End-User License Agreement

This End-User License Agreement ("***EULA***") is a legal agreement between you (either an individual or a single legal entity) ("***Licensee***") and Enscape GmbH, Erbprinzenstraße 27, 76133 Karlsruhe, Germany ("***Licensor***") to use the Software. This EULA applies from the date when the Licensee receives the Software from a Reseller or Licensor ("***Delivery***"). The Licensee agrees to be bound by the terms of this EULA by installing, copying, downloading or otherwise using the Software. If the Licensee does not agree to the terms of this EULA, the Licensee may not install, copy, download or otherwise use the Software. For the Trial Period free of charge the provisions in Appendix A shall apply.

1.   Subject matter

1.1   Subject matter of this EULA is the Licensee's temporary possibility to use the software Enscape (the „***Software***"), an add-on developed by Licensor for

- the building information modelling software Revit („***Revit***") created by Autodesk Inc., 111 McInnis Parkway, San Rafael, CA 94903, USA („***Autodesk***"),
- the 3D modeling software SketchUp („**SketchUp**") created by Trimble Inc., 935 Stewart Drive, Sunnyvale, CA 94085, USA („**Trimble**"),
- the 3D modeling software Rhino („**Rhino**") created by McNeel, 3670 Woodland Park Ave N, Seattle, WA 98103, USA („**McNeel**"), and for
- the building information modelling software ArchiCAD ("**ArchiCAD**") created by Graphisoft, Záhony u. 7. (GRAPHISOFT Park 1.) 1031 Budapest, Hungary ("**Graphisoft**")

    for the term of this EULA.

1.2   The use of the Software requires one of the following:

- Revit, at least version 2015, or newer
- SketchUp, at least version 2016 or newer
- Rhino 5.0 64 Bit or newer
- ArchiCAD 21 or newer

    as a basic software program (the **"Underlying Software"**). The provision of the Underlying Software is not part of this EULA. Licensee is aware that it needs to separately acquire a right to use Revit from Autodesk, SketchUp from Trimble, Rhino from McNeel or ArchiCAD of Graphisoft. The Underlying Software may have additional requirements, e.g. with regards to the operating system.

1.3   The provision of the Software shall exclusively be governed by the provisions of this EULA, unless the Parties agree otherwise in writing. Other contractual terms shall not become part of this EULA even where Licensor does not explicitly object to them in an individual case.

1.4   The Software uses the open source library "Libav" (see https://libav.org/ for more information) which is governed by the LGPLv2.1, available via https://www.gnu.org/licenses/old-licenses/lgpl-2.1.html. For the avoidance of doubt, the

provisions of this EULA shall not apply to Libav and Libav does not form part of the Software.

2.   Obligations of Licensor

2.1   Licensor will provide Licensee with the Software during the term of this EULA. Licensor does not warrant that availability of the Software will be uninterrupted or always error-free.

2.2   Licensor shall make the Software available as an executable form (object code) for the Underlying Software. Licensor shall deliver the Software by making it available for download on the Internet.

2.3   Licensee is not entitled to be provided with the source code of the Software.

2.4   Licensee may access the user manual available via https://enscape3d.com/knowledgebase/. Any other documentation shall only be due if explicitly agreed upon.

2.5   The installation of the Software shall be conducted by the Licensee.

2.6   Consulting, parameterization, customizing, migration, training, programming and other Licensee-specific project services (collectively referred to as "**Services**") are only due if explicitly agreed upon in writing.

2.7   In order to start and use the Software, a sufficiently powerful Internet connection between Licensee's IT-systems and Licensor's server is required in order to verify the license of the Licensee and to use the Cloud Services. Depending on the type of license, Internet access for license verification may be necessary every 24 hours. During the validity of the license verification, Internet access solely is necessary for use of the Cloud Services.

2.8   Licensor shall be entitled to use its own IT-systems and third-party systems and may freely subcontract obligations under this EULA.

2.9   Licensor shall be responsible for the availability of the server up to a suitable connection point to the Internet that is determined by Licensor ("**Service Delivery Point**"). Further Internet connection of the access point of the Licensee is not included in the subject matter of the EULA.

