



IxANVL Source Code License Agreement

This IxANVL Source Code License Agreement (this “Agreement”) is a legal agreement between You and Ixia, a California corporation (“Licensor”), and governs Your possession and use of the Software and the Documentation. (The terms “You”, “Your”, “Software”, and “Documentation” are each defined below.) By checking and/or clicking “I Accept” or any similar box or button at the beginning of the Software download or installation process, by installing the Software or having the Software installed (for example, and not by way of limitation, by permitting Licensor to install the Software on hardware owned, controlled, or operated by You), by using the Software, by downloading the Software, and/or by activating the Software with any associated license key, as applicable, You are entering into this Agreement and agreeing to all of the terms and conditions contained herein. If You do not want to enter into this Agreement and do not agree to be bound by all of the terms and conditions contained herein, You must not download, install, activate, or use the Software in any way, and You must not check and/or click “I Accept” or any similar box or button associated with this Agreement during the Software installation, activation, or downloading process. If You have paid the applicable license fee for the Software but chose to not enter into this Agreement, You should promptly notify the vendor that provided the Software to You.

1. DEFINITIONS. For purposes of this Agreement (including but not limited to the paragraph above), the following terms shall have the following meanings:

- 1.1. “Confidential Information” shall mean any information relating to or disclosed in the course of the performance of this Agreement, which is or should be reasonably understood to be confidential or proprietary to the disclosing party or is otherwise marked “Confidential” or “Proprietary” or with words of similar import. For the avoidance of doubt, the Source Code, the Documentation, and any Derivative Works are the Confidential Information of Licensor.
- 1.2. “Derivative Work” shall mean source code that constitutes a derivative work (as defined in Title 17, United States Code, Section 101) of the Source Code and that is created by You.
- 1.3. “Documentation” shall mean any written, explanatory materials provided to You in connection with this Agreement and relating to the operation or use of the Software, and any copies thereof.
- 1.4. “Effective Date” shall mean the first date on which You enter into this Agreement in accordance with the first paragraph set forth above.
- 1.5. “Intellectual Property Rights” shall mean any and all patent rights, copyrights, mask rights, trademarks, trade names, and service marks, any and all registrations of and applications for registration of any of the foregoing, any and all rights in trade secrets and/or know-how, and any and all other intellectual or industrial property rights recognized in any jurisdiction now or in the future.



- 1.6. "Object Code" shall mean any machine executable code that is created by compiling any Source Code or Derivative Work.
- 1.7. "Software" shall mean all IxANVL software provided to You in connection with this Agreement and any updates thereto provided to You from time to time, as well as copies of any of the foregoing.
- 1.8. "Source Code" shall mean any human readable code that constitutes part of the Software.
- 1.9. "Transfer" shall mean sell, assign, license, rent, lease, lend, distribute, or otherwise transfer or convey to any third party.
- 1.10. "You" and "Your" refers to the legal entity that has purchased one or more licenses to the Software, and whose employee, agent, or representative enters into this Agreement on its behalf.

2. LICENSE AND RESTRICTIONS

- 2.1 SOFTWARE LICENSE. Subject to all terms and conditions of this Agreement, Licensor hereby grants to You a limited, non-exclusive, non-transferable, non-sublicensable right and license to install and use the Software only on the computer(s) for which You have a purchased a license. If You purchased a license for the Software that *is not* identified on Your invoice as a "floating" license then, for each such license purchased (each, a "Node-Locked License"), the Software may be installed only on one workstation, and may be used by only one user at a time. For Software licensed to You pursuant to a Node-Locked License, You must contact Ixia to move the Software between workstations. If You purchased a license for the Software that *is* identified on Your invoice as a "floating" license (a "Floating License"), then You may install the Software on an unlimited number of workstations, and you may view and compile the Source Code on an unlimited number of workstations, *but* you may only execute the Object Code simultaneously on the number of workstations for which you have purchased Floating License seats (with one user at a time per such workstation). Notwithstanding the foregoing or anything herein to the contrary, any license management software provided in connection with a Floating License and as part of the Software may be installed and used only on a single computer server.
- 2.2 DOCUMENTATION LICENSE. Subject to the terms and conditions of this Agreement, Licensor hereby grants to You a limited, non-exclusive, non-transferable, non-sublicensable right and license to copy, and to distribute and use internally, the Documentation solely for so long as Your license to use the Software under Section 2.1 above is in effect, and solely to facilitate Your internal use of the Software.
- 2.3 DERIVATIVE WORKS. Subject to the terms and conditions of this Agreement, You are hereby granted a limited, non-exclusive, non-transferable, non-sublicensable right and license to create Derivative Works. Ownership of all such Derivative Works shall immediately and automatically be transferred to Licensor pursuant to Section 2.4 below. Your possession



