

## Software License Agreement

DATE: 10/1/2019

THIS SOFTWARE LICENSE AGREEMENT (“**AGREEMENT**”) GOVERNS YOUR ACCESS TO AND USE OF THE INNOVYZE SOFTWARE PRODUCTS FOR WHICH YOU HAVE PURCHASED LICENSE RIGHTS (THE “**SOFTWARE**,” AS FURTHER DEFINED BELOW), AND INNOVYZE’S PERFORMANCE OF ANY CORRESPONDING SUPPORT SERVICES AND PROFESSIONAL SERVICES RELATING THERETO.

BY ACCEPTING THIS AGREEMENT, EITHER BY: (a) CLICKING “I ACCEPT” OR OTHERWISE ELECTRONICALLY INDICATING YOUR ACCEPTANCE OF THIS AGREEMENT WHEN ASKED TO DO SO BY INNOVYZE; OR (b) BY EXECUTING AN ORDER FORM THAT REFERENCES THIS AGREEMENT, YOU AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU ARE ENTERING INTO OR ACCEPTING THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT AND WARRANT THAT YOU HAVE THE NECESSARY AUTHORITY TO BIND SUCH COMPANY OR LEGAL ENTITY TO THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THE TERMS AND CONDITIONS OF THIS AGREEMENT, DO NOT ACCEPT THIS AGREEMENT AND DO NOT ACCESS OR USE THE SOFTWARE.

By accepting this Agreement as described above, you have the following rights, obligations and responsibilities:

### Definitions.

Capitalized terms not defined elsewhere in this Agreement shall have the meaning given to them in the Definitions section below.

“**Affiliates**” means any entity which directly or indirectly controls, or is controlled by, or is under common control with a party to this Agreement, by way of majority voting stock ownership or the ability to otherwise direct or cause the direction of the management and policies of such party, for as long as such control exists.

“**Confidential Information**” means any commercial, financial, marketing, business, technical or other data, security measures and procedures, trade secrets, know-how or other information disclosed by or on behalf of a party (the “**Disclosing Party**”) to the other party (the “**Receiving Party**”) for purposes arising out of or in connection with this Agreement, and that: (a) in the case of information in tangible form, is marked “confidential” or “proprietary;” (b) in the case of information disclosed orally, visually or any other intangible form, is designated confidential or proprietary at the time of disclosure, and if disclosed orally, is summarized in reasonable detail in a writing delivered to the Receiving Party within ten (10) days following disclosure; or (c) under the circumstances, a person exercising reasonable business judgment would understand to be confidential or proprietary. Any reproduction of the foregoing information in any form or medium, or any part of such information, shall likewise be deemed “Confidential Information” hereunder. Notwithstanding the foregoing, the following shall not be Confidential Information: (i) information that was in the public domain at the time of its disclosure, or which becomes public domain property through no fault of the Receiving Party; (ii) information that was rightfully in the Receiving Party’s possession without restriction prior to disclosure; (iii) information that was rightfully disclosed to the Receiving Party by a third party without restriction; and (iv) information that was independently developed by employees and/or contractors of the Receiving Party who did not have access to and without use of or reference to the Disclosing Party’s Confidential Information.

“**Customer**” means the customer licensing the Software as identified in the applicable Order Form.

“**Professional Services**” means the general consulting, implementation and/or training services to be provided to Customer by Innovyze pursuant to a Work Order.

“**Order Form**” means Innovyze’s order form or other ordering documentation for the Software that is executed by Customer or its Affiliate and Innovyze.

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“**Software**” means the Innovyze software, in executable, machine readable format only, identified in the Order Form, including any Updates and any accompanying materials and hardware.

“**Support Services**” means the supplemental, fee-based technical support services described in the Support Terms to be provided to Customer by Innovyze in connection with the Software pursuant to the terms and conditions of this Agreement.

“**Territory**” means the geographic territory for which Customer has purchased the right to access and use the Software, as identified in the Order Form.

“**Third Party Software**” means third party software that is included with or provided by Innovyze in connection with the Software, as further described in Section 1.9 below.

“**Updates**” refers to releases in the Software that improve usability (identified by a version change two points to the right of the decimal point, e.g., 2.1.1 to 2.1.2) which are generally an accumulation of maintenance changes to the Software.

“**Upgrades**” refers to releases of the original Software (identified by a version change one point to the right of the decimal point, e.g., 2.1 to 2.2), which add functionality.

“**Users**” means individuals in the Territory who are authorized by Customer or its Affiliate to use the Software pursuant to this Agreement or as otherwise defined, restricted or limited in an Order Form. Users are limited to Customer’s and its Affiliates’ employees, consultants, contractors and agents, in each case, located in the Territory.

“**Website Terms**” means the terms and conditions set forth on Innovyze’s designated website(s) for the Software, as may be updated from time to time, and which terms are hereby incorporated by reference herein. In the case of any conflict or inconsistency between the provisions of this Agreement and the Website Terms, the provisions of this Agreement shall govern and control.

