End-User License Agreement

This End-User License Agreement ("EULA") is a contract between you ("Licensee") and Enscape Inc., 80 Pine Street, Floor 24, New York, NY 10005, United States of America ("Licensor"), giving you a license or permission to use Licensor’s ENSCAPE® software in the respective latest version provided by Licensor e.g. in the respective download link (the "Software"). This EULA runs from the date when the Licensee receives the Software from a Reseller or Licensor ("Delivery"). By installing, copying, downloading, or otherwise using the Software, the Licensee agrees to be bound by the terms of this EULA. 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 additionally apply.

1. Subject matter

1.1 The subject matter of this EULA is the Licensee’s limited in time, non-transferable, non-sublicensable and non-exclusive license to use the Software which Licensor developed to be used solely in conjunction with

- The REVIT® building information modelling software ("Revit") created by Autodesk Inc., 111 McInnis Parkway, San Rafael, CA 94903, USA ("Autodesk"),
- the SKETCHUP® 3D modeling software ("SketchUp") created by Trimble Inc., 935 Stewart Drive, Sunnyvale, CA 94085, USA ("Trimble"),
- the RHINO3D® modeling software ("Rhino") created by Robert McNeel & Associates, 3670 Woodland Park Ave N, Seattle, WA 98103, USA ("McNeel"), and for
- the ARCHICAD® building information modelling software ("ArchiCAD") created by Graphisoft, Záhony u. 7. (GRAPHISOFT Park 1.) 1031 Budapest, Hungary ("Graphisoft")
- the VECTORWORKS® 3D and building information modelling software ("Vectorworks") created by Vectorworks Inc., 7150 Riverwood Drive, Columbia, MD 21046, USA ("Vectorworks")

for the term of this EULA and for internal business operations only, notably excluding any use of the Software as a service for third parties.

1.2 The use of the Software requires certain basic software programs (together the "Underlying Software"). The software requirements and supported versions of the Underlying Software are published on https://enscape3d.com/system-requirements. The use of the Software with other versions of the Underlying Software and/or substitutes is not permitted under this EULA. Use of the Underlying Software is not provided pursuant to this EULA. Licensee must separately acquire a right to use the Underlying
Software. The Underlying Software may have additional requirements, e.g. with regards to the operating system. Licensor will in no way guarantee or warrant the availability and/or usability of the Underlying Software unless expressly agreed upon by the Parties in writing.

1.3 The license of the Software shall exclusively be governed by the provisions of this EULA, unless the Parties agree otherwise in writing.

1.4 The Software uses certain open source code and libraries, which are set forth in Appendix B (“Open Source Software”). To the extent any terms of this EULA conflict with any terms of such Open Source Software license terms, the latter shall prevail. Further, Enscape’s warranty and liability with respect to such Open Source Software is set forth exclusively and conclusively in the respective Open Source Software license terms and Enscape disclaims any further warranty and liability.

2. Obligations of Licensor

2.1 Licensor does not warrant that availability of the Software, its functions and/or Licensor’s servers will be uninterrupted or always error-free. Clause 2.10 shall apply.

2.2 Licensor shall make the Software available to Licensee in an executable form (object code) for download on the Internet.

2.3 Licensee is not entitled to the source code of the Software or parts thereof.

2.4 Licensee may access the user manual available via https://enscape3d.com/system-requirements/. The technical requirements and specifications set forth therein shall at all times be observed by Licensee. No other documentation shall be due unless explicitly agreed upon in writing.

2.5 Unless explicitly stated herein, Licensor shall not be responsible for installing the Software on Licensee’s infrastructure and/or assisting in such process.

2.6 Licensor is not obliged to provide any consulting, parameterization, customizing, migration, training, programming or other Licensee-specific project services (collectively referred to as “Services”) unless explicitly agreed upon by the Parties in writing.

2.7 In order to start and use the Software, Licensee must arrange for a sufficiently powerful Internet connection between Licensee’s IT-systems and Licensor’s server 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 this 24 hour period, Internet access solely is necessary for use of the Cloud Services.

2.8 Licensor shall be entitled to use the Software on its own IT-systems and third-party systems – provided that these third party systems are controlled by or exclusively assigned to Licensee and/or Licensee’s agents/employees – and may freely subcontract obligations under this EULA.

2.9 Licensor shall be responsible for the availability of the server(s) necessary to allow Licensee to use the Software up to a suitable connection point to the Internet that Licensor shall determine ("Service Delivery Point"). The license provided by this EULA does not include further Internet connection to the access point of the Licensee.

