Threedy Standard instant3Dhub License Terms and Conditions

1   Definitions

The capitalized terms used in this Agreement shall have the following meaning:

Agreement means these terms and conditions, their Annexes and the Order Form.

Annex means any annex to these terms and conditions.

Documentation means the documentation of the Licensed Software as well as instructions concerning its use in a digital format in the English language.

Licensed Software means the executable code of those modules of the instant3Dhub software identified in an applicable Order Form and further described in an applicable Annex that are covered by this Agreement. For clarity, except to the extent expressly agreed otherwise in writing, Licensed Software does not include any source code.

Licensee means the entity identified accordingly in the Order Form.

Order Form means the order form to which these terms and conditions and the Annexes are attached.

Party / Parties means a party / the parties to this Agreement identified in the Order Form.

Scope has the meaning given in Section 2.2.

Security Key means a code or file provided by Threedy and required to technically unlock the Licensed Software for the then-current Term.

Term has the meaning given in Section 14.1 and the applicable Order Form.

Threedy means Threedy GmbH.

2   Subject Matter of Agreement

2.1   These terms and conditions, together with the Order Form and their Annexes (as applicable), govern Threedy's provision and Licensee's use of Threedy's instant3Dhub software and other services described therein.

2.2   The modules of the instant3Dhub software (only those are referred to as the "Licensed Software" for the purpose of these terms and conditions) and the permitted scope of use of the Licensed Software (e.g. number of concurrent active sessions and/or other license metrics) are set out in the Order Form and the Technical Annex (the "Scope").

2.3   In the event of any discrepancy between the various components of the contract, the following order of precedence applies:

a)   The Order Form and its Annexes

b)   The Technical Annex (if applicable)

c)   The Support and Service Annex (if applicable)

d)   The Project Annex(es) (if applicable)

e)   These terms and conditions.

3   Obligations of Threedy

3.1   Threedy shall provide the Licensed Software as set forth in the Order Form, the Technical Annex (if applicable) and these terms and conditions.

3.2   Threedy shall provide any additional support, maintenance and other services pursuant to the Support and Service Annex and the Project Annex(es), each as applicable.

3.3   Threedy will provide the Licensee with a digital copy of the Documentation. Threedy does not owe any printed copies of the Documentation.

4   Obligations and Responsibilities of Licensee

4.1   Licensee shall pay all fees when due and shall use the Licensed Software solely as permitted herein.

4.2   Licensee shall take adequate measures to protect the Licensed Software and/or any access credentials and Security Keys provided by Threedy from unauthorized access and copying.

4.3   Licensee is responsible for separately backing up any data used with or generated through the use of the Licensed Software on a regular basis at intervals that are reasonable in view of the importance of such data.

4.4   Licensee shall definitively destroy or remove all copies of the [Licensed Software and the] Documentation from any system and/or data medium under Licensee's control after the end of the term and certify such removal to Threedy in writing upon request. This includes any printed copy of the Documentation.

5   License Grant

5.1   All copies of the Licensed Software, Documentation and configuration, as well as any other materials provided to Licensee, in whole or in part, in accordance with this contract remain the exclusive property of Threedy. Licensee only receives the limited rights of use set forth in any Annexes, the Order Form, and this Section 5.

5.2   Subject to the condition precedent of the full payment of any license fees which are due in advance, Threedy grants Licensee a non-transferable, non-exclusive license, without the right to sublicense, limited to the Term, entitling Licensee to install and use the Licensed Software in executable code for its own internal purposes within the Scope. No copy of the source code will be provided to Licensee.

