

# SOFTWARE LICENSE AGREEMENT

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## IMPORTANT- READ CAREFULLY

**THIS IS AN “END-USER” LICENSE AGREEMENT BETWEEN THE LICENSOR AND THE CUSTOMER. PRIOR TO DOWNLOADING INSTALLING OR USING THIS SOFTWARE PRODUCT YOU NEED TO CAREFULLY REVIEW THIS AGREEMENT. REDISTRIBUTION OR RENTAL OF THE SOFTWARE PRODUCT IS NOT PERMITTED. BY CLICKING THE ACCEPTANCE BUTTON, AND/OR INSTALLING AND/OR USING THE SOFTWARE PRODUCT YOU HAVE VOLUNTARILY AND EXPRESSLY CONSENTED TO LICENSE THIS SOFTWARE PRODUCT AND HAVE ACCEPTED THE TERMS AND CONDITIONS THEREOF AS HEREAFTER DESCRIBED.**

## 1. DEFINITIONS

For these purposes the following terms have the meanings ascribed to them:

- a) "Customer"; means the individual or entity purchasing, that has downloaded, installed, or is using the Software Product.
- b) "Licensor"; means LollipopShaders, a product of Lumnance, a California partnership having a place of business at Fairfax, California 94930
- c) " Purchase Price" or "Fee"; means the price paid by the Customer to License the Software Product.
- d) "Registration Code"; means a software password unique to the Customer that enables the complete operation of the Software Product.
- e) "Software Product"; means the respective object code associated with Lollipop's proprietary software for three dimensional rendering with any Renderman compliant renderer

as downloaded, installed or used by the Customer. Software Product expressly includes the fully operational software having the Registration Code, as well as any trial versions or other software having limited operability.

## **2. DOWNLOAD**

**2.1 Customer Information.** The Customer agrees to provide the Licensor accurate information requested by it during the downloading/registration process.

**2.2 Payment.** The Customer agrees to pay the Licensor or its designee the Fee for the Registration Code. The Customer understands and agrees that the Fee is a license fee and that maintains full ownership of the Software Product and that the Customer does not obtain or retain any ownership rights whatsoever in the Software Product.

**2.3 Failed Installation.** The Licensor recognizes that the Customer may fail to properly install the Software Product. Therefore once the Fee is paid the Licensor shall allow the Customer to reasonably repeat the installation process until such time that the Software Product is successfully installed and enabled. In the event the Software Product cannot be successfully installed or enabled, the Licensor may provide the Customer with an electronic copy of the Software Product via other means or refund the Fee.

## **3. LICENSE AND USE**

**3.1 Intellectual Property Rights.** All right, title and interest in and to the Software Product, including but not limited to any and all copyrights, trade marks, images, photographs, animations, video, audio, music, text, incorporated into the Software Product, the accompanying printed materials, and any copies of the Software Product are owned by. The Software Product is protected by copyright laws and treaties, as well as trademark laws and treaties, patent laws and treaties, and other

intellectual property laws and treaties.

**3.2 License Grant.** THE LICENSOR HEREBY GRANTS TO THE CUSTOMER A PERSONAL, NON-EXCLUSIVE, NON-TRANSFERABLE AND LIMITED LICENSE TO USE THE SOFTWARE PRODUCT SOLELY FOR USE BY THE CUSTOMER IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THIS AGREEMENT. THE CUSTOMER DOES NOT HAVE THE RIGHT TO GRANT SUBLICENSES IN THE SOFTWARE PRODUCT OR OTHERWISE DISTRIBUTE THE SOFTWARE PRODUCT. ALL RIGHTS NOT EXPRESSLY GRANTED ARE RESERVED BY THE LICENSOR.

**3.3 Installation and Use.** The Customer may install and use the Software Product on no more than one computer at a time. Customer shall limit access to the Software Product to a single user at any one time. The Customer is expressly prohibited from using the Software Product in a multi-user environment. The Customer is granted the right to make one (1) copy of the Software Product for archival purposes.

**3.4 Use of Customer Information.** The Licensor may use, and the Customer hereby grants the Licensor the right to use the Customer's name and information in any customer reference list, press release issued by the Licensor regarding the licensing of the Software Product, billing purposes, advertising, notification of the Customer of other products, services, and upgrades, or other such use as determined by the Licensor. The Licensor agrees not to sell any Customer information to third party bulk advertising companies.

## **4. WARRANTY**

**4.1 No Warranties.** THE SERVICES, PRODUCTS, AND ANY RELATED DOCUMENTATION, PROVIDED BY THE LICENSOR IS PROVIDED "AS IS", WITHOUT WARRANTY OF ANY KIND TO CUSTOMER OR ANY THIRD PARTY, INCLUDING, BUT NOT LIMITED TO ANY EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OF THE SOFTWARE PRODUCT OR

DOCUMENTATION, FITNESS FOR A CUSTOMER'S PURPOSE OR SYSTEM INTEGRATION, INFORMATIONAL CONTENT OR ACCURACY, NON-INFRINGEMENT, QUIET ENJOYMENT, AND TITLE. THE CUSTOMER AGREES THAT ANY EFFORTS BY THE LICENSOR TO MODIFY ITS SERVICES, PRODUCTS, OR RELATED DOCUMENTATION, SHALL NOT BE DEEMED A WAIVER OF THESE LIMITATIONS AND THAT ANY THE LICENSOR WARRANTIES SHALL NOT BE DEEMED TO HAVE FAILED OF THEIR ESSENTIAL PURPOSE.

