

# ActiViz License Agreement

*Last updated: January 3, 2022*

This ActiViz License Agreement (“Agreement”) shall apply to the grant of a license to the users and subsequent use, installation and integration of ActiViz (as defined herein) offered by Kitware SAS (“KITWARE”). This Agreement constitutes an agreement between CUSTOMER and KITWARE when you execute this Agreement and/or make use of ActiViz. CUSTOMER and KITWARE shall collectively be referred to as the “parties” and individually as the “party”. In the following, the terms “CUSTOMER” shall refer, jointly and severally, to you individually and any organization on whose behalf you act. This Agreement applies to any ActiViz versions provided by KITWARE or that includes, displays, or links to this Agreement, and to any updates, supplements or support services for ActiViz. CUSTOMER may only use ActiViz in accordance with this Agreement.

CUSTOMER’S USE OF ACTIVIZ INDICATES THAT THE CUSTOMER HAS READ, ACCEPTED AND UNCONDITIONALLY AGREED TO THIS AGREEMENT. CUSTOMER MAY NOT USE ACTIVIZ IF CUSTOMER IS A (A) PERSON WHO IS NOT OF LEGAL AGE TO FORM A BINDING CONTRACT WITH KITWARE OR (B) PERSON WHO IS BARRED FROM RECEIVING ACTIVIZ UNDER THE LAWS OF ANY COUNTRY INCLUDING THE COUNTRY IN WHICH THE CUSTOMER IS A RESIDENT OR FROM WHICH THE CUSTOMER IS USING ACTIVIZ. CUSTOMER HEREBY ACKNOWLEDGES THAT CUSTOMER’S ELECTRONIC ASSENT CONSTITUTES CUSTOMER’S AGREEMENT AND INTENT TO BE BOUND BY THESE TERMS AND CONDITIONS AND HONOR ALL TRANSACTIONS ENTERED INTO.

## 1. Definitions.

“**ActiViz**” shall mean the software development tools allowing .Net wrapping of the Visualization Toolkit that allows the creation of applications for a certain software package, software framework, hardware platform, computer system, video game console, operating system, or similar development platform. ActiViz also integrates third party open source software components as specifically listed under Appendix A attached hereto.

ActiViz shall also include the following components:

- Installation package;
- Developer application programming interfaces (APIs);
- On-device libraries to interface to a particular programming language;
- Sample codes; and
- Technical notes or other supporting documentation, such as tutorials to help clarify points made by the primary reference material.

Additionally, ActiViz shall include any subsequent updates or upgrade made available to CUSTOMER, and any associated documentation, software code, or other materials made available by KITWARE to assist CUSTOMER in developing solution(s) (each a “CUSTOMER Product”) that utilizes ActiViz.

The Parties hereby acknowledge, accept and agree that ActiViz contains two essential components for which KITWARE hereby grants the CUSTOMER the license contained herein:

- A. **Developer mode:** this mode shall be utilized solely by the CUSTOMER for internal development and integration purposes, this mode includes header files, documentation along with the run-time libraries, and
- B. **User mode:** this mode shall be utilized by the CUSTOMER and incorporated/integrated/installed into a CUSTOMER Product that may then be subsequently distributed to and utilized by the CUSTOMER' third-party end-users (the “End-Users”), in the form of ActiViz run-time libraries without headers or documentation.

“**ActiViz release**” means the official packaging of ActiViz provided by KITWARE and referenced by a major, minor and patch version.

“**Unlimited License**” means a perpetual license of the ActiViz release.

“**Yearly license**” means a license of the ActiViz release which is available for twelve (12) months from the purchase date.

## 2. Use Rights.

2.1 Subject to CUSTOMER' compliance with the terms of this Agreement, as it pertains to the Developer mode of ActiViz, CUSTOMER may download, install, and use the Developer mode of ActiViz on its devices solely to design, develop, integrate, implement, and test CUSTOMER Product(s). KITWARE hereby grants the CUSTOMER a non-transferable license to use ActiViz's Developer mode. The license enables one individual developer to use the Developer mode of ActiViz and may not be shared or used by more than one individual developer. The CUSTOMER may not license, sub-license, or distribute ActiViz's Developer mode to any third party, including End-Users.