2.10 Licensor shall use commercially reasonable efforts to maintain an availability of the licensing server of 99% per calendar month ("**Agreed Availability**"). The licensing server shall be deemed available if accessible and correctly responding when contacted from the Service Delivery Point ("**Availability**"). Non-availability due to force majeure and other reasons outside of the responsibility of Licensor and Scheduled Downtimes (see sec. 2.12) are not taken into account for the calculation of the Availability if Scheduled Downtimes (1) are announced to Licensee by e-mail at least 48 hours prior to commencement (if Licensee has not waived such announcements) and (2) concern Saturdays or Sundays (at Licensor's place of business), but for (3) a

maximum of eight hours per calendar month. If in any given calendar month, the Availability falls short of the Agreed Availability for reasons imputable to Licensor, Licensor will, on Licensee's request to be made within three months of the end of the respective calendar month, offer a discount on recurring fees, which, during the term of this Agreement, shall be offset against future recurring fees and only in the event of termination be payable in cash. Such discount shall be 1/720 of the monthly license fee per seat for every hour and licensed seat that could not be used to unavailability of the license server but in no case more than Licensee has actually paid for the licensed seat that could not be used for the respective month. The discount shall fully settle any reduction right under Sec. 536 of the German Civil Code. Claims in damages as referred to in Sec. 9 below as well as Licensor's obligation to resolve the Non-Conformity under Sec. 7 shall remain unaffected. The foregoing shall not be deemed an express warranty, guarantee or guarantee of properties.

2.11 In order to carry out updates, configuration changes and certain maintenance work, it is necessary to take the licensing server out of operation for a specific period of time, which ("**Scheduled Downtimes**"). Scheduled Downtimes are communicated by Licensor via its website and communicated to Licensee via e-mail (unless Licensee has opted out from this information). Licensee is usually given notice of Scheduled Downtimes two weeks in advance. In urgent and exceptional cases, it may be necessary to arrange a Scheduled Downtime on shorter notice, e.g. in case of severe unexpected network traffic on the server like DoS/DDoS attacks or (attempted) unlawful intrusion of a third party on the server.

2.12 Licensor cannot guarantee the same feature set of the Software for all supported Underlying Software solutions and their versions based on the differences between the Underlying Software solutions itself. Therefore, the feature set of the software can differ between the underlying Software Solutions and their versions. A specific feature is only owed if Licensor has specified it as available for the respective combination of version of the Software and version of the Underlying Software.

2.13 Licensor strives to regularly – usually every three months – publish new versions of the Software with new functionality ("**Upgrades**"), however shall not be obliged to do so.

2.14 Licensor will strive to provide the Licensee advance notice of any Update or Upgrade which may require changes to the Licensee's hardware or software environment.

3.   Use of the Software and Licensee Obligations

3.1   Licensee shall be granted a non-exclusive, non-sublicensable and non-transferable right to use the Software for the term of this EULA with the number of users agreed upon.

3.2   Licensee can upload up to 10 GB data ("**Licensee Data**") to the Licensor's server and provide third parties with a link to such Licensee Data; such Licensee Data will be made publicly available on the Internet ("**Cloud Services**"). Licensor has no custody or custody obligations for the data transmitted and processed by the Licensee, in particular the Licensee Data; neither back-ups of the data nor a permanent and safe storage of the data form part of the subject matter of this EULA. The licensee is

responsible for making back-ups of all and any data including Licensee Data and for observing legal retention periods. Sec. 2.11 applies accordingly, whereby the discount will be 1/72000 of the license fee applicable to the respective licensed seat per hour of unavailability proven by Licensee.

3.3   Licensee retains copyrights of Licensee Data.

3.4   Licensee Data is only accessible via a direct nonpublic link, which means that Licensor does not publish the link but nevertheless everybody in knowledge of the link may access the Licensee Data. Licensor shall not share the Licensee Data with third parties or within Licensor's organization.

3.5   The Licensee grants the Licensor and its vicarious agents the right to copy and publicly make available the Licensee Data and any other right necessary to provide the Cloud Services. Licensor is also entitled to make changes to the structure of the data or the data format in order to eliminate defects. Licensor shall only make use of these rights in order to consummate the EULA.

3.6   Licensor shall be entitled to delete Licensee Data from its server after the end of term of this EULA. Licensee expressly demands that Licensor delete the data within reasonable time after the end of term of this EULA.