### 1. Software.

- 1.1. **License Grant.** Subject to the terms and conditions of this Agreement, Innovyze hereby grants to Customer, a limited, nontransferable, nonsublicensable, nonexclusive right and license to use the Software pursuant to the license rights purchased by Customer in the Order Form (the “**License Rights**”), for use by Customer’s and its Affiliates’ Users solely for the internal business operations of Customer or such Affiliate (as applicable) in the Territory.
- 1.2. **License Rights.** Customer agrees to use the Software solely in accordance with the License Rights purchased by Customer. The License Rights shall include: (a) the configuration of the Software being purchased (i.e., Fixed Seat or Floating Seat); (b) the term for which the Software is being licensed (i.e., perpetual term, subscription, or lease or rental term); and (c) the Territory for which the Software is being licensed. The License Rights purchased by Customer shall be set forth in the Order Form.
- 1.3. **Order Forms.** The Software shall be ordered by Customer or its Affiliates pursuant to one or more Order Forms. Each Order Form shall include, at a minimum, a listing of the Software, the License Rights being purchased, and, if applicable, any Support Services and/or Professional Services being ordered, and the associated fees for each. Except as otherwise provided in the Order Form or in this Agreement, each Order Form is non-cancellable and shall be subject to the terms and conditions of this Agreement. For any order by Customer’s Affiliates, the term “Customer” herein shall refer to Customer and any such Affiliate.
- 1.4. **Restrictions.** Customer is responsible for Users' compliance with the terms and conditions of this Agreement. Except as otherwise expressly authorized in this Agreement, Customer must

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not use, and must ensure that its Affiliates do not use, the Software to provide a service bureau or outsourced service, and may not rent, resell, sublicense, or permit the concurrent use of, or time-sharing of the Software. Customer shall not and shall not permit any Affiliate, User or other third party to: (a) copy, translate, create a derivative work of, reverse engineer, reverse assemble, disassemble, or decompile the Software or any part thereof or otherwise attempt to discover any source code or underlying ideas or algorithms of the Software; (b) rent, lease, distribute sell, resell, assign, or otherwise transfer Customer's or a User's rights to use the Software; (c) access or use the Software to circumvent or exceed Software use limitations or requirements; (d) use the Software for the purpose of directly or indirectly developing a similar or competitive product or service; (e) modify or alter the Software in any way; (f) use the Software in a manner that is in violation of any third party's privacy or intellectual property rights; (g) issue or participate in any press release or other public statement related to this Agreement or the Software without the prior written consent of Innovyze; (h) use or permit the use of any tools in order to probe, scan or attempt to penetrate or benchmark the Software hereunder; or (i) bypass any measures Innovyze uses to restrict access to the Software. Except as permitted by this Agreement, no part of the Software may be copied, reproduced, distributed, republished, displayed, posted or transmitted in any form or by any means. Customer shall ensure that all access and use of the Software by Users is in accordance with the terms and conditions of this Agreement. Any action or breach by any of such User shall be deemed an action or breach by Customer.

- 1.5. Territory.** The Software is licensed for use in the Territory only. The Software may not be accessed or used by Customer and/or its Users outside of the Territory, whether such use is by or for an Affiliate or otherwise. The access to and/or use of the Software outside of the Territory by Customer, Customer's Affiliates, or any User shall be deemed a material breach of this Agreement.
- 1.6. Compliance with Laws.** In using the Software, Customer shall comply with all applicable local, state, federal, and foreign laws, treaties, regulations, and conventions in connection with this Agreement, including without limitation those related to privacy, data security, electronic communications and anti-spam legislation.
- 1.7. Export Compliance.** In using the Software, Customer shall comply with the export laws and regulations of the United States and other applicable jurisdictions and obtain any permits, licenses and authorizations required for such compliance. Without limiting the foregoing, Customer represents, warrants and covenants on behalf of itself, its Affiliates and its Users that: (a) it is not named on any U.S. government list of persons or entities prohibited from receiving exports; (b) it shall not permit Users to access or use the Software in violation of any U.S. export embargo, prohibition or restriction; (c) it shall comply with all applicable laws regarding the transmission of technical data exported from the United States and the country in which its Users are located; and (d) it shall not use, or permit the use of, the Software for illegal, fraudulent, or unethical purposes or otherwise in a manner that could give rise to civil or criminal liability.
- 1.8. Updates and Upgrades.**
  - 1.8.1 Updates.** If Customer has purchased or is otherwise entitled to receive Support Services under this Agreement and/or an Order Form, Innovyze will provide Updates to the Software, if any, as part of providing such Support Services. Notwithstanding the preceding sentence, Customer acknowledges and agrees that: (a) Innovyze shall have no obligation to develop or release any such Updates; and (b) any such Updates shall be released to Customer, if at all, at the same time such Updates are released by

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Innovyze to its customers generally. Customer shall not be entitled to receive Updates except as otherwise set forth in this Section 1.8.1.

**1.8.2 Upgrades.** Innovyze shall have no obligation to provide or make available to Customer, and Customer shall have no right to receive from Innovyze, any Upgrades, regardless of whether Customer has purchased or is otherwise entitled to receive Support Services. Upgrades must be purchased by Customer pursuant to a separate Order Form and/or under separate license terms and conditions.