2.10 Licensor shall use commercially reasonable efforts to maintain the availability of the licensing server(s) for 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. 2.11) are not taken into account for the calculation of the Availability if Scheduled Downtimes (1) are announced to Licensee by e-mail without undue delay but at least 48 hours prior to commencement (if Licensee has not waived such announcements) and (2) are scheduled for Saturdays, Sundays or public holidays (at Licensor’s place of business), and (3) do not exceed 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, upon 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 EULA, 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 due 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. This discount shall be in full settlement of any claim by Licensee, including for a refund or fee reduction, in connection with any shortfall in Agreed Availability. Claims in damages as referred to in Sec. 9 below; 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 ("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). In case Licensee has opted out from receiving such information via e-mail, communication of Scheduled Downtimes via Licensor’s website shall be deemed
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 contractually agreed 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”), but shall not be obliged to do so. Any Upgrades provided are compatible only with the versions of Underlying Software being communicated by Licensor as compatible at the time the Upgrade is made available for download; Licensee therefore is made aware that upgraded Software may be used only with these versions of the Underlying Software.

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

2.15 To the maximum extent permitted by applicable law and except as provided otherwise in the EULA, Licensor is providing the Software “as is” without warranty of any kind including, without limitation, any implied warranties of merchantability, fitness for a particular purpose, title, non-infringement, or any warranty or representation about the results from the use of the Software. Secs. 7 and 9 apply.

3. Use of the Software and Licensee Obligations

3.1 Licensee is granted a non-exclusive, non-sublicensable and non-transferable right to use the Software for the term of this EULA with the number of licensed seats agreed upon. Licensor may from time to time conduct an audit to ensure that Licensee and its employees and/or agents are complying with the terms of this EULA.

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 available on the Internet as specified in more detail in Sec. 3.4 (“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. 2.10 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 the copyright and all other intellectual-property rights to the Licensee Data.

3.4 Licensee Data is accessible only 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 – other than providing such nonpublic link – not share the Licensee Data with third parties or within Licensor's organization.

3.5 The Licensee grants the Licensor, its employees and its vicarious agents the right to copy and publicly make available the Licensee Data and any other right necessary to perform Licensor’s duties hereunder, inter alia providing 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 make use of these rights only in order to carry out its obligations under the EULA.

3.6 Licensor shall be entitled to delete Licensee Data from its server after the term of this EULA, provided that Licensor has informed Licensee of the intended deletion in writing (e-mail or fax being sufficient) at least 2 weeks prior to deletion and given Licensee the possibility to copy and store such Licensee Data.

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 incur due to Licensee’s infringement of this Sec. 3.7. 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 advise Licensor that Licensee Data may infringe their rights or otherwise violate applicable law, Licensor is entitled to delete or block the Licensee Data.

3.8 Licensee shall install the Software in accordance with the provisions of this EULA only on Licensee’s network, i.e., only on computers that are owned by and in the possession of Licensee (or as otherwise allowed under Sec. 2.8), except with the 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 such freelancers and consultants perform the work in accordance with the instructions issued by and for the purposes of Licensee.
3.10 Licensee shall protect the Software from unauthorized access of a third party. Licensee shall provide all employees, freelancers and/or agents that use the Software with a copy of this EULA and shall oblige them to respect the restrictions on the use of the Software and the Licensee’s obligations under this EULA.

3.11 Licensee is entitled to make back-up copies of the Software required for a safe operation of the Software and shall store the back-up copies in a secure place. Licensee shall delete or destroy any copies that it no longer needs or at the end of the term of the EULA, whichever is sooner. Licensee shall not delete, modify or suppress copyright notices and marks.

3.12 Licensee may not rent, lend or distribute in any form, or use the Software by and on behalf of third parties (e.g., by outsourcing, hosting, Software as a Service), without the prior written consent of Licensor. Licensee shall not transfer the Software to a third party or allow a third party to use or gain knowledge of the Software. Licensee shall not to grant third parties direct or remote access to the Software including the screen of the computer running the Software, or use the Software on behalf of a third party.

3.13 Licensor is the sole owner of all intellectual property rights to the Software, including copyright, but does not own the open source software identified in Sec. 1.4.

3.14 Data backups are the sole responsibility of Licensee. Licensee shall 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 Scheduled Downtimes and/or any maintenance or installation of Updates or Upgrades, perform an alternating (on different data carriers) backup.

3.15 Licensee shall, regarding Licensee’s IT-systems, take all commercially reasonable protective measures to safeguard the Licensee Data and the Software against any harm whatsoever, such as unauthorized use, theft or infection with viruses or other malicious software.

3.16 Licensee shall be responsible to install Updates and Upgrades.

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

3.18 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 does not and
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.

3.19 Under no circumstances may Licensee modify, create derivative works based on, decompile, reverse-compile, disassemble or reverse-engineer the Software, or any component of the Software, or grant any third party the right to do so.

