Isotope v3 Commercial Developer License Agreement

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1. **Definitions**

1.1. "**Application**" means any software, application, or elements that Your Licensed Developers develop using the Software or Modifications in accordance with this Agreement.

1.2. "**End User**" means an end user of Your Application who acquires a license to such solely for their own use and not for distribution, resale, user interface design, or software development purposes.

1.3. "**Licensed Developer**" shall mean an individual person permitted to use the Software and make Modifications for your Applications, whether such person is Your employee or a consultant or contractor providing services to You.

1.4. "**Modification**" means any revision, adaptation, or derivative of the Software produced by You.

1.5. The "**Software**" means Isotope version 3.

2. **Commercial license grant**

2.1. Subject to the terms of this Agreement, Metafizzy grants to You a revocable, non-exclusive, non-transferable license: (i) for one (1) Licensed Developer to use the Software to create Modifications and Applications; (ii) for You to distribute the Software and/or Modifications to an unlimited number of End Users solely as integrated into the Applications; and (iii) for End Users to use the Software as incorporated into Your Applications in accordance with the terms of this Agreement.

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3. **Ownership**

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4. **Prohibited Uses**

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4.2. You may not distribute the Software or Modifications except as included within Your Application.

4.3. If You produce an Application for a customer, You are responsible for ensuring that your customer does not make use of the Software except with Applications licensed herein.

4.4. Your Application must not enable End Users to produce separate applications that incorporate the Software or Modifications. For example, if Your Application is a development toolkit or library, an application builder, a website builder that can be used to incorporate the Software into a new Application, You must obtain a separate OEM license from Metafizzy.

5. **Termination**

5.1. This Agreement and the license granted hereunder shall continue until terminated in accordance with this Section. Unless otherwise specified in this Agreement, the license shall last as long as Your use of the Software is in compliance with the terms herein.

5.2. Metafizzy shall have the right to terminate this Agreement and the license granted hereunder immediately if You breach any of the material terms of this Agreement, and You fail to cure such material breach within thirty (30) days of receipt of notice from Metafizzy. Upon termination of this Agreement, all licenses granted to You in this Agreement shall terminate automatically and You shall immediately cease use and distribution of the Software.

5.3. Upon termination of this Agreement, You must cease all use of the Software. If, prior to your breach of this Agreement, you delivered Applications incorporating the Software to Your End Users, those End Users' licenses shall survive termination.

6. **Disclaimer of Warranties**

6.1. TO THE EXTENT PERMITTED BY LAW, METAFIZZY DISCLAIMS ALL WARRANTIES AND CONDITIONS, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, WITH REGARD TO THE SOFTWARE. WE DO NOT GUARANTEE THAT THE OPERATION OF THE SOFTWARE OR YOUR APPLICATION WILL BE UNINTERRUPTED OR ERROR-FREE, AND YOU ACKNOWLEDGE THAT IT IS NOT TECHNICALLY PRACTICABLE FOR US TO DO SO.

7. **Limitation of Liabilities**

7.1. TO THE EXTENT PERMITTED BY LAW, IN NO EVENT SHALL METAFIZZY BE LIABLE UNDER ANY LEGAL OR EQUITABLE THEORY FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, OR ANY OTHER PECUNIARY LAW) ARISING OUT OF THE USE OF OR INABILITY TO USE THE SOFTWARE OR THE CODE IT PRODUCES OR ANY OTHER SUBJECT MATTER RELATING TO THIS AGREEMENT, EVEN IF METAFIZZY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY CASE, METAFIZZY'S ENTIRE LIABILITY WITH RESPECT TO ANY SUBJECT MATTER RELATING TO THIS AGREEMENT SHALL BE LIMITED TO THE GREATER OF: (I) THE AMOUNT ACTUALLY PAID BY YOU FOR THE LICENSE, OR (II) FIVE HUNDRED DOLLARS ($500).

