

Viziotix

Terms and Conditions for Trial Software

ABOUT

This Trial Agreement governs the use of Viziotix Software for Free-Trials to allow Licensees to evaluate the suitability of the Software for use in an application, product or solution under their own development. The Licensor is Viziotix (Us or We) and the Licensee (You or Your) is the integrator or evaluator of the Software (each a Party and together The Parties).

This Trial Agreement provides the legally binding terms and conditions which are applicable to your evaluation of Viziotix Software (Trial System) for the limited Term. The Agreement is between You and Viziotix and it defines the conditions under which You may use the Trial System for testing and evaluation to assess its suitability for Your application, product or solution only. It is important that you read and understand these conditions. IN ACCEPTING THE AGREEMENT, DURING THE REGISTRATION AND DOWNLOAD PROCESS, YOU CONFIRM THAT YOU HAVE READ AND UNDERSTOOD THE AGREEMENT AND ANY OTHER DOCUMENTS REFERRED TO HEREIN, INCLUDING WITHOUT LIMITATION OUR PRIVACY POLICY ([LINK](#)) AND SOFTWARE SPECIFICATION ([LINK](#)) AND THAT YOU AGREE TO BE BOUND BY THIS AGREEMENT. Consequently, if you do not accept or understand the terms, please do not use, download, access or register for the Trial System. If you do not agree to this Agreement, you are not entitled to use the Trial System and you must immediately uninstall and delete all copies of the Software.

You confirm that you have the right, authority and capacity to accept this Agreement and to abide by the terms.

These terms are current as of 24th January 2022

You are contracting with Viziotix S.A.S. a company registered in France at 2 rue Saint Exupéry, Apt 13, 31750 ESCALQUENS, France.

AGREEMENT

1. Definitions

1.1 In this Agreement, except to the extent expressly provided otherwise:

"**Activation**" means the first usage of the License Key and the Software on a new hardware device;

"**Business Day**" means any weekday;

"**Business Hours**" means the hours of 09:00 to 17:00 CET on a Business Day;

"**Confidential Information**" means all information related to this Agreement including Fees and commercial terms, performance data, personal data, technical data shared by the Parties, License Keys, emails and the documents specific to this Agreement;

"**Documentation**" means the documentation for the Software produced by the Licensor and delivered or made available by the Licensor to the Licensee;

"**Finished Application**" means the solution, application or executable software belonging to the Licensee that integrates the Software;

"**Force Majeure Event**" means events beyond the control of the Parties, for example, but not limited to, the occurrence of a natural disaster, strikes, utility breakdowns, internet service provider breakdowns or an act of terrorism or war;

"**Free Trial Version**" means a free trial version of the Software supplied as an executable or SDK, without warranty, for a limited duration to allow You to test and ensure that the Software performance conforms to Your requirements;

"**Intellectual Property Rights**" means all intellectual property rights wherever in the world, whether registrable or unregistrable, registered or unregistered, including any application or right of application for such rights (and these "intellectual property rights" include copyright and related rights, database rights, confidential information, trade secrets, know-how, business names, trade names, trademarks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models and rights in designs);

"**License Key**" means the data string provided by the Licensor that verifies authorized Software product access;

"**License**" means the rights, limits and obligations defined in the Agreement required by the Licensor on the Licensee to use the Software for a defined Term;

"**Licensee**" means You or the customer who purchases a License to use the Software;

"**Licensor**" means Us or Viziotix SAS as the owner of the Software;

"**Privacy Policy**" means the Viziotix Privacy Policy that defines what data is stored and how it is used and is available via the Viziotix.com website;

"**Registration**" means the process to request and deliver the software and License Key for a trial. This process is complete when We provide the License Key;

"**Software**" means the Viziotix Software component or application provided as an executable or SDK by the Licensor;

"**Software Defect**" means a defect, error or bug in the Software having an adverse effect on operation, functionality or performance of the Software, but excluding any defect, error or bug caused by or arising as a result of:

- (a) any act or omission of the Licensee or any person authorized by the Licensee to use the Software;
- (b) any use of the Software contrary to the Documentation by the Licensee or any person authorized by the Licensee to use the Software;
- (c) a failure of the Licensee to perform or observe any of its obligations in this Agreement; and/or
- (d) an incompatibility between the Software and any other system, network, application, program, hardware or software not specified as compatible in the Software Specification;

"**Software Specification**" means the specification for the Software set out in the document that forms part of this Agreement;

"**Support**" means the services (help and assistance) and updates provided by the Licensor to Licensees (or potential Licensees) to enable integration and effective usage of the Software.