3.20 Licensee agrees that its breach of this section or of Section 11 will cause Licensor irreparable harm and damage and that, as a result, Licensor shall be entitled to injunctive and other equitable relief in addition to any other remedy to which Licensor might be entitled.

3.21 Licensee shall comply with all statutes and regulations, as they might be amended from time to time, pertaining to export control, money laundering, trade embargoes and economic sanctions.

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”). After each term and subject to Licensor’s right to a Price Change as per Sec. 5.7, this EULA will renew for another term equivalent in time to the initial term, unless terminated by a party pursuant to Sec. 4.2 or 4.3 or 4.4 and/or in accordance with clause 5.5 as the case may be. The term starts upon this EULA’s effective date and ends (i) in case of the One-Month-Term model, with the end of the day before the day with the same number in the following month; if such day does not exist in the following month, with the end of the last day of the following month, (ii) in case of the One-Year-Term model, with the end of 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, with the end of the last day of the same month in the following year.

4.2 If the Parties agree 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 agree 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 Licensor may terminate this EULA for good cause. For Licensor, good cause shall exist, in particular but not limited to, if

   a) Licensee is in default with the license fee for thirty days or more than thirty days,

   b) Licensee suspends its payments,
c) Licensee files for insolvency or similar statutory proceedings,

d) 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

e) if Licensee materially breaches contractual obligations and fails to remedy 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 or e-mail shall suffice.

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

5. **Remuneration, payment, amendments to Prices, Software 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 at any point in time amend the terms of this EULA or the specifications of the Software by giving notice in text form (e.g. letter or e-mail) to Licensee, at least one month prior to the proposed date of their effectiveness. Changes to the Software that do not reduce the functionalities of the Software, such as updates, bugfixes, functional additions or changes in appearance may be implemented at any given time in the sole discretion of the Licensor.

5.4 Licensee’s consent to any amendments and changes communicated under Sec. 5.3 shall be deemed to have been given if Licensor does not reject in writing such proposed change within four weeks of receipt of such communication or continues to use the Software after the proposed effective date of such change. In its communication pursuant to Sec. 5.3, Licensor shall inform Licensee of such consequences.

5.5 In the event that Licensee rejects any or all of the proposed changes, these will not take effect and the EULA (and Licensee’s right of use of the Software) will terminate with the expiry of the agreed term, excluding any renewal pursuant to Sec. 4.1.

5.6 This EULA will be replaced automatically by any more recent version of the EULA that Licensee agrees to by downloading and/or installing any new release after Version 2.8.2. of the Software in the future.
5.7 Licensor shall be entitled to increase the agreed license fee by means of a communication to Licensee in text form. Licensor shall inform Licensee of such increase ("Price Change") at least one month (One Year Term Model) or two weeks (One Month Term Model) 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 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. Licensor shall, however, not be responsible for the proper functioning of the Underlying Software and/or its compatibility with the Software, unless expressly so stated by Licensor in accordance with Sec. 1.2 above.

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 Licensee shall remain obligated to pay the agreed license fee in case of defects.

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 Except as expressly stated in this EULA, Licensor makes no warranty, express or implied, regarding any matter whatsoever. Licensor specifically disclaims all implied warranties of title, non-infringement, accuracy of data, merchantability, and fitness for a particular purpose and any implied warranty arising from a course of dealing or performance or from usage of trade.

9.2 The total liability of Licensor and Licensor’s own licensors, suppliers and subcontractors for all claims, whether in tort, contract or otherwise, arising out of or connected with, or resulting from this EULA or the Software, as applicable, shall not exceed the amounts paid or payable by Licensee to Licensor under this EULA during the 12 months immediately preceding the event that forms the basis of the claim.

9.3 In no event shall Licensor, its licensors, suppliers or subcontractors be liable for any indirect, incidental, special, consequential or punitive damages, without limitation, lost profits, lost revenue or lost savings, even if the Licensor has been made aware of the possibility of such damages.

9.4 Limitations of liability agreed in this EULA shall apply also to the personal liability of Licensor’s agents, officers and employees.

10. Statute of limitations

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 The prescription period 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 Notwithstanding the provisions above, Licensee may assign rights under this EULA other than monetary claims only 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 and signed by both parties to be effective. This applies to an amendment of this Sec. 12.2 as well.


12.4 All disputes arising under or in connection with this Agreement shall be submitted exclusively to the courts of general jurisdiction of New York, New York.

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.

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). Such data include 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.

Revised October 28th 2020
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.

Notwithstanding anything to the contrary in the EULA, the Licensor shall not be obliged to provide any level of maintenance, support or availability of the server during the Trial Period.
Appendix B – Open Source Software Specific License Terms

Available via https://enscape3d.com/downloadable/Enscape_EULA/Appendix_B.pdf