2.2 Subject to CUSTOMER' compliance with the terms of this Agreement, as it pertains to the User mode of ActiViz, CUSTOMER may, provided that CUSTOMER reproduces, without limitation all, copyright notices, and other legal notices and terms, use, reproduce, modify, and distribute CUSTOMER Products containing the embedded User mode of ActiViz to its End-Users, provided that the contained, included, or embedded ActiViz is in the form of ActiViz redistributable package. The User mode of ActiViz may not be utilized by any End-User for any development purposes. Additionally, the CUSTOMER may not license or sublicense the User mode to any End-Users, unless such User mode of ActiViz is incorporated, included, or embedded in a CUSTOMER Product.

2.3 KITWARE reserves the right to discontinue offering ActiViz (or any updates thereto) or to modify ActiViz at any time in its sole discretion.

2.4 KITWARE may provide an “ActiViz Trial version”. The ActiViz Trial version is a subset of the full license, with the following restrictions. The license term is for a fixed limited period, nominally 30 days after download, unless an extension is otherwise agreed with KITWARE. During the trial period CUSTOMER may test, evaluate, experiment and learn about the product and use it for no other purpose. CUSTOMER may not create any products for resale, or share such integration with third parties, or use the software for commercial projects. The license and any rights associated with it terminates automatically at the end of the trial period.

2.5 For the Unlimited License, as set forth above in 2.1 and 2.2, KITWARE grants a perpetual license to CUSTOMER for a specific ActiViz release as defined in the purchase order or, if the ActiViz release version is not specified, the latest available version at time of purchase. CUSTOMER cannot claim any upgrade or other versions without KITWARE’s consent.

2.6 For the Yearly License, CUSTOMER, as set forth above in 2.1 and 2.2, KITWARE grants a license to CUSTOMER for a period of twelve (12) months from the purchase date. CUSTOMER acknowledges that after 12 months the license will be revoked and CUSTOMER will not attempt to use ActiViz after that period.

### 3. Fee.

The CUSTOMER shall pay KITWARE the price mentioned in either the purchase order or the online order for the type ActiViz license described in this Agreement. KITWARE will deliver the ActiViz Release after full payment by CUSTOMER. KITWARE will provide ActiViz for download to CUSTOMER via a shared platform or email. CUSTOMER agrees not to share the download link to any third party. The download link will be made available only for a definite period.

CUSTOMER may elect to purchase technical support. KITWARE provides standard support packages as well as custom packages for larger development. The Support section below provides the terms and conditions regarding technical support.

### 4. Restrictions.

4.1 Except as set forth above, CUSTOMER may not (1) modify, distribute, sell, lease, rent, lend, or sublicense ActiViz (or any copy or portion thereof), (2) pre-install or embed applications created using ActiViz on third-party devices, (3) use ActiViz to create, design, or develop anything other than CUSTOMER Product(s), (4) make any more copies of ActiViz than are reasonably necessary for the authorized use, (5) modify, create derivative works of, reverse engineer, reverse compile, disassemble ActiViz, or otherwise seek to ascertain the source code, except and only to the extent that applicable law expressly permits, despite this limitation (in which case CUSTOMER shall provide KITWARE with prior notification and the opportunity to

respond), or (6) use ActiViz in any manner to (a) circumvent any technical or licensing restrictions of KITWARE products, (b) upload or otherwise transmit any material containing software viruses or other computer code, files or programs designed to interrupt, destroy, or limit the functionality of any software or hardware, (c) use ActiViz or any of its features to invade the privacy of any person or otherwise violate any law.

