

# Web3D-blaxxun Community Source Agreement

## SOURCE CODE LICENSE AGREEMENT

This Source Code License Agreement (“Agreement”) is made and entered into this 8th day of August, 1999, by and between the Web3D Consortium, Inc., a not-for-profit corporation (“Web3D”) and blaxxun interactive, Inc., a Delaware corporation (“blaxxun”) (collectively, the “Parties”).

### RECITALS

WHEREAS, Web3D has interest in maintaining, promoting, and evolving the VRML 97 standard through a variety of activities including specification development, conformance testing, specification validation, and implementation support; and

WHEREAS, blaxxun owns a leading suite of VRML 97 products and technologies and desires to facilitate the research, innovation and development of Web3D standards for use in multiple domains; and

WHEREAS, the Parties share the goal of leading the industry to engage in specifying, implementing, marketing and adopting Web3D standards; and

WHEREAS, the Parties desire to enable industry-leading, consortium-driven standardization activities to maintain, promote and evolve Web3D standards (the “Standards Activities”).

In furtherance thereof, Web3D desires to acquire, and blaxxun is willing to grant, a source code license to certain of blaxxun’s VRML products in an effort to create a platform for implementation, integration with applications, conformance testing and further innovation of Web3D standards.

NOW THEREFORE, in consideration of the foregoing and the mutual covenants and promises contained in this Agreement, the Parties agree as follows:

1. Recitals. The Recitals to this Agreement are hereby incorporated by reference and made a part of this Agreement.
2. License Grants.
  - 2.1 Community Source. Subject to the terms and conditions of this Agreement, blaxxun hereby grants to Web3D, and Web3D hereby accepts, a worldwide, non-exclusive, non-transferable, royalty-free limited license, within the framework of the Community Source Program (defined below), to:

- (a) use, reproduce, publish, display and compile the source code for the software listed under the heading “Community Source Products” on Appendix A hereto, as and to the extent such code is delivered to Web3D (the “Community Source Code”), as Web3D deems reasonably necessary to promote the Standards Activities; and
- (b) sub-license, on a royalty-free basis, the Community Source Code only for non-commercial use in connection with research and development and other internal non-commercial use; provided that sublicensees sign or otherwise consent to the terms of the Community Source Code License in the form substantially similar to the license included as Appendix B hereto.

2.2 Title and Retained Rights. Notwithstanding anything to the contrary contained herein, as between blaxxun and Web3D, title in and to the Community Source Code (sometimes referred to as the “Code”), including copyright and other intellectual property rights therein, shall remain with blaxxun. Any copy or other publication of any of the Code by Web3D or any sublicense thereof shall include notice of the copyright of blaxxun with respect to such Code. All rights not granted to Web3D herein are retained by blaxxun. Notwithstanding anything contained in this Agreement to the contrary, blaxxun retains the full right to use and license the Code, without restriction, for commercial and non-commercial use, to existing and new customers.

2.3 U.S. Export Restrictions. Web3D acknowledges that the Code and all related technical information, documents and materials are subject to export controls under the U.S. Export Administration Regulations. In connection with its rights hereunder, Web3D will:

- (a) comply strictly with all legal requirements established under these controls;
- (b) cooperate fully with blaxxun in any official or unofficial audit or inspection that relates to these controls; and
- (c) not export, re-export, divert or transfer, directly or indirectly, any such item or direct products thereof to Cuba, Iran, Iraq, Libya, North Korea, Sudan, Syria or any national thereof or to any country or national thereof that is embargoed by Executive Order, unless Web3D has obtained the prior written authorization of blaxxun and the U.S. Commerce Department. Upon notice to Web3D, blaxxun may modify this list to conform to changes in the U.S. Export Administration Regulations.