5.3   All rights not expressly granted to Licensee herein are reserved. In particular, except to the extent expressly permitted as part of the Scope, Licensee is not entitled to:

a)   provide, disclose, divulge or make directly or indirectly available to, or permit use of Licensed Software in whole or in part to/by any third party without the prior written consent of Threedy (this includes using the Licensed Software to generate output for or on behalf of third parties);

b)   modify and/or create derivatives based on the Licensed Software except to the extent required to make contractual use of the software (including error correction), subject to the limits of Sec. 69d and 69e of the German Copyright Act;

c)   decompile or disassemble the Licensed Software to reverse engineer, or otherwise attempt to derive source code of the Licensed Software, in whole or in part, except to the extent required to derive interface information needed to make the Licensed Software interoperational with other software, subject to the limits of Sec. 69d and 69e of the German Copyright Act;

d)   remove any titles, trademarks or trade names, copyright notices, legends, or other proprietary markings from the Licensed Software.

5.4   Prior to making any use of statutory rights to decompile, reverse engineer and/or modify under Sec. 69d and 69e of the German Copyright Act, Licensee shall first request the necessary information or error correction from Threedy. Licensee may only exercise these rights if Threedy does not provide the necessary information (against reimbursement of Threedy's costs for this) or error correction within a reasonable time. For clarity, any information provided by Threedy under this Section 5.4 or learned due to any decompiling or reverse engineering is Threedy's confidential information and remains Threedy's exclusive property.

5.5   Threedy grants Licensee a non-exclusive, non-transferable, non-sublicensable right, limited to the term, to make a reasonable number of copies of the Documentation as needed for contractual use of the Licensed Software. All other rights are reserved. The Licensee is in particular not entitled to modify, distribute or make the Documentation publicly accessible.

6   Delivery

6.1   Upon conclusion of the contract, Threedy will provide Licensee with the latest available version of the Licensed Software available for the targeted operational infrastructure as defined in the Order Form or Technical Annex.

6.2   Except to the extent agreed otherwise in the Order Form, the Licensed Software is provided (at Threedy's option) either by making it available for download or on a customary data medium.

6.3   Together with the Licensed Software package, Threedy will provide Licensee with the required Security Keys to operate the Licensed Software, which will technically limit the operation to the term. Upon any renewal of the term, Threedy will provide the additional Security Keys needed to allow operation of the Licensed Software until the end of such renewal term.

7   Support and Maintenance

7.1   Threedy makes available a digital service desk with a support ticketing system to report any issues with the Licensed Software and/or any deliverable (as applicable).

7.2   In addition, Threedy will provide Licensee with updates and patches of the Licensed Software at no cost, as long as such modifications are part of Threedy's regular maintenance. [Licensee is responsible for installing such updates and patches. For clarity, Threedy is free to make the provision of upgrades or new functionalities subject to additional agreements and remuneration.

7.3   Except as set forth above and in Section 10, Licensee owes any support, consulting, installation, customization, training or other professional services only to the extent agreed separately in the Order Form and any Support and Service Annex (if applicable).

8   Reporting

8.1   Licensee acknowledges that the Licensed Software automatically logs the usage parameters according to the requirements of the license model. For this purpose, the system automatically and anonymously records device and session data. A session is identified at runtime using an anonymous session cookie. Active devices, sessions, feature usage and service runs are stored in the database of the Licensed Software installation without any user reference and can be retrieved via the admin interface.

8.2   Licensee will provide Threedy with a usage report as defined in the Order Form. The deadline for the first usage report is the first working day of the first month after the end of the respective reporting period. If not agreed otherwise, the report is retrieved using the admin interface and sent by email to the Threedy representative identified in the Order Form.

9   Payment Terms

9.1   Licensee shall pay the amounts set forth in the Order Form at the times set forth in the Order Form.

9.2   If applicable with respect to the licensing model, and in the event of any overuse by Licensee, Threedy may invoice the fees for such overuse based on the agreed license fees as soon as the overuse is reported or detected. The Parties will discuss in good faith whether the overuse is temporary or expected to continue, and will adjust the agreed license scope (and according fees) if appropriate in view of expected on-going higher need.

