



End User License Agreement

Between

Sphere Technology Holdings, Inc.

A Delaware corporation based in:

333 W San Carlos St

Riverpark Tower

San Jose, CA 95110

hereinafter "Licensor"

and

hereinafter "Client"

Introduction

Whereas, Licensor is the owner of a Software for an Augmented Reality platform with standardized modules for businesses;

Whereas, Licensor is incorporated with registered offices in California, United States of America & Lenzburg, Switzerland, and is willing to provide the Software to the Client;

Whereas, both Client and Licensor agree with respect to the terms and conditions upon which Licensor will grant to Client a license to use the Software.

Now, therefore, in consideration of the mutual promises set forth herein, intending to be legally bound hereby, the Parties agree as follows:

Definitions

Capitalized terms use in this Agreement and not otherwise defined shall have the following meanings:

"Effective Date" means the date of this Agreement as set forth on the page with the signatures of the parties.

"Affiliated Companies" shall mean the companies controlled by Client on the Effective Date, whereby "control" shall mean ownership of at least 50% of the share capital and voting rights. In the event that such companies shall cease to be controlled by Client as mentioned above, they shall be deemed Affiliated Companies for an additional period of six (6) months as from the effective date when they ceased to be controlled by Client.

"Agreement" shall mean this License Agreement and all Annexes hereto. In the event of conflict among the documents, this License Agreement shall govern.

"Documentation" shall mean the software user's manual and their updates and/or modifications.

"Software" shall mean the as of the Effective Date latest and current versions of the software product of Licensor.



“Individual License” is provided to an employee of Client or any of its Affiliated Companies with a user account, user name and a user password dedicated to such employee.

“Group License” is provided to a defined group of employees of Client or any of its Affiliated Companies which has access to one single generic user account with one username and a user password.

“System” shall mean the Software System, which System consists of the Software operating in the Technical Environment of Client.

“User” shall mean an employee of Client or any of its Affiliated Companies with a user account, username and a user password dedicated to such employee (**“Individual License”** or a defined group of employees of Client or any of its Affiliated Companies which has access to one single generic user account **“Group License”**).

Software License

2.1. Grant of License

Subject to the terms and conditions set forth in this Agreement, Licensor hereby grants to Client and its Affiliated Companies the non-exclusive and non-transferable right, to access the Software and use the Documentation in the premises of Client and its Affiliated Companies for the internal business purposes of the Client for as long as the License Fees pursuant to Section 6 below are being paid by Client and the Software is provided by Licensor for Client hereto. Unless expressly provided for in this Agreement to the contrary, the license granted hereunder does not include the right to use any third-party software, including without limitation any third-party software.

2.2. Copies

Client has the right to copy the Documentation to any User. Other than that, Client shall not copy or otherwise reproduce the Documentation and/or the Software without the prior written consent of Licensor.

2.3. IP-Notices, No Access of Third Parties

Client shall leave all IP-notices, such as copyright notices and other reservations of rights, in or on the Software and the Documentation unchanged, and shall include such notices in any copy produced by it.

Client shall not assign, lease, market, transfer or sublicense any copy of or rights to the Software or the Documentation, or otherwise grant any right of access or use to any third party, neither in original nor in any other form, without the prior written consent of Licensor.

2.4. No Reverse Engineering, Interoperability

Client shall not reverse engineer, disassemble, decompile or otherwise seek to devise or discover the source code for the Software, and shall not modify the Software, in full or in part. Client shall however be entitled, upon its written request, to obtain all information necessary for the interoperability of the Software with other software created independently from Licensor.

Client undertakes not to, and shall procure that none of its employees, officers, directors, consultants, subcontractors or other third parties will perform any of the above mentioned.



Installation, Delivery of Documentation

3.1. Installation

Licensor shall give the Client access to the Software in electronic form (installation of App on Client's system). The installation of the Software on Client's system and the production of back-up and archives shall be performed by the Client.

3.2. Delivery of Documentation

Together with the installation of the Software, Licensor shall provide Client with one copy of the Documentation for the Software in electronic form.

Support services and updates

Licensor shall provide support services for the Software in accordance with the terms agreed upon hereto. Free software updates are available on the App-Stores as well as on the administrator portal.

Training

5.1. Training Services

The Licensor and Client can agree upon training services according to the terms set forth.

5.2. Reimbursement

In addition to the fees agreed-upon between The Licensor and Client, Licensor shall be reimbursed for costs and expenses as follows:

- a) Railway or air travel;
- b) Car mileage at the rate of EUR 0.70 per km plus applicable tolls and parking;
- c) Other travel expenses (hotels, meals) up to EUR 200 per person per day,

The receipts shall be obtained and submitted to Client for all reimbursable amounts. Client shall pay all applicable taxes based on or relating to the training services.

