



END USER LICENSE AGREEMENT

PLEASE READ ALL OF THE FOLLOWING TERMS AND CONDITIONS OF THIS END USER LICENSE AGREEMENT CAREFULLY. BY CLICKING AN “AGREE” OR SIMILAR BUTTON OR INSTALLING OR USING THE PROGRAM YOU INDICATE YOUR ACCEPTANCE OF THIS AGREEMENT AND AGREE, AS AN AUTHORIZED REPRESENTATIVE OF YOUR COMPANY OR ORGANIZATION (IF BEING ACQUIRED FOR USE BY AN ENTITY) OR AS AN INDIVIDUAL, TO ABIDE BY ALL OF THE TERMS AND CONDITIONS STATED OR REFERENCED HEREIN. IF THE INDIVIDUAL ACCEPTING THIS AGREEMENT IS ACCEPTING ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, SUCH INDIVIDUAL REPRESENTS THAT THEY HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERM “CUSTOMER” SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF YOU DO NOT AGREE TO ABIDE BY THESE TERMS AND CONDITIONS, DO NOT CLICK “AGREE” OR SIMILAR BUTTON AND DO NOT INSTALL OR USE THE PROGRAM.

YOU MUST ACCEPT AND ABIDE BY THESE TERMS AND CONDITIONS AS PRESENTED TO YOU – ANY CHANGES, ADDITIONS OR DELETIONS BY YOU TO THESE TERMS AND CONDITIONS WILL NOT BE ACCEPTED BY xViz LLC AND WILL NOT BE PART OF THIS AGREEMENT.

This End User License Agreement, including the Order Form which by this reference is incorporated herein (this “**Agreement**”) is a binding agreement between **xViz LLC.**, a Texas Limited Liability company, (**Licensor**), and the individual or entity identified on the Order Form as the purchaser, or that has agreed to use, downloaded or otherwise procured the Software (“**Customer**”).

1. DEFINITIONS.

For purposes of this Agreement, the following terms have the following meanings:

“**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%.

“**Customer Data**” means all electronic data and information, or any derivatives thereof, uploaded, submitted or otherwise transmitted to or through the Software, which shall also be known and treated as Customer’s Confidential Information. Customer Data shall be and remain the sole and exclusive property of Customer. Customer Data does not include data generated by Licensor solely describing the licensing parameters and the usage and efficiency of operation of components of the Software.

“**Documentation**” means user manuals, technical manuals, and any other materials provided by Licensor, in printed, electronic, or other form, that describe the installation, operation, use, or technical specifications of the Software.

“**Order Form**” means an order form filled out and submitted by or on behalf of Customer, through online submission or transmitted by other means, and a quotation issued by Licensor, signed by or on behalf of Customer, and returned by Licensor, accepted by Licensor, for Customer’s purchase of the license for the Software granted under this Agreement.

“**Software**” means the xViz software program for which Customer has downloaded or otherwise procured, or, if purchasing a license, as expressly set forth in the Order Form, and additionally includes all modifications, enhancements, documentation, and license keys specific to the abovementioned software program.

“**Term**” has the meaning set forth in Section 9.1.

“**Third Party**” means any Person other than Customer or Licensor.

