achievable if the portion of the Software affected by the problem were functioning according to the Documentation.



h. Priority Levels and PST average response times are as follows:

Priority Level	Customer Impact and Response	Response Time (% of time)
Critical	<p>A major application or system is unavailable; or a complete business unit is non-operational; or part of a business unit is non-operational in a critical business period; or there is a single failure in an element critical to the overall business <b>and</b> no problem by-pass is available. <b>Critical</b> items shall be worked on continuously during regular business hours until a resolution is achieved and will take priority over all other issues.</p> <p>The PST will provide a status update every four (4) hours for Critical issues or more frequently if requested by customer.</p>	1 hour (99%)
Major	<p>Part of a major application or system is unavailable; part of a business unit is non-operational <b>and</b> no problem by-pass is available. Items assigned a priority level of "Major" will be worked on in order of priority as mutually agreed upon by Licensee and VisioLogix support personnel. <b>Major</b> items take priority over <b>Minor</b> items and shall be worked on continuously during regular business hours until a resolution is achieved.</p> <p>The PST will provide a status update daily for Major issues or more frequently if requested by customer.</p>	2 hours (99%)
Minor	<p>A problem has occurred which would normally be categorized as Critical or Major, but a problem by-pass is available. Inconvenience is increased, but functionality is not highly affected and workaround is an acceptable alternative. <b>Minor</b> items will be worked on after <b>Critical and Major</b> items have been resolved and based on priority as mutually agreed upon by VisioLogix and Licensee support personnel.</p> <p>The PST will provide a status update weekly for Minor issues or more frequently if requested by Customer.</p>	4 hours (95%)
Cosmetic	<p>A minor application, hardware component, system or service problem which does not have a serious business impact. This also includes a user perceived problem which does not require an immediate response and may be dealt with by a routine upgrade or maintenance release. Such workarounds and patches may be held in abeyance pending a combined release.</p>	4 hours (95%)

All times specified may be impacted by availability of Customer internal support, if required, to assist in investigation or resolution.

Although VisioLogix will endeavor to provide a resolution for all errors within the times indicated above, VisioLogix does not guarantee that all errors will be resolved within these times or that a Resolution will be provided at all.

VisioLogix shall have the right to modify the foregoing support policies as agreed by VisioLogix and Customer, provided (1) VisioLogix provides Customer with at least thirty (30) days written notice of such changes, and (ii) such changes do not materially diminish VisioLogix's overall technical support obligations to Customer as set forth herein

i. The following services are excluded from the Product Support Services:

- Support for software not listed in Schedule A
- End user training
- Level 1

## SCHEDULE C – APPLICATION SUPPORT

### 1 SUPPORTED SOFTWARE

The Support Services includes application support for the solution comprised of the following Software:

Software
Software defined in Schedule A
Third party software integrated with the Software

### 2 APPLICATION SUPPORT SCOPE

Application support activities are defined as the activities required to support and maintain a solution which are excluded from the scope of standard product support (Schedule B).

The Application Support scope consists of the following activities. Other related activities may be considered in scope as agreed in writing by VisioLogix and Customer.

#### Single Point of Contact

- Serve as single point of contact for application and infrastructure issues
- Receive, log, escalate and respond to inquiries from the Customer concerning infrastructure availability or connectivity concerns.
- Forward infrastructure issues to VisioLogix IT Infrastructure Support Services team on behalf of Customer.

#### System Enhancements

- Modifications to existing customizations
- New customizations/extensions
- Modifications to current configurations
- New Customer specific configurations

#### Issue Triage

- Field support questions on Customer-specific configurations and customizations.
- Serve as single point of contact for Third Party software support issues.
- Interface with VisioLogix support groups for technology issues which must be researched through the VisioLogix support team.
- Interface with Product Support and Product Team.
- Interface with Customer IT organizations and network issues
- Level 2 Application Support

#### System Maintenance

- Defect correction for Customer specific configuration and customization errors (Including Critical and non-Critical issues)
- Apply software patches and minor releases as required with appropriate documentation.
- Engage VisioLogix Hosting Center professional staff when required to support application support activities in the scope of this agreement.

Report on license compliance for Software defined in Schedule A, and notify client if license restrictions are exceeded.