Prices

6.1. License Fees

For the license to the Software granted under Section 2 above, Client shall pay to Licensor license fees on a monthly basis (the "**License Fee**") set payable in monthly instalments.

6.2. Additional Users

As the user accounts of Individual Licenses are not meant to be shared, any additional User of an Individual License needs a new user account. The License Fee for additional Users of Individual Licenses as well as the License Fee for Group Licenses are based on a set fee agreed upon between the Licensor and Client.

6.3. Additional Companies



Any extension of the license under this Agreement to companies other than the Affiliated Companies shall be negotiated in good faith between Client and Licensor and agreed between them.

6.4. Support

The support services provided by Licensor shall in all respects be filled in and duly executed by both Parties.

6.5. Taxes

All payments due under this Agreement shall be made plus any taxes such as a Sales Tax or Value Added Tax (VAT). Other than that, each Party shall bear its own taxes and duties.

Invoicing and Payment

7.1. Invoicing

Licensor shall invoice Client for all payments under this Agreement. Payment shall be due thirty (30) calendar days from the date of invoice. Licensor shall be entitled upon to demand advance payments at his discretion.

7.2. Currency, Payment

All invoices from Licensor to Client shall be made in US Dollar, Euro or Swiss Francs. Unless otherwise stated in an Annex executed hereunder, all payments due under this Agreement shall be made in US Dollar, Euro or Swiss Francs. Client shall only have a right to set-off claims against Licensor that (i) have arisen under this Agreement, (ii) are due and payable at the time of set-off, and (iii) are free of any and all objection or defense Licensor may have against the respective claim.

Rights of Ownership

8.1. Software Client

Client acknowledges and agrees that it does not have and will not in any way acquire under this Agreement, any intellectual property rights in and to the Software or the Documentation, including without limitation any copyrights, trademarks, trade secrets or patents.

Licensor remains the holder of all rights relating to the Software and the documentation, including any copy for back-up or archives purposes produced by Client. Client acknowledges and agrees that nothing in this Agreement grants Client any ownership rights in the Software or the Documentation, or any copyrights, trademarks, trade secrets, patents or other intellectual property rights relating thereto.

8.2. Ownership of Know-How and Discoveries

Any discovery or improvement, process or device relating to data processing licensed or developed pursuant to this Agreement shall be the sole property of Licensor, except for any discovery or improvement, process or device specifically related to the Client's owned system and software.



Warranties

9.1. Warranty

Licensor warrants that at the time of installation the Software has no material defects and that the Software does not differ from the specifications in the Documentation. Client agrees that minor deviations of the Software from the specifications contained in the Documentation shall be disregarded.

Licensor reserves the right to continuously adapt, develop, improve and debug the software at his discretion. Client takes note of such actions and explicitly agrees.

9.2. Warranty Period

The Warranty Period shall be twelve (12) months after the Effective Date of this Agreement.

9.3. No Third-Party Rights

Licensor warrants that it has the right and power to grant the License herein and that the execution, delivery and performance of this Agreement by Licensor do not and will not constitute a material breach of any material agreement binding on Licensor. Licensor further warrants that, to his best knowledge, the use of the Software does not infringe any valid right of any third party.

9.4. No Alterations

All warranties given by Licensor will become void and of no effect in the event that Client makes any alteration to the Software or to any other software program necessary for the operation of the Software.

9.5. Regulatory Approvals

No warranties are given and are expressly excluded by Licensor with regard to regulatory approvals required in the territory of Client's business.

Client warrants to Licensor that prior to the undertaking of this Agreement, it has inquired on and is fully familiar with any regulatory requirements imposed by law in the territory of Client's business in order to provide its services with the help of the Software licensed.

Indemnity for Infringement Claims

Licensor shall defend, indemnify and hold Client harmless against claims, damages or other amounts (including reasonable attorney's fees and costs which may be awarded to any third party in respect of any claim or action against client) arising from the breach by Licensor of any representation or warranty set forth in Section 9.3 above. Client shall immediately inform Licensor of such claims in writing and all measures of defense and negotiations of settlement shall be subject to Licensor's sole discretion. Such indemnity shall only be applicable in the event of a final decision by a court of competent jurisdiction from which no appeal exists and shall be limited to the total amount of the license fees received by Licensor under this Agreement up to the time when the claim was raised by a third party. Further, this indemnity does not cover any infringement caused by (i) access of the Software other than in accordance with this Agreement, (ii) modifications or changes of the Software made by Client in violation of this Agreement, (iii) use of third-party goods in combination with the Software other than as contemplated by this Agreement, or (iv) information, service or technical support furnished by a third party.