4.2 The CUSTOMER AGREES not to Use or permit Use of ActiViz for any purpose that may (i) menace, threaten, defraud or harass any person (including other users of ActiViz) or cause damage or injury to any person or property; (ii) involve the publication of any material that is false, defamatory, harassing or obscene; (iii) violate privacy rights or promote bigotry, racism, hatred or harm; (iv) constitute an infringement of intellectual property or other proprietary rights; (v) otherwise violate applicable laws, ordinances or regulations; (vi) Transmit any worms or viruses or any code of a destructive nature through ActiViz; (vii) Misrepresent the source, identity, or content of information transmitted via ActiViz, for example, by claiming to be someone that CUSTOMER is not; (viii) Use ActiViz for any illegal or unlawful purpose; (ix) Intentionally interfere with the operation of ActiViz or any User's enjoyment of ActiViz; and (x) Use ActiViz in any manner that in KITWARE's sole discretion could damage, disable, overburden, or impair it or interfere with any other party's Use and enjoyment of ActiViz.

CUSTOMER AGREES not to access, or attempt to access, ActiViz by any means other than through the means provided by KITWARE or its authorized Partners..

Specifically, CUSTOMER AGREES that CUSTOMER will not:

- Remove or modify any ActiViz markings or any notice of KITWARE's or other proprietary rights;
- Modify, make derivative works of, disassemble, reverse compile, or reverse engineer any part of ActiViz, or access or use ActiViz in order to build or support, and/or assist a third party in building or supporting, products or services competitive to KITWARE;
- Access or attempt to access any portion of ActiViz, which CUSTOMER is not authorized to access under the present License; and
- No part of ActiViz may be copied, reproduced, distributed, republished, downloaded, displayed, posted or transmitted in any form or by any means, including but not limited to electronic, mechanical, photocopying, recording, or other methods, except as expressly provided herein.

4.3 KITWARE reserves the right to revoke access to CUSTOMER to any portion of ActiViz if CUSTOMER violates the present Agreement. KITWARE shall have no liability to CUSTOMER in the event that KITWARE takes such action.

CUSTOMER AGREES to defend and indemnify KITWARE against any claim arising out of a violation of CUSTOMER' obligations under this Section.

CUSTOMER AGREES to make every reasonable effort to prevent unauthorized third parties not authorized by KITWARE from accessing or using ActiViz.

ANY VIOLATION OF THE PROVISIONS UNDER SECTION 4.2 (DETERMINED IN KITWARE'S SOLE DISCRETION) WILL RESULT IN THE TERMINATION OF CUSTOMER' ABILITY TO USE ACTIVIZ.

CUSTOMER UNDERSTANDS AND AGREES THAT KITWARE CANNOT BE RESPONSIBLE FOR ANY CONTENT POSTED, SHARED, OR TRANSMITTED VIA CUSTOMER' USE OF ACTIVIZ AND WHICH VIOLATES THE PROHIBITIONS AS STATED UNDER SECTION 4.2 OF THIS AGREEMENT. CUSTOMER AGREES TO USE ACTIVIZ AT CUSTOMER' OWN RISK.

KITWARE SHALL NOT BE RESPONSIBLE FOR ANY VIOLATION OF APPLICABLE LAWS, RULES, OR REGULATIONS COMMITTED BY CUSTOMER WHEN USING ACTIVIZ. IT IS CUSTOMER' RESPONSIBILITY TO ENSURE THAT CUSTOMER' USE OF ACTIVIZ DOES NOT CONTRAVENE APPLICABLE LAWS, RULES, OR REGULATIONS.

## 5. Feedback.

CUSTOMER may, from time to time, provide feedback to KITWARE concerning the functionality and performance of ActiViz or KITWARE products including, without limitation, identifying potential errors and improvements ("Feedback"). Feedback that is provided by CUSTOMER to KITWARE in connection with this Agreement may be used by KITWARE and its affiliates to improve or enhance its products and, accordingly, KITWARE and its affiliates shall have a non-exclusive, perpetual, irrevocable, royalty-free, worldwide right and license to use, reproduce, disclose, sublicense, modify, make, have made, distribute, sell, offer for sale, display, perform, create derivative works, permit distribution and otherwise exploit such Feedback without restriction.

## 6. Support.

This agreement does not, by default, include any technical support for ActiViz. CUSTOMER may select to purchase additional support. The support consists of hours spent by KITWARE's technical staff to answer technical questions regarding ActiViz. Support starts upon full payment by CUSTOMER and for a period of 12 months. All unused hours are forfeited after this time period.