3. Delivery of the Source Codes. Within 45 days of the execution of this Agreement, blaxxun will deliver to Web3D copies of the Code on magnetic tape or other media as mutually agreed, along with such technical documentation as blaxxun deems reasonably necessary for a skilled software developer to understand the structure and functionality of the Code. blaxxun shall have no obligation to update the Code as delivered to Web3D to reflect any modifications made by blaxxun or others or to support or maintain the Code.
4. Web3D Requirements and Responsibilities. In consideration of the rights granted under Section 2.1 above, Web3D agrees that it will use its best efforts to promote the Code as a core or base implementation of Web3D standards. Without limiting the generality of the foregoing commitment, Web3D agrees to do the following:
  - a) Community Source. Web3D shall establish a “Community Source Program” with respect to the Community Source Code. The purpose of this program will be to further Web3D specification, implementation and adoption, and to integrate the availability of the Code into the Standards Activities, including but not limited to the creation of sample or reference implementations. In furtherance of the foregoing, Web3D will license the Code, as it may over time be modified and enhanced pursuant to the Programs, consistent with terms of Sections 2.1 above.
  - b) Promotional Efforts. Web3D and blaxxun will jointly engage in promotional and educational efforts within the VRML community to enhance and support the Standards Activities and Community Source Programs, including systematic efforts to promote the sharing of information, modifications, enhancements and know-how relating to the Code.
  - c) Web Site. Web3D will, with the assistance of blaxxun, establish and maintain a Community Source Web Site and Source Tree in a manner to be mutually agreed upon by the Parties, and use its best efforts to obtain and publish all modifications and enhancements made by sublicensees of the Code. Web3D will set up and maintain electronic mailing lists for Program participants in the development of Web3D standards.
  - d) Web3D Standards Evolution. Web3D will establish a conformance program to validate implementation of Web3D Standards Activities.
  - e) Records and Reports. Web3D will maintain accurate records of its activities under this Agreement, including (i) a current list of sublicensees of the Code, (ii) copies of all executed or accepted Community Source Code Licenses, (iii) records of all modifications and enhancements to the Code, and (iv) copies of all correspondence with sublicensees of the Code.

Web3D will make any or all such records available to blaxxun upon request, and shall provide blaxxun, on a quarterly basis, with the list of current sublicensees.

- f) Enforcement. Web3D hereby agrees to use its best efforts to effectively enforce against all licensees the provisions of any applicable Community Source Code License to the extent that it affects blaxxun's rights or interests. If Web3D learns that any sublicensee has breached any such provision, Web3D will immediately notify blaxxun and take best-efforts steps that may be available to enforce the License Agreement, including availing itself of actions for seizure or injunctive relief. If Web3D fails to effectively enforce the provisions of those licenses at blaxxun's request, blaxxun is appointed attorney in fact to exercise any rights and pursue any remedies against sublicensees on Web3D's behalf.
- 5. Protection of the Code. Web3D recognizes and acknowledges that the Community Source Code constitutes protectable business interests of blaxxun and that any use or disclosure of the Community Source Code in a manner inconsistent with the provisions of this Agreement will cause blaxxun irreparable damage. Web3D further acknowledges that in the event of Web3D's actual or threatened breach of this Agreement, blaxxun shall have no adequate remedy at law and shall be entitled to immediate injunctive and other equitable relief, without bond and without necessity of showing actual monetary damages.
- 6. Disclaimer of Warranty. THE COMMUNITY SOURCE CODE IS PROVIDED UNDER THIS AGREEMENT "AS IS," WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES THAT THE COMMUNITY SOURCE CODE ARE FREE OF DEFECTS, MERCHANTABLE, FIT FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT OR IN ANY WAY CONSTITUTE THE COMPLETE PRODUCT MARKETED UNDER THE NAMES GIVEN SAID CODE IN APPENDIX A. WEB3D AND ITS SUBLICENSEES AGREE TO BEAR THE ENTIRE RISK IN CONNECTION WITH THE USE AND DISTRIBUTION OF THE CODE UNDER THIS AGREEMENT. THIS DISCLAIMER OF WARRANTY CONSTITUTES AN ESSENTIAL PART OF THIS AGREEMENT. NO USE OF THE CODE IS AUTHORIZED HEREUNDER EXCEPT SUBJECT TO THIS DISCLAIMER.