### System Administration

- Support of tools and utilities.
- Perform system administration functions such as security, user/group administration, and dictionary maintenance.
- Developers to support ongoing Customer based technical modifications and enhancements.
- Support of data migration activities.

### Customer Specific Scope Items

- Provide Level 2 support for third party tools integrated with Customer's system such as publishing tools in use by Customer. Customer agrees to ensure that the third-party Vendors will provide Level 3 support to the VisioLogix support team and to ensure that VisioLogix resources are provided sufficient training on the third-party tools to provide effective Level 2 support.

## 3 APPLICATION SUPPORT SERVICE DESCRIPTION

The application support service consists of a pool of hours offered in minimum and maximum hours per month to be utilized by Customer. The Application Support Services selected by Customer are defined in Section 15, Application Support Services Parameters, of this Schedule C.

VisioLogix and the Customer can use the pool of hours to perform any of the activities described in Section 4, as long as the effort of those activities fit within the allocated pool of hours. Changes to the system are documented in a Change Control Request which will provide estimates, risks etc. and must be agreed to by a designated Customer approver and managed through an agreed change management process (including roll-out).

VisioLogix will provide the maintenance pool hours selected in Section 15 of this Schedule C for Customer to provide application support to the systems defined in Section 1 - Supported Software.

Customer may change the maintenance pool hours on a quarterly basis as agreed with VisioLogix unless otherwise agreed by VisioLogix and Customer. VisioLogix requires 30 days advance notice to change the Application Support service maintenance pool hours. Up to 90 days advance notice may be required to increase the level of the Application Support Service, depending on VisioLogix's resource availability.

If Customer desires a change in the Application Support Service, the parties will define any changes in the form of an amendment hereto.

## 4 SUPPORT FEES

The Application Support fees for the Support Period are included in the aaS payment schedule.

The application support levels may be adjusted on a quarterly basis to a level that reflects the estimated support requirements for the period. It is accepted by both parties that there will be a requirement for greater support in the pre and post go-live phases. This requirement will be reflected in the estimated support hours in Table 6 – Customer Application Support Services.

If more than the maximum hours per month of application support are required on short notice, additional support is available on a time and materials basis. Application Support service hours required in excess of those currently selected by Customer shall not be performed by VisioLogix and therefore costs will not be incurred without Customer approval.

Additional application support time will be allocated via approval of an amendment hereto by Customer and VisioLogix.

Any travel and living expenses associated with the delivery of the Services will be invoiced separately at cost.

VisioLogix Support Team Members will only travel to Customer facilities if requested by Customer in writing.

## 5 RENEWAL OF SERVICES

**Renewal of services applies to additional support services above the minimum level specified in section 16 Application Support Services of this Schedule C.**

After the initial Support Period, application support services may be renewed by Customer on an annual basis; provided that, (i) Customer pays to VisioLogix the then-current Support Fees charged by VisioLogix to its clients for the applicable renewal period on or before thirty (30) days prior to the expiration of the current annual Support Period; and (ii) VisioLogix shall not be obligated to provide support services after the Initial Term, unless otherwise mutually agreed in writing by the parties.

Prior to the commencement of each annual renewal period, VisioLogix shall be entitled to increase Support Fees to the then-current Support Fees charged by VisioLogix to its clients for Application Support and shall provide Customer with written notice of such fee increase (which written notice may be in the form of an invoice from VisioLogix for support services for the renewal period).

## 6 SUPPORT SERVICES AVAILABILITY

Application Support services availability shall be identical to the Product Support service availability defined in Schedule A.

## 7 OTHER TERMS

The terms and conditions defined in the current effective Master Services Agreement between Customer and VisioLogix shall apply to this Schedule C.

## 8 SUPPORT PROCESS

VisioLogix and Customer will follow the following process when handling application support issues

- Customer will contact the VisioLogix support team via email or telephone hotline.
- Customer will provide all relevant information regarding the problem, circumstances leading to the problem, confirmation of Customer's configuration details, and results of any investigations made, including any attempts to reproduce the problem.
- VisioLogix will log the call in the VisioLogix Call Management System, assign a Support Call Reference number, and pass this information to Customer staff for future reference.
- VisioLogix will apply the priorities defined in the Priority Level Table in Schedule B, Section h to Application Support Service issues.

