

# End User License Agreement

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Please read this Agreement carefully. It is a legal document that explains your rights and obligations related to your use of AcceleratXR™ Technology and related content. By downloading or using this software or any related content, you are agreeing to be bound by the terms of this Agreement. If you do not or cannot agree to the terms of this Agreement, please do not download or use this software or any related content.

Certain words or phrases are defined to have certain meanings when used in this Agreement. Those words and phrases are defined below in Section 25.

If you are separately licensed by AcceleratXR, Inc. under a Custom License certain terms of this Agreement do not apply to your Custom License. Those terms are described below in Section 26.

## 1. License Grant

AcceleratXR, Inc. (the “Company”) grants you a non-exclusive, non-transferable, non-sublicensable (except as described in this Agreement) license to use, reproduce, display, perform, and modify the Licensed Technology for any lawful purpose (the “License”). However, the rights that Company grants you under the License are subject to the terms of this Agreement, and you may only make use of the License if you comply with all terms.

The License becomes effective on the date you accept this Agreement or download the Source Code or any Content. The License does not grant you any title or ownership in the Licensed Technology.

### (A) Allowed forms of Distribution and Sublicensing

There is no restriction on your Distribution of a Product made using the Licensed Technology that does not include any Source Code (including as modified by you under the License) and does not require any Licensed Technology (including as modified by you under the License) to run (“Unrestricted Products”). For clarity, the foregoing does not constitute a license under any patents, copyrights, trademarks, trade secrets or other intellectual property rights, whether by implication, estoppel or otherwise.

You may only Distribute the Licensed Technology as follows:

*a.* Distribution to end users – You may Distribute the Licensed Technology incorporated in object code format only as an inseparable part of a Product to end users who are subject to an end user license agreement which explicitly disclaims any representations, warranties, conditions, and liabilities related to the Licensed Technology.

*b.* Distribution to other licensees – You may Distribute the Licensed Technology (including as modified by you under the License) in Source Code or object code format, or any Content, to an AcceleratXR Licensee who has rights under its license to the same Version of the Source Code that you are Distributing.

*c.* Distributions to employees and contractors – You also may Distribute Content to an AcceleratXR Licensee who is your employee or your contractor who does not have rights under their license to the same Content, but only to permit that AcceleratXR Licensee to utilize that Content in good faith to develop a Product on your behalf for Distribution by you under the License, and not for the purpose of Content pooling or any other Distribution or sublicensing of Content that is not permitted under this Agreement. Recipients of such a Distribution have a limited license to use, reproduce, display, perform, and modify that Content to develop your Product as outlined above, and for no other purpose.

*d.* Distribution and sublicensing of Examples – You may Distribute or sublicense Examples (including as modified by you under the License) in Source Code or object code format to any third party. However, the rights in this Section 1(d) do not expand or modify your limited Distribution and sublicensing rights for Source Code (including as modified by you under the License) that are not Examples.

You are permitted to post snippets of Source Code, up to 30 lines of code in length, online in public forums for the sole purpose of discussing the content of the snippet, or distribute such snippets in connection with supporting patches and plug-ins for the Licensed Technology, so long as it is not for the purpose of enabling non- AcceleratXR Licensees to use or modify any Source Code, or to aggregate, recombine, or reconstruct any larger portion of the Source Code.

You may not sublicense the Licensed Technology in Source Code format. You may not sublicense the Licensed Technology in object code format, or any Content, except to grant end users the ability to use, or to permit your publishers and distributors to market and Distribute, a Product that you Distribute as permitted in Section 1(a) above. This paragraph does not limit your rights to Distribute and sublicense Examples.

When you generate revenue from a Product or Distribute it to end users, you must send Company with advance notification to [release@acceleratxr.com](mailto:release@acceleratxr.com), as early as reasonably possible, including the name of the Product, the format of distribution, unique Product id (where applicable), and the distribution channel(s)

## **(B) Other Restrictions**

### **i. Non-Compatible Licenses**

The limitations and restrictions to the Licensed Technology under this Agreement shall not be altered by combining any aspect of the Licensed Technology with any code or other content which is covered by a separate license, regardless of the terms of such separate license.