**IN NO EVENT SHALL BLAXXUN BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, OR ANY OTHER DAMAGES OF ANY KIND ARISING OUT OF THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS OR LOSS OF DATA, WHETHER OR NOT BLAXXUN HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**

7. License Grant Limitations. Notwithstanding anything to the contrary contained herein, the Code will not contain, and blaxxun will not license or otherwise provide to Web3D, any source code, inventions or other technology which blaxxun does not have the right to so license or provide.
8. Transfer; Assignability. This Agreement and the licenses and other rights granted hereunder may not be transferred or assigned by Web3D, except in accordance with the terms hereof, without the express prior written permission of blaxxun.
9. Termination. This Agreement, including the licenses and rights granted hereby, shall terminate automatically if Web3D fails to comply with any material term or condition hereof and fails to cure such breach within thirty (30) days of becoming aware of the breach. All sublicenses which have been properly granted prior to such termination shall survive. Provisions which by their nature must remain in effect beyond the termination of this Agreement shall survive.
10. Miscellaneous.
  - 10.1 Governing Law. The validity, construction, and performance of this Agreement shall be governed by the laws of the State of California without regard to conflicts of law principles.
  - 10.2 Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law or otherwise unenforceable, the remaining provisions of this Agreement will remain in full force and effect.
  - 10.3 Notice. Any notice required or permitted to be made or given by either party under this Agreement shall be made in writing and delivered by hand, U.S. certified mail, postage prepaid, or by overnight courier service, in each case addressed as set forth below or to such other address as a party shall designate by written notice given to the other party.
  - 10.4 Confidentiality. From time to time during the performance of this Agreement, each party may become privy to various information and trade secrets considered by the other party to be confidential. Any such information (which will not include Community Source Code) which is marked or otherwise designated as "Web3D confidential" or "blaxxun confidential" will be kept confidential by the recipient and such recipient will not, at any time thereafter, make any independent use of, publish or disclose or authorize or allow any person or entity to use, publish or disclose, in any manner whatsoever, to any other person or entity, any such confidential information. Information which is or becomes in the public domain without violation of this Agreement shall not be considered

“Web3D confidential” or “blaxxun confidential.” The foregoing shall not be construed to effect the license to the Community Source Code granted to Web3D herein or give Web3D any greater rights thereto or therein.

- 10.5 Disclaimer of Agency. The Parties shall perform their respective duties hereunder in all respects as independent contractors and shall not be deemed in any manner to be an employee, associate, partner or joint venturer of or with the other party.
- 10.6 Amendment of Agreement. This Agreement contains the entire understanding of the parties and shall supersede any other oral or written agreements. No modifications, changes, or additions to this Agreement shall be effective except by written amendment executed by both parties.
- 10.7 Waivers. Either party's failure to enforce at any time any of the provisions hereof shall not be construed to be a waiver of such provisions or of the right of the party thereafter to enforce any such provisions, and no waiver by either party of any breach hereunder by the other party shall be deemed a waiver of any subsequent breach hereunder.
- 10.8 Force Majeure. Neither party will be liable for any failure or delay in performing an obligation under this Agreement that is due to causes beyond its reasonable control, such as natural catastrophes, governmental acts or omissions, laws or regulations or labor strikes or difficulties.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

**BLAXXUN INTERACTIVE**

By: \_\_\_\_\_  
Name: Franz Buchenberger  
Title: President & CEO

Address for Notice:  
blaxxun interactive, Inc.  
1550 Bryant Street, Suite 770  
San Francisco, CA 94003

**WEB3D CONSORTIUM**

By: \_\_\_\_\_  
Name: Neil Trevett  
Title: President

Address for Notice:  
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2694 Bishop Drive, Suite 105  
San Ramon, CA 94583

**Appendix A**

**Community Source Products**

blaxxun CC3D version 4.1006



## **Appendix B: Community Source License**

1.0 Definitions. Capitalized terms used in this License are defined in the Glossary.

### **2.0 LICENSE GRANT**

2.1 The Web3D Consortium grants to you “Licensee” a non-transferable, nonexclusive, royalty-free, limited license to use a copy of the VRML COMPONENT CODE in the United States, Canada, Japan, Australia and the European Union, exclusively for non-commercial use in connection with research and development. Licensee acquires no right, title or interest in or to the Licensed VRML COMPONENT CODE other than the limited rights granted in this License. All modifications, enhancements and bug fixes made by or for Licensee to the Licensed VRML COMPONENT CODE may not be offered for sale or reuse without including notification of all pertaining copyrights retained by copyright owners, including blaxxun interactive.