3.7   Licensee warrants and represents that Licensee Data will not violate applicable law, in particular third-party rights. Licensee shall hold Licensor and its directors, employees, consultants, subcontractors and other vicarious agents ("***Indemnitees***") harmless from and against any claims resulting from an infringement of this sec. 3.7 and indemnify Licensor and its Indemnitees for any damage and expenses that Licensor or its Indemnitees incurs due to Licensee's infringement of this sec. 3.7, unless Licensee was not responsible for the infringement. Licensee shall reasonably cooperate with Licensor in the defense against any third-party claim relating to any alleged or actual infringement of this sec. 3.7 and provide Licensor with any information or evidence reasonably requested. If third parties approach Licensor with the assertion that Licensee Data infringe their rights or otherwise violate applicable law, Licensor is entitled to delete or block the data concerned if this assertion appears to be conclusive. As a general rule, Licensor will only carry out such blocking or deletion if Licensee has not dispelled the suspicion within 24 hours of being informed of the third party's allegation, unless immediate blocking or deletion seems necessary to Licensor. In any case, Licensor is entitled to comply with official or judicial requirements for blocking or deletion.

3.8   The Software shall only be installed on Licensee's network, i.e., on computers that are owned and directly possessed by Licensee. Any other form of use is only permitted in case of prior written approval by Licensor.

3.9   Licensee is entitled to allow freelancers and consultants that work on behalf of Licensee on or via its network to use the Software, provided, however, that the work is exclusively performed in accordance with the instructions issued by and for the purposes of Licensee.

3.10 Licensee shall take adequate measures to protect the Software from unauthorized access of a third party. Licensee shall provide its employees and other users with a copy of this EULA and point out to them the restrictions on the use of the Software and the Licensee's obligations under this EULA.

3.11 Licensee is entitled to make the back-up copies required for a safe operation of the Software. The back-up copies shall be stored in a secure place. Copyright notices and marks shall not be deleted, modified and/or suppressed. Copies that are no longer needed shall be deleted or destroyed. Back-up copies shall be deleted at the end of the term of the EULA in accordance with sec. 4.4.

3.12 The renting, lending and distribution in physical or immaterial form, use of the Software by and on behalf of third parties (e.g., by outsourcing, hosting, Software as a Service) are not permitted without the prior written consent of Licensor. Licensee is not entitled to transfer the Software to a third party or to allow a third party to use or gain knowledge on the Software. Licensee undertakes not to grant third parties direct or remote access to the Software including the screen of the computer running the Software. Licensee explicitly undertakes not to use the Software on behalf of a third party.

3.13 Licensor is the sole owner of all commercial property rights and necessary exploitation rights to the Software. For the avoidance of doubt, Licensor does not own Library; the respective owners of Library can be found via https://libav.org/.

3.14 Data backups are the sole responsibility of Licensee. Licensee undertakes to ensure that a state-of-the-art backup of the Software, the complete system used and all data – including data stored in the cloud services provided under this EULA – is in place and properly working. In addition to the foregoing, Licensee shall at least daily and immediately before any maintenance or installation of Updates or Upgrades perform an altering (on different data carriers) backup.

3.15 Licensee shall be responsible to install Updates and Upgrades.

3.16 Licensee shall promptly install all Updates and Upgrades and may only object to installation of an Update or Upgrade if Licensee agrees to separately compensate Licensor for the additional cost for continued support of the earlier version of the Software for the remaining term of the Agreement.

3.17 Licensor may provide preview versions of the Software ("***Preview Versions***") that give insights to Licensor's planning's for upcoming Updates. Preview Versions are **not** governed by this EULA. Preview Versions can contain errors and Licensor cannot guarantee a stable functionality. Licensor therefore expressly warns against installing Preview Versions on productive computers or computers integrated into the normal network as errors and data losses cannot be ruled out.

4.   Term and termination

4.1 This EULA shall run for the agreed term. Licensee can choose between a one-month-term model ("***One-Month-Term Model***") and a one-year-term model ("***One-Year-Term***

Model"). This EULA will renew after each term, unless terminated by a party pursuant to sec. 4.2 or 4.3, as the case may be. The term starts upon conclusion of this EULA and ends (i) in case of the One-Month-Term model, on the day before the day with the same number in the following month; if such day does not exist in the following month, on the last day of the following month, (ii) in case of the One-Year-Term model, on the day before the day with the same number of the same month in the following year; if such day does not exist in the following year, on the last day of the same month in the following year.