### **ii. General Restrictions**

You may not engage in any activity with respect to the Licensed Technology, including as incorporated into a Product, (1) for any gambling-related activities or Products (as defined by law in the jurisdiction of use); (2) for any pornographic activities or Products (as defined by law in the jurisdiction of use); (3) for operation of nuclear facilities, aircraft navigation, aircraft communication systems or air traffic control machines, or for military use in connection with live combat; (4) in violation of any applicable law or regulation; (5) in which the Licensed Technology is rented or leased; (6) that misappropriates any of Company's other products or services; (7) in support of a claim by you or any third party that the Licensed Technology infringes a patent. You also may not sell or grant a security interest in the Licensed Technology.

## **2. User License**

The Licensed Technology is licensed to you for use by a single User. The User may store the Licensed Technology on any of the User's computers, but the Licensed

Technology cannot be shared with others (including any other employees or agents) except through a permitted Distribution as described above.

Under the License, the User may use the Licensed Technology for as long as you comply with this Agreement. If you are a legal entity, references to “you” in this agreement also apply to the User in all cases. You are responsible for the User’s compliance with this Agreement.

If you are an Academic Institution, your use is not limited to a single User for any Licensed Technology. Instead, you may store that Licensed Technology on any of your computers, and you may allow all users of those computers to use that Licensed Technology under the License. However, those users are not authorized under your License to Distribute or sublicense the Licensed Technology (including as incorporated in a Product). For that, they must obtain a License of their own.

### **3. New Versions**

During the term of your License, you will be entitled to access future Versions of the Source Code and new Content that Company chooses to make available to you. Company does not have any obligation to make new Versions of the Source Code or new Content available. Nor does Company have any obligation to continue to make available for access or download any or all Versions of the Source Code. However, any Versions of the Source Code that Company has made available to you, and for which you have accepted any applicable amendment to this Agreement as described in Section 22, are considered part of the Licensed Technology and may be used under the License (as amended by that amendment)

### **4. Paid Content**

Company may make Paid Content available to you for a fee. Your License to Paid Content is subject to your payment of the associated fee. When you pay the fee to obtain Paid Content, you are purchasing from Company the right to have your License include that Paid Content. Regardless of any references Company may make outside this Agreement to purchasing or selling Paid Content, Paid Content is licensed, not sold, to you under the License.

When you provide payment information to Company or its authorized processor, you represent that you are an authorized user of the payment card, PIN, key, account, or other payment method specified by you, and you authorize

Company to charge such payment method for the full amount of the transaction.

## **5. Royalty**

You agree to pay Company a royalty equal to 4% of all worldwide gross revenue actually attributable to each Product, regardless of whether that revenue is received by you or any other person or legal entity, as follows:

- a.** Gross revenue resulting from any and all sales of a Product to end users through any and all media, including but not limited to digital and retail;
- b.** Gross revenue resulting from any and all in-app purchases, downloadable content, microtransactions, subscriptions, sale, transfer, or exchange of content created by end users for use with a Product, or redemption of virtual currency, either within a Product or made externally but which directly affect the operation of the Product;
- c.** Gross revenue from any Kickstarter or other crowdfunding campaign which is directly associated with Product access or in-Product benefit (e.g., in a multi-tiered campaign, if an amount is established in an early tier solely for Product access, your royalty obligation will apply to that amount for each backer with the same access, but not on additional amounts in higher tiers based on ancillary benefits);
- d.** Your revenue from in-app advertising and affiliate programs;
- e.** Revenue from advance payments for a Product (from a publisher or otherwise); and
- f.** Revenue in any other form actually attributable to a Product (unless excluded below).

However, no royalty is owed on the following forms of revenue:

- 1.** The first \$100,000.00 in gross revenue for each Product (Product as used herein includes all versions, additions, and releases of a product as a single product. Also, products made available under a general license and pass will all be treated as a single Product for purposes of this royalty exclusion);
- 2.** Financial winnings generated by awards for the Product;

The royalty is based on gross revenue from end users, regardless of whether you sell your Product to end users directly, self-publish via an app store or any similar store, or work with a publisher. The following simplified example illustrates the application of the royalty to gross sales: if your Product earns \$10 on the app store, Apple may pay you \$7 (having deducted 30% as a distribution fee), but your royalty to Company would still be 4% of \$10 (or \$0.40).