### 1.9. Third Party Software.

**1.9.1** Customer acknowledges and agrees that Customer shall not take any action that would require, indicate, or imply that the Software or any portion or component thereof is or may be licensed under the terms of any Open Source Code license. By way of illustration and not by way of limitation, Customer shall not use or incorporate the Software with any Open Source Code licensed under any license terms that: (a) impose or could impose a requirement or condition that the Software, or any software or source code used or integrated therewith: (i) be disclosed or distributed in source code form; (ii) be licensed for the purpose of making modifications or derivative works; or (iii) be redistributable at no charge; or (b) otherwise impose or could impose any other material limitation, restriction, or condition on the right or ability of Innovyze to use or distribute the Software, or any software or source code used or integrated therewith. Customer shall promptly inform Innovyze in writing of any Open Source Code use in violation of this Section 1.9.1 of which it becomes aware. For purposes of this Agreement, “**Open Source Code**” means any software code that is distributed as “free software” or “open source software” or that is otherwise distributed publicly in source code form under terms that permit modification and redistribution of such software.

**1.9.2** The Software may use and/or include certain third party software components, as listed in the “About” section of the Software which is accessible after installation. Customer acknowledges and agrees that the use of the Software may be subject to the license terms under which such third party software components are licensed. Notwithstanding any provision of this Agreement to the contrary, Innovyze has no responsibility or liability for any such third party software components.

**1.9.3** Subject to Section 1.9.1 above, in exercising the rights granted to Customer in this Agreement, Customer shall strictly comply with the terms and conditions of any Open Source Code licenses and/or other third party software licenses that may govern or apply to Customer’s use of the Software as authorized in this Agreement.

**1.10. Website Terms.** Innovyze may from time to time adopt or otherwise maintain certain Website Terms which apply to the access to and/or use of the Software and/or Innovyze’s provision of Support Services. Such Website Terms may include, without limitation: (a) the Support Terms; and/or (b) acceptable use policies and/or other similar policies, in each case as may be adopted, amended or revised from time to time. Access to and/or use of the Software signifies Customer’s acceptance of the Website Terms. Customer shall strictly comply with any and all such Website Terms adopted or otherwise maintained by Innovyze.

**2. Support Services and Professional Services.** Innovyze may, but shall have no obligation to, provide Customer with documentation and other online resources to assist Customer in its use of the Software. Innovyze also offers optional “for fee” Support Services and Professional Services, as follows:

**2.1. Support Services.** The Support Services provided by Innovyze are described at the following link:<https://www.innovyze.com/media/2635/innovyze-software-maintenance-support->

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[agreement.pdf](#) (the “**Support Terms**”). Support Services will be provided in the Territory only. The parties further agree as follows with respect to the Support Services:

- 2.1.1** If Customer’s License Rights are subscription based, then the Support Services are included as part of the subscription fees paid by Customer for the Software, as specified in the Order Form. Subject to Customer’s payment of the subscription fees owed by Customer as set forth in the Order Form, Innovyze will provide Support Services to Customer during the term of each applicable subscription period.
- 2.1.2** If Customer’s License Rights are perpetual in nature or are lease or rental based, Support Services are not included in the license fees paid by Customer for the Software, but must instead be purchased separately by Customer in the Order Form.
- 2.1.3** Where Customer’s License Rights are perpetual in nature, Support Services are purchased annually and will be invoiced by Innovyze and paid for by Customer in advance. Innovyze will commence providing Support Services as of the date purchased by Customer, and will continue to provide such Support Services for a period of twelve (12) months. Thereafter, unless this Agreement has been earlier terminated as set forth in Section 6.2 below, Innovyze’s obligation to provide Support Services will automatically renew as set forth herein. Innovyze shall provide Customer with a general renewal reminder prior to the end of the then-current Support Services term. However, if neither Customer nor Innovyze provides written notice to the other of its intention that the Support Services not renew as provided in this Section 2.1.3 at least thirty (30) days’ prior to the expiration of the then current Support Services term, then the Support Services shall automatically renew for a successive twelve (12) month period. The pricing for any renewal Support Services terms shall be set at then current Innovyze pricing, unless otherwise agreed to by the parties in writing, and Innovyze shall be entitled to invoice Customer for the fees owed by Customer for such Support Services. The failure to renew the Support Services shall not affect the perpetual License Rights purchased by Customer. However, in the event that Customer does not renew the Support Services and seeks to purchase Support Services at any time thereafter, Customer will be obligated to pay to Innovyze any and all amounts that would have been due and payable to Innovyze for the Support Services had Customer renewed the Support Services during any period of time in which the Support Services were allowed to lapse by Customer.

**2.2. Professional Services.** Innovyze shall provide Professional Services to Customer pursuant to a work order entered into between Customer and Innovyze (“**Work Order(s)**”). Work Orders shall identify, among other things, the Professional Services being sought, the fees for such Professional Services, and the requested Professional Services dates. Professional Services will only be provided by Innovyze in locations approved by Innovyze. Each Work Order shall be subject to and governed by the terms and conditions of this Agreement.