2. LICENSE GRANT AND SCOPE.

- 2.1 **Grant.** Subject to the terms set forth in this Agreement, and payment of fees as set forth in Section 3.1, Licensor grants Customer a non-exclusive, non-transferable, non-sublicensable, limited license during the Term to use the Software and Documentation only in Customer’s internal business operations. Unless otherwise specified on the Order Form, this license is limited to the number of Creators/Editors and Viewers specified on the Order Form, for use only on a single tenant of the platform on which the software is deployed (*i.e.*, Microsoft Power BI) (“**Instance**”).
- 2.2 **Public Display Rights.** Notwithstanding the restrictions on publication in Section 2.3(d), and upon full payment of a public display fee as set forth on the Order Form, Customer may display the Software for public, view-only use during the Term.
- 2.3 **Use Restrictions.** Customer shall not, and shall require its Affiliates not to, directly or indirectly:
- (a) modify, translate, adapt, or otherwise create derivative works or improvements, whether or not patentable, of the Software or Documentation or any part thereof;
 - (b) reverse engineer, disassemble, decompile, decode, or otherwise attempt to derive or gain access to the source code of the Software or any part thereof;
 - (c) remove, delete, alter, or obscure any trademarks or any copyright, trademark, patent, or other intellectual property or proprietary rights notices provided on or with the Software or Documentation, including any copy thereof;
 - (d) rent, lease, lend, sell, sublicense, assign, distribute, publish (except as provided for in Section 2.2), transfer, embed or bundle the Software into or with Customer’s products or services, or otherwise make available the Software, or any features or functionality of the Software, to any Third Party for any reason; or
 - (e) use the Software or Documentation for purposes of competitive analysis of the Software, the development of a competing software product or service, or any other purpose that is to the Licensor’s commercial disadvantage.
- 2.4 **Affiliates.** Subject to the grant in Section 2.1, including the number of authorized Creators/Editors and Viewers and restricted to the same single tenant, Customer may allow its Affiliates to use the Software under Customer’s Order Form, provided Customer is responsible for its Affiliates’ compliance with the terms of this Agreement.
- 2.5 **Trial or Beta Version.** If Customer has registered for a trial use of the Software, or if Customer is granted access to a beta version, Customer may access the Software for the Licensor approved time period (unless extended by Licensor in writing), solely for evaluation purposes. The Software is provided ‘AS IS,’ with no warranty or Support provided during this time period.
- 2.6 **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 Licensor 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.

- 2.7 **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://xviz.com/agreement/supported-software>, which Customer must 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>).
- 2.8 **Microsoft AppSource Purchases.** The Software, when purchased from Microsoft AppSource or its equivalent marketplace, shall be utilized only for publishing to Power BI web/service, and not for the following purposes: (a) publish to Power BI report server (b) combine, bundle, or embed the Software in Customer's own technology that is licensed, sold, distributed, hosted or deployed in return for license or subscription fees (OEM use case) (c) build, publish or distribute reports and applications incorporating Software to external organizations as part of Customers consulting or service offerings (Embedded use case).

3. PAYMENT.

- 3.1 **Payment.** All License fees are payable in advance in the manner set forth in the Order Form and are non-refundable.
- 3.2 **Automatic Renewal Payments.** Unless otherwise specified in the Order Form, and explicitly agreed to in writing by Licensor, Customer is required to specify in the Order Form payment terms to effectuate the automatic renewal of the Term as set forth in Section 9.2. Licensor may process such Automatic Renewal Payments up to thirty (30) days in advance of the renewal date. If any such Automatic Renewal Payment is unsuccessful, for any reason, Customer shall have thirty (30) days after notice from Licensor to pay the required renewal fee. Failure to pay the renewal fee may result in automatic termination of this License.
- 3.3 **Taxes.** The fees herein 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 Licensor has the legal obligation to pay or collect taxes for which Customer is responsible under this section, Licensor will invoice Customer and Customer will pay that amount unless Customer provides Licensor with a valid tax exemption certificate authorized by the appropriate taxing authority.
- 3.4 **Excess Use or Nonpayment.** Excess Use of the Software by Customer 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, Licensor may suspend Support and/or revoke the license to the Software until the amount is paid in full.

4. AUDIT RIGHTS

Licensor may audit Customer's usage of the Software in order to verify that Customer is in compliance with the terms of this Agreement, and Customer agrees to cooperate with such audit. Customer agrees to immediately pay any fees applicable to Customer's use of the Software in excess of the number of licenses purchased under the Order Form (**Excess Use**), beginning from the date of initial license or subscription purchase. In the event of Excess Use, Customer is responsible for any Licensor costs and expenses associated with the audit.