Royalties that you pay on an advance payment of revenue for a Product that is recoupable by the payer, such as a publisher, may be credited against future royalty payments that you incur under this Agreement for that Product.

Royalties must be reported and paid on a per-Product basis. The \$100,000 per Product royalty exemption may not be aggregated across multiple Products except as expressly stated otherwise herein.

Within 45 days after the end of each calendar quarter in which a Product earns revenue outside of the above-listed royalty exclusions, you must pay to Company the full amount of the royalty due for that quarter and send Company a royalty report on a per Product basis. Any requirements for detailed information on royalty reporting and payment can be found at [acceleratxr.com/release](https://acceleratxr.com/release).

The royalty will be payable under this Agreement with respect to each Product for as long as any Content (including as modified by you under the License) incorporated in or used to make the Product are protected under copyright or other applicable intellectual property law.

## **6. Payments**

Company reserves the right to charge a 2% late fee, per calendar quarter (compounding), for any amounts unpaid after the required due date.

You are responsible for all taxes on all payments required to be made by you under this Agreement (other than taxes that Company is obligated to pay on its income, which are Company's responsibility). If you are required by a government agency to reduce your payment to Company for any reason, you are required to provide sufficient documentation to Company supporting the withholding. For questions about withholding taxes or taxes in general, please go to [acceleratxr.com/contact](https://acceleratxr.com/contact).

## **7. Records and Audits**

You agree to keep accurate books and records related to your development, manufacture, Distribution, and sale of Products and related revenue. Company may conduct reasonable audits of those books and records. Audits will be conducted during business hours on reasonable prior notice to you. Company will bear the costs of audits unless the results show a shortfall in payments in excess of 5% during the period audited, in which case you will be responsible for the cost of the audit.

## **8. Cost**

Unless as otherwise agreed to under a Custom License, the Licensed Technology is provided to You, under the terms of this Agreement, free of charge with no implied costs. If You have made any payments, to a Third-Party or otherwise, for the Licensed Technology such payments does not grant You any License to the Licensed Technology. Please contact [fraud@acceleratxr.com](mailto:fraud@acceleratxr.com) to report any unlawful use.

## **9. Support**

Company does not have any support obligations with respect to the Licensed Technology under this Agreement. Company does provide Support and Consulting Services on a Paid basis under a separate Support Agreement. More information can be found at [acceleratxr.com/pricing](https://acceleratxr.com/pricing).

## **10. Feedback and Contributions**

If you provide Company with any Feedback, Company is free to use the Feedback however it chooses. If you make any Contribution available to Company, you hereby assign to Company all right, title, and interest (including all copyright, patent, and other intellectual property rights) in that Contribution for all current and future methods and forms of exploitation in any country. If any of those rights are not effectively assigned under applicable law, you hereby grant Company a non-exclusive, fully-paid, irrevocable, transferable, sublicensable license to reproduce, distribute, publicly perform, publicly display, make, use, have made, sell, offer to sell, import, modify and make derivative works based on, and otherwise exploit that Contribution for all current and future methods and forms of exploitation in any country. If any of those rights may not be assigned or licensed under applicable law (such as moral and other personal rights), you hereby waive and agree not to assert all of those rights. However, you may continue to freely use any Feedback that you provide to Company,

and you may continue to use, in any manner consistent with the License, any Contribution that you make available to Company.

You understand and agree that Company is not required to make any use of any Feedback or Contribution that you provide. You agree that if Company makes use of your Feedback or Contribution, Company is not required to credit or compensate you for your contribution.

You represent and warrant that you have sufficient rights in any Feedback or Contribution that you provide to Company to grant Company and other affected parties the rights described above. This includes but is not limited to intellectual property rights and other proprietary or personal rights.

## **11. Third Party Software**

The Source Code includes Third Party Software components. If Third Party Software has separate software license or attribution requirements, the license terms or other attribution requirements for Third Party Software components can be found in the root directory for each version (ThirdPartyNotices file). By entering into this Agreement and using Third Party Software, you are accepting the terms of those licenses. In this case, the Third Party Software terms will govern your use of the Third Party Software, and if there is inconsistency, those terms will take precedence over the terms of the License for the Third Party Software. You agree that the owners of the Third Party Software are intended third party beneficiaries to this Agreement in relation to your uses of Third Party Software.