### **3. Term; Fees and Payments.**

**3.1. Term.** The term of this Agreement shall commence on the Effective Date and shall continue for the length of the License Rights purchased by Customer in the Order Form(s) (the “**Term**”), unless earlier terminated as set forth in Section 6.2 below. In particular:

- 3.1.1** If Customer’s License Rights are for a perpetual term, then this Agreement and the License Rights purchased by Customer hereunder shall continue in perpetuity until terminated pursuant to Section 6.2 below.
- 3.1.2** If Customer’s License Rights are subscription based, then this Agreement and the License Rights purchased by Customer hereunder shall, unless earlier terminated as

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set forth in Section 6.2 below, continue for the subscription period specified in the Order Form, and upon the expiration of such subscription period, shall, unless this Agreement has been earlier terminated as set forth in Section 6.2 below, automatically renew for successive subscription periods of the same length. Innovyze shall use commercially reasonable efforts to provide Customer with a general renewal reminder prior to the end of the then current subscription period. However, if neither Customer nor Innovyze provides written notice to the other of its intention that this Agreement not renew for a successive subscription period at least thirty (30) days' prior to the expiration of the then current subscription period, then this Agreement shall automatically renew for a successive subscription period. The pricing for any renewal subscription periods shall be set at then current Innovyze pricing, unless otherwise agreed to by the parties, and Innovyze shall be entitled to invoice Customer during such renewed subscription period.

- 3.1.3** If Customer's License Rights are lease or rental based, then this Agreement and the License Rights purchased by Customer hereunder shall expire upon the expiration of the lease or rental period specified in the Order Form, unless earlier terminated as set forth in Section 6.2 below.

### **3.2. Fees and Payment.**

- 3.2.1** The fees paid or payable by Customer are set forth in the Order Form. All fees payable are due within thirty (35) days from the invoice date unless otherwise specified in the Order Form. All fees are non-refundable, except as otherwise explicitly stated in the applicable Order Form or this Agreement.
- 3.2.2** The fees do not include any local, state, federal or foreign taxes, levies or duties of any nature, including value-added, sales, use or withholding taxes ("**Taxes**"). Customer is responsible for paying all Taxes, excluding only taxes based on Innovyze's net income. If Innovyze has the legal obligation to pay or collect Taxes for which Customer is responsible under this Section, the appropriate amount shall be invoiced to and paid by Customer unless Customer provides Innovyze with a valid tax exemption certificate authorized by the appropriate taxing authority.
- 3.2.3** If Customer fails to make any payment when due then, in addition to all other remedies that may be available, Innovyze may charge interest on the past due amount at the rate of one and one half percent (1.5%) per month calculated daily and compounded monthly or, if lower, the highest rate permitted pursuant to applicable law.
- 3.2.4** All amounts payable to Innovyze under this Agreement and/or an Order Form shall be paid by Customer to Innovyze in full and without any setoff, recoupment, counterclaim, deduction, debit or withholding for any reason.

## **4. Proprietary Rights.**

- 4.1. Innovyze Intellectual Property Rights.** The Software is licensed and not sold. All rights, title and interest in and to the Software, the Support Services, and/or the Professional Services ("**Innovyze Proprietary Rights**") (including without limitation all intellectual property rights therein and all modifications, extensions, customizations, scripts or other derivative works of any of the foregoing provided or developed by Innovyze) are owned exclusively by Innovyze or its licensors. Except as provided in this Agreement, the rights granted to Customer do not convey any rights in the Innovyze Proprietary Rights, express or implied, or ownership in the Innovyze Proprietary Rights or any intellectual property rights thereto. Customer shall not take any act or engage in any conduct that is contrary to or inconsistent with Innovyze's exclusive ownership of and rights in and to the Innovyze Proprietary Rights, including without limitation, by

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granting any rights in or to the Software to any third party, or otherwise encumbering the Software in any way. Customer grants Innovyze a royalty-free, worldwide, perpetual, irrevocable, freely transferable right to use, modify, distribute and incorporate into its products and/or services (without attribution of any kind) any suggestions, enhancement requests, recommendations, proposals, corrections or other feedback or information provided by Customer or any Users related to the operation or functionality of the Software or in any way related to the Innovyze Proprietary Rights. Any rights in the Innovyze Proprietary Rights or Innovyze's intellectual property rights not expressly granted herein by Innovyze are reserved by Innovyze. The trademark INNOVYZE and all associated logos and product and service names are trademarks and/or service marks of Innovyze (the "**Innovyze Marks**"). Customer agrees not to display or use the Innovyze Marks in any manner without Innovyze's express prior written permission.