5. COLLECTION AND USE OF INFORMATION.

- 5.1 **Collection.** Customer acknowledges that Licensor may, directly or indirectly through the services of its Affiliates and/or Third Parties, collect and store information regarding use of the Software and about equipment on which the Software is installed or through which it otherwise is accessed and used.
- 5.2 **Use.** Customer agrees that Licensor may use such information for any purpose related to any use of the Software by Customer or on Customer's equipment, including but not limited to improving the performance of the Software or developing updates, and verifying Customer's compliance with the terms of this Agreement including license audit purposes as outlined in Section 4 and enforcing the Licensor's rights, including all Intellectual Property Rights in and to the Software.
- 5.3 **Customer Data.** Licensor's rights to collection and use of information under this Section shall not include any Customer Data.

6. MUTUAL CONFIDENTIALITY.

- 6.1 **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**). Licensor's Confidential Information includes, without limitation, the Software, its user interface design and layout, and information on pricing, bugs & product performance.
- 6.2 **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.
- 6.3 **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.

7. INTELLECTUAL PROPERTY.

Reservation of Rights. The Software, workflow processes, user interface, designs, technical documentation, and other technologies provided by Licensor as part of the Software are the proprietary property of Licensor and its licensors, and all right, title, and interest in and to such items, including all associated intellectual property rights, remain only with Licensor 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. Licensor reserves all rights unless expressly granted in this Agreement.

8. MAINTENANCE AND SUPPORT.

- 8.1 **Included Support.** Subject to Section 8.3, the License granted in this Agreement entitles Customer to Licensor's basic technical support and maintenance services (**Support**). Support is provided under the Support policies then in effect. Licensor may change its Support terms, but Support will not materially degrade during any Term.
- 8.2 **Support Restrictions.** Licensor's Support shall be limited to operation and function of the Software and shall not include the operation, function or other issue solely related to any Third Party Service upon which the Software operates as an extension or component.
- 8.3 **Excess Support.** In its sole discretion, Licensor may suspend Support under this Section for any Customer incurring more than ten (10) hours of Support services within any thirty-day (30) period during the Term. The duration of such suspension of Support will be for a period of at least thirty (30) days and up to the duration of the Term, at the sole discretion of Licensor.
- 8.4 **Support for Prior Versions.** Licensor's commitment to provide Support herein shall extend only to the current version of the Software, with Support provided for the immediate prior version of the Software for a period of twelve (12) months after release of the current Software version.
- 8.5 **Outsourcing of Support.** Licensor may contract with an Affiliate or a Third-Party to provide Support services to Customer. Licensor shall ensure that such Affiliate or Third Party agrees to be bound by the Confidentiality terms of Section 6 of this Agreement.
- 8.6 **Free and Trial Versions.** This section of the Agreement is not applicable to any Free or Trial version of the Software, for which Customer is not entitled to any Support services.

9. TERM AND TERMINATION.

- 9.1 **Term.** This Term of this Agreement shall be as specified in the accompanying Order Form.
- 9.2 **Automatic Renewal.** Unless otherwise stated in an Order Form, (i) orders and all subscriptions under them will automatically renew for additional one-year periods unless a party notifies the other of non-renewal thirty (30) or more days before the renewal date, and (ii) all terms on an automatically renewing order will remain unchanged from the prior term except for any pricing increase of which Licensor has notified Customer sixty (60) or more days before the renewal date.
- 9.3 **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.
- 9.4 **Return Licensor 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 Licensor's request, Customer will confirm in writing its compliance with this destruction or return requirement.

10. WARRANTY DISCLAIMER.

LICENSOR 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) LICENSOR IS NOT RESPONSIBLE OR LIABLE FOR ANY THIRD PARTY SERVICE ISSUE.

