Software Terms And Conditions

TWO BIG EARS LIMITED — 3Dception

Human Readable Summary:

This human readable summary is not a license, has no legal value, and its contents do not appear in the actual license.

Commercial Use: Starter, Basic and Pro Versions (for Indies)

- The license grants you permission to use 3Dception in commercial projects
- A fee is paid on a monthly or a yearly basis for a period of 12 months. During this period you will be entitled to free updates. After this period you will be able to continue the subscription on a monthly basis or renew the subscription for another year. If you choose to end the subscription after the initial 12 month period, you can continue using 3Dception for commercial work but you will not be entitled to new updates
- You will require an active internet connection to activate the license
- The license is valid for companies and/or entities that have 6 or less employees
- You are not allowed to redistribute, transfer or sell the license
- You may not modify, resell or reverse engineer the software

Commercial Use: Platinum Version

- The license grants you permission to use 3Dception in commercial projects
- A fee is paid on a monthly or a yearly basis for a period of 12 months. During this period you will be entitled to free updates. After this period you will be able to continue the subscription on a monthly basis or renew the subscription for another year. If you choose to end the subscription after the initial 12 month period, you can continue using 3Dception for commercial work but you will not be entitled to new updates
- You will require an active internet connection to activate the license
- The license is valid for companies and/or entities that have more than 6 employees
- You are not allowed to redistribute, transfer or sell the license
- You may not modify, resell or reverse engineer the software

Non-Commercial Use: Non-Commercial Version (for Indies)

- 3Dception cannot be used for commercial purposes of any kind
- You must display the 3Dception logo as a splash screen in your project

- You may not modify, resell or reverse engineer the software

-----

A : SOFTWARE LICENCE AGREEMENT — COMMERCIAL USE — Starter, Basic and Pro versions

PLEASE READ THIS CAREFULLY BEFORE CONTINUING

BEFORE DOWNLOADING THE SOFTWARE, YOU SHOULD CAREFULLY READ THE TERMS AND CONDITIONS OF THIS LICENCE AGREEMENT. BY DOWNLOADING THE SOFTWARE YOU ARE AGREEING TO BE LEGALLY BOUND BY THE TERMS AND CONDITIONS OF THIS LICENCE AGREEMENT AND AGREE TO BECOME A LICENSEE. IF YOU DO NOT AGREE TO ALL OF THE TERMS AND CONDITIONS OF THIS LICENCE AGREEMENT YOU SHOULD NOT DOWNLOAD OR USE THE SOFTWARE.

1. **Grant of the Licence**
   When you accept the terms and conditions of this Licence Agreement by purchasing or downloading the software, Two Big Ears Limited, a company registered in Scotland with company number SC444737 and having its registered office at 9/9 Brighton Street, Edinburgh, EH1 1HD (the "Licensor") shall immediately grant you (the "Licensee") a limited, non-exclusive, non-transferrable licence to Use *3Dception*, a software library for real-time binaural spatialisation of sound and any and all accompanying documentation (the "Software"), subject to the terms and conditions of this Licence Agreement. You may not transfer the Software electronically from one computer to another and may not distribute it over a network.

2. **Use of the Software**
   2.1 In this Licence Agreement, "Use" shall be defined as including the installation of the Software by copying, transmitting or loading it into the permanent memory of a computer or other device (each a "Computer") for the processing of the system instructions or statements contained in the Software. "Use" shall also include copying the Software in machine-readable form for the purposes of understanding the contents of such machine-readable material (which may be known as reverse-engineering).
   2.2 Under this Licence Agreement the Software may only be used by the Licensee or by any other employee, agent and/or other parties authorised by the Licensee. Only one instance of the Software can be used within an organisation with a maximum of 6 members, including employees, agents, contractors or other parties.
   2.3 For organisations with greater than 6 members, including employees, agents, contractors, or other parties, this License will not be applicable. In such a case you are not entitled to use this software without first notifying,

consulting and coming to a new License agreement with the licensor.

2.4 Under this Licence Agreement you shall be entitled to incorporate the Software into your products, which you may then rent, lease, sub-licence or sell to third parties. For the avoidance of doubt no warranty is given relative to such incorporation or to third party end users.

