

Customer Name:	x	Commencement Date:	00/00/2017
Address:	X		

This Software License and Maintenance Agreement (the "Agreement") is a binding agreement between Customer ("You" or "Your") and Innovyze Limited Company Number 06975921, located at Jacobs Well, West Street, Newbury, Berkshire RG14 1BD ("Us", "Our" or "We") for the purchase of the software and/or services described in the Schedule that refers to this Agreement.

1. **DEFINITIONS.**
 - 1.1 "Documentation" means the user documentation supplied by Us with the Product.
 - 1.2 "Customer Associated Companies" means those companies which are Your subsidiary and/or associate company of (the terms Subsidiary and Associate as defined in Sections 1159 and 1162 of the Companies Act 2006) on the Effective date of this Agreement
 - 1.3 "Contractor" means a third party engaged by You for internal data processing, consulting, product customisation, or internal information management.
 - 1.4 "Maintenance Services" means Product support and maintenance services.
 - 1.5 "Products" means the machine-readable object code of the software programs specified in an Order, together with any Documentation and Updates thereto.
 - 1.6 "Schedule" means a document that we Produce and that refers to this Agreement and describes in greater detail Your order-specific information including, but not limited to: Your billing information, lists of Products ordered, and pricing. Such information is incorporated into this Agreement by reference.
 - 1.7 "Updates" means any update, release, or enhancement that may be provided under Support Services.
 - 1.8 "Lan" and/or "Wan" means respectively a Local and/or a Wide area network
 - 1.9 "Warranty Period" means ninety (90) days from the date of initial delivery to You of the applicable Product (excluding Updates).
2. **LICENSE.**

License Grant. Subject to Your compliance with this Agreement, You are granted a limited, non-exclusive, and non-transferable license to use the Products identified in an Order accepted under this Agreement for Your business purposes in accordance with the terms and conditions of this Agreement at the registered premises address embedded in the Product. For the avoidance of doubt, this Agreement does not permit access to the Products by means of remote access or networks that extend beyond the registered premises. In the event of a Wan license being specified in the Schedule then You may only permit access to the Wan from locations specified in the current Schedule. You may have a single back up copy for disaster recovery purposes and which may only be used as a temporary replacement and never contemporaneously with the original of the Product.