## **12. Ownership**

Company or its licensors own all title, ownership rights, and intellectual property rights in the Source Code. All rights granted to you under this Agreement are granted by express license only and not by sale, and all of those rights are limited by the terms of this Agreement. No license or other rights will be created hereunder by implication, estoppel, or otherwise. Any attempted sublicense under this Agreement that is not consistent with the terms of this Agreement will be null and void.

## **13. Proprietary Notices and Attribution**

You agree to retain and reproduce in all copies of the Licensed Technology the copyright, trademark, and other proprietary notices and disclaimers of Company and third parties as they appear in the Source Code.



You agree to place the following notices in the credits for any Product, other than Unrestricted Products that do not otherwise have credits, (replacing YYYY with the current year):

“[Product name] uses AcceleratXR™ Technology. AcceleratXR™ is a trademark or registered trademark of AcceleratXR, Inc. in the United States of America and elsewhere”

“AcceleratXR™ Technology, Copyright 2018 – YYYY, AcceleratXR, Inc. All rights reserved.”

No other license or right in the Company Trademarks is granted under this Agreement. All use of the Company Trademarks will inure to the sole benefit of Company. You agree not to engage in any activity that could tarnish, dilute, or affect the validity or enforceability of the Company Trademarks or cause consumer confusion or diminish any goodwill relating to any Company Trademarks.

Company may use your trademarks, service marks, trade names, and logos used with any Product, as well as publicly released screen shots and video content from the Product, in connection with Company’s marketing, advertisement, and promotion of AcceleratXR™ Technology in any and all media without restriction.

#### **14. Disclaimers and Limitation of Liability**

The Licensed Technology and all other materials and information provided by Company (the “Company Materials”) are provided on an “as is” and “as available” basis, “with all faults” and without warranty of any kind. Company, its licensors, and its and their affiliates disclaim all warranties, conditions, common law duties, and representations (express, implied, oral, and written) with respect to the Company Materials, including without limitation all express, implied, and statutory warranties and conditions of any kind, such as title, non-interference with your enjoyment, authority, non-infringement, merchantability, fitness or suitability for any purpose (whether or not Company knows or has reason to know of that purpose), system integration, accuracy or completeness, results, reasonable care, workmanlike effort, lack of negligence, and lack of viruses, whether alleged to arise under law, by reason of custom or usage in the trade, or by course of dealing. Without limiting the generality of the foregoing, Company, its licensors, and its and their affiliates make no warranty that (1) any of the Company Materials will operate properly, including as integrated in any

Product, (2) that the Company Materials will meet your requirements, (3) that the operation of the Company Materials will be uninterrupted, bug free, or error free in any or all circumstances, (4) that any defects in the Company Materials can or will be corrected, (5) that the Company Materials are or will be in compliance with a platform manufacturer's rules or requirements, or (6) that a platform manufacturer will approve any of your Products, or will not revoke approval of any Product for any or no reason. Any warranty against infringement that may be provided in Section 2-312 of the Uniform Commercial Code or in any other comparable statute is expressly disclaimed. Company, its licensors, and its and their affiliates do not guarantee continuous, error-free, virus-free, or secure operation of or access to the Company Materials. This paragraph will apply to the maximum extent permitted by applicable law.

To the maximum extent permitted by applicable law, neither Company, its licensors, nor its or their affiliates, nor any of Company's service providers, shall be liable in any way for loss or damage of any kind resulting from the use or inability to use the Company Materials or otherwise in connection with this Agreement, including but not limited to loss of goodwill, work stoppage, computer failure or malfunction, or any and all other commercial damages or losses. In no event will Company, its licensors, nor its or their affiliates, nor any of Company's service providers be liable for any loss of profits or any indirect, incidental, consequential, special, punitive, or exemplary damages, or any other damages arising out of or in connection with this Agreement or the Company Materials, or the delay or inability to use or lack of functionality of the Company Materials, even in the event of Company's or its affiliates' fault, tort (including negligence), strict liability, indemnity, product liability, breach of contract, breach of warranty, or otherwise and even if Company or its affiliates have been advised of the possibility of such damages. These limitations and exclusions regarding damages apply even if any remedy fails to provide adequate compensation.