Client shall defend, indemnify and hold Licensor harmless against any claims, damages or other amounts (including reasonable attorney's fees and costs which may be awarded to any third party in respect of any claim or action against client) arising from regulatory requirements in the territory of Client's business, as set forth in Section 9.5. above.



Limitation of Liability

In no event shall Licensor be liable to Client for any damages resulting from or related to any failure of the Software, including, but not limited to loss of data. Licensor shall not be liable to client for any indirect, special or consequential damages or lost profits arising out of or related to this Agreement. Licensor's liability shall in no event exceed the total amount of License Fees received by Licensor up to the time of any such event. Client is aware of and acknowledges that Licensor does not guarantee or warrant the absence of defects of the Software. Licensor shall not in any event be liable for content transmitted across the System.

The above limitation of liability shall not apply in cases of willful misconduct, claims under product liability laws or other cases where the limitation of Licensor's liability is prohibited by applicable law.

Confidentiality

12.1. In General

The Parties to this Agreement undertake to maintain strict confidentiality with respect to all information and company secrets of the other party which comes to their notice (the **"Confidential Information"**, as further defined below), even after this Agreement has expired. The parties shall not be entitled to use such information either directly or indirectly without the written consent of the other party, nor to forward nor divulge it to third parties, with the exception of those persons who require knowledge of such confidential information for the purposes of this Agreement, as set out in this Section 12.

"Confidential Information" shall mean any and all technical and non-technical information or company secrets relating to existing, future and/or proposed products and services of each of the Parties. Without limiting the generality of the foregoing, the protection of Confidential Information shall extend to all information with regard to research, engineering, financial information, procurement requirements, purchasing, manufacturing, customer lists, business forecasts, sales and merchandising and marketing plans. Confidential Information may be communicated in writing, orally or electronically.

12.2. Non-Disclosure of Confidential Information

Each Party (the **"Receiving Party"**) to which Confidential Information is disclosed by the other Party (the **"Disclosing Party"**) shall keep such Confidential Information strictly secret and shall not disclose it to any unauthorized third party without the prior written consent of the Disclosing Party. In particular, the Receiving Party agrees

- a) to use such Confidential Information only for purposes of this Agreement;
- b) to ensure that a standard of strict confidentiality is applied by the Receiving Party's employees, agents or sub-contractors so as to prevent disclosure to third parties. The Receiving Party shall take all steps necessary to assure that its employees, agents and subcontractors adhere to the terms of this Section 12;
- c) to return all Confidential Information to the Disclosing Party within thirty (30) calendar days of the written request of the Disclosing Party to that effect and to retain no copies or reproductions thereof; and
- d) to certify in writing to the Disclosing Party at its request that the terms of this Section 12 have been complied with.



12.3. Client's Data

Any data or other materials furnished by Client for use by Licensor under this Agreement shall remain the sole property of Client and will be held in confidence in accordance with this Section 12. Such data and materials shall be returned to Client upon completion of the services rendered by Licensor under this Agreement.

12.4. Limitations

The Receiving Party may disclose Confidential Information, provided such information

- a) was legitimately in the Receiving Party's possession or was legitimately known to the Receiving Party prior to receipt from the Disclosing Party; or
- b) is or becomes public knowledge without the fault of the Receiving Party, or
- c) is or becomes rightfully available to the Receiving Party from a party that is not bound by any confidentiality undertaking and which is not directly or indirectly controlled by the Disclosing Party; or
- d) is required to be disclosed by an order of a court or governmental agency (provided, however, that the Receiving Party shall first have given notice to the Disclosing Party and allow the Disclosing Party to make a reasonable effort to obtain a protective order or other confidential treatment of the Confidential Information).

12.5. Survival

The confidentiality obligations contained in this Section 12 shall remain effective even after the termination of this Agreement.

Data Protection

Licensor acknowledges that data Client (and its Affiliated Companies) may provide to Licensor (or to which Licensor may access from time to time) may qualify as personal data under applicable privacy/data protection laws in the territory of Client's business, respectively personal and/or sensitive personal data under the General Data Protection Regulation (hereinafter "**GDPR**") and the Swiss Federal Act on Data Protection (hereinafter "**FADP**") and, in addition, may be qualified as data subject to professional secrets under criminal law statutes ("**Customer Data**").

Client undertakes to and will make sure that all of its Customers will give their prior informed consent in written form that Customer Data relating to them may be transferred to California and/or Switzerland and may occasionally be processed by Licensor for the purposes set out in this Agreement (i.e. support services).