 - 2.1 **License Restrictions.** Except as expressly permitted by this Agreement, You may not: (i) lease, loan, resell, sublicense, or otherwise distribute a Product; (ii) use a Product to provide or operate Application Service Provider (ASP), service bureau, marketing, training, or any other commercial service related to the Products; (iii) use a Product to develop a product which is competitive with any of the software programs manufactured and/or marketed by Us; (iv) permit third-party access to, or use of, the Products, except as expressly permitted herein ;or (v) use the Products beyond the term of any license. You shall promptly notify Us if You become aware of any unauthorised third party access to, or use of, a Product.
 - 2.2 **Contractors.** You may permit access to, and use of, the Products by a Contractor, provided that: (i) the Contractor agrees to comply with the terms of this Agreement and to access and use the Products solely for purposes of rendering services to You; and (ii) the total number of licenses used by You and Contractor must not exceed the number of licenses purchased. You shall be responsible and liable for Contractor's compliance with the terms of this Agreement. Upon completion of Your services by Contractor, You shall, upon Our request, certify in writing that Contractor has un-installed and destroyed all copies of Products within thirty (30) days of such completion of services and You will give Us any reasonable assistance We may request to ensure Contractor complies with this clause.
 - 2.3 **Product Ownership and Restrictions.** All intellectual property rights and title to the Product and any materials shall remain with Us and no interest or ownership therein is conveyed to You. No right to copy/modify (even for purposes of error correction), adapt, or translate the Product or create derivative works therefrom is granted to You, except as necessary to configure the Product using the menus, options and tools provided for such purposes and contained in the Product. All Product copyright, trademark, patent, and related proprietary notices incorporated in or fixed to the Product shall be duplicated by You on all copies or extracts thereof and shall not be altered, removed, or obliterated. Except as required to be permitted by applicable law, reverse compiling (including reverse compiling to ensure interoperability), reverse engineering and other source code derivation of the Product is prohibited.
3. **MAINTENANCE AND ADDITIONAL SERVICES.**
 - 3.1 You may elect to not continue with maintenance for certain Products after the first year. Should You so elect you will not be provided with support, updates or new versions. Should You subsequently wish to place certain of the Products back on Maintenance then you shall be required to pay the maintenance fees throughout the period when those Products were off Maintenance plus our administration charge. We may suspend or terminate Maintenance Services for all Product(s) in the event that You do not pay fees for Maintenance Services when due.
 - 3.2 **Additional Services.** Training may be obtained by You on an as-available basis and at mutually agreed rates in accordance with a separate agreement. Should We agree to provide additional services, the payment of the Product license and Maintenance Services fees under this Agreement shall not be contingent under any circumstances upon the performance of any such services including installation and implementation services.
4. **FEES; TAXES; PAYMENT TERMS; PURCHASE ORDERS; SHIPPING**
 - 4.1 **Fees.** Fees or other charges shall be as specified in an Order. All amounts payable under this Agreement are non-refundable and not subject to set off or deduction by You. In the event that You wish to renew the annual subscription of a Product, the applicable price shall be that stated within the then-current Our price list, unless otherwise agreed between the parties.
 - 4.2 **Invoicing and Payment.** All payments of fees and charges under this Agreement shall be made within thirty (30) days of the date of the applicable invoice sent to You. Any amount payable by You to Us hereunder which is past due may be subject to a late payment charge equal to one percent (1%) per month, or the highest rate permitted by law, whichever is less. The receipt or request for payment of such amounts shall not prejudice Our rights with respect to Your failure to pay on the due date.
 - 4.3 We shall invoice and You shall pay all monies due prior to the commencement of the new annual term. Failure to Pay shall result in the automatic suspension of all licences and services but not the obligation to pay. In the event of suspension for late payment, the period of suspension shall be deducted from the then current licence term.
 - 4.4 For the avoidance of doubt, time of delivery of Products and/or Maintenance Services shall not be of the essence.
5. **LIMITED WARRANTIES.**
 - 5.1 We warrant that, during the Warranty Period, the Products (excluding Updates) will operate substantially in conformity with the applicable Documentation. Updates are not included within the definition of Products for the purposes of any Warranty or Warranty Period.
 - 5.2 Within the Warranty Period, if You detect a defect in a Product's physical media, You may return the defective media to Us and We will replace it free of charge.
 - 5.3 Provided that We are notified in writing of a Product's non-conformance with the warranty set forth in section 5.1 within the applicable Warranty Period, We shall, at Our option: a) repair or replace the defective Product, or b) refund the license fees paid for the Product in exchange for a return of the defective Product. In the event of a refund Your license to use the Products will immediately expire. This Section 5.3 is Your exclusive remedy for breach of the limited warranty in Section 5.1. The above warranties specifically exclude defects resulting from accident, abuse, misapplication or unauthorised repair, modifications, enhancements and installation in an incompatible environment. We do not warrant that use of the Products will be uninterrupted or error free.
 - 5.4 EXCEPT FOR EXPRESS WARRANTIES STATED IN THIS SECTION 5 AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE PRODUCTS AND SERVICES ARE PROVIDED "AS IS", AND WE, AND OUR SUPPLIERS DISCLAIM ALL OTHER WARRANTIES, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY (I) OF MERCHANTABILITY OR SUITABILITY, (II) OF FITNESS FOR A PARTICULAR PURPOSE, OR (III) OF NON-INFRINGEMENT OF THIRD PARTY RIGHTS.
6. **LIMITATION OF LIABILITY.**

To the maximum extent permitted by applicable law, in no event will We or Our Suppliers be liable to you or any third party for any indirect, special, incidental, consequential or punitive damages, including without limitation, any lost profits or revenues, loss or inaccuracy of any data, or cost of substitute goods, regardless of the theory of liability (including negligence) and even if we have been advised of the possibility of such damages. Our and Our suppliers' aggregate liability to You for actual direct damages for any cause whatsoever shall be limited to the greater of 110% of the cumulative Product fees paid or payable by You to Us in the particular for the year for the Product directly causing the damages or the fees paid or payable by You to Us for the services directly causing the damages. In no event shall You raise any claim under this Agreement more than one year after (i) the discovery of the circumstances giving rise to such claim; or (ii) the effective date of the termination of this Agreement. Nothing in this Agreement shall exclude or limit either party's liability for (A) death or personal injury caused by that party's negligent act or omission or by willful default; or (B) any breach of any obligations implied by Section 12 of the Supply of Goods and Services Act 1982. In entering into this Agreement, You had recourse to Your own skill and judgement and have not relied on any representations made by Us. This Limitation of Liability shall not apply to Clause 7 below.