11. LIABILITY LIMIT.

- 11.1 TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, LICENSOR IS NOT LIABLE TO CUSTOMER, EVEN IF LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, FOR (A) THE VALUE OF CUSTOMER DATA; (B) DESTRUCTION, DELETION, THEFT, UNAUTHORIZED MODIFICATION, OR LOSS OF, OR FAILURE TO STORE ANY, CUSTOMER DATA; (C) DAMAGES FROM ANY SECURITY INCIDENT, BREACH OR ANY OTHER EVENT, OR FROM ANY VIRUSES, BUGS, MALICIOUS SOFTWARE OR HARMFUL COMPONENTS, AFFECTING CUSTOMER DATA; (D) LOSS OF PROFITS, REVENUES, CUSTOMERS, OPPORTUNITIES, OR GOODWILL; OR (E) UNAVAILABILITY OF THE SOFTWARE. CUSTOMER IS SOLELY RESPONSIBLE FOR SECURING AND BACKING UP THE SOFTWARE AND CUSTOMER DATA. NEITHER LICENSOR NOR ITS SUPPLIERS WARRANTS THAT THE OPERATION OF THE SOFTWARE WILL BE ERROR-FREE OR UNINTERRUPTED OR IS NOT VULNERABLE TO SECURITY INCIDENT, BREACH OR ANY OTHER EVENT OR THE LOSS OF, ALTERATION OF, OR IMPROPER ACCESS TO, CUSTOMER DATA.
- 11.2 EXCLUSION OF INDIRECT DAMAGES. TO THE MAXIMUM EXTENT ALLOWED BY LAW, LICENSOR 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.
- 11.3 TOTAL LIMIT ON LIABILITY. TO THE MAXIMUM EXTENT ALLOWED BY LAW, EXCEPT FOR LICENSOR'S INDEMNITY OBLIGATIONS, LICENSOR'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.

12. DEFENSE OF THIRD-PARTY CLAIMS.

Licensor 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 Licensor of the claim in writing, cooperates with Licensor in the defense, and allows Licensor to solely control the defense or settlement of the claim. *Costs.* Licensor will pay infringement claim defense costs it incurs in defending Customer, Licensor-negotiated settlement amounts, and court-awarded damages. *Process.* If such a claim appears likely, then Licensor may modify the Software, procure the necessary rights, or replace it with the functional equivalent. If Licensor determines that none of these are reasonably available, then Licensor may terminate the Software and refund any prepaid and unused term license fees. *Exclusions.* Licensor has no obligation for any claim arising from: Licensor'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 Licensor.

THIS SECTION CONTAINS CUSTOMER'S EXCLUSIVE REMEDIES AND LICENSOR'S SOLE LIABILITY FOR INTELLECTUAL PROPERTY INFRINGEMENT CLAIMS.

13. 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.

14. OTHER TERMS.

- 14.1 **Entire Agreement and Changes.** This Agreement and the Order Form 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 Licensor.
- 14.2 **Purchase Order Terms.** The Parties recognize that, during the Term, other than the Order Form specified herein, a purchase order, acknowledgment form, invoice, or similar routine document (collectively, "Forms") may be used to implement or administer provisions of this Agreement. Therefore, the Parties agree that the terms of this Agreement are the sole and exclusive terms that will prevail in the event of any conflict between this Agreement and the printed provisions of such Forms, or in the event of any typed provisions of Forms that add to, vary, modify or are at conflict with the provisions of this Agreement. ANY ACTUAL OR ATTEMPTED MODIFICATION OF THE TERMS HEREUNDER SHALL BE NULL AND VOID AND SHALL BE DEEMED NOT ACCEPTED BY LICENSOR.
- 14.3 **Assignments.** Customer may not assign or transfer this Agreement to a Third Party, nor delegate any duty, except that the Agreement may be assigned, without the consent of the Licensor, as part of a merger or sale of all or substantially all the businesses or assets of the Customer. Licensor may assign, transfer or delegate this Agreement, or any of its rights or obligations hereunder, in whole or in part, to any Third-Party without notice to, or the consent of the Customer.
- 14.4 **Independent Contractors.** The parties are independent contractors with respect to each other.
- 14.5 **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.
- 14.6 **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.
- 14.7 **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.

- 14.8 **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.
- 14.9 **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.
- 14.10 **Open Source Software Licenses.** The Software may contain embedded open source software components listed in <http://xviz.com/agreement/opensourceattribution>. Customer acknowledges and agrees that it is also subject to the license terms of each such component.
- 14.11 **Feedback.** If Customer provides feedback or suggestions about the Software, then Licensor (and those it allows to use its technology) may use such information without obligation to Customer.