CUSTOMER shall communicate development requests, technical questions, and bugs to the KITWARE support team via Kitware's ticketing system available at <https://support.kitware.fr>. The KITWARE support team shall respond to the CUSTOMER's request within two business days with either a solution or, in the case of complex issues or lengthy development, an estimate of the time required to implement a potential solution, which CUSTOMER can decide to pursue using the available support hours or buying a new support contract.

## 7. Termination.

This Agreement shall continue as long as CUSTOMER is in compliance with the terms specified herein or until otherwise terminated. Either party may terminate this Agreement upon thirty days written notice if the other party is in material breach of any term of this Agreement. CUSTOMER agrees, upon termination, to immediately destroy all copies of ActiViz within the CUSTOMER' possession or control, including any and all versions of ActiViz (or components or code from ActiViz) contained in all CUSTOMER Products. The following Sections survive any termination of this Agreement: Sections 4, 5, 8, 9, 10, 11, and 12.

## 8. Ownership.

ActiViz is licensed, not sold. KITWARE reserves all other rights not granted herein. The parties acknowledge that, as between the parties, (a) KITWARE retains complete ownership of all Intellectual Property Rights in and to ActiViz and (b) CUSTOMER or its licensors retain complete ownership of all Intellectual Property Rights in the CUSTOMER Product(s) (subject to KITWARE's underlying ownership of the Intellectual Property Rights in and to ActiViz). Nothing in this Agreement will be construed to transfer or assign any Intellectual Property Rights of either party to the other. "Intellectual Property Rights" means any and all rights under patent law, copyright law, trade secret law, trademark law, and any and all other proprietary rights.

## 9. DISCLAIMER OF WARRANTIES & LIABILITY.

ACTIVIZ IS PROVIDED "AS IS" WITHOUT ANY WARRANTIES OF ANY KIND. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, KITWARE DISCLAIMS ANY IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL KITWARE BE LIABLE FOR ANY LOST PROFITS OR BUSINESS OPPORTUNITIES, LOSS OF USE, BUSINESS INTERRUPTION, LOSS OF DATA, OR ANY OTHER INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES RELATING TO ActiViz OR THIS AGREEMENT, UNDER ANY THEORY OF LIABILITY, WHETHER BASED IN CONTRACT, TORT, NEGLIGENCE, PRODUCT LIABILITY, OR OTHERWISE. KITWARE'S TOTAL LIABILITY RELATING TO ActiViz OR THIS AGREEMENT WILL NOT, IN ANY EVENT, EXCEED THE AMOUNT PAID BY THE CUSTOMER TO THE KITWARE DURING THE TWELVE (12) MONTH PERIOD PROCEEDING THE EVENT GIVING RISE TO THE CLAIM. THE FOREGOING LIMITATIONS SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, REGARDLESS OF WHETHER KITWARE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.



## 10. INDEMNIFICATION.

CUSTOMER shall defend, indemnify, and hold harmless KITWARE and its affiliates and their respective directors, officers, employees, contractors, agents, and end users (“Indemnified Parties”) against any third party claim, suit, or proceeding (“Claim”) and any liability, damage, loss, cost, and expenses (including attorney’s fees) arising from the Claim (“Damages”) threatened or brought against any Indemnified Party alleging that any CUSTOMER Product infringes (including contributory infringement) or misappropriates any third party intellectual property right. The Indemnified Party shall provide CUSTOMER written notice of any Claim within a reasonable time after the Indemnified Party receives written notice of the Claim. The Indemnified Party’s failure to provide timely written notice will not excuse CUSTOMER’ obligation under this Agreement unless lack of actual notice of the Claim has a substantially adverse effect on CUSTOMER’ ability to defend the Claim. The Indemnified Party must allow CUSTOMER sole control of the defense. CUSTOMER shall not settle any Claim, and no settlement of a Claim will be binding on the Indemnified Party, without its prior written consent, which will not be unreasonably withheld or delayed.