"**Term**" means the limited Free Trial period in days or months granted by the Licensor to the Licensee to evaluate the Software under this Trial License Agreement;

"**Trial License Agreement**" or "**Agreement**" means the entire agreement between the Licensor and the Licensee including these Terms and Conditions for Trial Software and the associated Privacy Policy and Software Specification.

"**Trial System**" means the package of Software, Documentation and any Support provided by the Licensor to the Licensee.

2. **Term**

- 2.1 The Term of this agreement is 30 days beginning on the date of completion of Registration. If the parties mutually agree to extend the trial Term, then the Term of this agreement is also extended to the new agreed period.

3. **Supply of Software**

- 3.1 The Licensor shall make the Software available for download by the Licensee on the completion of the email confirmation process via the Licensor's website and shall provide to the Licensee a License Key to activate the Software.

4. **Software License**

- 4.1 Subject to the terms of this Trial License Agreement, the Licensor hereby grants to the Licensee, from the date of Activation until the end of the Trial Period, at no cost, a limited, non-exclusive, non-transferable, revocable, non-sub-licensable and world-wide license to:

- (a) Download, integrate or install, the Software for the purposes of development and evaluation only for Your planned system, solution or application;
- (b) Use the Trial System only in your development and evaluation. The Trial System should not be distributed in any system, solution or Finished Application to your affiliates, customers or any third party. Any redistribution of the Software as licensed, or in the form of a re-linkable library, or in a similar form shall be prohibited;
- (c) Use the Software for development and evaluation in your system, solution or application if You hold a valid and effective license pursuant to the terms and conditions hereof which has not been terminated, revoked or expired,

subject to the limitations and prohibitions set out and referred to in this Section 4.

- 4.2 The Trial License granted by the Licensor to the Licensee in Section 4.1 is subject to limitations including but not limited to the number of installations (defined as the number of Activations) and any other usage limits set or required by the Licensor which may be varied at any time at the sole discretion of the Licensor.
- 4.3 The Licensee may not sub-license and must not purport to sub-license any rights granted under Section 4.1 without the prior written consent of the Licensor.
- 4.4 The Software may only be used and evaluated by Your officers, employees and sub-contractors that are specifically contracted to you for the purpose of evaluation and development. The Licensee shall ensure that all users are aware of and comply with the terms of the Agreement.
- 4.5 Save to the extent expressly permitted by this Agreement or required by applicable law on a non-excludable basis, any license granted under this Section 4 shall be subject to the following prohibitions:
 - (a) the Licensee must not sell, resell, rent, lease, loan, supply, publish, distribute or redistribute the Trial System;
 - (b) the Licensee must not decompile, de-obfuscate or reverse engineer, or attempt to decompile, de-obfuscate or reverse engineer, the Software.
- 4.6 The Licensee agrees that the Software requires a valid License Key from the Licensor for the use of the Software. The Licensee accepts the need to use a valid license key and agrees to replace this key with any new License Key that the Licensor demands. The Licensor will not have any liability to the Licensee related to any delay or failure to update a License Key or for any error in the License Key but will use best efforts to ensure the provision of a valid License Key.
- 4.7 The Licensee shall be responsible for the security of License Keys of the Software supplied to the Licensee under this Agreement and shall use all reasonable endeavors (including all reasonable security measures) to ensure that access to such license keys is restricted to persons authorized to use them under this Agreement. The Licensee shall not allow access to the keys or the Software to any third party.
- 4.8 The Licensee shall use a separate License Key for each agreed system, solution or Finished Application. Two or more different applications running on the same device will each require unique License Keys.
- 4.9 The Licensee shall be responsible for their system, solution or application including functionality, specification, look and feel, updates and maintenance for any and all aspects
- 4.10 The Licensee is responsible and liable for compliance with the Agreement and any breach thereof by anyone that the Licensee gives access to the Software or License.
- 4.11 The Licensee accepts that the License Key requires intermittent internet connection to validate its use and to send usage data, as defined in the Privacy Policy, to the Licensor and its service providers.
- 4.12 The Software may use open-source components from third party open-source licenses. The list of open-source components used in the Software is provided to the Licensee in the Documentation and in the Software SDK deliverable.