4.2   If the Parties agreed upon the One-Month-Term Model, each Party shall be entitled to terminate this EULA at any point before the end of the respective term.

4.3   If the Parties agreed upon the One-Year-Term Model, each Party shall be entitled to terminate this EULA with one month's prior notice to the end of the respective term.

4.4   The right of the Parties to terminate this EULA for good cause pursuant to sec. 314 of the German Civil Code (BGB) remains unaffected. For Licensor, good cause shall exist, in particular but not limited to, if

   a)   Licensee is in default with the license fee for two months or more than two months,
Licensee suspends its payments,
   b)   Licensee files for insolvency or similar statutory proceedings,
   c)   if permissible, Licensor or any other creditor applies for the institution of insolvency proceedings or similar statutory proceedings, if such a proceeding is opened or declined for a lack of assets, or if Licensee significantly violates contractual agreements and fails to cease this breach within a reasonable grace period granted in a written warning issued by Licensor.

4.5   Notices of termination shall be in writing to be effective. Fax and e-mail shall not suffice.

4.6   Upon the end of this EULA, the Licensee shall return or delete the Software and all Software copies to Licensor and confirm to Licensor in writing Licensee's compliance with this obligation.

5.   Remuneration, payment, amendments to Prices and EULA

5.1   Licensee shall pay the license fee agreed upon.

5.2   If the Parties agreed upon the One-Month-Term Model, the license fee is to be paid monthly in advance. If the Parties agreed upon the One-Year-Term Model, the license fee is to be paid yearly in advance.

   5.3 Licensor may propose amendments to this EULA or the specifications of the Software (1) in text form (e.g. letter or e-mail) to Licensee, such letter or e-mail to be received by Licensee no later than three months prior to the proposed date of their

effectiveness, (2) by asking for explicit consent to the new EULA/specifications during installation of the Software, (3) by asking for explicit consent to the amendments or new EULA/specifications in text form.

5.4 Licensor may propose changes of the license fee at its reasonable discretion (Sec. 315 of the German Civil Code BGB). Such amendments shall be offered to Licensee no later than three months prior to the proposed date of their effectiveness in text form (e.g. letter or e-mail).

5.5 Licensee's consent to the amendments/changes communicated under Sec. 5.3 case (1) and Sec. 5.4 shall be deemed to have been given if (1) Licensor would be entitled to ordinarily terminate the contract at or before the proposed date of effectiveness of the amendments and (2) Licensee has not objected to the amendments in text form prior to the proposed date of their effectiveness. In its offer, Licensor shall make particular reference to the effect of not reporting objections to amendments.

5.6 If the Parties have not agreed (including by means of a communication under Sec. 5.4/5.5) a price change in a given calendar year, Licensor shall be entitled to increase the agreed license fee once per calendar year by a maximum of 5 %. If the Parties agreed upon the One-Year-Fixed-Term Model, the price increase shall become effective with the beginning of the next one-year-term. Licensor shall inform Licensee of a price increase at least three months in advance.

6. Rights of third parties

6.1 Licensee shall notify Licensor in writing without undue delay if third parties claim rights (e.g. copyrights or patent rights) to the Software. Licensee shall support Licensor in the dispute. In particular, Licensee shall make the necessary information as well as the relevant documents available in writing. Licensee shall allow Licensor to direct the defense against such third-party claims and issue any necessary power of attorney. Licensee shall refrain from confirming or accepting facts or claims or settling the case without Licensor's explicit written consent.

6.2 Licensor shall not be liable for an infringement of third-party rights which arises due to use of the Software by Licensee contrary to the provisions of this EULA, use outside the intended area of use, use in a country other than that of Licensee's registered office or any other country explicitly agreed in writing or use in combination with components (e.g. hardware and software) not explicitly recommended by Licensor.