Because some states or jurisdictions do not allow the exclusion or the limitation of liability for consequential or incidental damages, in those states or jurisdictions, the foregoing limitations of liability shall apply only to the full extent permitted by law.

## **15. Indemnity**

You agree to indemnify, pay the defense costs of, and hold Company, its licensors, its and their affiliates, and its and their employees, officers, directors, agents, contractors, and other representatives harmless from all claims, demands, actions, losses, liabilities, and expenses (including attorneys' fees, costs, and expert witnesses' fees) that arise from or in connection with (a) any claim that, if true, would constitute a breach by you of this Agreement (including, without limitation, any Distribution or sublicensing of the Licensed Technology in violation of this Agreement) or negligence by you, (b) any claim brought by any third party to whom you Distribute or sublicense the Licensed Technology in violation of this Agreement (including without limitation any claim that the Licensed Technology infringes a patent), (c) any claim that any Product or any other matter you created, or your exercise of the Company Licenses, infringes any third party's intellectual property rights or other proprietary or personal rights, or (d) any federal, state, or foreign civil or criminal actions related to any Product. You agree to reimburse Company on demand for any defense costs incurred by Company and any payments made or loss suffered by Company, whether in a court judgment or settlement, based on any matter covered by this Section 15.

If you are prohibited by law from entering into the indemnification obligation above, then you assume, to the extent permitted by law, all liability for all claims, demands, actions, losses, liabilities, and expenses (including attorneys' fees, costs and expert witnesses' fees) that are the stated subject matter of the indemnification obligation above.

## **16. Export Compliance**

You agree to comply with all applicable federal and foreign laws, regulations, and rules, and complete any required undertakings. You will obtain any necessary export license or other governmental approval prior to accessing, downloading, exporting, re-exporting, or releasing the Licensed Technology. You represent and warrant that you do not appear on any United States list of prohibited or restricted parties (including the Specially Designated Nationals List).

## **17. Term and Termination**

### **A. Term of the License.**

This Agreement will continue in effect unless terminated as described below.

### **B. Termination by Company.**

Company may terminate the Agreement by providing written notice if you breach any provision of this Agreement and the breach is not curable or, if it is curable, you fail to cure the breach within thirty (30) days of notice of the breach from Company. Without limiting the foregoing, your failure to make any payment due under this Agreement or breach of any restriction under the Company Licenses constitutes a breach of this Agreement.

### **C. Termination for Intellectual Property Action.**

The Agreement will terminate automatically as of the date you commence any claim that the Licensed Technology infringes any intellectual property, such as a patent, or otherwise support any claim by a third party that the Licensed Technology infringes any intellectual property, such as a patent.

### **D. Effect of Termination.**

Upon any termination, the Company Licenses will automatically terminate, you may no longer exercise any of the rights granted to you by the Company Licenses, and you must destroy all copies of the Licensed Technology in your possession and cease distributing any Products developed under this Agreement (other than Unrestricted Products). Within 30 days of termination, unless otherwise agreed by Company, you must destroy all Products in your inventory (other than Unrestricted Products).

### **E. Surviving Provisions**

Sections 7, 10-12, 14, 15, 17, 18, and 21-27 will survive termination of this Agreement. In addition, all restrictions on use and distribution of Licensed Technology in Section 1 will survive termination of this Agreement.

### **F. No Refunds**

Except to the extent required by law, all payments, fees and royalties are non-refundable under all circumstances, regardless of whether or not this Agreement has been terminated.

## **18. Governing Law and Jurisdiction**

You agree that this Agreement will be deemed to have been made and executed in the State of Florida, U.S.A., and any dispute will be resolved in accordance with the laws of Florida, excluding that body of law related to

choice of laws, and of the United States of America. Any action or proceeding brought to enforce the terms of this Agreement or to adjudicate any dispute must be brought in the Superior Court of Orange County, State of Florida or the United States District Court for the Eastern District of Florida. You agree to the exclusive jurisdiction and venue of these courts. You waive any claim of inconvenient forum and any right to a jury trial. The Convention on Contracts for the International Sale of Goods will not apply. Any law or regulation which provides that the language of a contract shall be construed against the drafter will not apply to this Agreement.