5. No assignment of Intellectual Property Rights

- 5.1 Nothing in this Agreement shall operate to assign or transfer any Intellectual Property Rights from the Licensor to the Licensee, or from the Licensee to the Licensor.

The Software, source code, know-how, trade secrets, any materials used to provision the Software or related services, and all intellectual property rights, title and interest remains the property of the Licensor, or our licensors

6. Warranty, Liability and Indemnity

- 6.1 The Licensor warrants to the Licensee that it has the legal right and authority to enter into this Agreement and to perform its obligations under this Agreement.
- 6.2 Licensor warrants that it has the right to grant temporary use by Licensee of the Trial System. LICENSOR MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
- 6.3 WITHOUT REGARD TO WHETHER A CLAIM IS BASED ON CONTRACT OR TORT, INCLUDING NEGLIGENCE, IN NO EVENT SHALL LICENSOR OR ITS SUPPLIERS BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL

DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES RESULTING FROM LOSS OF PROFITS, DATA OR BUSINESS ARISING OUT OF OR IN CONNECTION WITH THIS TRIAL LICENSE AGREEMENT, EVEN IF LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

6.4 The Trial System is therefore provided "as is" and is provided with NO WARRANTY or LIABILITY.

6.5 Indemnity. The Licensor makes no representation or warranty to the Licensee that the Software and Trial System shall not infringe any intellectual property rights including, without limitations, claims arising from patent, copyright, trademark, trade secret, or other intellectual property infringement.

If the Licensor reasonably determines, or any third party alleges, that the use of the Software and Trial System by the Licensee in accordance with this Agreement infringes any person's Intellectual Property Rights, the Licensor may, acting reasonably at its own cost and expense:

- (a) modify the Software in such a way that it no longer infringes the relevant Intellectual Property Rights, providing that any such modification must not introduce any Software Defects into the Software and must not result in the Software failing to conform with the Software Specification; or
- (b) procure for the Licensee the right to use the Software in accordance with this Agreement; or
- (c) request that the Licensee stop using the Software and terminate the applicable trial Term. In this case the Licensor will terminate the License.

6.6 The Licensee warrants to the Licensor that it has the legal right and authority to enter into this Agreement and to perform its obligations under this Agreement.

6.7 Licensee shall indemnify and hold Licensor, as well as its employees, affiliates, successors in business, partners and customers (in each case including their agents and employees) harmless from and against any damages by any third-party claim that alleges Intellectual Property infringement by the Licensee's product, system or Finished Application or asserted as a consequence of Licensee's breach of its obligations based on Licensee's use of the Software, including any Damages resulting from that claim, the cost of complying with any preliminary or permanent injunction, and all other costs of defense (including the attorneys' fees and costs), in connection with the foregoing.

6.8 All of the Parties' warranties and representations in respect of the subject matter of this Agreement are expressly set out in this Agreement. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NO OTHER WARRANTIES OR REPRESENTATIONS CONCERNING THE SUBJECT MATTER OF THIS AGREEMENT WILL BE IMPLIED INTO THIS AGREEMENT OR ANY RELATED CONTRACT.

7. Acknowledgements and warranty limitations

7.1 The Licensee acknowledges that complex software is never wholly free from Software Defects, errors and bugs; and subject to the other provisions of this Agreement, the Licensor gives no warranty or representation that the Software will be wholly free from Software Defects, errors and bugs.