and use of all Derivative Works shall be subject to all of the terms, conditions, and limitations in this Agreement that govern Your possession and use of the Source Code.

2.4. LIMITATIONS.

- 2.4.1.** Except as expressly set forth in Section 2.1, 2.2, or 2.3 above, You shall have no rights in, or licenses with respect to, the Software, the Documentation, or any Derivative Work. The licenses and rights granted hereunder are revocable by Licensor in accordance with this Agreement. Licensor reserves all rights not expressly granted herein.
- 2.4.2.** In no event may You Transfer all or any part of the Software, the Documentation, or any Derivative Work, whether by operation of law or otherwise, without the prior written consent of the Licensor.
- 2.4.3.** You shall prevent any unauthorized third parties, persons, or entities from copying, reproducing, duplicating, examining, inspecting, studying, and/or reviewing any Software, Documentation, or Derivative Work. You hereby agree to promptly notify Licensor of the possession or use of any Software, Documentation, or Derivative Work by any person, firm, or organization not authorized by this Agreement to possess or use such Software, Documentation, or Derivative Work, and to cooperate with Licensor and its representatives in any investigation of and/or litigation against such person, firm, or organization.
- 2.4.4.** You shall not remove any proprietary notices, labels, or marks from the Software or the Documentation, and each copy made as permitted hereunder must reproduce all existing proprietary notices, labels, and marks.
- 2.4.5.** You may make copies of the Software only as reasonably necessary to exercise Your rights and licenses expressly granted in Sections 2.1, 2.2, and 2.3 above (including as reasonably needed for backup and/or archival purposes).
- 2.4.6.** To the maximum extent permitted by applicable law, You may not, under any circumstances, reverse engineer, decompile, disassemble, or otherwise attempt to discover, reconstruct, or identify the source code for any object code that is provided as part of the SOFTWARE (the “Licensed Binaries”) or any user interface techniques, algorithms, logic, protocols, or specifications included, incorporated, or implemented therein. Furthermore, to the maximum extent permitted by applicable law, You may not, except as expressly authorized by Licensor in the Documentation, modify, port, translate, or create derivative works of the Licensed Binaries.

- 2.5. GRANT-BACK.** Notwithstanding anything else in this Agreement to the contrary, immediately upon creation of any Derivative Work You agree to, and do hereby, assign and transfer to Licensor all of Your rights, title, and interest in and to such Derivative Work (including but not limited to all Intellectual Property Rights therein or associated therewith). Licensor may in



its sole discretion choose to apply for applicable intellectual property or proprietary protection of any Derivative Work and You hereby agree to cooperate fully with Licensor in executing and delivering such documents and in taking such other actions as Licensor may reasonably request in order to effect, evidence, and/or perfect such assignment to Licensor and in order for Licensor to apply for and obtain such intellectual property or proprietary protection. If You fail to fulfill Your obligations in the preceding sentence within ten (10) days following Licensor's written request therefor, Licensor automatically shall be deemed Your attorney-in-fact (which agency shall be deemed coupled with an interest) with full right, power, and authority to execute and deliver (or procure the execution and delivery of) any such documents, and to take any such further actions, in Your name and on Your behalf. Upon Licensor's written request from time to time, You shall promptly inform Licensor of each Derivative Work that has been created and provide a copy of such Derivative Work to Licensor.

