

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**“), and for
- the 3D modeling software SketchUp („**SketchUp**“) created by Trimble Inc., 935 Stewart Drive, Sunnyvale, CA 94085, USA („**Trimble**“),

for the term of this EULA.

1.2 The use of the Software requires

- **Revit, at least version 2015, or newer**
- **SketchUp, at least version 2016 or newer**

as a basic software program. The provision of the basic software program is not part of this EULA. Licensee is aware that it needs to separately acquire a right to use Revit from Autodesk or SketchUp from Trimble.

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.**

2. Obligations of Licensor

2.1 Licensor will provide Licensee with the Software during the term of this EULA.

2.2 Licensor shall make the Software available as

- An executable form (object code) for Revit.
- A Ruby Plugin file for SketchUp

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.

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. To the extent permitted under the data protection law, Licensor shall be entitled to use its own IT-systems and third-party systems. Licensor shall be responsible for the availability of the server up to the point of Internet connection of the data processing center in which the server is operated ("**Service Delivery Point**"). The Internet connection itself is not included in the subject matter of the EULA.

2.8 Licensor shall use commercially reasonable efforts to maintain an availability of the server of 99% per year. Non-availability due to force majeure or other reasons outside of the responsibility of Licensor and scheduled downtimes (see sec. 2.9) are not taken into account for the calculation of the availability.

2.9 In order to carry out updates, configuration changes and certain maintenance work, it is necessary to take the server out of operation for a specific period of time ("**Scheduled Downtimes**"). Scheduled Downtimes are communicated by Licensor via its website and communicated to Licensee via e-mail. 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.

3. Use of the Software

- 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 2 GB data ("**Licensee Data**") to the Licensor's server and provide third parties with a link to such Licensee Data. Licensor shall use commercially reasonable efforts to maintain an availability of the upload possibility of 80% per year. Non-availability due to force majeure or other reasons outside of the responsibility of Licensor and scheduled downtimes (see sec. 2.9) are not taken into account for the calculation of the availability.
- 3.3 Licensor shall be entitled to delete Licensee Data from its server after three months of the upload of the respective Licensee Data.
- 3.4 Licensee Data shall not violate applicable law, in particular third party rights. Licensee shall hold Licensor harmless from and against any claims resulting from an infringement of this sec. 3.4 and indemnify Licensor for any damage and expenses that Licensor incurs due to Licensee's infringement of this sec. 3.4, unless Licensee was not responsible for the infringement.
- 3.5 Generally, 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.
- 3.6 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.
- 3.7 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.
- 3.8 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.
- 3.9 Licensee shall be entitled to modify the Software ("**Modifications**") and to decompile the Software for debugging such Modifications.

Note: Licensee is aware that any Modification of the Software leads to the inapplicability of sec. 7 and Licensor's obligations to rectify defects of the

Software to the extent that such defects are caused by the Modifications. In addition, Licensor shall not be liable for any damages or other losses that to the extent such damages or other losses are caused by Modifications.

- 3.10 All other forms of exploitation, in particular, 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 or to use the Software on behalf of a third party.
- 3.11 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 Libav; the respective owners of Libav can be found via <https://libav.org/>.

4. Term and termination

- 4.1 This EULA shall run for the agreed term. Licensee can choose between an indefinite term model ("Indefinite Term Model") and a one-year-fixed-term model ("One-Year-Fixed-Term Model"). Pursuant to the One-Year-Fixed-Term Model this EULA will renew after each one-year-term, unless terminated by a party pursuant to sec. 4.3.
- 4.2 If the Parties agreed upon the Indefinite Term Model, each Party shall be entitled to terminate this EULA with one month's prior notice to the end of a month.
- 4.3 If the Parties agreed upon the One-Year-Fixed-Term Model, each Party shall be entitled to terminate this EULA with one month's prior notice to the end of a one-year-term.
- 4.4 The right of the Parties to terminate this EULA for good cause pursuant to s.314 of the German Civil Code (BGB) remains unaffected. For Licensor, good cause shall exist, in particular but not limited to, if
- a) if Licensee is in default with the license fee for two months or more than two months,
 - b) Licensee suspends its payments, itself, or, 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
 - c) 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.

However, upon the application for the institution of insolvency proceedings against Licensee's assets, Licensor shall not be entitled to terminate this EULA based on a delay in the payment of compensation that occurred prior to the date of the application or due to a deterioration of Licensee's economic situation.

- 4.5 Notices of termination shall be in writing to be effective.
- 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

- 5.1 Licensee shall pay the license fee agreed upon.
- 5.2 If the Parties agreed upon the Indefinite Term Model, the license fee is to be paid monthly in advance. If the Parties agreed upon the One-Year-Fixed-Term Model, the license fee is to be paid yearly in advance.
- 5.3 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.
- 6.2 Licensor shall not be liable for a breach of third-party rights which arise due to use of the Software by Licensee contrary to the provisions of this EULA, use outside the intended area of use or use in combination with components (e.g. hardware and software) not explicitly recommended by Licensor.

7. Defects

- 7.1 Licensor will rectify any defects and errors of the Software duly reported by Licensee within a reasonable period. A defect exists if the Software does not have the characteristics described in the relevant product description or documentation, if it produces inaccurate results, aborts accidentally or if characteristics agreed upon in any other manner are missing.

- 7.2 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.
- 7.3 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 O/S version, browser used, application server, database, 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.
- 8.5 Licensee is obligated to accept, install and launch all new software versions, updates, patches, etc. provided by Licensor for error rectification.
- 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 pay damages and compensation for futile expenses, no matter on what legal ground, solely as follows:

- a) Liability is unlimited in case of intent.
- b) In case of gross negligence, Licensor is liable in the amount of the typical damage foreseeable at the time of conclusion of this EULA.
- c) In case of a negligent breach of a material obligation the fulfilment of which enables proper performance of this EULA in the first place, on fulfilment of which Licensee generally relies and is entitled to rely and a breach of which jeopardizes achievement of the purpose of the contract (material obligation), Licensor shall be liable in the amount of the typical damage foreseeable at the time the contract was concluded, however, not more than six times the license fee for the last 12 months before the breach.
- d) In all other cases of negligent breaches of obligations, no liability shall arise.
- e) In case of injury to life, limb or health and where claims under the German Product Liability Act are concerned, the statutory provisions shall apply.

9.2 Licensor is at liberty to raise the defense of contributory negligence. In particular, Licensee is obligated to back-up data and to avert malware, in each case according to the current state of the art.

10. 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. 9.1 lit. e).

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 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 excludes access by third parties.
- 11.2 Licensee shall ensure that it is in compliance with the applicable data protection law.
- 11.3 Licensor shall be entitled to track a user's usage of the Software pursuant to the guidelines laid out in the tracking policy if the respective user has agreed to such tracking under the tracking policy.

12. Miscellaneous

- 12.1 Licensee may assign rights under this EULA solely with the prior written consent of Licensor.
- 12.2 Amendments to this EULA 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.
- 12.4 Exclusive venue for all disputes under or in connection with this EULA is the registered office of Licensor.
- 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.

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.