7. Defects

7.1 Licensor will, during the term of this EULA, rectify any Non-Conformities of the Software duly reported by Licensee as set forth in Sec. 8 in accordance with the following provisions by providing patches or work arounds and/or minor enhancements (each an „*Update*") for download by Licensee. A "***Non-Conformity***" exists if the Software does not have the characteristics described in the relevant product description or documentation, aborts accidentally or if characteristics agreed upon in any other manner are missing.

7.2 Critical Non-Conformities will be remedied without undue delay. Material Non-Conformities will be remedied within reasonable time. With respect to all other Non-

Conformities, Licensor may refer Licensee to one of the following Upgrades. "***Material Non-Conformity***" shall comprise only Non-Conformities which materially affect use for the agreed purposes. "***Critical Non-Conformity***" as used herein shall exclusively comprise Material Non-Conformities which effect that the Software is completely inactive, does not respond to input, deletes data or cannot be productively used at all.

7.3   Licensor is liable for defects of the Software that already exist at the time the Software is initially provided only to the extent that Licensor is responsible for them.

7.4   Initially, Licensee shall remain obligated to pay the agreed license fee in case of defects. Licensee's right to claim a refund, in whole or in part, based on the principle of unjust enrichment, in the event of a defect remains unaffected.

8.   Licensee's obligation to cooperate

8.1   Licensee shall send error reports to Licensor via the agreed communication channels. Licensor shall be entitled to require Licensee to use a certain ticket system that will be provided at the expense of Licensor. Licensee shall comply with this requirement, unless Licensee cannot reasonably be expected to do so in a specific case.

8.2   Licensee shall assist Licensor comprehensively and at its own expense with the error analysis and rectification.

8.3   In particular, an error report in compliance with this EULA shall include the following information:

   a)   detailed error description;

   b)   the exact wording of error messages, if available;

   c)   screen shot of error state

   d)   steps for reproducing the error state;

   e)   operation logs;

   f)   system environment data (including operating system version, type and version of Underlying Software used, etc.).

8.4   Upon request of Licensor, Licensee shall set up a remote access for Licensor to all IT systems on which the Software is run. However, Licensee shall ensure that Licensor cannot access any personal data.

8.5   Licensee is obligated to accept, install and launch all new Software versions, updates, patches, etc. provided by Licensor for error rectification. Further, Licensor may withhold warranty if Licensee does not use the latest version of the Underlying Software.

8.6   Licensee shall reimburse Licensor for the additional expenses that Licensee incurs due to a lack of cooperation on the part of Licensee. This shall not apply if Licensee is not

responsible for the lack of cooperation. In the event that the analysis should produce the result that a situation reported by Licensee is not attributable to a Software defect, Licensor has the right to charge Licensee with the expenses incurred in the error analysis, unless Licensee was unable to determine that no Software defect existed.

9. Limitation of liability

9.1 Licensor shall not be liable under warranty or for damages or otherwise legally responsible in connection with this EULA, with regard to the following:

- ◦ (1) any non-conformity due to (a) use of the Software (i) for any purpose other than the contractual purpose or in violation of the relevant statutory requirements and/or any guidelines issued by Licensor; or (ii) with any hardware or software not approved by Licensor for such purpose; or (b) modification of the Software by the Licensee;

- ◦ (2) damage due to loss of data if such damage could have been avoided by reasonable regular back-up;

- ◦ (3) damage which could have been prevented by examination of the work products of the Software or appropriate protection measures against viruses or other malicious software.

9.2 Not limiting the exclusions and limitations under sec. 9.1, Licensor shall be liable in damages in connection with a breach of this EULA, including any non-conformity of the Software, whether based on contract, tort or any other legal theory, whether for damage to property, persons, financial or any other loss, only (i) if and to the extent that Licensor cannot establish that such breach was not due to negligence imputable to Licensor and (ii) within the following limits:

- ◦ (1) Licensor shall be liable without limits in accordance with applicable law with respect to (a) gross negligence or willful misconduct imputable to Licensor, (b) death of a natural person or personal injury to the latter caused by slight negligence imputable to Licensor, (c) mandatory statutory product liability, and/or (d) liability arising from a guarantee of properties.

