SOFTWARE LICENSE AND SUPPORT AGREEMENT

PLEASE READ THIS AGREEMENT CAREFULLY BEFORE USING THIS SOFTWARE.

BY USING THE SOFTWARE, CLICKING AGREE OR OTHER FORM OF ASSENT, YOU ARE AGREEING TO BE BOUND BY THIS AGREEMENT. IF YOU ARE AGREEING TO THESE TERMS ON BEHALF OF OR FOR THE BENEFIT OF YOUR EMPLOYER OR A THIRD PARTY, THEN YOU REPRESENT AND WARRANT THAT YOU HAVE THE NECESSARY AUTHORITY TO AGREE TO THIS AGREEMENT ON THEIR BEHALF.

This agreement is between **xViz LLC d/b/a Lumel** and its applicable Affiliate, (**Company**), and the individual or entity (**Customer**) that has downloaded or otherwise procured the licensed Software (as defined below). The software, modifications, enhancements, documentation, and license keys provided to Customer (**Software**) are licensed and are not sold.

1. SCOPE.

This agreement describes the licensing of the Software and Support provided to Customer under an order, or accessed by Customer through free version download or registration.

2. GRANTS AND THIRD-PARTY SERVICE.

a. **Grant**. Subject to the other terms of this agreement, Company grants Customer, under an order, for the duration specified in the order, a term-based, non-exclusive, non-transferable license up to the license capacity purchased to use the Software only in Customer's internal business operations. Additionally, for an additional fee, if purchased under an order, Customer may display the Software for public, view-only use during the term of the order. Unless otherwise provided in the order, each license is restricted to one production environment, which may be a single and logical domain, workspace tenant, server, or service, as applicable.

b. **Affiliates.** Customer and its Affiliates may enter into orders with Company and its Affiliates. An Affiliate entering into an order agrees to be bound by this agreement as if it were an original party hereto. Customer may also allow its Affiliates to use the Software under Customer's order, provided Customer is responsible for their compliance with the terms of this agreement. **Affiliate** means any company controlled by or under common control with the subject entity, directly or indirectly, with an ownership interest of at least 50%.

c. **Trial Version.** If Customer has registered for a trial use of the Software, Customer may access the Software for the Company approved time period (unless extended by Company in writing), solely for evaluation purposes. The Software is provided 'AS IS', with no warranty or Support provided during this time period.

d. **Free Version.** If Customer has registered for a no-charge use of the Software or downloads the no-charge version through a Third Party Service (as defined below), Customer may access the Software until it is cancelled by Company upon notice via email, or by the Customer. The Software is provided 'AS IS', with no warranty or Support provided during the no-charge period.

e. **Third Party Service.** The use of the Software requires that Customer has a fully functioning, fully supported, properly licensed copy of third-party software, as further outlined in https://valq.com/agreement/supported-software, which Customer much purchase separately (**Third Party Service**). Customer understands that the Software is add-on software developed using the Third Party Service's Software Development Kit (SDK), and follows the Third Party Service protocols (https://docs.microsoft.com/en-us/power-bi/developer/visuals/power-bi-custom-visuals). Company will make reasonable efforts to maintain Third Party Service certification requirements (https://docs.microsoft.com/en-us/power-bi/developer/visuals/power-bi-custom-visuals-certified) but not all Software will be certified by the Third Party.

3. DISCLAIMER.

COMPANY DISCLAIMS ALL OTHER WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. CUSTOMER UNDERSTANDS THAT THE SOFTWARE MAY NOT BE ERROR FREE, AND USE MAY BE INTERRUPTED. CUSTOMER UNDERSTANDS AND AGREES THAT (I) THE SOFTWARE MAY NOT OPERATE PROPERLY IN THE EVENT THAT THERE IS ANY ISSUE WITH THE THIRD PARTY SERVICE, INCLUDING BUT NOT LIMITED TO LACK OF SUPPORT BY THE THIRD PARTY OF THE THIRD PARTY SERVICE, AND THAT (II) COMPANY IS NOT RESPONSIBLE OR LIABLE FOR ANY THIRD PARTY SERVICE ISSUE.

4. PAYMENT AND AUDIT.

a. **Payment**. Customer must pay all fees as specified on the order, but if not specified, then within 15 days of receipt of an invoice. The fees are exclusive of sales, use, withholding, VAT and other similar taxes, and Customer is responsible for payment of such taxes at the rate and in the manner for the time being prescribed by law. If Company has the legal obligation to pay or collect taxes for which Customer is responsible under this section, Company will invoice Customer and Customer will pay that amount unless Customer provides Company with a valid tax exemption certificate authorized by the appropriate taxing authority. This agreement contemplates one or more orders for the Service, which orders are governed by the terms of this agreement.

b. **Audit and Telemetry**. Company may audit Customer's usage of the Software, through a telemetry setting in the Software or other process, in order to verify that Customer is in compliance with the terms of this agreement, and Customer agrees to cooperate with such audit. Any telemetry data received by Company is anonymous and is solely related to the use of the Software, and not to reports or any underlying data sets. Customer may disable the telemetry setting, if such option is provided in the Software, and if Customer has purchased an unlimited usage license, Customer may request that Company disable this setting. Customer agrees to immediately pay any fees applicable to Customer's use of the Software in excess of the number of users purchased under an order (**Excess Use**), beginning from the date of initial license or subscription purchase. In the event of Excess Use, Customer is responsible for any Company costs and expenses associated with the audit.

c. **Excess Use or Nonpayment.** Excess Use of the Software by Customer or any invoiced amount not received by Company by the due date may accrue interest at the lower rate of 1.5% per month or the maximum rate permitted by law. In addition, if Excess Use continues for more than 30 days or an invoiced amount is 30 days or more past due, Company may suspend Support and/or revoke the license to the Software until the amount is paid in full.

