

ITEM # 18-0964**Innovyze®**

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Portland, OR 97219

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Document #180554980**Date of Document: 10 May 2018**Your Account Team: Marina Bouchot
Greg Brazeau**SHIP TO**

City of Santa Fe NM

Darlene Beingessner

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Santa Fe, NM 87505-3923

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dabeingessner@ci.santa-fe.nm.us

BILL TO (if different from ship to)

Innovyze License Agreement stipulates that licenses are not transferrable and must be used at the location for which they are purchased.

Qty	Product	Unit Price	Total Amount
1	InfoWater Floating (Unlimited Links) Credit for trade-in license toward new license Credit to Convert Existing H2OMap license H2M96RUNL01-F001972	\$24,480.00 -\$ 18,360.00	\$6,120.00
1	InfoWater Floating (Unlimited Links) – InfoCare 7/14/18-7/14/19 (H2OMap Water license H2M96RUNL01-F001972 expires 7/14/18)	\$4,900.00	\$4,900.00
1	InfoWater Suite Floating (Unlimited Links) Credit for trade-in license toward new license Credit for Conversion from H2OMap Water license H2M96SUNL01-F001973	\$26,010.00 -\$ 19,507.50	\$6,502.50
1	InfoWater Suite Floating (Unlimited Links) – InfoCare 7/14/18-7/14/19 (H2OMap Water license H2M96SUNL01-F001973 expires 7/14/18)	\$5,205.00	\$5,205.00
1	Complementary Attendee for InfoWater Training at any of our regularly scheduled trainings in Broomfield, CO, Portland, OR or Monrovia, CA – dates to be selected by client form available listings	\$1600.00	\$0.00
Read the Innovyze License & Annual Maintenance Agreement: http://innovyze.com/agreements		Tax	EXEMPT
		FREIGHT/HANDLING	
		TOTAL (U.S. Dollars)	\$22,727.50

Document #180554980 With Complementary Training is valid ONLY through: July 14, 2018**METHOD OF PAYMENT (Choose One)**☐ Signed Authorization (see below)☐ Purchase Order No: _____ (Terms = 30 days)☐ Check No: _____ Date Mailed: _____
Make checks payable to Innovyze, Inc.**FEDERAL TAX ID: 59-3169325****I Agree to the Terms of this Quote**

(Please print Name of authorized Manager)

(Title)

(Signature of authorized Manager)

(Date)

Tax has been estimated per your local regulations. Customer remains responsible for all taxes imposed by local regulations associated with this transaction. If your business is tax exempt, please forward your exemption certificate. Please see our website at <http://www.innovyze.com/support> for a description of our Maintenance and Support Program.

**IMPORTANT – READ THE FOLLOWING
SOFTWARE LICENSE AGREEMENT
BEFORE USING THE ENCLOSED SOFTWARE.**

This is a legal agreement between you (either an individual or an entity, hereinafter "Licensee") and, depending on the software product ordered, either (1) Innovyze, Inc., a California corporation, or (2) Innovyze, Ltd., a company organized under the laws of the United Kingdom (hereinafter collectively referred to as "Innovyze").

By installing the software, Licensee agrees and accepts to be bound by the terms and conditions of this Agreement. If you do not agree with the terms and conditions of this Agreement, promptly return the software and accompanying written materials and hardware to receive a refund.

1. Definitions.

- a. "Quotation" shall mean the quotation provided by Innovyze and approved by Licensee, which sets forth the software purchased, licensing and maintenance fees, any other fees or costs, and applicable duties or taxes.
- b. "Software" shall mean the software indicated on the Quotation, including any accompanying materials and hardware, in executable, machine readable, format.
- c. "Open-Source Components" shall mean any open-source, freeware, shareware or other software having similar licensing or distribution models by which it is subject to license agreement or other enforceable requirements or restrictions, including under any GNU General Public License or GNU Library or Lesser Public License, or other license agreement that conforms to a standard definition set by the Open Source Initiative.

2. Contracting Entity. Please refer to <http://www.innovyze.com/licensing/> to determine which legal entity, either Innovyze, Inc. or Innovyze, Ltd., is party to this Agreement with Licensee for the Software described in the Quotation.