- 4.2. U.S. Government Rights.** The Software is a "commercial item" as that term is defined at FAR 2.101. If Customer or a User is a U.S. Federal Government ("**Government**") Executive Agency (as defined in FAR 2.101), Innovyze provides the Software, including any related software, technology, technical data, and/or professional services in accordance with the following: (a) if acquired by or on behalf of any Executive Agency (other than an agency within the Department of Defense ("**DoD**"), the Government acquires, in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Computer Software), only those rights in technical data and software customarily provided to the public as defined in this Agreement; or (b) if acquired by or on behalf of any Executive Agency within the DoD, the Government acquires, in accordance with DFARS 227.7202-3 (Rights in commercial computer software or commercial computer software documentation), only those rights in technical data and software customarily provided in this Agreement. In addition, DFARS 252.227-7015 (Technical Data – Commercial Items) applies to technical data acquired by DoD agencies. Any Federal Legislative Agency or Federal Judicial Agency shall obtain only those rights in technical data and software customarily provided to the public as set forth in this Agreement. If any Federal Executive Agency, Federal Legislative Agency, or Federal Judicial Agency has a need for rights not conveyed under the terms described in this Section 4.2, it must negotiate with Innovyze to determine if there are acceptable terms for granting such rights, and a mutually acceptable written addendum specifically conveying such rights must be included in any applicable contract or agreement to be effective. This Section 4.2 is in lieu of, and supersedes, any other FAR, DFARS, or other clause, provision, or supplemental regulation that addresses Government rights in computer software or technical data under this Agreement.
- 4.3. Publicity.** Subject to the other party's prior written consent in each instance, each party grants to the other party the limited, revocable right to use such other party's name and logo solely on its website and promotional materials for marketing and promotional purposes.

**5. Customer Requirements.** Customer agrees as follows:

- 5.1. Accuracy of Customer's Contact Information.** Customer shall provide accurate, current and complete information on Customer's legal business name, address, email address and phone number, and maintain and promptly update this information if it should change.
- 5.2. Email and Notices.** Customer's email address for communication and notice purposes relating to this Agreement is the email address for notices set forth in the Order Form (or subsequent email addresses as advised by Customer to Innovyze in writing). Customer agrees to accept emails from Innovyze at such email address. Innovyze may provide any and all notices, statements, and other communications in English to Customer through either email or by mail or express delivery service. In addition, Innovyze may rely and act on all information, authorizations and instructions provided to Innovyze from the above-specified email address and/or Customer's designated administrators for the Software.

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**5.3. Use of Software.** The Software being licensed is intended for use in the design, modeling, and management of water systems. However, while appropriate care has been taken in the development of the Software, the Software is a tool only, and is not a substitute for the advice and/or judgment of a professionally trained engineer or similar water systems professional. Innovyze does not perform any independent analysis or investigation of Customer's particular water systems, nor does Innovyze provide engineering services. Furthermore, model configurations, projections, and any analyses generated by the Software are intended for informational use only. Forecasts and actual results may materially vary due to, among other things, the use of inaccurate or incomplete data as an input into the Software, operation and system conditions that are beyond the scope or capability of the Software, or any events or circumstances that are not reasonably foreseeable under the circumstances. Innovyze is not responsible for the realization of forecasted conclusions or projections, or the identification of (or the failure to identify) matters that might affect actual system operation or conditions as a result of Customer's use of the Software. Customer acknowledges and agrees that each User must exercise his or her own independent skill, experience, knowledge and professional judgment in making decisions based on his or her use of the Software and/or the output thereof; accordingly, all risk associated with the use of the Software is solely with Customer and/or its Users.

## 6. Suspension and Termination.

**6.1. Suspension.** In addition to any other rights and/or remedies that Innovyze may have hereunder, whether at law or in equity, Innovyze reserves the right to suspend Customer's access to or use of the Software and/or the Support Services, as follow:

**6.1.1** Where Customer's License Rights are subscription based, Innovyze may suspend Customer's and/or Customer's Affiliates' access to and/or use of the Software if any payment is due to Innovyze (whether under this Agreement, an Order Form, or any other agreement between the parties) but is unpaid, provided that, Innovyze has provided Customer a delinquency notice and at least fifteen (15) days have passed since the transmission of such notice.

**6.1.2** Innovyze may suspend Customer's and/or Customer's Affiliates access to and/or use of the Support Services if any payment is due to Innovyze (whether under this Agreement, an Order Form, or any other agreement between the parties) but is unpaid, provided that, Innovyze has provided Customer a delinquency notice and at least fifteen (15) days have passed since the transmission of such notice.

**6.1.3** Innovyze may suspend Customer's and/or Customer's Affiliates' access to and/or use of the Software in the event Customer: (a) breaches its confidentiality obligations in Section 7; (b) infringes, violates or misappropriates Innovyze's intellectual property rights; or (c) exceeds the scope of the License Rights granted to Customer under this Agreement.

**6.1.4** Customer agrees that Innovyze shall not be liable to Customer or to any Customer Affiliate or other third party for any suspension pursuant to this Section.

**6.2. Termination.** In addition to any other rights and/or remedies that either party may have hereunder, whether at law or in equity, either party may immediately terminate this Agreement and all Order Forms hereunder in the event the other party commits a material breach of any provision of this Agreement which is not cured within thirty (30) days of written notice from the non-breaching party. Such notice by the non-breaching party shall expressly state all of the reasons for the claimed breach in sufficient detail so as to provide the alleged breaching party a meaningful opportunity to cure such alleged breach.



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**6.3. Post Termination or Expiration Rights and/or Responsibilities.** Upon the termination or expiration of this Agreement, Customer shall have no rights to continue the use of the Software and shall promptly uninstall the Software and, at Innovyze's option, either destroy the Software (and certify in writing such destruction) or return the Software to Innovyze. If this Agreement is terminated by Customer for any reason other than a termination expressly permitted by this Agreement, then Innovyze shall be entitled to all of the fees due under this Agreement for the entire Term. If this Agreement is terminated as a result of Innovyze's breach of this Agreement, then Customer shall be entitled to a refund of the pro-rata portion of any fees pre-paid by Customer under this Agreement to the extent unearned by Innovyze as of the effective date of termination or expiration.