If the issue is a Problem Report or System Question

- VisioLogix staff will assign a severity to the reported problem and identify the next action(s) to be taken.
- VisioLogix staff will troubleshoot and identify the most effective resolution to the issue or if needed escalate the call to the technical specialist.
- VisioLogix staff will monitor the support request until it is resolved or it is agreed with the Customer staff that no further action can be taken.

If the issue is a request to modify a Customer system (Change Request)

- VisioLogix staff will initiate the Change Control process
- The effort to implement the request will be estimated and accommodated in accordance with the change control process agreed by VisioLogix and Customer.
- VisioLogix staff and Customer will agree on an implementation schedule

If access to Customer systems is only available via a Customer supplied laptop or other hardware VisioLogix may only be able to work on a single issue at a time if access to the Customer system is required to resolve the issues.

## 9 METHODOLOGY

Any system enhancements or configuration changes work will follow the methodology defined in VisioLogix's Quality Management System.

## 10 SYSTEM CHANGE CONTROL PROCESS

VisioLogix and Customer shall follow VisioLogix's change control process.

## 11 REPORTING

Four reports will be sent to Customer via electronic mail each month – A Summary Report of all issues; an Open Issue Detail report of open issues; a Service Level Agreement Report of all service level agreement issues; and a Monthly Support Usage report.

Descriptions of the VisioLogix issue reports are listed in **Table 1 - VisioLogix Application Support Issue Reports**.

**Table 2 - VisioLogix Application Support Issue Reports**

Report	Description
Summary Report	A summary report of all Application Support issues
Open Issue Detail Report	A detail report of all non-closed Application Support issues including assigned severity level and time taken to close out issue
Service Level Agreement Report	A detail report of all Service Level Agreement incidences including assigned severity level and time taken to close out issue
Monthly Support Usage	Details on monthly usage of support hours listed by support issue

## 12 CUSTOMER RESPONSIBILITIES

Customer will designate a System Contact (Customer System Contact).

- The Customer System Contact will be responsible for managing Customer resources required to fulfill Application Support team requests.
- The Customer System Contact will serve as VisioLogix's point of contact for all Application Support Issues.
- The Customer System Contact will be trained on and will be familiar with the Customer's System as detailed in Schedule A.
- The Customer System Contact will meet with the VisioLogix Regional Support Manager (or his designee) on a monthly or other mutually agreed upon schedule.
- The Customer System Contact will manage and set priorities on all Customer issues including Change Requests.
- The Customer System Contact will escalate Application Support issues to Customer management when required.
- The Customer System Contact will request and obtain approval on any amendment to this Schedule C for additional Application Support services prior to performing additional services, if desired by Customer.

- The Customer will provide a steering committee governance body which will meet on an agreed upon schedule to monitor program performance and serve as an escalation mechanism to mitigate risk.

**13 ESCALATION PATH**

**VisioLogix Escalation Path**

The following path is defined for issues requiring escalation within VisioLogix’s management structure:

Priority	Notified Party	Responsibilities
1 <sup>st</sup> Level	VisioLogix Regional Support Manager	Involved with the daily support activities. Liaise with support team members and progress problem resolution. Accelerate escalation procedure if required.
2 <sup>nd</sup> Level	VisioLogix Global Support Manager	Main Escalation contact after Regional Support Manager has been contacted. May allocate additional resources and may agree to on-site assistance if required.

**Customer Management Escalation Path**

Customer will designate a System Manager and Program Manager. The following path is defined for issues requiring escalation within the Customer management structure:

Priority	Notified Party	Responsibilities
1 <sup>st</sup> Level	System Manager	Involved with the daily support activities. Liaise with support team members and progress problem resolution. Accelerate escalation procedure if required.
2 <sup>nd</sup> Level	Program Manager	Main Escalation contact after Regional Support Manager has been contacted. May allocate additional resources and may agree to on-site assistance if required.