3. Grant of License. Innovyze hereby grants Licensee a perpetual, nonexclusive, nontransferable right to use the Software in accordance with the terms and restrictions of this Agreement, provided however, that any rental or short term Software licenses will expire at the end of the time period specified in the relevant Quotation. Unless otherwise agreed, Licensee is solely responsible for the installation of the Software. Innovyze or its duly appointed agents shall have the right at any time to inspect the Licensee's premises or computer network to verify the use of the Software is in accordance with the terms of this Agreement, including the number of licenses and configuration of the Software. Under no circumstances shall Licensee have the right to sublicense use of the Software to any third party. Innovyze provides the Software in two configurations:

- a. **Fixed Seat.** A fixed seat license configuration permits the installation and use of the Software on a single computer at any one time. The Software may be uninstalled and reinstalled on a different computer (not to exceed more than four (4) times per month) at the same location so long as the number of fixed seat licenses does not exceed the number purchased.
- b. **Floating Seat** A floating seat license configuration is installed on a centrally accessible computer or server (LAN or WAN) and consists of the numbers and combinations (sizes and types) of floating seat licenses purchased. The number of authorized concurrent floating seat licenses indicated on the approved Quotation may not be exceeded at any office location. Software granted as WAN or LAN licenses are limited to the office location or country to which they are issued, respectively. As permitted, licenses of the Software may be checked out to a specific computer for the purpose of operating remotely or for other purposes, and that checked out license will not be available to any other computer until returned. A floating seat license, once issued, may not be divided into multiple floating seat licenses. Licensee must take reasonable

steps to ensure that the number of users of the Software at any one time does not exceed the number of licenses for the Software that you have obtained from Innovyze.

4. Open-Source Licenses. The Software may include Open-Source Components licensed under separate open-source licenses, hyperlinked copies of which can be found in the "About" section of the Software ("Open-Source Licenses"). Any use of the Open-Source Components by the Licensee shall be governed by, and subject to, the terms and conditions of the Open-Source Licenses. On written request to Innovyze, Innovyze shall provide the Licensee with a complete, machine-readable copy of the source code for such Open-Source Components in accordance with the terms of the Open-Source License(s).
5. Restrictions. Licensee agrees not to: (a) decompile, reverse engineer, or disassemble the Software, (b) create any derivative work based in whole or in part on the Software, (c) copy, change, modify, merge, or adapt the Software in any way, (d) sublicense, rent, lease, loan, export, or re-export the Software or otherwise transfer the Software to another person or entity, or (e) remove, obscure, or modify any trademark or copyright notice of Innovyze. Notwithstanding the foregoing, Licensee may make one copy of the Software solely for backup or archival purposes.
6. Updates. From time to time, at its option, Innovyze may change, modify, enhance, or otherwise develop new or updated versions of the Software. Licensee has no right under this Agreement to receive or use such updated versions of the Software, but may obtain such updated versions under the terms and conditions of a separately executed Maintenance and Support Agreement.
7. Payment. Licensee agrees to pay the fees indicated in the approved Quotation within thirty (30) days receipt of an invoice from Innovyze or its authorized representative, subsidiary, or affiliate. Failure to make payment shall be deemed a material breach of this agreement. For Software requiring the use of Dongle, failure to make payment will result in Licensee not receiving the necessary activation code for continued use of the Software after installation.
8. Intellectual Property. Licensee agrees that Innovyze is the sole and exclusive owner of all proprietary rights in and to the Software and any corrections, enhancements, updates, or modifications thereto, including any patent, copyright, trade secret, trademark, or other proprietary rights. The Software is protected under applicable law, including the laws of the United States, the United Kingdom, and applicable international treaties. No right, title or interest in or to the Software is transferred to Licensee under the terms of this Agreement. To the extent that a court of competent jurisdiction determines that Licensee is deemed to have any rights in or to the Software of any enhancements, upgrades, etc., the Licensee assigns those rights to Innovyze. If the Software residing on the Licensee owned or leased server(s) will be accessed through a web application or any other remote access tool or device, Licensee shall provide such reasonable security, to include passwords, firewalls, and network/hardware security, as may necessary to prevent unauthorized access or damage to the Software and to protect Innovyze's Intellectual Property rights under this Agreement.
9. Reliability of Data. Model configurations, projections and the analysis generated by Software is provided "as is", without any warranty as to accuracy or validity, is intended for planning and decision support purposes only, and is subject to uncertainties that cannot be fully identified or qualified. Forecasts and actual results may materially vary due to events and circumstances that are not reasonably foreseeable, inaccurate or incomplete data provided and used to formulate the projections, or operation and system conditions that are beyond the scope or capability of Software. Innovyze is not responsible for the realization of forecasted conclusions or projections, or identification of matters that might affect actual system operation or conditions as a result of Licensee's use of Software.
10. Limited Warranty. Innovyze warrants that the Software will perform substantially in accordance with the accompanying written materials for a period of ninety (90) days from the date the Software is received. Innovyze's sole liability and Licensee's exclusive remedy under this limited warranty will be, at Innovyze's option, either (a) the return of the purchase price paid for the Software or (b) repair or

replacement of the Software. Any replacement Software will be warranted for the remainder of the original warranty period or thirty (30) days, whichever is longer.