2.6. OWNERSHIP. The Software and the Documentation are copyrighted and protected by the laws of the United States and other countries and international treaty provisions. You acknowledge and agree that as between the parties hereto, Licensor is and shall remain the sole and exclusive owner of all right, title, and interest in and to the Software and the Documentation, and in and to any and all Intellectual Property Rights associated therewith, and any and all updates, upgrades, modifications, changes, alterations, edits, conversions, improvements, enhancements, derivative works, or the like to the Software or the Documentation. You shall not attempt to register any copyrights, register any trademarks or service marks, or apply for any patent or other intellectual property protection for the Software, Derivative Works, or Documentation, or any portion thereof. You acknowledge and agree that You shall receive no title or other interest therein except the licenses and rights expressly granted by this Agreement. Such grants are not sales.

2.7. INJUNCTIVE RELIEF. You acknowledge and agree that any actual or threatened breach by You of Your obligations in this Section 2 or in Section 4 below shall subject Licensor to the risk of serious and irreparable harm, for which any remedy or damages at law may be inadequate, and You further agree that, in such event, Licensor shall be entitled to temporary, preliminary, and permanent injunctive relief, which shall be in addition to and not in derogation of any other remedies which may be available as a result of such actual or threatened breach.

3. LICENSE FEE. In consideration for the licenses and rights granted to You under this Agreement, You shall pay a paid-up software license fee in accordance with the terms set forth in Your invoice.

4. CONFIDENTIALITY

4.1. SCOPE. You acknowledge that You are receiving Confidential Information of the Licensor. You agree to hold all such Confidential Information in strict confidence and to not disclose it to any third party without the prior express written consent of the Licensor. You shall use the same or a greater degree of care in safeguarding the Confidential Information of the Licensor as You use for Your own most confidential and/or proprietary information, but in no event using less than a reasonable degree of care.



- 4.2. EXCEPTIONS.** The obligations in Section 4.1 above shall not apply to information: (i) already lawfully known by You and not subject to other confidentiality obligations; (ii) disclosed in lawfully published materials that are made generally available to the public; (iii) generally known to the public; (iv) lawfully obtained from any third party that is not acting in violation of any confidentiality obligations to Licensor or a third party; or (v) required to be disclosed pursuant to applicable law, provided that Licensor is provided an opportunity to contest the need for such disclosure or otherwise seek a protective order to limit disclosure thereof.

5. WARRANTIES; LIMITATION OF LIABILITY

- 5.1. LICENSOR WARRANTY.** Licensor provides a limited twelve-month warranty with respect to the Software, the terms and limitations of which are set forth in Licensor's 12-Month Limited Warranty and Technical Support Services Agreement (the "Warranty Agreement"). A copy of the Warranty Agreement is available at http://www.ixiacom.com/support/terms_and_conditions. The Warranty Agreement is incorporated herein by reference. Upon expiration of the warranty period specified in the Warranty Agreement, You may purchase from Licensor extended warranty coverage if available, pursuant to the terms on which such warranty coverage is then available. In the event of any discrepancies or conflicts between the terms and conditions of this Agreement and those of the Warranty Agreement, the terms and conditions of this Agreement shall govern.

- 5.2. NO OTHER LICENSOR WARRANTIES.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT AS EXPRESSLY SET FORTH IN THE WARRANTY AGREEMENT, ALL SOFTWARE AND DOCUMENTATION PROVIDED IN CONNECTION WITH THIS AGREEMENT IS PROVIDED "AS IS", AND LICENSOR AND ITS SUPPLIERS DO NOT MAKE AND SPECIFICALLY DISCLAIM (A) ALL EXPRESS AND IMPLIED WARRANTIES OF EVERY KIND RELATING TO THE SOFTWARE, THE DOCUMENTATION, AND/OR ANY USE OF THE SOFTWARE OR THE DOCUMENTATION (INCLUDING, WITHOUT LIMITATION, ANY EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT), AND (B) ANY EXPRESS OR IMPLIED WARRANTIES THAT THE SOFTWARE OR THE DOCUMENTATION (OR ANY ELEMENTS THEREOF) WILL ACHIEVE A PARTICULAR RESULT OR WILL BE UNINTERRUPTED OR ERROR-FREE.