3. **Licence Fee**

3.1 The Software is commercially licensed software. It is not open-source, freeware or shareware. The Licence Fee is payable for an initial twelve month period (the "Initial Term" as further defined at Clause 11 below) and is dependent on the tier of the subscription service which you have chosen on purchase. The fee is payable by direct debit either on a monthly basis or an annual basis into the Licensor's nominated bank account or by such other means as is agreed between you and the Licensor. The package description and subsequent fee will be available prior to confirming purchase on the Licensor's website. You are expected to read and understand the product description for a subscription package before confirming the purchase.

3.2 The Licence Fee and any other charges payable under this agreement are exclusive of any applicable VAT and other sales tax which shall be payable by the Licensee at the rate and in the manner prescribed by law against submission of a valid tax invoice.

3.3 The Licensor shall have the right to charge interest on overdue payments at the rate of 4% per year above the base rate of the Royal Bank of Scotland plc, calculated from the date when payment of the Licence Fee becomes due for payment up to and including the date of actual payment whether before or after judgement. For the avoidance of doubt the Licence Fee shall be considered late if not received within 14 days of the date of payment, being the first day of each month during the Term.

3.4 The Licensor has the right to modify the subscribed software from time to time, including modifying, adding or deleting features and functions, in an effort to improve your experience. No changes will be made that materially reduce the functionality of the software provided to you during the subscription term.

4. **Licensee's Undertakings**

By accepting the terms and conditions of this Licence Agreement you hereby undertake:

4.1 Not to copy the Software except as permitted by sub-Clause 1.2;

4.2 Not to modify, disassemble, decompile or otherwise reverse-engineer the Software;

4.3 Not to use the Software on more than one Computer at any one time in violation of this Licence Agreement;

4.4 To ensure that your employees, agents and other parties under your control who will use the Software do so in accordance with the terms and conditions of this Licence Agreement and are accordingly notified of the same;

4.5 To reproduce and include any and all copyright notices of the Licensor as they appear in or on the Software and any and all copies thereof;

4.6 Not to permit or facilitate the Use of the Software in any manner which would constitute a breach of the terms and conditions of this Licence

Agreement;

4.7 Not to place or distribute the Software on any website, ftp server or similar location without the express prior written consent of the Licensor; and

4.8 Not to Use the Software for any purpose which may be deemed immoral, illegal, offensive, threatening, abusive or otherwise harmful.

5. **Limited Warranty**

5.1 Subject to the limitations and exclusions of liability below, the Licensor warrants that (a) the Software will be free from material defects under normal use; and (b) the Software will materially conform with any documentation that accompanies it and to any specifications or descriptions provided by the Licensor. The warranty period is twelve months from the date of purchase (the "Warranty Period").

5.2 The Licensor will also indemnify you for personal injury or death solely and directly caused by any defect in its products or the negligence of its employees.

5.3 The Licensor shall not be liable under the said warranty above if the Software fails to operate in accordance with the said warranty as a result of any modification, variation or addition to the Software not performed by the Licensor or caused by any abuse, corruption or incorrect use of the Software, including use of the Software with equipment or other software which is incompatible.

6. **No Other Warranties**

The foregoing warranty is made in lieu of any other warranties, representations or guarantees of any kind, whether expressed or implied, including, but not limited to, any implied warranties of quality, merchantability, fitness for a particular purpose or ability to achieve a particular result. You assume the entire risk as to the quality and performance of the Software. The Licensor does not warrant that the Software will meet your requirements or that its operation will be uninterrupted or error free.

7. **Limitation of Liability**

The Licensor's entire liability and your exclusive remedy shall be:

7.1 The replacement of any Software (either with new Software or with the download of the required installation and setup materials) not meeting the Licensor's Limited Warranty and which is returned to the Licensor together with dated proof of purchase; or

7.2 If, during the Warranty Period, the Licensor is unable to deliver replacement Software or to provide a suitable downloadable replacement which is free of material defects, you may terminate this Licence Agreement by destroying the Software with all copies in any form and, on proof of the destruction any money paid to the Licensor will be refunded.