7.2 The Licensee acknowledges that complex software is never entirely free from security vulnerabilities; and subject to the other provisions of this Agreement, the Licensor gives no warranty or representation that the Software will be entirely secure.

7.3 The Licensee acknowledges that the Software is only designed to be compatible with that software and hardware specified as compatible in the Software Specification; and the Licensor does not warrant or represent that the Software will be compatible with any other software or hardware.

7.4 The Licensee acknowledges that except to the extent expressly provided otherwise in this Agreement, the Licensor does not warrant or represent that the Software or the use of the Software by the Licensee will not give rise to any legal liability on the part of the Licensee or any other person. THE LICENSEE ACCEPTS THE RESPONSIBILITY TO ENSURE THAT THE USAGE OF THE SOFTWARE IS SAFE AND CAUSES NO HARM. THE LICENSEE ACCEPTS THAT BARCODE AND COMPUTER VISION TECHNOLOGIES ARE NOT 100% EFFICIENT OR ACCURATE AND THAT THE LICENSOR WILL HAVE NO RESPONSIBILITY OR LIABILITY FOR THE RESULTS OBTAINED FROM THE USE OF THE SOFTWARE.

8. Limitations and exclusions of liability

8.1 Nothing in this Agreement will:

- (a) limit or exclude any liability for death or personal injury resulting from negligence;
- (b) limit or exclude any liability for fraud or fraudulent misrepresentation;

- (c) limit any liabilities in any way that is not permitted under applicable law; or
 - (d) exclude any liabilities that may not be excluded under applicable law.
- 8.2 The limitations and exclusions of liability set out in this Section 8 and elsewhere in this Agreement:
- (a) are subject to Section 8.1; and
 - (b) govern all liabilities arising under this Agreement or relating to the subject matter of this Agreement, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty, except to the extent expressly provided otherwise in this Agreement.
- 8.3 Neither Party shall be liable to the other Party in respect of any loss of profits or anticipated savings.
- 8.4 Neither Party shall be liable to the other Party in respect of any loss of revenue or income.
- 8.5 Neither Party shall be liable to the other Party in respect of any loss of use or production.
- 8.6 Neither Party shall be liable to the other Party in respect of any loss of business, contracts, opportunities or goodwill or any kind.
- 8.7 Neither Party shall be liable to the other Party in respect of any loss or corruption of any data, database or software.
- 8.8 Neither Party shall be liable to the other Party in respect of any special, indirect or consequential loss or damage.
- 9. Termination**
- 9.1 LICENSOR MAY TERMINATE THIS TRIAL LICENSE AGREEMENT AT ANY TIME WITH OR WITHOUT CAUSE AND WITHOUT GIVING NOTICE OF TERMINATION TO LICENSEE. The Trial License Agreement and the associated License Key will terminate automatically at the end of the trial Term. Anything to the contrary herein notwithstanding, immediately upon such termination Licensee shall stop using the Software and immediately uninstall and delete all copies of the Software.
- 10. Effects of termination**
- 10.1 All provisions hereof relating to proprietary rights, confidentiality and non-disclosure, indemnification and limitation of liability shall survive the completion of the Term or any earlier termination of this Trial License Agreement.
- 10.2 For the avoidance of doubt, the licenses of the Software in this Agreement shall terminate upon the termination of this Agreement; and, accordingly, the Licensee must immediately cease to use the Software upon the termination of this Agreement.
- 11. Notices**
- 11.1 Any notice from one Party to the other Party under this Agreement must be given by one of the following methods (using the relevant contact details set out in Section 11.2):
- (a) delivered personally or sent by courier, in which case the notice shall be deemed to be received upon delivery; or
 - (b) sent by email in which case the notice shall be deemed to be received upon reception, providing that, if the stated time of deemed receipt is not within Business Hours, then the time of deemed receipt shall be when Business Hours next begin after the stated time.
- 11.2 The Parties' contact details for notices under this Section 11 are as follows:
- (a) in the case of notices sent by the Licensee to the Licensor, legal@viziotix.com; or the registered postal address
 - (b) in the case of notices sent by the Licensor to the Licensee, the contact details will be the email supplied in request for the Software Trial System, which the Licensee will notify changes to the Licensor as necessary.
- 11.3 The addressee and contact details set out in Section 11.2 may be updated from time to time by a Party giving written (including email) notice of the update to the other Party in accordance with this Section 11.
- 12. General**
- 12.1 Privacy and usage data. The Licensee acknowledges and accepts that certain data (usage data and personal data) is transmitted to the Licensor or its service providers. The treatment of the data is described in the Privacy Policy.