**APPLICATION SUPPORT SERVICE MODELS**

**Application Support Service Description**

App Support Service	Description
Maintenance Pool-Standard	Standard 8am to 5pm Monday – Sunday Central Standard Time
Maintenance Pool-24x7	24 hours support 7 days a week excluding holidays
Maintenance Pool-International	Standard Noon to 8pm
System Replication	VisioLogix Hosted system for support issue triage. Hosted outside of production system environment
Replicated System Installation	Installation service for replica of customer system
Hosting Support	Covers single point of contact (POC), & VisioLogix Software maintenance, (including patch and maintenance release installation). Does not cover enhancements or configuration change requests.
Additional Time Zone	Additional Time zone support. One Time zone is included in base fees. Item covers support coverage in additional time zones.
24x7 Emergency Support	24x7 critical issue coverage

**Table 4 - Application Support Services**

NOTE: Table 4 - Application Support Services is a list of available Application Support Services. See the payment schedule for a list of services selected by Customer.

**Application Support Hours**

The hours available for each Application Support Maintenance Pool are listed below.

App Support Service	Starts	End	Days of Week	Time zone
Maintenance Pool-Standard	08:00	17:00	Monday-Friday	CST
Maintenance Pool-24x7	00:00	24:00	Monday-Sunday	CST
Maintenance Pool-International	12:00	20:00	Monday-Friday	CST

**Table 5 - Application Support Hours**

Monthly usage of Application support hours shall not exceed the specified **Maximum Time** for the selected Application Support Service unless agreed upon by VisioLogix and Customer.

**14 APPLICATION SUPPORT SERVICES**

Customer has selected the Application Support Services specified in Table 2 – Customer Application Support Services.

Customer has elected to have a Replicated System as defined in Section 3, Application Support Services.

The Support Period shall be the Initial Term of this Agreement.



## ACE CLOUD AND SOFTWARE AS A SERVICE AGREEMENT



The minimum support services provided will be Maintenance Pool-Standard

Customer's minimum application support services are set forth below in Table 6 – Customer Application Support Services

**Table 6 – Customer Application Support Services**

The Period Start Date and Period End Date values will be defined in a no-cost amendment to this Agreement no later than the start of Service Year 1.

Service Year 1	Support Service	Qty	Period Start Date	Period End Date
<b>Service Year 2</b>				
<b>Service Year 3</b>				
<b>Service Year 4</b>				
<b>Service Year 5</b>				

## SCHEDULE D – INFRASTRUCTURE

VisioLogix and Customer have agreed on the following services and architecture, which is based on data from Customer, industry and VisioLogix software architecture sizing worksheets, and VisioLogix Cloud Hosting procedures and sizing worksheets.

### BASE COMPONENTS:

#### **Managed Compute Services**

- Dedicated Servers
- Server Virtualization with VMware Support
- Virtual Servers
- VisioLogix Managed O/S

#### **Hosting Options: Servers and Storage**

- VisioLogix Managed Web Server Support
- VisioLogix Managed Database Support
- VisioLogix Managed Near-line Storage Support

#### **Hosting Options: Security and Networks**

- VisioLogix Managed Firewalls and Managed VPN

#### **Hosted Internet Provider Service (HIPS)**

- Local Load Balancing
- Geographic Load Balancing
- Standard Cloud Storage
- Bandwidth Measurement and Billing

### Assumptions

- VisioLogix assumes that Customer will provide the required user licenses to support the project.
- VisioLogix assumes that Customer will continue to pay support and maintenance for the user licenses. Customer will provide an appropriate high-speed network connection to the VisioLogix service center.
- Customer users will access the service via the Customer network.

### **Configuration Workbook**

The specific environment and services purchased by Customer under this Agreement is as described in Attachment 1 to this Schedule D.

## INFRASTRUCTURE SERVICE LEVEL AGREEMENTS

Customer's Availability SLAs are set forth in this section.

The hosting architecture shown in this Agreement has been designed to achieve the following Availability SLA: The Availability SLA for ACE Cloud and aaS via VisioLogix Data Center and Microsoft Azure Government is 99.9% uptime, which means the applicable infrastructure shall not be unavailable for more than forty-three (43) minutes in the applicable month.

Availability will be based on a Customer's cumulative outages over a calendar month

The Availability SLA(s) stated above will be effective once installation of the Services indicated in Attachment No. 1 "Customer Configuration" is complete.

The components shown in this Agreement have been designed to provide the following Recovery Time Objective:

- Under normal operation 24 hours.