Licensor will only use Customer Data provided by Client to the extent necessary for the performance of obligations under this Agreement. All employees of Licensor and of its subcontractors will be obliged in an effective contractual manner to comply with the GDPR and FADP or any other applicable privacy/data protection laws and this section of the Agreement. Licensor will provide employees or subcontractors with Personal Data for processing on a "need-to-know-basis" only.

Customer Data and the respective data carriers (in whatever form) shall always remain the property of Client or its Affiliated Companies. Client may give specific instructions to Licensor as to the handling and further treatment of Customer Data. Licensor shall process all Customer Data in accordance with the provisions set forth in this Sections and the instructions given by Client.



When providing services via remote access, Licensor shall only be entitled to proceed so from an adequately secured company IT-network (not through private virtual networks or mobile networks).

Licensor undertakes that Customer Data will be protected against unauthorized processing through adequate technical and organizational measures and pursuant to further instructions provided by Client.

Term and Termination

14.1. Term

This Agreement will enter into force on the Effective Date and, subject to termination pursuant to Section 14.2 below and will remain effective for an initial term of three months (the "Initial Term"). After the Initial Term this Agreement shall be automatically valid for an indefinite duration, unless either Party terminates this Agreement with one (1) month prior written notice to the other Party upon the end of a calendar month.

14.2. Termination for Cause

Either Party shall have the right to terminate this Agreement or part thereof by giving thirty (30) calendar days prior written notice to the other Party if such other Party breaches a material obligation under this Agreement and fails to cure that breach within thirty (30) calendar days after receiving receipt of a written notice describing the breach in reasonable detail. Any of the following shall be considered, inter alia, a material breach:

- a) breaching any of the provisions of this Agreement relating to reverse compilation, confidentiality, data protection, unauthorized modification or alteration of or access to the Software;
- b) repeated failure to make timely payment of the fees due to Licensor under this Agreement;
- c) filing for bankruptcy or being adjudicated bankrupt or insolvent; or
- d) making an assignment for the benefit of creditors, or an arrangement pursuant to any bankruptcy law.

14.3. Duties upon Termination

Upon termination of this Agreement,

- a) Client will return to Licensor the Software, Documentation and other property of Licensor; and
- b) Upon his own discretion, Licensor will return or delete to Client all data (including Customer Data) received from Client in connection with this Agreement, including such data and information stored in Client specific databases, and each Party shall return to the other Party all confidential Information of the other Party, or destroy all such items and give the other Party written confirmation thereof.

If for a reason not caused by Client, Licensor is not able to perform its duties under this Agreement at any time during the Initial Term, Licensor shall use all its reasonable best efforts to uphold the provision of its services under this Agreement in order to allow Client to organize adequate replacement services until the effective date of the termination of this Agreement.

Any provision of this Agreement that expressly or by implication is intended to continue in force shall survive termination of this Agreement, including without limitation confidentiality terms, tax payments and accrued payment obligations.



Applicable Law and Jurisdiction

This Agreement shall in all respects be governed by and construed in accordance with the substantive laws of California and Switzerland, irrespective of any conflict of law rules.

If the Parties are unable to resolve any dispute arising out of or in connection with this Agreement in good faith and by mutual agreement, then the dispute shall be subject to the exclusive jurisdiction of the ordinary courts at the registered office of Licensor.

Miscellaneous

16.1. Entire Agreement

This Agreement, including any Annexes and written amendments expressly made part of this Agreement, states the entire understanding between the Parties with respect to the subject matter of this Agreement, and supersedes all proposals, oral or written, understandings, representations, conditions and other communications between the Parties relating to such subject matter.

16.2. Severability

If any provisions of this Agreement, or the application of such provision to any person or circumstance, shall be held by a court or other competent authority to be invalid or unenforceable, the remainder of this Agreement or the application of such provisions to other persons or circumstances shall not be affected thereby.

This Agreement, including any Annexes, may be amended or modified only in writing (including electronic correspondence) through a document duly executed by both Parties.

16.3. Binding on Successors

All the terms, provisions, and conditions in this Agreement shall be binding upon the Parties hereto and their respective successors and assignees.

16.4. No Waiver

The failure of any of the Parties to enforce any of the provisions of this Agreement or any rights with respect thereto shall in no way be considered as a waiver of such provisions or rights, or in any way affect the validity of this Agreement. The waiver of any breach of this Agreement by any Party hereto shall not operate to be construed as a waiver of any prior, concurrent or subsequent breach of the same and no waiver shall be effective unless made in writing.