- 5.3. YOUR WARRANTIES.** You represent and warrant that:

- 5.3.1.** You have full power and authority to enter into this Agreement, to perform Your obligations hereunder, and to consummate the transactions contemplated hereby;

- 5.3.2.** All of Your employees and representatives shall be bound by the terms and conditions of this Agreement, and You shall take reasonable steps to ensure all such employees and representatives comply with such terms and conditions;



5.3.3. The execution and delivery of this Agreement by You, the performance by You of Your obligations hereunder, and Your consummation of the transactions contemplated hereby, have been duly and validly authorized by all necessary corporate or other action; and

5.3.4. This Agreement constitutes a legal, valid, and binding obligation on Your part, enforceable in accordance with its terms, except as limited by applicable bankruptcy, insolvency, moratorium, reorganization, or other laws affecting creditors' rights and remedies generally.

5.4. LIMITATION OF LIABILITY. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL LICENSOR OR ANY OF ITS SUPPLIERS BE LIABLE UNDER ANY THEORY OF LIABILITY FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES OF ANY KIND (INCLUDING, WITHOUT LIMITATION, DAMAGES ARISING FROM LOSS OF PROFITS, REVENUE, DATA, OR USE, OR FROM INTERRUPTED COMMUNICATIONS OR DAMAGED DATA, OR IN CONNECTION WITH CUSTOMER'S ACQUISITION OF SUBSTITUTE GOODS OR SERVICES, OR ANY SUCH DAMAGES ARISING FROM BREACH OF CONTRACT OR WARRANTY, OR FROM NEGLIGENCE OR STRICT LIABILITY), EVEN IF LICENSOR OR ANY OTHER PERSON HAS BEEN ADVISED OR SHOULD KNOW OF THE POSSIBILITY OF SUCH DAMAGES. WITHOUT LIMITING THE FOREGOING, LICENSOR'S MAXIMUM AGGREGATE LIABILITY IN CONNECTION WITH THIS AGREEMENT AND/OR IN CONNECTION WITH ANY SOFTWARE OR DOCUMENTATION (OR ANY USE THEREOF) SHALL NOT EXCEED THE TOTAL AMOUNT PAID BY YOU PURSUANT TO SECTION 3 ABOVE.

5.5. ALLOCATION OF RISKS. You acknowledge and agree that the license fee set forth in Section 3 above reflects the allocation of risk between the parties hereto, including the exclusion of warranties in Section 5.2 above, and the limitation and exclusion of damages in Section 5.4 above. Modification of the allocation of risks would affect the fees that Licensor charges and, in consideration thereof, You agree to the stated allocation of risk. The parties hereto agree that the limitation and exclusion of damages in this Section 5 shall specifically continue to apply in the event a court or arbitrator determines that the sole and exclusive remedies provided herein fail in their essential purpose.

6. TERM AND TERMINATION

6.1. TERM. The term of this Agreement shall continue until terminated in accordance with the provisions of this Section 6.

6.2. TERMINATION FOR BREACH. In the event of a material breach of any of the terms or conditions of this Agreement by one party hereunder, where such breach has not been cured within thirty (30) days after the non-breaching party's receipt of written notice describing the breach, the non-breaching party shall have the right to terminate this Agreement and the licenses and rights granted herein, effective immediately, upon the written notice of termination to the breaching party.



- 6.3. TERMINATION FOR INSOLVENCY.** A party shall have the right to terminate this Agreement in the event the other party is insolvent, adjudged bankrupt, is unable to pay its debts when due, ceases to operate as a going concern, makes an assignment for the benefit of creditors, or is the subject of a bankruptcy proceeding, whether voluntary or involuntary, which is not dismissed within ninety (90) days.
- 6.4. EFFECT OF TERMINATION.** In the event this Agreement is terminated, unless otherwise provided in this Agreement, You shall immediately cease any and all use of the Object Code, the Source Code, any Derivative Works, the Documentation, and the Confidential Information, and shall promptly return all such materials to Licensor (or destroy them, if requested in writing by Licensor).
- 6.5. SURVIVAL.** Sections 1, 2.4 through 2.7, 3, 4, 5, 6.4, 7, 8, 9 and this Section 6.5 shall survive any expiration or termination of this Agreement and continue in perpetuity.