8. **Exclusion of Liability**

Except in respect of personal injury or death caused directly by the negligence of the Licensor or its employees, in no event will the Licensor be liable to you for any damages, including any lost profits, lost savings, loss of data or any indirect, special, incidental or consequential damages arising out of the use of or inability to use the Software, even if the Licensor has been

advised of the possibility of such damages. Nothing in this Licence Agreement limits liability for fraudulent misrepresentation.

9. **Your Statutory Rights**
This Licence Agreement gives you specific legal rights and you may also have other rights that vary from country to country. Some jurisdictions do not allow the exclusion of implied warranties, or certain kinds of limitations or exclusions of liability, so the above limitations and exclusions may not apply to you. Other jurisdictions allow limitations and exclusions subject to certain conditions. In such a case the above limitations and exclusions shall apply to the fullest extent permitted by the laws of such applicable jurisdictions. If any part of the above limitations or exclusions is held to be void or unenforceable, such part shall be deemed to be deleted from this Licence Agreement and the remainder of the limitation or exclusion shall continue in full force and effect. Any rights that you may have as a consumer (i.e. a purchaser for private as opposed to business, academic or government use) are not affected.

10. **Intellectual Property Rights**
The Software and related documentation are copyright works of authorship and are also protected under applicable database laws. The Licensor retains ownership of the Software, all subsequent copies of the Software and all intellectual property rights subsisting therein, regardless of the form in which such copies may exist. This Licence Agreement is not a sale of the original Software or any copies thereof.

11. **Term and Termination**
11.1 This Licence Agreement is effective for an initial period of 12 months (the "Initial Term") and will continue beyond the Initial Term on either a month-by-month basis for the monthly plan or a yearly basis for the annual plan until terminated by either party on giving one month's notice.
11.2 During the term of this Licence Agreement you will receive updates from the Licensor of the Software for free. You will be notified by email of their availability and provided with a URL for downloading.
11.3 If at any time after the Initial Term you choose to terminate this Licence Agreement the Licence Agreement you may continue to use the Software but you will not receive the free updates.
11.4 The Licensor may terminate this Licence Agreement at any time or may choose not to renew this Licence Agreement after the Initial Term on giving you not less than one month's prior written notice.
11.5 This Licence Agreement shall also terminate upon conditions set out elsewhere in this Licence Agreement or if you fail to comply with the terms and conditions of this Licence Agreement, including the monthly or yearly payment of the Licence Fee pursuant to clause 3.
11.6 You agree that, upon such termination pursuant to Clauses 11.3 to 11.5 (inclusive), you will destroy the Software including any copies in whatever form.

12. **Data Protection**
12.1 When downloading and using the Software you may be required to provide certain personal information including, but not limited to, your name and email address. Under certain circumstances we may also obtain details

about your computer's system configuration and its IP and MAC addresses.

12.2 Any data collected by us will be collected, processed and held in accordance with the Company's rights and obligations arising under the provisions and principles of the Data Protection Act 1998.

12.3 All data collected and held by us will be governed by our Privacy Policy found at http://twobigears.com/privacy.html.

13. **Confidentiality and Non-disclosure**

13.1 For the purposes of this Clause 14, "Confidential Information" means the Software itself .

13.2 You acknowledge and undertake that, except as provided by sub-Clause 14.3 or as authorised in writing by the Company, you shall, at all times during the term of the Licence and for five years after its conclusion:

13.2.1 keep confidential all Confidential Information;

13.2.2 not disclose any Confidential Information to any other party;

13.2.3 not use any Confidential Information for any purpose other than as contemplated by and subject to these Terms and Conditions; and

13.2.4 not make any copies of or part with possession of any Confidential Information.

13.3 You may:

13.3.1 disclose any Confidential Information to any governmental or other authority or regulatory body to such extent only as is required by law, subject to the you first informing the person or body in question that the Confidential Information is confidential; and

13.3.2 use any Confidential Information for any purpose, or disclose it to any other person, to the extent only that it is at the date of your acceptance of these Terms and Conditions, or at any time after that date becomes, public knowledge through no fault of your own, provided that in doing so you do not disclose any part of that Confidential Information which is not public knowledge.

13.4 The provisions of this Clause 14 shall continue in force in accordance with their terms, notwithstanding the termination of this Agreement or licence to use the Software.

14. **Indemnification**

You hereby acknowledge that you shall be liable for, and shall indemnify the Licensor against any costs, liability, damages, loss, claims or proceedings from any third party which arise out of your use of the Software.