## 7. Confidentiality.

**7.1. Protection of Confidential Information.** The Receiving Party shall: (a) protect the Confidential Information against unauthorized access or use using the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event using less than commercially reasonable care); (b) not use any Confidential Information for any purpose outside the scope of this Agreement; and (c) except as otherwise authorized by the Disclosing Party in writing, not divulge, transfer or otherwise make available the Confidential Information to any third party. The Receiving Party shall further limit access to the Confidential Information to those of its and its Affiliates' employees, contractors and agents who need such access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein.

**7.2. Compelled Disclosure.** The Receiving Party may disclose the Confidential Information of the Disclosing Party if it is compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure.

**7.3. Return of Confidential Information.** Upon the termination of this Agreement, or at any time upon request of the Disclosing Party, the Receiving Party will promptly return all items and materials, including any copies, in its possession, custody, or control which contain any Confidential Information of the Disclosing Party. All notes or other work product containing Confidential Information will be destroyed, and such destruction will be certified in writing to the Disclosing Party by an authorized representative of the Receiving Party who supervised such destruction. The obligations concerning Confidential Information set forth herein will survive the termination of this Agreement for a period of five (5) years, provided that, for any trade secret information included as part of the Confidential Information, the obligations concerning Confidential Information shall continue with respect to such trade secret information for so long as such trade secret information remains a trade secret of the Disclosing Party.

## 8. Representations and Warranties.

**8.1. Limited Warranty.** Innovyze warrants that the Software will perform in all material respects with the accompanying written documentation for a period of ninety (90) days' following Customer's receipt of the Software. Customer's sole and exclusive remedy for Innovyze's breach of this warranty shall be for Innovyze, at its option, to: (a) use commercially reasonable efforts to modify or correct the Software such that the Software performs in all material respects with the accompanying written documentation; or (b) terminate this Agreement and take back the Software, in which case, Innovyze shall provide to Customer: (i) if the License Rights are subscription based, a pro-rata refund of the subscription fees paid under the Agreement for its use of the Software for the terminated portion of the then-current subscription term; (ii) if the License Rights are perpetual in nature, a pro-rata refund in the amount of the remaining value of the upfront license fees paid by Customer to Innovyze for the use of the Software, calculated

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based on straight-line depreciation over three (3) years from Innovyze's delivery of the Software; or (iii) if the License Rights are lease or rental based, a pro-rata refund of the upfront license fees paid by Customer to Innovyze for its use of the Software for the terminated portion of the rental or lease term. The limited warranty set forth in this Section 8.1 is made to and for the benefit of Customer only. This limited warranty shall further only apply if the applicable Software has been utilized in accordance with its intended use, this Agreement (including Customer's License Rights), and any applicable law. Customer further acknowledges and agrees that:

**8.1.1** This limited warranty applies only to the initial shipment of the Software under the applicable Order Form, and does not renew for a new warranty period with the delivery of: (a) any Updates; or (b) new or reissued license keys; and

**8.1.2** This limited warranty is not valid if: (a) the Software has been subject to: (i) misuse or unauthorized use by Customer; (ii) modification, alterations or changes to the Software other than by Innovyze; (iii) improper installation or maintenance of the Software by Customer or a third party; or (b) the alleged non-conformity is the result of: (i) the operating environment in which the Software is being used; (ii) failures or defects in any third party hardware or software; or (iii) other causes outside of Innovyze's reasonable control.

**8.2. Disclaimer.** EXCEPT AS STATED IN THIS SECTION 8, THE SOFTWARE, THE SUPPORT SERVICES, AND THE PROFESSIONAL SERVICES ARE PROVIDED TO CUSTOMER ON AN "AS IS" AND "AS AVAILABLE" BASIS. EXCEPT AS STATED IN THIS SECTION 8, INNOVYZE DOES NOT REPRESENT OR WARRANT THAT CUSTOMER'S USE OF THE SOFTWARE WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE OR THAT THE SOFTWARE WILL MEET CUSTOMER'S REQUIREMENTS OR THAT ALL ERRORS IN THE SOFTWARE AND/OR DOCUMENTATION WILL BE CORRECTED OR WILL BE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. THE LIMITED WARRANTY STATED IN SECTION 8.1 ABOVE IS THE SOLE AND EXCLUSIVE REPRESENTATION OR WARRANTY OFFERED BY INNOVYZE HEREUNDER. THERE ARE NO OTHER REPRESENTATIONS, WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THOSE OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT OF THIRD-PARTY RIGHTS. CUSTOMER ASSUMES ALL RESPONSIBILITY FOR DETERMINING WHETHER THE SOFTWARE OR THE OUTPUT GENERATED THEREBY IS ACCURATE OR SUFFICIENT FOR CUSTOMER'S PURPOSES.