7. EXPORT. You shall not export or re-export either any Source Code, Object Code, Derivative Work, or Documentation, or any copies of any of the foregoing, in violation of (i) this Agreement, (ii) the U.S. Export Administration regulations, or (iii) other applicable export-related laws or regulations.

8. U.S. GOVERNMENT USE. The Software and accompanying Documentation are deemed to be “commercial computer software” and “commercial computer software documentation,” respectively, pursuant to DFAR Section 227.7202 and FAR Section 12.212, as applicable. Any use, modification, reproduction, release, performing, displaying, or disclosing of the Software or the Documentation by the U. S. Government shall be governed solely by the terms of this Agreement and shall be prohibited except to the extent expressly permitted by the terms of this Agreement.

9. MISCELLANEOUS

- 9.1. ARBITRATION.** In the event of a dispute between the parties hereunder concerning whether Licensor is in material breach hereunder, the parties agree that such matter will be submitted to an arbitrator experienced in the field of software transfer transactions (the “Arbitrator”) in accordance with the applicable Commercial Arbitration Rules of the American Arbitration Association (“AAA”). Judgment upon the award rendered by the Arbitrator may be entered in any court having jurisdiction. The Arbitrator will have the right to assess, against a party or between the Parties, as the Arbitrator deems reasonable: (i) administrative fees of the AAA; (ii) compensation, if any, to the Arbitrator; and (iii) attorneys’ fees incurred by a party. Arbitration hearings will be held in the county of Licensor’s principal place of business. The provisions of California Code of Civil Procedure Section 1283.05 will apply to any arbitration.
- 9.2. INDEPENDENT CONTRACTORS.** The relationship of the Parties established by this Agreement is that of independent contractors, and nothing contained in this Agreement shall be construed to: (i) give either party the power to direct or control the day-to-day activities of the other party; (ii) constitute the parties as partners, joint venturers, co-owners or otherwise as



participants in a joint or common undertaking; or (iii) allow either party to create or assume any obligation on behalf of the other party for any purpose whatsoever.

- 9.3. **ASSIGNMENT.** You may not assign this Agreement without the prior written consent of Licensor. Any assignment by You in violation of this Section, whether voluntarily or by operation of law shall be void ab initio. This Agreement shall inure to the benefit and be binding upon each party's respective permitted assigns and successors.
- 9.4. **HEADINGS.** All Section headings are for reference only and shall not be considered in construing this Agreement.
- 9.5. **SEVERABILITY.** If any provision of this Agreement is held to be unenforceable or invalid, the remaining provisions shall be given full force and effect.
- 9.6. **WAIVER.** Any waiver of any right or remedy under this Agreement must be in writing and signed by the party to be bound to be effective. No delay or omission in exercising any right or remedy shall operate as a waiver of such right or remedy or any other right or remedy. A waiver on any one occasion shall not be construed as a waiver of any right or remedy on any future occasion.
- 9.7. **GOVERNING LAW.** This Agreement shall be governed in all respects by the laws of the State of California, without regard to any provision governing conflicts of law.
- 9.8. **NOTICES.** Any notice or other communication required or which may be given hereunder shall be in writing and shall be delivered personally, telecopied (confirmed by mail or courier), or sent by certified, registered, or express mail, postage prepaid, or delivered by commercial courier to the Licensor at the following addresses: Ixia, 26601 W. Agoura Rd., Calabasas, CA 91302, Attn: Legal Department. Facsimile: (818) 444-3100. Notice to You shall be sent to the addresses specified in Your invoice.
- 9.9. **ENTIRE AGREEMENT.** This Agreement, together with additional documents incorporated herein by reference, constitutes the entire agreement between the parties with respect to the subject matter hereof, superseding all prior or contemporaneous oral or written agreements or understandings with respect to such subject matter. No alterations, amendments, or additions hereto shall be binding unless reduced to writing and signed by each party.