## 11. Confidentiality.

11.1 The parties agree not to permit access to or to disclose the other party’s Confidential Information except to its authorized employees, contractors and personnel of affiliated companies with a need to know and agree to be subject to the same or similar terms as contained in this Agreement. KITWARE will only use Proprietary Information (hereinafter referred to as “Information”) received from the CUSTOMER for the specific purpose of performing its duties for the sole benefit of the CUSTOMER as described in this Agreement. “Proprietary Information” may include but not be limited to: business plans, marketing plans, and operational financial or personnel information, project/product/service concepts, illustrations, architectures, specifications, designs, prototypes, and/or processes; computer programs, models, drawings and/or architectures; affiliations, associations and/or agreements with other parties.

11.2 If the disclosing party claims that Information furnished is proprietary, the receiving party agrees to preserve and protect such proprietary information from disclosure, inadvertent or otherwise, to any person or persons, through an exercise of care equivalent to the degree of care it uses to preserve and protect its own proprietary information and, in any event, with no less than a reasonable standard of care for protection. The foregoing restriction shall not apply to any portion of the information that:

- is or becomes part of the public domain without breach of this Agreement;
- is subsequently received from a third party who did not obtain or disclose it in violation of any rights of the disclosing party;
- is already known to a party as evidenced by tangible documentation;
- was independently developed by the receiving party without resort to the Information disclosed hereunder;

- was disclosed in a non-written form and was not identified as proprietary at the time of disclosure and/or was not reduced to written form in accordance with the terms herein;
- the receiving party is compelled to disclose pursuant to a judicial order issued by a court of competent jurisdiction to which the receiving party shall provide formal notice to the disclosing party, and all reasonable assistance in opposing such disclosure order.

11.3 Confidential Information may be disclosed in either a verbal or a tangible form; and shall, if disclosed verbally be identified as Proprietary and Confidential in nature; and shall, if disclosed in writing, be conspicuously marked as being “Proprietary”, “Confidential” or by any other appropriate legend clearly indicating the proprietary nature of the information. All Confidential Information is and shall remain the property of the disclosing party. All Confidential Information, and any copies thereof, shall be promptly returned to the disclosing party upon termination of this Agreement or written demand of the disclosing party. Termination shall not, however, affect the rights and obligations contained herein with respect to Information supplied hereunder prior to termination. Such restriction on disclosure shall apply from the time of receipt of said Information through a period of 5 years after termination of this agreement.

## 12. General.

### 12.1 Governing Law.

This agreement shall be governed and construed in all respects by the internal French laws of the Tribunal de Lyon without regard to its choice of law principles. Both parties agree to submit to the jurisdiction of the courts of the Tribunal de Lyon (or French federal courts) when a dispute arises that the parties are unable to settle amicably. Any action by either party must be commenced within one (1) year after the cause of action arises. Furthermore, the prevailing party shall be entitled to receive reasonable attorney’s fees and costs as part of the judgement.

### 12.2 Assignment.

This Agreement may not be assigned in whole or in part, by operation of law or otherwise, by either party without the prior written consent of the other party. Notwithstanding the foregoing, KITWARE may assign this Agreement in connection with merger, a corporate reorganization, or the transfer of substantially all of the assets of the business to which this Agreement relates. This Agreement will bind and inure to the benefit of the parties and their permitted assigns.

### 12.3 Entire Agreement.

This Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof and supersedes entirely all written or oral agreements previously existing between the parties with respect to that subject matter. Each of the parties acknowledges that it is not entering into this Agreement on the basis of any representations other than those representations contained expressly in this Agreement. Any modifications of this Agreement



must be in writing and signed by both parties hereto. If any provision of this Agreement is held to be illegal, invalid, or unenforceable, the parties agree to comply with the provision to the maximum extent permissible so as to affect the intent of the parties, and the remaining provisions of this Agreement remain in full force and effect.

## 12.4 Data Privacy.

12.4.1 KITWARE shall collect and process personal data from CUSTOMER's employees (hereafter "Data Subject") for its own purposes, such as business process execution, business development and internal management. Personal Data means any information relating to an identifiable Data Subject, such as name, email address, postal address, telephone number, profession and name of the employer.

12.4.2 KITWARE is deemed to be the Controller of such data and is responsible for meeting the legal requirements. As the Controller, KITWARE represents that any Processing of Personal Data shall be carried out in accordance with the GDPR.