#### **19. U.S. Government End Users**

The Licensed Technology and related documentation are “Commercial Items” (as defined at 48 C.F.R. §2.101), consisting of “Commercial Computer Software” and “Commercial Computer Software Documentation” (as used in 48 C.F.R. §12.212 or 48 C.F.R. §227.7202, as applicable). The Licensed Technology is being licensed to U.S. Government end users only as Commercial Items and with only those rights as are granted to other licensees (other than Academic Institutions) under this Agreement.

#### **20. Independent Contractor**

You and Company are independent contractors and are not the legal representative, agent, joint venturer, partner, or employee of the other. Neither party has any right or authority to assume or create any obligations of any kind or to make any representation or warranty on behalf of the other party.

#### **21. Class Action Waiver**

You agree not to bring or participate in a class or representative action, private attorney general action, or collective arbitration related to the Licensed Technology or this Agreement. You also agree not to seek to combine any action or arbitration related to the Licensed Technology or this Agreement with any other action or arbitration without the consent of all parties to this Agreement and all other actions or arbitrations.

#### **22. Amendments of this Agreement**

Company may issue an amended Agreement at any time in its discretion by providing notice to you or by providing you with digital access to the amended Agreement when you next download the Source Code, new Versions, or access

our website at [acceleratxr.com](https://acceleratxr.com). You are not required to accept the amended Agreement. However, in order to continue to use new Versions, you must accept the amended Agreement. By downloading or using a new Version, you hereby agree to be bound by the amended Agreement then most recently issued by Company. If you do not accept the amended Agreement, you may not download or use any new Version that is made available by Company contemporaneously with or after the issuance of that amended Agreement (but this will not terminate your License for the Licensed Technology that you downloaded prior to the issuance of the amended Agreement). If you are a legal entity, acceptance of an amended Agreement by any of your Users will be binding on you.

## **23. Notices**

Where this Agreement calls for notice from Company, including written notice, Company may provide notice to you at the website [acceleratxr.com](https://acceleratxr.com) or at the email address that you provided when you registered for Support (or any updated email address you subsequently provide). Company's notices to you will be effective when they are published to [acceleratxr.com](https://acceleratxr.com) or sent to that email address.

## **24. No Assignment**

You may not, without the prior written consent of Company, assign, transfer, charge, or sub-contract all or any of your rights or obligations under this Agreement, and any attempt without that consent will be null and void. Company may at any time assign, transfer, charge, or sub-contract all or any of its rights or obligations under this Agreement. For clarity, you are not prohibited by Company from assigning or transferring your rights in your Product, other than the Source Code, Content, and Contributions. Third Party Software assignment and transfer is governed by the terms of the applicable licenses

## **25. Definitions**

As used in this Agreement, the following capitalized words have the following meanings:

*"Academic Institution"* means any educational institution such as, but not limited to, a university, college, or high school, as well as libraries.

*“Content”* means any code, artwork, or other content that Company makes available to you.

*“Contribution”* means any code, whether in Source Code format or object code format, or any other information, that you make available to Company by any means (e.g., via submissions to forums, wiki, or Company’s GitLab, or through email or otherwise) which in any way incorporates, extends, alters, is derived from, or otherwise in any way constitutes a derivative work of any portion of the Licensed Technology.. In addition, mere use of code with the Licensed Technology, without making that code available to Company, does not constitute a Contribution.

*“Custom License”* means any agreement between you and Company, or any sublicensor authorized by Company, other than this Agreement or any amendment to this Agreement, under which you are granted a license to use AcceleratXR™ Technology to develop one or more product(s).

*“Custom Product”* means a product developed pursuant to a Custom License.

*“Distribute”* means to provide or otherwise make a copy available, or to make its functionality available on a network.

*“AcceleratXR Licensee”* means a third party who is separately licensed by Company to use the Source Code.

*“Company”* means AcceleratXR, Inc., a Florida Corporation having its principal business offices at 1170 Tree Swallow Drive, Suite 306, Winter Springs, FL, 32708, U.S.A

*“Company Licenses”* means this License.

*“Company Trademarks”* means the trademarks, service marks, trade names and logos associated with AcceleratXR, AcceleratXR’s technology and other intellectual property, and the AcceleratXR™ Technology.

*“Examples”* means the Source Code made available by Company in GitLab at the URL <https://gitlab.acceleratxr.com/Core/samples>.