2.2 In the event Licensee wishes to license the VRML COMPONENT CODE for any commercial or other use not consistent with the provisions of Section 2.1, Licensee shall contact

blaxxun interactive, Inc.  
1550 Bryant Street, Suite 770  
San Francisco, CA 94003  
tel: (415) 437-6160; fax (415) 437-6170  
email: info@blaxxun.com

for further information. Licensee understands and agrees that no license is hereby granted for any other such use and that such additional use may only be authorized under a separate written license agreement between blaxxun and Licensee.

2.3 Licensee retains all rights to Modifications to the VRML COMPONENT CODE created by the Licensee. Licensees are encouraged to share and submit back to the Web3D Consortium such Modifications by submitting them back to the Web3D Consortium for consideration and inclusion in the source code covered by this license. In the case of such a submission, licensee grants to the Web3D Consortium and to blaxxun interactive, Inc. perpetual, worldwide, non-exclusive, royalty-free, transferable license to use, reproduce, modify, perform, display, make, integrate, embed, combine, sell, distribute (through multiple tiers of distribution), to make derivative works, to compile to create object code and to exercise all of the foregoing rights with respect to such object code for all uses and purposes. Nothing in this section grants Licensee the right to commercially distribute the VRML COMPONENT CODE as specified in section 2.1 and 2.2.

### **3.0 COPYRIGHTS AND TRADEMARKS**

3.1 Licensee shall reproduce and apply any copyright or other proprietary rights notices included on or embedded in VRML COMPONENT CODE to any copies of VRML COMPONENT CODE, in whole or in part, in any form.

3.2 Licensee acknowledges that, as between itself and the Web3D Consortium, the Web3D Consortium possesses all rights to CONSORTIUM INTELLECTUAL PROPERTY-related trademarks, logos and icons and agrees to: (i) not use CONSORTIUM INTELLECTUAL PROPERTY - related trademarks or icons in the names of internet domains or businesses, or applets, applications, implementations, modifications, or enhancements; and (ii) not use CONSORTIUM INTELLECTUAL PROPERTY -related logos or icons in Apps, webpages or other marketing materials, except as may be authorized separately by the Web3D Consortium.

3.3 Licensee agrees that any software developed by it pursuant to this License shall, when launched by any end-user, display the blaxxun name and logo for a reasonable amount of time. Such name and logo are included in the VRML COMPONENT CODE.

### **4.0 FEES**

4.1 Use of VRML COMPONENT CODE in accordance with the terms of this License shall not require payment of a license fee.

## 5.0 TERM AND TERMINATION

5.1 This License shall commence on the date the Web3D Consortium makes the VRML COMPONENT CODE available to Licensee without expiration date.

5.2 The Web3D Consortium may immediately terminate this License upon written notice to Licensee, if Licensee fails to comply with any of the material terms or conditions of this License. Upon termination of this License, use of VRML COMPONENT CODE by Licensee shall be immediately discontinued, all copies of VRML COMPONENT CODE shall be destroyed by Licensee, and the License granted hereunder shall expire. Sections 2.2, 2.3, 6.1, 6.2, 6.3, 7.1 and 8.1 shall survive any termination of this License.

5.3 Licensee understands and agrees that blaxxun interactive, Inc. may exercise any right or remedy of the Web3D Consortium under this agreement and may enforce the terms of this agreement, and that blaxxun interactive, Inc. is an intended third party beneficiary of this agreement, entitled to enforce its terms.

## 6.0 DISCLAIMER OF WARRANTY

6.1 VRML COMPONENT CODE is provided “AS IS” and without any warranty of any kind, and Licensee accepts all risks and liabilities associated with its use of VRML COMPONENT CODE.