12.4.3 The CUSTOMER represents that the consent of each Data Subject has been given by a clear affirmative act establishing a freely given, specific, informed and unambiguous indication of the Data Subject's agreement to the Processing of Personal Data relating to him or her, such as by a written statement. Consent has been given for all processing activities carried out for multiple purposes.

12.4.4 The CUSTOMER represents that Data Subject shall be made aware of risks, rules, safeguards and rights in relation to the Processing of Personal Data and how to exercise their rights in relation to such Processing. It represents that the information in relation to the Processing of Personal Data relating to the Data Subject has been given to him or her at the time of collection from the Data Subject and that the Personal Data will be disclosed to KITWARE. All the information defined in Article 13 of the GDPR have been provided to the Data Subject.

12.4.5 KITWARE shall implement appropriate technical and organisational measures for ensuring that, by default, only Personal Data which are necessary for each specific purpose of the Processing are processed. The Personal Data are stored only for the necessary period and their accessibility is restricted.

12.4.6 KITWARE is bound by standard contractual clauses ("CTT") that are published on KITWARE website. Where Processing is to be carried out on behalf KITWARE, KITWARE use only Processors providing sufficient guarantees to implement appropriate technical and organisational measures in such a manner that processing will meet the requirements of the GDPR and ensure the protection of the rights of the Data Subject. Such Processors are bound by CTT. The Processor shall not engage another Processor without prior specific or general written authorisation of KITWARE. Where a Processor engages another Processor for carrying out specific processing activities on behalf of KITWARE, the same data protection obligations as

set out in the contract or other legal act between the Controller and the Processor as referred to in paragraph 3 of article 28 of GDPR providing sufficient guarantees to implement appropriate technical and organisational measures in such a manner that the processing will meet the requirements of the GDPR. Where that other Processor fails to fulfil its data protection obligations, the initial Processor shall remain fully liable to KITWARE for the performance of that other processor's obligations.

12.4.7 KITWARE shall provide modalities for facilitating the exercise of the Data Subject's rights under the GPDR including mechanism to request and obtain access and rectification or deletion of Personal Data and the exercise of the right to object. The email address to exercise the rights of the Data Subject is : [kitware@kitware.fr](mailto:kitware@kitware.fr).

## 12.5 Equitable Relief.

The parties agree that a breach of this Agreement would cause irreparable injury to KITWARE for which there may be no adequate remedy at law. Accordingly, KITWARE shall have the right to apply to any court of competent jurisdiction for injunctive relief and specific performance, without prejudice to any remedies available to it at law or in equity.

## 12.6 Force Majeure.

KITWARE shall not be liable in any respect for failures to perform hereunder due wholly or substantially to the elements, acts of God, labor disputes, acts of terrorism, acts of civil or military authority, fires, floods, epidemics, quarantine restrictions, armed hostilities, riots and other unavoidable events beyond the control of KITWARE, and the time for performance of obligations hereunder by KITWARE or its suppliers subject to such event shall be extended for the duration of such event.

## 12.7 Relationship of Parties.

The relationship of the parties during the term of this Agreement is that of independent third parties. Neither party has, nor no party has the right to represent that it has any power, right or authority to bind the other party, or to assume or create any obligation or responsibility, express or implied, on behalf of the other party or in the other party's name. Nothing stated in this Agreement may be construed as creating a partnership between the parties, creating the relationships of employer/employee, franchiser/franchisee, or principal/agent between the parties.

## 12.8 Notices.

Whenever under the terms of or in connection with this Agreement any notice, consent, approval, authorization or other information is required to be given by either party, such notice, consent, approval, authorization or other information shall be in writing and shall be given or

made by facsimile, personal delivery, reputable overnight courier or registered or certified mail, return receipt requested and with all postage prepaid, to the other party at the address and name mentioned in the invoices and purchase orders.

## APPENDIX A (Open Source Software Components)

ActiViz is based and build on the following open source components:

1. The Visualization Toolkit (VTK) : <https://github.com/Kitware/VTK>
2. CastXML (<https://github.com/CastXML/CastXML>)