11. DISCLAIMER. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, INNOVYZE DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE SOFTWARE AND ACCOMPANYING WRITTEN MATERIALS. INNOVYZE DOES NOT WARRANT, REPRESENT, OR GUARANTEE THAT THE SOFTWARE WILL MEET YOUR REQUIREMENTS, THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE, THAT THE SOFTWARE WILL OPERATE IN COMBINATION WITH ANY OTHER SOFTWARE, OR THAT DEFECTS OR ERRORS IN THE SOFTWARE WILL BE CORRECTED. FURTHER, INNOVYZE MAKES NO WARRANTY, REPRESENTATION OR GUARANTEE REGARDING THE USE, OR THE RESULTS OF USE, OF THE SOFTWARE WITH RESPECT TO ITS CORRECTNESS, ACCURACY, RELIABILITY, OR OTHERWISE. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY INNOVYZE SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF THE LIMITED WARRANTY.
12. LIMITATION OF LIABILITY. THE PARTIES THEREFORE AGREE THAT IN NO EVENT SHALL INNOVYZE BE LIABLE FOR ANY INCIDENTAL, SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOST REVENUE OR PROFIT, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, OR OTHER PECUNIARY LOSS) ARISING OUT OF THE USE OR INABILITY TO USE THE SOFTWARE, EVEN IF INNOVYZE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF LEGAL THEORY, WHETHER IN TORT, CONTRACT, OR OTHERWISE.
13. INNOVYZE'S TOTAL AGGREGATE LIABILITY ARISING FROM OR RELATED TO THIS AGREEMENT SHALL NOT EXCEED THE AMOUNT PAID BY LICENSEE FOR THE SOFTWARE. IN NO EVENT SHALL INNOVYZE BE LIABLE FOR THE PERFORMANCE OR NON-PERFORMANCE OF ANY THIRD PARTY PRODUCTS, INCLUDING SOFTWARE AND HARDWARE.
14. Export Restrictions. Licensee agrees not to export, re-export, or provide the Software in violation of this Agreement or any applicable law, including but not limited to, any regulations or restrictions of the United States Export Administration, United States Treasury Department, United States Commerce Department, or the United Kingdom Department of Trade and Industry. Any use, duplication, or disclosure of the Software by the United States Government is subject to restrictions set forth in subparagraph (c) (1) (ii) of the Rights of Technical Data and Computer Software clause at DFARS 252.227-7013 or subparagraphs (c) (1) (2) of the Commercial Computer Software - Restricted Rights clause at 48 CFR 52.227-19, as applicable.
15. Third Party Software. Licensee acknowledges that Software may require the use of third party software covered by a separate license agreement, and Innovyz has no responsibility or liability for the functionality of such third party software.
16. Controlling Law. The validity, construction, and performance of this Agreement shall be governed in accordance with the laws of the State of Colorado, ~~USA.~~ The parties agree that any proceeding arising out of this Agreement shall be instituted in the State of Colorado, ~~Denver County,~~ *new Mexico* *Santa Fe, New Mexico* USA, and each party irrevocably submits to the jurisdiction of such proceeding and waives any and all objections to jurisdiction and venue that it may have under any other law.
17. Termination. If Licensee fails to comply with any of the terms and conditions of this Agreement, Innovyz may terminate the license granted hereunder without notice. In the event of termination, you must immediately uninstall the Software and return any accompanying materials and hardware and provide written confirmation that Licensee has complied with the terms of this provision.
18. Complete Agreement. This Agreement constitutes the entire agreement between the parties concerning the use of the Software and supersedes all prior or contemporaneous understandings or

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agreements, whether written or oral. This agreement may not be amended except by a writing signed by an authorized representative of Innovyze.

19. Binding Effect and Assignment. The terms of this Agreement shall bind and inure to the benefit of the parties and their respective successors and assigns. Innovyze may assign this Agreement, or any right or obligation hereunder, without the prior written consent of Licensee.
20. Parties in Interest. Nothing in this Agreement, express or implied, is intended to confer on any third party or person any right or remedy under or by reason of this Agreement.
21. Severability. The invalidity or unenforceability of any term of this Agreement shall not affect the other terms, and this Agreement shall be construed in all respects as if any invalid or unenforceable term were omitted.
22. Notice. All notices under this Agreement must be delivered in writing by courier, certified or registered mail, to the other party and will be effective upon receipt or three (3) business days after being deposited in the mail, whichever occurs sooner.
23. Waiver. Any waiver, either express or implied, by either party of any term of this Agreement shall not constitute or be construed as a waiver of any subsequent breach or other default.