## **9. Limitations of Liability.**

**9.1. Exclusion of Consequential Damages.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL INNOVYZE OR ITS AFFILIATES HAVE ANY LIABILITY TO CUSTOMER OR ITS AFFILIATES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT FOR ANY LOST PROFITS OR REVENUE OR FOR INCIDENTAL, CONSEQUENTIAL, PUNITIVE, COVER, SPECIAL, RELIANCE OR EXEMPLARY DAMAGES, OR INDIRECT DAMAGES OF ANY TYPE OR KIND HOWEVER CAUSED, WHETHER FROM BREACH OR REPUDIATION OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, OR OTHERWISE (AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER OR NOT SUCH DAMAGES ARE OTHERWISE FORESEEABLE). CERTAIN STATES AND/OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, IN WHICH CASE SUCH DAMAGES SHALL BE SUBJECT TO THE LIMITATIONS SET FORTH IN SECTION 9.2 BELOW.

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- 9.2. Limitations on Liability.** THE MAXIMUM AGGREGATE LIABILITY OF INNOVYZE AND ITS AFFILIATES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED ON BREACH OR REPUDIATION OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, OR OTHERWISE, SHALL NOT EXCEED THE TOTAL LICENSE FEES (NO MATTER THE LICENSE RIGHTS PURCHASED BY CUSTOMER) PAID BY CUSTOMER FOR THE SOFTWARE GIVING RISE TO THE LIABILITY DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT OUT OF WHICH THE LIABILITY AROSE.
- 9.3. Acknowledgement.** CUSTOMER ACKNOWLEDGES THAT THE FEES REFLECT THE ALLOCATION OF RISK SET FORTH IN THIS AGREEMENT AND THAT INNOVYZE WOULD NOT ENTER INTO THIS AGREEMENT WITHOUT THESE LIMITATIONS ON ITS LIABILITY.

## 10. Indemnification.

- 10.1. Innovyze's Indemnity.** Subject to the terms and conditions set forth in this Section 10, Innovyze shall, at its own expense, defend Customer from and against any and all allegations, threats, claims, suits, and proceedings brought by third parties (collectively "**Claims**") alleging that the Software, as used in accordance with this Agreement, infringes such third party's copyrights or trademarks, or misappropriates such third party's trade secrets and shall indemnify Customer from and against liability, damages, and costs finally awarded or entered into in settlement (including, without limitation, reasonable attorneys' fees) (collectively, "**Losses**") to the extent based upon such Claim(s). Notwithstanding the foregoing, Innovyze will have no liability for Claims or Losses to the extent arising from: (a) use of the Software in violation of this Agreement or applicable law; (b) use of the Software after Innovyze notifies Customer to discontinue use because of an infringement claim; (c) modifications to the Software not made by Innovyze or made by Innovyze based on Customer specifications or requirements; or (d) use of the Software in combination with any non-Innovyze software, technology, hardware, application or service. If a Claim of infringement as set forth above is brought or threatened, Innovyze shall, at its sole option and expense, use commercially reasonable efforts either: (i) to procure a license that will protect Customer against such Claim without cost to Customer; (ii) to modify or replace all or portions of the Software as needed to avoid infringement, such update or replacement having substantially similar or better capabilities; or (iii) if (i) and (ii) are not commercially feasible, terminate the Agreement, in which case, Innovyze shall provide to Customer: (1) if the License Rights are subscription based, a pro-rata refund of the subscription fees paid under the Agreement for its use of the Software for the terminated portion of the then-current subscription term; (2) if the License Rights are perpetual in nature, a pro-rata refund in the amount of the remaining value of the upfront license fees paid by Customer to Innovyze for the use of the Software, calculated based on straight-line depreciation over three (3) years from Innovyze's delivery of the Software; or (3) if the License Rights are lease or rental based, a pro-rata refund of the upfront license fees paid by Customer to Innovyze for its use of the Software for the terminated portion of the rental or lease term. The rights and remedies granted Customer under this Section 10.1 state Innovyze's entire liability, and Customer's sole and exclusive remedy, with respect to any claim of infringement or misappropriation of the intellectual property rights of a third party.
- 10.2. Customer's Indemnity.** Subject to the terms and conditions set forth in this Section 10, Customer shall, at its own expense, defend Innovyze from and against any and all Claims arising from or relating to Customer's breach or violation of this Agreement; and shall indemnify Innovyze from and against liability for any Losses to the extent based upon such Claims.
- 10.3. Indemnification Procedures and Survival.** In the event of a potential indemnity obligation under this Section 10, the indemnified party shall: (a) promptly notify the indemnifying party

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in writing of such Claim; (b) allow the indemnifying party to have sole control of its defense and settlement; and (c) upon request of the indemnifying party, cooperate in all reasonable respects, at the indemnifying party's cost and expense, with the indemnifying party in the investigation, trial, and defense of such Claim and any appeal arising therefrom. The indemnification obligations under this Section 10 are expressly conditioned upon the indemnified party's compliance with this Section 10.2 except that failure to notify the indemnifying party of such Claim shall not relieve that party of its obligations under this Section 10 but such obligations shall be reduced to the extent of any damages attributable to such failure. The indemnification obligations contained in this Section 10 shall survive termination of this Agreement for one (1) year.