**4.2 Limitation of Liability.** THE CUSTOMER AGREES THAT THE LICENSOR SHALL NOT BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY LOSS OF PROFITS, LOSS OF USE, INTERRUPTION OF BUSINESS, OR ANY DIRECT, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND WHETHER UNDER THIS AGREEMENT OR OTHERWISE, EVEN IF THE LICENSOR WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR WAS NEGLIGENT OR GROSSLY NEGLIGENT. The entire risk arising out of use or performance of the Software Product remains with the Customer. If a particular state or jurisdiction does not allow such exclusion or limitation of liability, and, as such, some portion of the above limitation may not apply to Customer, the Licensor's total liability is limited to the greatest extent permitted by law.

## **5. GENERAL TERMS**

**5.1 Term.** This Agreement is effective until terminated by the Licensor. The Customer may terminate this Agreement by permanently deleting and destroying the Software Product, any back-up or archival copies, and any related documentation.

**5.2 Termination.** Without prejudice to any other rights, the Licensor may terminate this Agreement and all rights the Customer has been granted to use the Software Product. In the event the Customer fails to comply with the terms and conditions of this Agreement the Customer must destroy all copies of the Software Product and all of its component parts.

**5.3 Export Control.** Customer agrees to comply with all export laws and restrictions and regulations of the United States or foreign agencies or authorities and not to export or re-export the Software Product or any direct product thereof in violation of any such restrictions, laws or regulations, or without all necessary approvals. As applicable, each party shall obtain and bear all expenses relating to any necessary licenses and/or exemptions with respect to its own export of the Software Product from the United States. Neither the Software Product nor the underlying information or technology may be downloaded or otherwise exported or re-exported (i) into Cuba, Iran, Iraq, Libya, North Korea, Sudan, Syria or any other country subject to United States trade sanctions covering the Software Product, to individuals or entities controlled by such countries, or to nationals or residents of such countries other than nationals who are lawfully admitted permanent residents of countries not subject to such sanctions; or (ii) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals and Blocked Persons or the U.S. Commerce Department's Table of Denial Orders. By downloading or using the Software Product, Customer expressly agrees to the foregoing and represents and warrants that it complies with these conditions.

**5.4 Choice of Law.** This Agreement shall be exclusively governed by and construed in accordance with the laws of California, USA, without regard to the choice of law provisions of this or any other jurisdiction. Any suit hereunder will be brought solely in the federal or state courts in Marin County, California, USA, and the Customer agreed to submit to the personal jurisdiction thereof. The 1980 United Nations Convention on Contracts for the International Sale of Goods shall not be applicable to the Development Agreements. If California law is not held to apply to this Agreement for any reason, then in jurisdictions where warranties, guarantees, representations, and/or conditions of any type not provided hereunder may not be disclaimed, any such warranty, guarantee, representation and/or warranty is: (1) hereby limited

to the period of either (a) thirty (30) days from the date of delivery; or (b) the shortest period allowed by law in the applicable jurisdiction if a thirty (30) day limitation would be unenforceable. If the Software Product was acquired outside the United States, then local laws may apply.

**5.5 Indemnity and Disputes.** The Licensor shall not undertake to resolve any disputes or litigation on the Customer's behalf involving the use of the Software Product. The Customer agrees to indemnify and hold the Licensor harmless as well as defend the Licensor against any disputes involving the use of the Software Product. If any dispute arises under this Agreement the prevailing party shall be reimbursed by the other party for any and all legal fees and costs associated therewith.

**5.6 Severability.** If, for any reason, any provision of this Agreement is held invalid, such invalidity shall not affect the remainder of this Agreement, and this Agreement shall continue in force and effect to the full extent allowed by law.

**5.7 Language.** No translation of this Agreement into any language other than English shall be of any effect in the interpretation of the Agreement.

**5.8 Force Majeure.** Neither party shall be in default or be liable for any delay, failure in performance (excepting the obligation to pay) or interruption of service resulting directly or indirectly from any cause beyond its reasonable control.

**5.9 Independent Contractors.** The parties are independent contractors. There is no relationship of partnership, joint venture, employment, franchise, or agency between the parties. Neither party will have the power to bind the other or incur obligations on the other's behalf without the other parties' prior written consent. Nothing herein is intended to, or shall be construed to, confer upon any person not a signatory party hereto any rights or benefits hereunder.

**5.10 No Waiver.** Neither any failure nor any delay by the Licensor in exercising any right, power or privilege under this Agreement will operate as a waiver of such right, power or privilege, and no single or partial exercise of such right, power

or privilege will preclude any other or further exercise of such right, power or privilege..

**5.11 Entire Agreement.** This Agreement supersedes any and all other agreements, either oral or in writing, between the parties with respect to the matters stated herein, and this Agreement contains all of the covenants and agreements between the parties with respect thereto. This Agreement may be amended or modified only in writing, and shall only be effective after affixation of both parties' signatures.

**5.12 Consent.** The parties knowingly and expressly consent to the foregoing terms and conditions and each party is authorized to enter into this Agreement on behalf of its respective party.

***IF YOU (CUSTOMER) DO NOT AGREE WITH ALL THE  
AFOREMENTIONED TERMS AND CONDITIONS, DO NOT  
COPY, INSTALL, OR USE THE SOFTWARE PRODUCT AND  
DESTROY ALL COPIES OF THE PRODUCT AND ANY  
ASSOCIATED DOCUMENTATION.***