- 12.2 THE LICENSEE MUST NOT SHARE ANY TEST OR BENCHMARK DETAILS OF THE SOFTWARE WITH ANY OTHER PARTIES. In the context of evaluating the Software and business discussions, the Parties will grant each other access to certain information and materials, including, but not limited to, evaluation software, the business, commercial offers, source codes, trade and business secrets, know-how, data and products of the other Party, that are confidential (the "Confidential Information"); The value of this would be impaired if such Confidential Information is disclosed to third parties. The Parties shall maintain and protect the confidentiality of Confidential Information in the same manner in which they protect their own Confidential Information of a similar nature. The Parties will take necessary precautions to protect and maintain the confidentiality and non-disclosure of Confidential Information. Notwithstanding any other provision hereof, Confidential Information shall not include any information that: (i) is or subsequently becomes public domain through no fault of the disclosing Party; (ii) is already known to the disclosing Party at the time of its disclosure; (iii) is rightfully received by the disclosing Party from a third party without restriction on disclosure; (iv) has demonstrably been developed independently by the disclosing Party. The Parties' confidentiality obligation shall survive the end of the Parties' business relationship without limitation in terms of time.
- 12.3 No breach of any provision of this Agreement shall be waived except with the express written consent of the Party not in breach.
- 12.4 If any provision of this Agreement is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions of this Agreement will continue in effect. If any unlawful and/or unenforceable provision would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the provision will continue in effect (unless that would contradict the clear intention of the Parties, in which case the entirety of the relevant provision will be deemed to be deleted).
- 12.5 This Agreement may not be varied except by a written document signed by or on behalf of each of the Parties.
- 12.6 Accept as permitted herein, neither Party may without the prior written consent of the other Party, not to be unreasonably withheld, assign, transfer, charge, license or otherwise deal in or dispose of any contractual rights or obligations under this Agreement. Notwithstanding the foregoing, the Licensor may at any time upon notice to the Licensee assign or otherwise transfer the Licensor's rights and obligations under the Agreement to any of its affiliates or successors in business. The Licensor may further at any time involve any of its affiliates as subcontractors under the Agreement.
- 12.7 This Agreement is made for the benefit of the Parties, and is not intended to benefit any third party or be enforceable by any third party. The rights of the Parties to terminate, rescind, or agree any amendment, waiver, variation or settlement under or relating to this Agreement are not subject to the consent of any third party.
- 12.8 This Agreement with its documents and their appendices shall constitute the entire Agreement between the Parties in relation to the subject matter of this Agreement, and shall supersede all previous agreements, arrangements and understandings between the Parties in respect of that subject matter whether in writing or oral, relating to the subject-matter hereof.
- 12.9 Force Majeure. Neither Party shall have any liability to the other Party if the Party is unable to perform its obligations due to a Force Majeure Event.
- 12.10 This Agreement shall be governed by and construed in accordance with the laws of France.
- 12.11 The courts of France shall have exclusive jurisdiction to adjudicate any dispute arising under or in connection with this Agreement.
- 13. Interpretation**
- 13.1 The Section headings do not affect the interpretation of this Agreement.
- 13.2 In this Agreement, general words shall not be given a restrictive interpretation by reason of being preceded or followed by words indicating a particular class of acts, matters or things.

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