**11. Governing Law and Jurisdiction.** This Agreement is governed by the substantive and procedural laws of the State of Minnesota, USA, and each party agrees to submit to the exclusive jurisdiction of, and venue in, the courts in Ramsey County, Minnesota, USA, in any dispute arising out of or relating to this Agreement. The Uniform Computer Information Transactions Act does not apply to this Agreement or to Order Forms under it.

**12. Records and Audits; Compliance.**

**12.1.** Customer shall keep complete and accurate records of its activities under this Agreement, including without limitation, its use of the Software. Innovyze shall have the right, upon written notice to Customer, to audit and inspect, either itself or using a third party designee, such records for purposes of assessing Customer's compliance with the terms and conditions of this Agreement, including without limitation, the use of the Software in accordance with Customer's License Rights. Customer shall fully cooperate with Innovyze in connection with any such audit or inspection. If, as part of any audit or inspection of Customer's records, it is determined that Customer has materially breached or violated this Agreement then, in addition to any rights and/or remedies that Innovyze may have under this Agreement or otherwise at law or in equity, Customer shall promptly reimburse Innovyze for the full reasonable cost of the audit or inspection.

**12.2.** The Software may include functionality that permits Innovyze to monitor Customer's use of the Software and/or disable or terminate Customer's access to or use of the Software. Customer acknowledges and agrees that Innovyze may use such functionality to monitor Customer's use of the Software for purposes of determining whether Customer is in compliance with the terms and/or conditions of this Agreement, and/or to suspend or terminate Customer's access to and/or use of the Software upon the expiration or termination of this Agreement or as otherwise permitted in this Agreement.

**13. Equitable Relief.** Customer acknowledges that Customer's breach of this Agreement as it relates to: (a) the unauthorized use or disclosure of Innovyze's Confidential Information; (b) the infringement, violation or misappropriation of Innovyze's intellectual property rights; or (c) the misuse or unauthorized use of the Software, could give rise to irreparable injury to Innovyze and that such injury may be inadequately compensable in damages. Accordingly, Innovyze is entitled, in addition to the rights and remedies it may have under and pursuant to this Agreement or under applicable law, to seek an injunction issued by any competent court enjoining and restraining Customer and/or its Affiliates, and each of their respective employees, personnel, agents, representatives, consultants and service providers, from continuing any breach or threatened breach of this Agreement. The existence of any claim or cause of action that either party may have against the other party shall not constitute a defense or bar to the enforcement of this Section 13.

**14. General Provisions.**

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- 14.1. Integration.** This Agreement incorporates by reference all Website Terms (as applicable) and Order Forms, and this Agreement, together with such referenced items, constitute the entire understanding between Customer and Innovyze and are intended to be the final and entire expression of their agreement. The parties expressly disclaim any reliance on any and all prior discussions, emails, RFPs and/or agreements between the parties. There are no other verbal agreements, representations, warranties undertakings or other agreements between the parties. Under no circumstances will the terms, conditions or provisions of any purchase order, invoice or other administrative document issued by Customer in connection with this Agreement be deemed to modify, alter or expand the rights, duties or obligations of the parties under, or otherwise modify, this Agreement, regardless of any failure of Innovyze to object to such terms, provisions, or conditions. The Agreement shall not be modified, or amended, except as expressly set forth herein, or in writing and signed or accepted electronically by the party against whom the modification, amendment or waiver is to be asserted, or by a properly executed Order Form. Notwithstanding the above, after execution of this Agreement, Users may be presented with the requirement to “agree” to a click through agreement pertaining to the User’s use of the Software.
- 14.2. Other General Provisions.** This Agreement shall inure to benefit and bind the parties hereto, their successors and assigns, but neither party may assign this Agreement without written consent of the other, except that Innovyze may assign without consent to a related entity or the successor of all or substantially all of Innovyze’s business or assets to which this Agreement relates. Except as set forth in Section 10 above, there are no third party beneficiaries to this Agreement. This Agreement does not create any joint venture, partnership, agency, or employment relationship between the parties, although Innovyze reserves the right to name Customer as a user of the Software. If any provision is held by a court of competent jurisdiction to be contrary to law, such provision shall be eliminated or limited to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect. A waiver of any breach under this Agreement should not constitute a waiver of any other breach or future breach. Neither party shall be liable for loss, delay, nonperformance to the extent resulting from any force majeure event, including, but not limited to, acts of God, strike, riot, fire, explosion, flood, earthquake, natural disaster, terrorism, act of war, civil unrest, criminal acts of third parties, failure of the Internet, governmental acts or orders or restrictions, failure of suppliers, labor stoppage or dispute (other than those involving Innovyze employees), or shortage of materials, provided that such party uses reasonable efforts, under the circumstances, to notify the other party of the circumstances causing the delay and to resume performance as soon as possible and any delivery date shall be extended accordingly. The Section headings used in this Agreement are included for reference purposes only and shall not affect the meaning or interpretation of this Agreement in any way. The Definitions Section and Sections 1.4, 1.6, 1.7, 3.2, 4, 5.3, 6.3, and 7 through 14 shall survive the termination or expiration of this Agreement.