*“Feedback”* means any feedback or suggestions that you provide to Company regarding the Licensed Technology.

*“Licensed Technology”* means any or all of the Source Code and the Content, including as modified by you under the License.

*“Paid Content”* means any Content made available to you by Company for an additional fee.

*“Product”* means any product developed under this Agreement that is made using the Licensed Technology or that combines the Licensed Technology with any other software, regardless of how much or little of the Licensed Technology is used. Product as defined herein shall not include any product which competes with any product or service offering of Company or otherwise provides networking software for the purposes of providing real-time and asynchronous user interaction.

*“Source Code”* means the human readable form of a software program, including all modules it contains, plus any associated interface definition files, scripts used to control compilation, and installation of an executable (object code).

*“Third Party Software”* means third party software components included in the Source Code.

*“User”* means an individual user who accesses or downloads the Source Code and Content from Company’s GitLab account or website(s). If you are an individual, *“User”* means you. For legal entities, *“User”* means the individual employee or agent through whom you are exercising rights under this Agreement.

*“Version”* means any updated or upgraded version of the Source Code that Company chooses to make available to the public.

*“You,” “your” or “yourself”*, whether or not capitalized in this Agreement, means you as an individual or the legal entity exercising rights under this Agreement through you. For legal entities, *“you,” “your” and “yourself”* include any entity that controls, is controlled by, or is under common control with you, where *“control”* means the power, direct or indirect, to cause the direction or management of the entity in question, whether by contract or otherwise, or ownership of 50% or more of the outstanding shares or beneficial ownership of the entity in question.

## **26. Custom Licenses**



Custom Licenses are not modified or otherwise affected by this Agreement. For Custom Products, the terms of your applicable Custom License will govern all matters (including royalties, notifications, Feedback, Contributions, trademarks, service marks, trade names, logos, screen shots, and video content related to those Custom Products) related to your use of the code, artwork, that are licensed to you under that Custom License, as applicable, instead of the terms of this Agreement.

You may exercise your rights in Paid Content under this License in connection with Custom Products that are developed and distributed under your Custom License as if they were Products developed and distributed under the License. However, your exercise of those rights in connection with Custom Products is governed by and subject to the terms of this Agreement, including without limitation all obligations and limitations that apply to use of Paid Content in connection with Products, as well as all disclaimers, limitations of liability, and indemnification rights of Company, whether related to Paid Content, Products, or otherwise. Despite this, no royalty is owed under this Agreement on Custom Products, but royalties may be owed on Custom Products under the terms of a Custom License.

As used in this Agreement, the defined term “Product” does not include Custom Products, and except as described above, the terms of this Agreement applicable to Products do not apply to Custom Products.

## **27. Miscellaneous**

This Agreement and any document or information referred to in this Agreement constitute the entire agreement between you and Company relating to the subject matter covered by this Agreement. All other communications, proposals, and representations with respect to the subject matter covered by this Agreement are excluded.

The original of this Agreement is in English; any translations are provided for reference purposes only. You waive any right you may have under the law of your country to have this Agreement written or construed in the language of any other country.

This Agreement describes certain legal rights. You may have other rights under the laws of your jurisdiction. This Agreement does not change your rights under the laws of your jurisdiction if the laws of your jurisdiction do not permit it to do

so. Limitations and exclusions of warranties and remedies in this Agreement may not apply to you because your jurisdiction may not allow them in your particular circumstance. In the event that certain provisions of this Agreement are not enforceable in your jurisdiction, those provisions shall be enforceable to the furthest extent possible under applicable law.

Any act by Company to exercise, or failure or delay in exercise of, any of its rights under this Agreement, at law or in equity will not be deemed a waiver of those or any other rights or remedies available in contract, at law or in equity.

Unless otherwise stated in this Agreement, if any term of this Agreement is held by a court or tribunal of competent jurisdiction to be unenforceable, the term will be enforced to the maximum extent permissible and the remaining terms of this Agreement will remain in full force and effect. You agree that this Agreement does not confer any rights or remedies on any person other than the parties to this Agreement, except as expressly stated.

Company's obligations are subject to existing laws and legal process, and Company may comply with law enforcement or regulatory requests or requirements despite any contrary term in this Agreement.