6.2 The Web3D Consortium DOES NOT MAKE AND HEREBY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTIES RELATING TO THE VRML COMPONENT CODE, INCLUDING BUT NOT LIMITED TO, WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR ANY WARRANTIES THAT MIGHT ARISE FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE.

6.3 VRML COMPONENT CODE is not designed or intended for use in on-line control of aircraft, air traffic, aircraft navigation or aircraft communications; or in the design, construction, operation or maintenance of any nuclear facility. Licensee warrants that it will not use or redistribute the Software for such purposes.

## 7.0 LIMITATION OF LIABILITY

7.1 In no event will the Web3D Consortium be liable for any lost revenues, data, or profits, or direct, indirect, special, punitive or consequential damages, even if the Web3D Consortium has been advised of the possibility or probability of such damages.

## 8.0 EXPORT

8.1 Licensee shall not export, re-export or transfer, whether directly or indirectly, VRML COMPONENT CODE to any person or company who is a legal resident or is controlled by a legal resident of any proscribed country listed in the U.S. Export Administration Regulations (or any equivalent thereof) unless properly authorized by the U.S. Government.

## 9.0 U.S. GOVERNMENT RESTRICTED RIGHTS

9.1 VRML COMPONENT CODE is provided with RESTRICTED RIGHTS. Use, duplication, or disclosure by the Government is subject to the restrictions as set forth in subparagraph (c) (1) (ii) of the Rights in Technical Data and Computer Software Clause as DFARS 252.227-7013 and FAR 52.227-19, as applicable.

## 10.0 GOVERNING LAW

10.1 Any action related to this License will be governed by California law, excluding choice of law rules.

### Glossary:

“Authorized Submitter” means blaxxun.

“Contributor” means each entity that creates or contributes to the creation of Modifications.

“Contributor Version” means the combination of the Original Code, prior Modifications used by a Contributor, and the Modifications made by that particular Contributor.

“Covered Code” means the Original Code (VRML COMPONENT CODE) or Modifications or the combination of the Original Code and Modifications, in each case including portions thereof, as accepted for redistribution by the Web3D Consortium.

“Executable” means Covered Code in any form other than Source Code.

“License” means this document.

“Licensee” means an individual or a legal entity exercising rights under, and complying with all of the terms of, this License or a future version of this License issued under Section 6.1. For legal entities, “Licensee” includes any entity which controls, is controlled by, or is under common control with Licensee. For purposes of this definition, “control” means (a) the power, direct or indirect, to cause the direction or management of such entity, whether by contract or otherwise, or (b) ownership of fifty percent (50%) or more of the outstanding shares or beneficial ownership of such entity.

“Modifications” means any addition to or deletion from the substance or structure of either the Original Code or any previous Modifications. When Covered Code is released as a series of files, a Modification is:

A. Any addition to or deletion from the contents of a file containing Original Code or previous Modifications.

B. Any new file that contains any part of the Original Code or previous Modifications.

“Original Code” means Source Code of computer software code identified, or identifiable as being created by blaxxun interactive, Inc. and which, at the time of its release under this License is not already Covered Code governed by this License.

“Source Code” means the preferred form of the Covered Code for making modifications to it, including all modules it contains, plus any associated interface definition files, scripts used to control compilation and installation of an Executable, or a list of source code differential comparisons against either the Original Code or another well known, available Covered Code of the Contributor's choice. The Source Code can be in a compressed or archival form, provided the appropriate decompression or de-archiving software is widely available for no charge.

“Submitting Author” means blaxxun.

“VRML COMPONENT CODE” means the blaxxun CC3D version 4.1006 source code.

"CONSORTIUM INTELLECTUAL PROPERTY" means assets, code, trademarks, copyrights or other protectable intellectual property assets owned, licensed to or effectively controlled by the Web3D Consortium not specifically treated otherwise in this agreement.

*[Checkbox Assent Mechanism is to appear at this point, with CGI Form attached for registering end user's name, address, email address.]*