9.3   All fees are stated exclusive of VAT, which must be paid in addition as applicable.

10   Warranty

10.1   To the extent any of Threedy' s performance hereunder is subject to any statutory warranty obligations, Threedy' s according obligations are limited as described in this Section 10.

10.2   Defects are only significant deviations from the contractually agreed functional scope of the Licensed Software or deliverable (as applicable). [Threedy is not responsible for defects resulting from Licensee's failure to install an update or patch provided by Threedy.]

10.3   Licensee will immediately inform Threedy through the support ticketing system of any occurring possible defects. Furthermore, Licensee will reasonably support Threedy with the removal of defects free of charge and will in particular provide Threedy with all information and documents available to Licensee which Threedy may require for the analysis, reproduction, and removal of defects.

10.4 If the performance to be provided pursuant to this contract does not meet the agreed standard, Threedy will at its own discretion either remedy or provide the services again within an appropriate period of time after receipt of Licensee's complaint through the support ticketing system. The provision of instructions of use with which the Licensee can reasonably circumvent occurring deficiencies in order to be able to use the Licensed Software ("workaround"), is also considered to be a sufficient remedy.

10.5 If supplementary performance is not successful within an appropriate deadline determined by the Licensee in text form through the support ticketing system, Licensee may reduce the agreed remuneration by an appropriate amount, or terminate the contract for cause if the defect is not immaterial, and claim damages pursuant to Section 11 of these general terms and conditions.

10.6 Except for any additional contractual obligations of Threedy under any separate Support and Service Annexes (which remain unaffected), this Section 10 exhaustively states Licensee's rights and Threedy' s obligations in case of any defects.

11 Limitation of Liability

Threedy is exclusively liable pursuant to the following provisions:

11.1 Threedy' s statutory liability is unlimited in case of intent and gross negligence as well as damages resulting from injury to life, body or health.

11.2 In other cases of slight negligence, Threedy is liable only in case of a breach of an essential contractual obligation. An essential contractual obligation in terms of this section is an obligation which must be fulfilled to enable the implementation of the contract in the first place, and on the fulfilment of which the Licensee may therefore generally rely.

11.3 In the case of section 11.2, Threedy is not liable for a lacking economic success, loss of profit and indirect damages.

11.4 The liability pursuant to section 11.2 is limited to the typical and foreseeable damages at the time of the contract conclusion.

11.5 The typical and foreseeable damage is limited in aggregate for each contract year to the amount of fees paid by Licensee in such contract year for the license or service giving rise to the damage (as applicable).

11.6 The Licensee is responsible for separately backing up any data saved within the Licensed Software (if any) on a regular basis. In case of data loss, the liability of Threedy pursuant to section 11.2 is limited to the costs which would also have been incurred to restore the data in case of a proper data backup on the part of the Licensee.

11.7 The liability limitations apply accordingly in favour of the directors, employees, representatives, agents and subcontractors of Threedy.

11.8 Threedy's further liability for guarantees (which must be expressly designated as such in order to be guarantees in the legal sense), as well as for claims under the German Product Liability Act remain unaffected.

11.9   Any further liability of Threedy is excluded. This in particular concerns any no-fault liability for initial defects pursuant to Sec. 536a (1) of the German Civil Code.

12   Confidentiality

12.1   Confidential information includes all information and documents, including these general terms and conditions and those of any Order Form and its Annexes, which are either marked as confidential or the confidentiality of which can be derived from the circumstances or their nature. Confidential information is especially technical, commercial and strategic information, including any instructions and materials provided by Threedy.

12.2   Non-confidential information is information which

   a)   the receiving Party was aware of before receiving it from the other Party in connection with this contract;

   b)   the receiving Party independently developed without falling back on confidential information of the other Party;

   c)   the receiving Party acquired from third parties not bound to limitations in terms of use and transfer (provided that Threedy's affiliated companies, subcontractors, and their employees and agents are not considered third parties within the meaning of this section);

   d)   is publicly known or becomes publically known through no fault of the receiving party.