- ◦ (2) Licensor shall be liable even in the event of slight negligence for breach of a Fundamental Duty under this EULA, provided that such liability shall exclude such damage as Licensor could not have reasonably foreseen at the time of concluding the EULA. A "Fundamental Duty" as used herein comprises any duty which must be fulfilled by Licensor in order to enable consummation of the EULA and the achievement of its purposes and fulfillment of which Licensee may reasonably expect in view of the content and purposes of the EULA such as the duty to consummate this EULA in a timely manner and a manner which does not endanger the life or health or personal property of Licensee and its personnel.

- ◦ (3) Except for liability under sec. 9.2(1), Licensor shall not in any event be liable (or in any way legally responsible) for third party claims, lost profits, loss of business, loss of reputation or good will, and/or any other indirect or consequential damages.

- ◦ (4) Except for liability under sec. 9.2(1), and/or liability excluded under sec. 9.2(3), Licensor' aggregate liability for all breaches of this Agreement shall be capped at an amount equivalent to cost of the purchased licenses per year.

9.3 This sec. 9 shall not be construed to shift the statutory burden of proof in any way.

10. **Limitations of liability agreed in this EULA shall apply also to the personal liability of Licensor's officers and employees. Statute of limitation**

10.1 The prescription period is limited

   a)   to one (1) year for claims based on material defects;

   b)   to two (2) years for claims based in an infringement of third-party rights;

   c)   to two (2) years for claims for damages or compensation for futile expenditure that are not based on material defects or an infringement of third-party rights.

10.2 Sec. 10.1 shall not apply to claims for damages or compensation for expenditure that are based on intent, gross negligence, guarantee or fraudulent intent, or in the cases mentioned in sec. 9.2(1).

10.3 The prescription period, except for liability under Sec. 9.2(1), starts at the accrual of the claim, irrespective of knowledge of underlying facts.

11.   Confidentiality and data protection

11.1 The Parties agree to treat confidential, also beyond the end of this EULA, all items (e.g. software, documents, information) that are protected by proprietary rights, contain trade or business secrets or are reasonably designated as being confidential ("***Confidential Information***"), of which they obtain knowledge or which are provided to them prior to or during performance of the contract by the other Party, unless such information becomes publicly known without a breach of the confidentiality obligation. The Parties shall keep and safeguard Confidential Information in a manner that reasonably excludes access by third parties.

11.2 Licensee shall ensure that it is in compliance with the applicable data protection law.

12.   Miscellaneous

12.1 Licensee may assign rights under this EULA other than payment claims solely with the prior written consent of Licensor.

12.2 Amendments to this EULA (except for amendments as stipulated in Sec. 5.3) shall be in writing to be effective. This applies to an amendment of this sec. 12.2 as well.

12.3 Applicable law shall exclusively be German law to the exclusion of its conflict of laws rules. The United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply.

12.4 All disputes arising under or in connection with this Agreement shall be submitted exclusively to the district court of Stuttgart, Germany (Landgericht Stuttgart) if Licensee

is a merchant, legal entity of public law or of special fund under public law or does not have a place of general jurisdiction in Germany. Either Party may also sue the other Party before the courts competent for their registered seat, office or place of business. The right of either Party to claim injunctive relief before any competent court remains unaffected.

12.5 In the event that a provision of this EULA is or becomes, in part or in whole, the validity of other provisions shall remain unaffected. An invalid provision shall be replaced by such provision that is legally possible and closest to the invalid one and corresponds to the well understood economic interests of both Parties. The same applies to contractual loopholes, if any.

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13. Usage data

13.1 Licensee agrees to provide **pseudonymized** usage data in order to improve the Software until further notice (e.g. uncheck the checkbox in the about window of the software). That includes license identifier, system configuration, (basic) software and function usage with corresponding timestamps used license type. Received usage data will be used only in Licensor's Organization for updating the prioritization of the development agenda, possible implementation of AI, detection of possible fraudulent and malicious usage of the Software.

Appendix A – Trial Period

The Licensee may test the Software free of charge for a period of 14 days ("***Trial Period***"). The Trial Period starts with the provision of the license key by Licensor. With the expiry of the Trial Period Licensee's right to use the Software will automatically end.

The following provisions shall apply to the Trial Period and take precedence over the general provisions of the EULA set in sec. 1 to 12:

1. The Licensor shall not be obliged to any maintenance, support or availability of the server.

2. The statutory provisions of the German Civil Code shall apply in respect of the Licensor's warranty and liability obligations.