7. THIRD PARTY CLAIMS.

- 7.1 We shall: (i) defend, or at Our option settle, any claim brought against You to the extent that it is based on an allegation that a Product infringes a third-party patent, trade-mark or copyright of the country in which You take delivery of the Product; and (ii) indemnify and hold You harmless from all damages, costs and expenses finally awarded against You by a court of competent jurisdiction or agreed to by way of a settlement entered into by Us on Your behalf, **provided that** You (i) notify Us promptly of each such claim; (ii) give Us sole control of the defence and/or settlement of the claim; (iii) fully cooperate with Us in the defence or settlement of the claim; (iv) mitigate such damages, costs and expenses as far as is reasonably possible; and (v) take no action that may prejudice Our ability to defend the claim.
- 7.2 If all or any part of the Product is, or in the opinion of Us is likely to become, the subject of a claim of infringement, We may at Our sole discretion: (i) procure for You the right to use the Product or the affected part thereof; (ii) replace the Product or affected part with other software that has the same or additional functionality; (iii) modify the Product or affected part to make it non-infringing; or (iv) if none of the foregoing remedies is commercially feasible as determined by Us in our sole discretion, We shall refund, upon return of the infringing Product, a pro-rated (over a 12 month period on a straight-line basis) portion of the payments paid by You to Us for the Product or the affected part.
- 7.3 We shall have no liability or other obligations to the extent a claim is based on: (i) failure to use an update provided by Us, if infringement could have been avoided by use of the latest version of the Products; (ii) combination, operation, or use of Products with other products not provided by Us, if such infringement would have been avoided in the absence of such combination, operation, or use; (iii) Your use of Product in any manner inconsistent with the applicable license terms and conditions; (iv) modification, alteration, or enhancement to the Product not performed or expressly authorised by Us; (v) the furnishing to You of any information, service or technical support by a third party; (vi) non-licensed use of the Products; or (vii) Our compliance with Your designs, specifications or instructions.

THE FOREGOING PROVISIONS OF THIS SECTION STATE THE ENTIRE LIABILITY AND OBLIGATION OF US AND YOUR EXCLUSIVE REMEDY FOR CLAIMS OF INFRINGEMENT OF THIRD PARTY RIGHTS.

8. TERM AND TERMINATION.

- 8.1 Except as otherwise specified in a Schedule or Addendum to this Agreement, the Maintenance Services supplied hereunder shall be provided to You on an annual basis subject to payment having been received.
- 8.2 Notwithstanding the foregoing, We may terminate this Agreement and any licenses and services provided hereunder if: (i) You breach this Agreement in any way whatsoever. We will notify you in writing of any breach and if such breach is not cured within thirty (30) days We shall be entitled to terminate this Agreement; or (ii) forthwith if You make an assignment for the benefit of creditors or proceedings are commenced by or for You under any bankruptcy, insolvency, or debtor's relief law. Termination shall not relieve You from Your obligation to pay fees that remain unpaid and shall not limit either party from pursuing other available remedies. Upon termination by Us of this Agreement or any part thereof, We shall have no obligation to refund to You any fees paid by You. If a Product license is revoked or expired, You must certify in writing to Us that You have immediately un-installed and destroyed all copies of the Product within thirty (30) days of such revocation/expiration. The following Sections survive termination of this Agreement: 4, 5.4, 6, 7, 8 and 9.

9. GENERAL

- 9.1 **Confidential Information.** Each party receiving Confidential Information ("Recipient") shall retain in confidence and require its employees, agents, and contractors to retain in confidence all Confidential Information of the other party ("Discloser"). "Confidential Information" means (i) the terms and conditions of this Agreement, (ii) all financial terms and conditions contained in Our quotation; (iii) the Products as well as results of any Product benchmark or similar tests (whether performed by Us, You, or any third party); and (iv) any information, in written or other tangible form, which has been conspicuously marked by Discloser as "confidential" or "proprietary" or if not so marked, was indicated at the time of disclosure to be confidential and is later summarised and confirmed as confidential in writing transmitted to Recipient within ten (10) days after disclosure. Recipient shall protect Discloser's Confidential Information in the same manner Recipient protects its own Confidential Information of similar importance, but in no event with less than reasonable care. Confidential Information shall remain the sole property of the Discloser and shall not be disclosed to any third party without Discloser's express written consent (except, solely to employees, agents, advisors, attorneys, consultants, and subsidiaries, who need to know and are bound by a written agreement with Recipient to maintain the confidentiality of such Confidential Information in a manner consistent with this Agreement). Confidential Information shall not include any information that: (i) is or becomes publicly available without the Recipient's breach of any obligations owed to the Discloser; (ii) is known to the Recipient prior to the Discloser's disclosure of such information to the Recipient; (iii) becomes known to the Recipient from a source other than the Discloser without a breach of an obligation of confidentiality owed to the Discloser; or (iv) is independently developed by the Recipient. Notwithstanding the foregoing, We may disclose that You are Our customer. In addition, either party may

disclose information in compliance with applicable law or a court order, provided the Discloser is given reasonably prompt notice thereof.