SOFTWARE MAINTENANCE & SUPPORT AGREEMENT

The following Maintenance and Support Agreement (hereinafter "Agreement") is by and between you (hereinafter "Licensee") and Innovyze, Inc. or Innovyze, Ltd. (as provide in the Innovyze Standard License Agreement and hereinafter collectively "Innovyze") and shall apply to the provision of software maintenance and support services for the Software licensed under the Innovyze Standard License Agreement. If not otherwise defined herein, defined terms shall have the meaning as set forth in the Innovyze Standard License Agreement, which is specifically referenced and incorporated herein. In the event of any conflict in terms, the terms of the Standard License Agreement shall govern.

1. Definitions. "Effective Date" shall mean date set forth in the Quotation approved by Licensee.

2. Term. This Agreement shall commence on the Effective Date and shall automatically renew on the anniversary date of the Effective Date for a twelve (12) month period or such other period as may be defined in the Quotation ("Term"), unless cancelled as set forth below.

3. Software Updates and Maintenance. Innovyze will support, maintain, update, and upgrade ("Maintenance") the Software during the Term. Maintenance will only apply to unmodified Software and the most recently released and updated version of the Software. During the Term, Innovyze will use commercially reasonable efforts to correct any functions in the Software which fail to perform as specified in the supporting documentation. Updates or upgrades issued by Innovyze for the Software also may include enhancements or new features.

4. Software Support. Licensee may contact the Innovyze support team. The contact information can be found at <http://www.innovyze.com/contactus/>. Innovyze support staff will be available during normal business hours to assist Licensee regarding the operation of the Software within a reasonable time.

5. Cancellation. Either party may elect not to automatically renew this Agreement by providing the other party a written notification of cancellation at least sixty (60) days prior to the end of the then current Term.

6. Subscription Fees. On the anniversary of the Effective Date, Licensee agree to pay Innovyze the Annual Maintenance Fees set forth in the Quotation and each year thereafter on the anniversary date of Effective Date. Payment shall be made within 30 days receipt of invoice. Innovyze reserves the right to change the Annual Maintenance Fee.

7. Late Payment. If you fail to pay the Annual Maintenance Fee within thirty (30) days of the due date, this Agreement will automatically terminate

without written notice. Failure to make payment will result in Licensee receiving no maintenance and support services as described herein, including but not limited to, the reactivation of the Software in connection with its transfer to another computer or server. If Licensee wishes to renew this Agreement after it has been terminated for non-payment, Licensee shall pay all Annual Maintenance Fees in arrears plus a charge of 25% on the total amount.

8. Training. No software training is provided hereunder.

9. Data. Any data or information provided by Licensee to assist Innovyze in the provision of maintenance services hereunder shall remain your sole and exclusive property. Innovyze shall have no liability for the accuracy or correctness of such data or information.

10. Limitation of Liability. The parties agree, to the fullest extent permitted by law, to limit the aggregate liability of Innovyze, its parents, subsidiaries and affiliates, and their respective directors, officers, employees and agents, to the Annual Maintenance Fee as set forth in the Quotation. This limitation of liability shall apply to all suits, claims, actions, losses, costs and damages of any nature arising from or related to this agreement and without regard to the legal theory under which such liability is imposed.

Under no circumstances shall Innovyze be liable for any, incidental, special, or consequential damages of any kind (including, but not limited to, damages for loss of revenue or profit, business interruption, or loss of business information) arising out the provision of services under this agreement or the use, or inability to use, the Software, even if Innovyze has been advised of the possibility of such damages.

11. Controlling Law. The validity, construction, and performance of this Agreement shall be governed in accordance with the laws of the State of Delaware, USA. The parties agree that any proceeding arising

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out this Agreement shall be instituted in the State of ~~Delaware~~, USA, and each party irrevocably submits to the jurisdiction of such proceeding and waives any and all objections to jurisdiction and venue that it may have under any other law.

12. Termination. If Licensee fails to comply with any of the terms and conditions of this Agreement, Innovyze may terminate the license granted hereunder without notice. In the event of termination, you must immediately uninstall the Software and return any accompanying materials and hardware and provide written confirmation that Licensee has complied with the terms of this provision.

13. Complete Agreement. This Agreement constitutes the entire agreement between the parties concerning the use of the Software and supersedes all prior or contemporaneous understandings or agreements, whether written or oral. This agreement may not be amended except by a writing signed by an authorized representative of Innovyze.