5. MUTUAL CONFIDENTIALITY.

a. **Definition of Confidential Information.** Confidential Information *means* all non-public information disclosed by a party (**Discloser**) to the other party (**Recipient**), whether orally, visually, or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure (**Confidential Information**). Company's Confidential Information includes, without limitation, the Software, its user interface design and layout, and information on pricing, bugs & product performance.

b. **Protection of Confidential Information.** The Recipient must use the same degree of care that it uses to protect the confidentiality of its own confidential information (but in no event less than reasonable care), and it may not disclose or use any Confidential Information of the Discloser for any purpose outside the scope of this agreement. The Recipient must make commercially reasonable efforts to limit access to Confidential Information of Discloser to those of its employees and contractors who need such access for purposes consistent with this agreement and who have signed confidentiality agreements with Recipient no less restrictive than the confidentiality terms of this agreement.

c. **Exclusions.** Confidential Information *excludes* information that: (i) is or becomes generally known to the public without breach of any obligation owed to Discloser; (ii) was known to the Recipient prior to its disclosure by the Discloser without breach of any obligation owed to the Discloser; (iii) is received from a third party without breach of any obligation owed to Discloser; or (iv) was independently developed by the Recipient without use or access to the Confidential Information. The Recipient may disclose Confidential Information to the extent required by law or court order, but will provide Discloser with advance notice to seek a protective order.

6. PROPERTY.

a. **Reservation of Rights.** The Software, workflow processes, user interface, designs, technical documentation, and other technologies provided by Company as part of the Software are the proprietary property of Company and its licensors, and all right, title, and interest in and to such items, including all associated intellectual property rights, remain only with Company and its licensors. The Software is protected by applicable copyright and other intellectual property laws. Customer may not remove any product identification, copyright, trademark, or other notice from the Software. Company reserves all rights unless expressly granted in this agreement.

b. **Restrictions.** Customer *may not*: (i) transfer, assign, sublicense, rent the Software, create derivative works of the Software, (ii) use the Software in any type of service-provider environment, or embed or bundle the Software into or with Customer's products or services (including but not limited to software and reports); (iii) reverse engineer, decompile, disassemble, or translate the Software; (iv) evaluate the Software for the purpose of competing with Company; (v) publish the Software outside of Customer's internal organization, or (vi) operate the Software other than in accordance with its technical documentation.

7. TERM AND TERMINATION.

a. **Term.** This agreement expires at the end of the license period specified in the accompanying order.

b. **Term of Orders.** Unless otherwise stated in an order, (i) orders and all subscriptions under them will automatically renew for additional one-year periods unless a party notifies the other of non-renewal 60 or more days before the renewal date, (ii) an automatically renewing order will remain unchanged from the prior term except for any pricing increase of which Company has notified Customer 90 or more days before the renewal date, and (iii) upon automatic renewal, the per-unit pricing for the Software will not increase by more than 5% over that in the prior term unless the prior pricing was clearly designated in the order as promotional or one-time.

c. **Mutual Termination for Material Breach.** If either party is in material breach of this agreement, the other party may terminate this agreement at the end of a written 30-day notice/cure period, if the breach has not been cured.

d. **Return Company Property Upon Termination.** Upon termination of this agreement or a license for any reason, Customer must discontinue using the Software, de-install, and destroy the Software and all copies within 5 days. Upon Company's request, Customer will confirm in writing its compliance with this destruction or return requirement.

8. LIABILITY LIMIT.

a. **EXCLUSION OF INDIRECT DAMAGES. TO THE MAXIMUM EXTENT ALLOWED BY LAW, COMPANY IS NOT LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT (INCLUDING, WITHOUT LIMITATION, COSTS OF DELAY; LOSS OF OR UNAUTHORIZED ACCESS TO DATA OR INFORMATION; AND LOST PROFITS, REVENUE, OR ANTICIPATED COST SAVINGS), EVEN IF IT KNOWS OF THE POSSIBILITY OR FORESEEABILITY OF SUCH DAMAGE OR LOSS.**

b. **TOTAL LIMIT ON LIABILITY. TO THE MAXIMUM EXTENT ALLOWED BY LAW, EXCEPT FOR COMPANY'S INDEMNITY OBLIGATIONS, COMPANY'S TOTAL LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT (WHETHER IN CONTRACT, TORT, OR OTHERWISE) DOES NOT EXCEED THE GREATER OF THE AMOUNT PAID OR PAYABLE BY CUSTOMER UNDER THIS AGREEMENT WITHIN THE 12-MONTH PERIOD PRIOR TO THE EVENT THAT GAVE RISE TO THE LIABILITY.**

9. SUPPORT.

Term-Based License. Company's technical support and maintenance services (**Support**) is included with the license purchase. Support is provided under the Support policies then in effect. Company may change its

Support terms, but Support will not materially degrade during any Support term. More details on Support are located at https://valq.com/pricing/.