The components shown in this Agreement have been designed to provide the following Recovery Point Objective:

- Under normal operation 48 hours.

### Excused Downtime from SLA Calculations

The Customer's Site shall be considered available to the extent any downtime is due to:

- regularly scheduled maintenance or service upgrades;
- intentional shutdowns due to emergency interventions and/or responses to security incidents;
- problems with third-party components for which fixes have not been provided by the VisioLogix;
- content residing on the Customer's hosting environment;
- customer-managed hardware or software;
- configuration changes initiated by the Customer;
- the Customer's failure to observe VisioLogix Hosting security and upgrade policies; or
- any outages caused by VisioLogix application support described in Schedule B
- any cause outside of VisioLogix's control.

Customer will be entitled to a single one thousand US dollar (\$1,000) credit against the applicable monthly recurring charges for any calendar month in which a client's Site is unavailable and/or for any calendar month that VisioLogix fails to Respond or Notify the client according to the SLAs stated above.

### Bandwidth Measurement and Billing

For Cloud and Software as a Service, VisioLogix is providing shared bandwidth of 100MB and customer will have the option to purchase dedicated bandwidth based on the Standard Infrastructure Hosting measurement and billing.

For Standard Infrastructure Hosting, VisioLogix will provide hosting bandwidth of 64 MB. The bandwidth usage is measured within the VisioLogix infrastructure in 15-minute intervals throughout the month. Of those measurements the largest 5% is discarded. If the resulting usage for that month exceeds the hosting bandwidth of 64 MB the usage is rounded up to the next bandwidth increment in MB and Customer is charged price associated with the commitment level plus the price for additional bandwidth. If the resulting usage for that month does not exceed the hosting bandwidth of 64 MB, Customer is charged only the price associated with the commitment level. Usage

shall be measured and charged at the current rate card pricing of \$125.00 per 1.0 Mbps per month. Bandwidth is calculated and reported monthly. Charges are billed to Customer quarterly based on payment schedule.

- VisioLogix is providing hosting bandwidth of 64 MB and will have the ability to burst 100 MB based on Customer demand. Customer can increase or decrease the hosting bandwidth amount at any time through the change order process
- VisioLogix uses the 95th Percentile Method to determine Customer's bandwidth usage (the 95th percentile says that 95% of the time, the usage is at or below the hosting bandwidth amount. Conversely, 5% of the month, Customer's usage may be bursting above this rate without additional charges.). A further description of how the 95<sup>th</sup> percentile bandwidth is calculated is listed below.
- Bandwidth usage is measured at interfaces (known as Billing Point Interfaces or BPIs) on infrastructure equipment that provide Internet connectivity to equipment dedicated to Customer. VisioLogix takes the measurements at the Catalyst switch ports, that is, the network switches. These points that logically separate client-specific devices from the network infrastructure. This means that the measurement is taken within the VisioLogix infrastructure.
- When establishing the hosting architecture, VisioLogix indicates the BPIs for that solution. Customer then groups the BPIs into one or more Billing Aggregation Groups ("BAGs") and selects a bandwidth commitment level for each BAG based on the expected usage for all of the devices that are associated with that BAG.
- VisioLogix measures the input and output traffic volume at the BPIs in 15-minute intervals. For each 15-minute period of the month, the input and output traffic of all the BPIs in a BAG are added together.
- The samples for the BAG are sorted in order of numerical value. The top 5% of the samples (those with the highest values) are then discarded. The value of the largest remaining sample is chosen. This is the 95th percentile bandwidth usage for that BAG for that month. Customer's usage for the BAG is rounded up to the next bandwidth increment in MB.
- If Customer's actual usage in a given month is less than or equal to the commitment level, (in this case, 64 MB), Customer will be charged the price associated with the commitment level. If the actual usage exceeds Customer's commitment level, (more than 64 MB), VisioLogix will charge Customer the price associated with Customer's commitment level PLUS the price for the additional bandwidth increments used by Customer over and above the commitment level.
- Usage shall be measured, reported and charged at the current rate card pricing of \$125.00 per 1.0 Mbps per month through the term of the contract. Bandwidth is calculated monthly in arrears. Calculations can be reported monthly to Customer if desired. Charges are billed to Customer quarterly based on payment schedule.