- 9.2 **Governing Law and Jurisdiction.** This Agreement shall be construed, and the legal relations between the parties hereto shall be determined, in accordance with the laws of England and Wales. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. The jurisdiction for any claims arising under this Agreement shall be the courts of England and Wales, and the parties agree to submit to the exclusive jurisdiction of such courts but without prejudice to our rights to bring proceedings in any other jurisdiction where You are incorporated or have assets to enforce any ruling made in the English Courts.
- 9.3 **Integration and Amendment.** This Agreement constitutes the entire agreement between the parties and supersedes all prior or contemporaneous conditions, agreements, communications or representations, whether oral or written, relating to the subject matter hereof. A party has not relied on any statement or representation by an employee or agent of the other party in entering into this Agreement. Any additional or different terms in Your documents (including any terms contained on Purchase Orders) are hereby deemed to be material alterations and notice of objection to, and rejection of, them is hereby given. Except as permitted herein, this Agreement may not be modified or any term or condition waived except in writing signed by a duly authorised representative of each party. No waiver of any breach of any provision of this Agreement shall constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provision hereof. Headings are for convenience only and shall not affect the interpretation of any provision hereunder.
- 9.4 **Assignment.** Neither this Agreement nor any right, obligation, or Product licensed hereunder may be assigned by You without Our prior written consent. Any purported assignment in violation of the foregoing is void. Subject to the foregoing, the provisions of this Agreement shall be binding upon and inure to the benefit of the parties, and their permitted successors and assigns.
- 9.5 **Severability/Waiver.** If any provision of this Agreement is declared unlawful, void, or unenforceable, then that provision shall be limited to the extent enforceable, or otherwise severed, and will not affect the validity and enforceability of the remaining provisions. No waiver of any contractual right will be effective unless in writing by an authorised representative of the waiving party. No waiver of a contractual right will be deemed a waiver of any future right.
- 9.6 **Audits. i) Self-Audits.** To help manage Your use of the Products and Your compliance with this Agreement, You agree to perform a self-audit upon 10 working days prior written notice from Us, on the self audit form made available by Us. If Your-self audit form reveals a discrepancy that You have previously or are currently using more of Our products than you have valid licenses for, You must submit a order to Us at the same time as returning the self-audit form to Us. In the event that you are late in submitting a self-audit form We may delay accepting orders and/or suspend Maintenance Services until We receive the self-audit form and We may instigate the Formal Audit process defined below.
ii) **Formal Audits.** We, or Our designated agent, may, upon five (5) working days prior written notice to You, inspect any of Your facility where Products are used and audit records for the purpose of confirming Your use of the Products and Your compliance with this Agreement. We may perform only one formal audit per twelve (12) month period unless a previous audit reveals a discrepancy. Our audit shall be performed at Our sole expense; **provided however**, that if, as a result of Our audit, it is determined that You owe Us additional fees, then You shall bear the reasonable cost of Our audit and pay all past-due fees immediately in accordance with the terms of this Agreement. This section survives termination of this Agreement for two (2) years.
- 9.7 **Force Majeure.** Except with respect to the obligation to pay fees when due hereunder, neither party shall be deemed in default of this Agreement because of a delay or failure in performance of its obligation resulting from any cause beyond its reasonable control (a "Force Majeure"), provided it gives reasonably prompt notice of the Force Majeure condition to the other party and uses reasonable efforts to mitigate the delay or failure.
- 9.8 **Notices.** Any notices required or permitted to be given hereunder shall be delivered by personal delivery, express courier, or recorded delivery, postage prepaid, return receipt requested, to a party's address set forth in the Schedule, or if to Us to Our address set out above. A notice shall be deemed effective when actually delivered. Either party may change its address for purposes of this Agreement by written notice given in accordance herewith.
- 9.9 **Contracts (Rights of Third Parties) Act 1999.** Notwithstanding any other provision in this Agreement, nothing in this Agreement shall create or confer (whether expressly or by implication) any rights or other benefits whether pursuant to the Contracts Rights of Third Parties) Act 1999 or otherwise in favour of any person not a party hereto, except with respect to Microsoft software included in the Software. Microsoft is a third party beneficiary with the right to enforce its right in its software
- 9.10 **Intellectual Property Rights/Remedies.** Nothing in this Agreement waives or limits Our equitable rights or remedies available to Us to protect Our rights in the Products, including those available under copyright law, international treaties or national copyright and intellectual property laws of the countries in which You use the Products.