12.3   Each receiving Party will treat all confidential information as confidential and exclusively for the purpose of the performance or enforcement of this contract. Each Party will protect confidential information against unauthorized access and will treat it with the same care with which they treat their own confidential information, at least, however, with reasonable diligence. Confidential information may only be shared with such employees, agents and consultants of the respective receiving Party (or their subcontractors) that are subject to a duty of confidentiality not less stringent than under this contract, and to the extent the disclosure is necessary for the implementation of this contract or such persons' performance of their duties to the receiving Party.

12.4   Except as permitted in Section 12.3, confidential information may not be disclosed to third parties by the receiving Party without the prior written consent of the other Party, unless this is necessary due to mandatory legal requirements or a court or administrative order and the receiving Party has informed the other Party to the extent legally possible about the respective obligation

12.5   Upon end of the Term, the Parties will return or appropriately destroy the confidential information given to one another by the respective other Party. If the Parties are obliged to archive confidential information due to mandatory provisions relating to commercial or tax law, they will be entitled to make copies of this information to a necessary extent.

12.6 This confidentiality obligation will remain in effect for five years after expiry of the Term, except that to the extent any confidential information is a trade secret under the German Trade Secrets Act (*GeschGehG*), the confidentiality obligation (and, for clarity, any additional statutory protections) remain in force for as long as the confidential information continues to be a trade secret.

13 Reference

13.1 Each Party may name the respective other Party as a reference and advertise the customer relationship during the term of this contract on their website and in any publications, public statements and/or other marketing material. Each Party may use the name and brands of the respective other Party for these purposes, subject to any reasonable trademark use and branding guidelines as may be communicated by each Party to the other Party from time to time.

13.2 The Parties will jointly issue a press release (approved by both Parties) about Licensee's use of the Licensed Software within a reasonable time of the start of the contract.

14 Term and Termination

14.1 The term of the contract is as stated in the Order Form.

14.2 In the event of an indefinite Term, and except as stated otherwise in the Order Form, each Party may terminate the contract for convenience with one month's notice.

14.3 Threedy is entitled to terminate the contract without notice if the Licensee is more than six weeks in arrears with the payment of an agreed fee and Threedy has set an additional grace period for payment of two weeks before the termination takes effect in text form.

14.4 The statutory right of extraordinary termination without notice for good cause remains unaffected.

14.5 Any termination must be in text form.

15 Privacy

15.1 Threedy does not have access to any personal data of users of the Licensed Software, and the Licensed Software is not intended for the storage or processing of personal data

15.2 To the extent the Parties separately agree on the provision of professional services that may expose Threedy to Licensee's personal data (such as remote maintenance), the Parties shall enter into any appropriate additional data agreements as may be required by applicable data protection law.

16 Communication / Escalation

In the event of any dispute between the Parties arising from this Agreement, the Parties will negotiate in good faith to resolve the dispute. If no amicable resolution can be reached within four weeks, the Parties are free to take further legal steps. This escalation procedure does not apply in the event of any (alleged) infringements of any intellectual property rights, in which

case the injured party may seek any legal protection available to it, including interim and emergency injunctions, without first resorting to negotiation.

17   Miscellaneous

17.1   This contract is subject to the law of the Federal Republic of Germany excluding the CISG.

17.2   Place of jurisdiction for disputes arising from or in connection with this contract is Darmstadt, Germany.

17.3   Changes and additional agreements to this contract require text form. This also applies to this text form clause.

17.4   The Licensee may only assign or otherwise transfer rights and obligations from this contract to third parties after the prior written consent of Threedy.

17.5   Should individual provisions of these general terms and conditions be or become ineffective and/or contradict the legal provisions, the remainder of the terms and conditions remain unaffected. The ineffective provision will be mutually replaced by the contractual parties with a provision whose economic purpose comes closest to the ineffective provision in a legally effective manner. The foregoing applies accordingly for any gaps in the agreement.