8. **Indemnification**

8.1. While redistributing the Software or Modifications thereof as part of Your Application, You may choose to offer acceptance of support, warranty, indemnity, or other liability obligations and/or rights consistent with this Agreement. However, in accepting such obligations, You may act only on Your own behalf and on Your sole responsibility, and not on Metafizzy's behalf.

8.2. You agree to indemnify, hold harmless, and defend Metafizzy and its owners, officers, agents, and affiliates from and against any and all claims, lawsuits and proceedings (collectively "Claims"), and all expenses, costs (including attorney's fees), judgments, damages and other liabilities resulting from such Claims, that arise or result from: (i) Your use of the Software in violation of this Agreement; (ii) the use or distribution of Your Application, except to the extent such claim is based solely on the inclusion of the Software therein; (iii) Your Modification of the Software's source code; or (iv) Your accepting support, warranty, indemnity, or additional liability as described in Section 8.1.

9. **Payment and Taxes**

9.1. All payments under this Agreement are due to Metafizzy upon Your purchase of a license to the Software.

9.2. Each party shall be responsible for all taxes (including, but not limited to, taxes based upon its income) or levies imposed on it under applicable laws, regulations and tax treaties as a result of this Agreement and any payments made hereunder (including those required to be withheld or deducted from payments); provided that You shall be responsible for any value added tax, use tax, sales tax, or similar tax, and shall pay or reimburse Metafizzy for the same upon invoice. Each party shall furnish evidence of such paid taxes as is sufficient to enable the other party to obtain any credits available to it, including original tax withholding certificates.

10. **Miscellaneous**

10.1. **Software Updates and Upgrades.** The license granted herein applies only to the version of the Software available when purchased in connection with the terms of this Agreement, and to any updates and/or upgrades to which You may be entitled. Any previous or subsequent license granted to You for use of the Software shall be

governed by the terms and conditions of the agreement entered in connection with purchase or download of that version of the Software.

10.2. **Survival.** The provisions of sections 4 through 10 will survive termination of this Agreement.

10.3. **Compliance with Applicable Laws.** You agree that You will comply with all applicable laws and regulations with respect to the Software, including without limitation all export control laws and regulations.

10.4. **Assignment.** This Agreement may be assigned by Metafizzy in whole or in part and will inure to the benefit of Metafizzy's successors and assigns. You may not assign or transfer this Agreement without Metafizzy's prior written consent. Notwithstanding the foregoing, however, if You transfer ownership of an Application to a customer for which it was developed, You may assign this Agreement to that customer (the "Assignee") provided: (i) You provide written notice to Metafizzy prior to the effective date of such assignment; and (ii) there is a written agreement, wherein the Assignee accepts the terms of this Agreement.

10.5. **Entire Agreement.** The terms and conditions stated herein set forth the entire agreement of the parties and replace and supersede all other contracts, agreements, and understandings, written or oral, relating to the subject matter hereof.

10.6. **Severability.** In the event that any portion of this Agreement is held to be unenforceable, such portions shall not limit or otherwise modify or affect any other portion of this Agreement.

10.7. **Modification; Waiver.** This Agreement cannot be amended except by a written instrument executed by each of the parties. The failure of either party to enforce any provision of this Agreement may not be deemed a waiver of that or any other provision of this Agreement.

10.8. **Governing Law.** This Agreement is governed by the laws of the Commonwealth of Virginia (notwithstanding conflicts of laws provisions), and all parties irrevocably submit to the jurisdiction of the state or federal courts of the Commonwealth of Virginia and further agree to commence any litigation which may arise hereunder in the state or federal courts located in the judicial district of Alexandria, Virginia. The UN Convention on Contracts for the International Sale of Goods is expressly excluded.

10.9. **Government Use.** If the Software or any related documentation is licensed to the U.S. Government or any agency thereof, it will be considered to be "commercial computer software" or "commercial computer software documentation," as those terms are used in 48 CFR § 12.212 or 48 CFR § 227.7202, and is being licensed with only those rights as are granted to all other licensees as set forth in this Agreement.