14. Binding Effect and Assignment. The terms of this Agreement shall bind and inure to the benefit of the parties and their respective successors and assigns. Innovyze may assign this Agreement, or any right or obligation hereunder, without the prior written consent of Licensee.

15. Parties in Interest. Nothing in this Agreement, express or implied, is intended to confer on any third party or person any right or remedy under or by reason of this Agreement.

16. Severability. The invalidity or unenforceability of any term of this Agreement shall not affect the other terms, and this Agreement shall be construed in all respects as if any invalid or unenforceable term were omitted.

17. Notice. All notices under this Agreement must be delivered in writing by courier, certified or registered mail, to the other party and will be effective upon receipt or three (3) business days after being deposited in the mail, whichever occurs sooner.

18. Waiver. Any waiver, either express or implied, by either party of any term of this Agreement shall not constitute or be construed as a waiver of any subsequent breach or other default.

See Attached "Addendum"

Licensee (City of Santa Fe) and Innovyze - ADDENDUM

A. TERMINATION

This Agreement may be terminated by the Licensee upon 60 days written notice to Innovyze. Innovyze shall render a final report of the services performed up to the date of termination and shall turn over to the Licensee original copies of all work product, research or papers prepared under this Agreement.

B. INDEMNIFICATION

Innovyze shall indemnify, hold harmless and defend the Licensee from all losses, damages, claims or judgments, including payments of all attorneys' fees and costs on account of any suit, judgment, execution, claim, action or demand whatsoever arising from Innovyze's performance under this Agreement as well as the performance of Innovyze's employees, agents, representatives and subcontractors

C. NEW MEXICO TORT CLAIMS ACT

Any liability incurred by the Licensee in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-1, et. seq. NMSA 1978, as amended. The Licensee and its "public employees" as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense and do not waive any limitation of liability pursuant to law. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act.

D. APPROPRIATIONS

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Licensee for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Licensee, this Agreement shall terminate upon written notice being given by the Licensee to Innovyze. The Licensee's decision as to whether sufficient appropriations are available shall be accepted by Innovyze and shall be final.

E. RELEASE

~~Innovyze, upon acceptance of final payment of the amount due under this Agreement, releases the Licensee, its officers and employees, from all liabilities, claims and obligations whatsoever arising from or under this Agreement.~~ Innovyze agrees not to purport to bind the Licensee to any obligation not assumed herein by the Licensee unless Innovyze has express written authority to do so, and then only within the strict limits of that authority.

Section E – first sentence (2nd sentence fine, as is): *Innovyze, conditioned upon the Licensee's payment of all amounts owed under this Agreement, will upon the termination or expiration of this Agreement (except where Innovyze is terminating this Agreement for cause), release Licensee, its officers and employees, from all known liabilities, claims and obligations whatsoever arising under this Agreement.*

[Signature]

F. INSURANCE

Innovyze shall maintain professional liability insurance throughout the term of this Agreement providing a minimum coverage in the amount required under the New Mexico Tort Claims Act. Innovyze shall furnish the Licensee with proof of insurance of Innovyze's compliance with the provisions of this section as a condition prior to performing services under this Agreement.

G. RECORDS AND AUDIT

Innovyze shall maintain, throughout the term of this Agreement and for a period of three years thereafter, detailed records that indicate the date, time and nature of services rendered. These records shall be subject to inspection by the Licensee, the Department of Finance and Administration, and the State Auditor. The Licensee shall have the right to audit the billing both before and after payment. Payment under this Agreement shall not foreclose the right of the Licensee to recover excessive or illegal payments.

CITY OF SANTA FE:

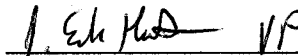


ERIK LITZENBERG, ~~INTERIM~~ CITY MANAGER

DATE: 8/11/18

LICENSEE:

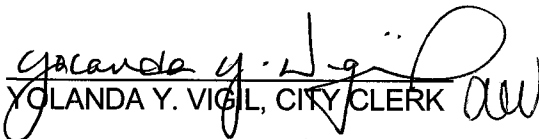
INNOVYZE:



NAME & TITLE

DATE: 8-21-18

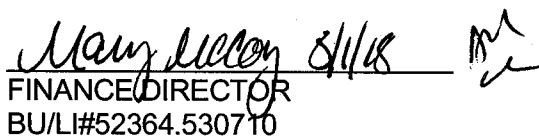
ATTEST:


YOLANDA Y. VIGIL, CITY CLERK

APPROVED AS TO FORM:


CITY ATTORNEY

APPROVED:


FINANCE DIRECTOR
BU/LI#52364.530710