10. DEFENSE OF THIRD-PARTY CLAIMS.

Company will defend or settle any third-party claim against Customer to the extent that such claim alleges that the Software violates a copyright, patent, trademark, or other intellectual property right, if Customer promptly notifies Company of the claim in writing, cooperates with Company in the defense, and allows Company to solely control the defense or settlement of the claim. *Costs.* Company will pay infringement claim defense costs it incurs in defending Customer, Company-negotiated settlement amounts, and court-awarded damages. *Process.* If such a claim appears likely, then Company may modify the Software, procure the necessary rights, or replace it with the functional equivalent. If Company determines that none of these are reasonably available, then Company may terminate the Software and refund any prepaid and unused term license fees. *Exclusions.* Company has no obligation for any claim arising from: Company's compliance with Customer's specifications; a combination of the Software with other technology or aspects where the infringement would not occur but for the combination; or technology or aspects not provided by Company. **THIS SECTION CONTAINS CUSTOMER'S EXCLUSIVE REMEDIES AND COMPANY'S SOLE LIABILITY FOR INTELLECTUAL PROPERTY INFRINGEMENT CLAIMS.**

11. GOVERNING LAW AND FORUM.

This agreement is governed by the laws of the State of Texas (without regard to conflicts of law principles) for any dispute between the parties or relating in any way to the subject matter of this agreement. Any suit or legal proceeding must be exclusively brought in the federal or state courts for Collin County, Texas, and Customer submits to this personal jurisdiction and venue. Nothing in this agreement prevents either party from seeking injunctive relief in a court of competent jurisdiction. The prevailing party in any litigation is entitled to recover its attorneys' fees and costs from the other party.

12. OTHER TERMS.

a. **Entire Agreement and Changes.** This agreement and the order constitute the entire agreement between the parties and supersede any prior or contemporaneous negotiations or agreements, whether oral or written, related to this subject matter. Customer is not relying on any representation concerning this subject matter, oral or written, not included in this agreement. No representation, promise, or inducement not included in this agreement is binding. No modification or waiver of any term of this agreement is effective unless both parties sign it, however this agreement may be modified through an online process provided by Company.

b. **No Assignment.** Neither party may assign or transfer this agreement to a third party, nor delegate any duty, except that the agreement and all orders may be assigned, without the consent of the other party, as part of a merger or sale of all or substantially all the businesses or assets of a party.

c. **Independent Contractors.** The parties are independent contractors with respect to each other.

d. **Enforceability and Force Majeure.** If any term of this agreement is invalid or unenforceable, the other terms remain in effect. Neither party is liable for events beyond its reasonable control, including, without limitation, force majeure events.

e. **Money Damages Insufficient.** Any breach by a party of this agreement or violation of the other party's intellectual property rights could cause irreparable injury or harm to the other party. The other party may seek a court order to stop any breach or avoid any future breach of this agreement.

f. **No Additional Terms.** Company rejects additional or conflicting terms of a Customer's form-purchasing document.

g. **Order of Precedence.** If there is an inconsistency between this agreement and an order, the order prevails.

h. **Survival of Terms.** All provisions of this agreement regarding payment, confidentiality, indemnification, limitations of liability, proprietary rights and such other provisions that by fair implication require

performance beyond the term of this agreement must survive expiration or termination of this agreement until fully performed or otherwise are inapplicable. The UN Convention on Contracts for the International Sale of Goods does not apply.

i. **Export Compliance.** The Software and Confidential Information may be subject to export laws and regulations of the United States and other jurisdictions. Each party represents that it is not named on any U.S. government denied-party list. Neither party will permit its personnel or representatives to access any Software in a U.S.-embargoed country or in violation of any applicable export law or regulation.

j. **U.S. Government Restricted Rights.** If Customer is a United States government agency or acquired the license to the Software hereunder pursuant to a government contract or with government funds, then as defined in FAR §2.101, DFAR §252.227-7014(a)(1), and DFAR §252.227-7014(a)(5), or otherwise, all Software provided in connection with this agreement are "commercial items," "commercial computer software," or "commercial computer software documentation." Consistent with DFAR §227.7202 and FAR §12.212, any use, modification, reproduction, release, performance, display, disclosure, or distribution by or for the United States government is governed solely by the terms of this agreement and is prohibited except to the extent permitted by the terms of this agreement.

k. **Open Source Software Licenses.** The Software may contain embedded open source software components listed in http://valq.com/agreement/opensourceattribution. Customer acknowledges and agrees that it is also subject to the license terms of each such component.

l. **Feedback.** If Customer provides feedback or suggestions about the Software, then Company (and those it allows to use its technology) may use such information without obligation to Customer.