15. **General**

15.1 Each party irrevocably agrees that the courts of the country of registration of the Licensor, its subsidiary office, or reseller which issues an invoice for the Software, shall have exclusive jurisdiction to resolve any controversy or claim of whatever nature arising out of or in relation to this Licence Agreement and the place of performance of this Licence Agreement shall be that country and the laws of that country shall govern such controversy or claim.

15.2 This Licence Agreement constitutes the complete and exclusive statement of the Licence Agreement between the Licensor and you with respect to the subject matter of this Licence Agreement and supersedes all proposals, representations, understandings and prior agreements, whether

oral or written, and all other communications between us relating to that subject matter.

15.3 Any Clause in this Licence Agreement that is found to be invalid or unenforceable shall be deemed deleted and the remainder of this Licence Agreement shall not be affected by that deletion.

15.4 Failure or neglect by either party to exercise any of its rights or remedies under this Licence agreement will not be construed as a waiver of that party's rights nor in any way affect the validity off the whole or part of this Licence Agreement nor prejudice that party's right to take subsequent action.

15.5 This Licence Agreement is personal to you and you may not assign, transfer, sub-contract or otherwise part with this Licence Agreement or any right or obligation under it without the Licensor's prior written consent.

Any questions concerning this Licence Agreement or the Software should be directed to the Licensor. Contact details are available from http://twobigears.com.

B : SOFTWARE LICENCE AGREEMENT — COMMERCIAL USE — Platinum Version

PLEASE READ THIS CAREFULLY BEFORE CONTINUING

BEFORE DOWNLOADING THE SOFTWARE, YOU SHOULD CAREFULLY READ THE TERMS AND CONDITIONS OF THIS LICENCE AGREEMENT. BY DOWNLOADING THE SOFTWARE YOU ARE AGREEING TO BE LEGALLY BOUND BY THE TERMS AND CONDITIONS OF THIS LICENCE AGREEMENT AND AGREE TO BECOME A LICENSEE. IF YOU DO NOT AGREE TO ALL OF THE TERMS AND CONDITIONS OF THIS LICENCE AGREEMENT YOU SHOULD NOT DOWNLOAD OR USE THE SOFTWARE.

1. **Grant of the Licence**
   When you accept the terms and conditions of this Licence Agreement by downloading or purchasing the software, Two Big Ears Limited, a company registered in Scotland with company number SC444737 and having its registered office at 9/9 Brighton Street, Edinburgh, EH1 1HD (the "Licensor") shall immediately grant you (the "Licensee") a limited, non-exclusive, non-transferrable licence to Use *3Dception*, a software library for real-time binaural spatialisation of sound and any and all accompanying documentation (the "Software"), subject to the terms and conditions of this Licence Agreement. You may not transfer the Software electronically from one computer to another and may not distribute it over a network.

2. **Use of the Software**
   2.1 In this Licence Agreement, "Use" shall be defined as including the installation of the Software by copying, transmitting or loading it into the

permanent memory of a computer or other device (each a "Computer") for the processing of the system instructions or statements contained in the Software. "Use" shall also include copying the Software in machine-readable form for the purposes of understanding the contents of such machine-readable material (which may be known as reverse-engineering).

2.2 Under this Licence Agreement the Software may only be used by the Licensee or by any other employee, agent and/or other parties authorised by the Licensee.

2.3 Under this Licence Agreement you shall be entitled to incorporate the Software into your products, which you may then rent, lease, sub-licence or sell to third parties. For the avoidance of doubt no warranty is given relative to such incorporation or to third party end users.

3. **Licence Fee**

The Software is commercially licensed software. It is not open-source, freeware or shareware. The Licence Fee is payable for an initial twelve month period (the "Initial Term" as further defined at Clause 11 below) on purchase. The fee is payable by direct debit either on a monthly basis or an annual basis into the Licensor's nominated bank account or by such other means as is agreed between you and the Licensor. The package description and subsequent fee will be available prior to confirming purchase on the Licensor's website. You are expected to read and understand the product description for a subscription package before confirming the purchase.

3.2 The Licence Fee and any other charges payable under this agreement are exclusive of any applicable VAT and other sales tax which shall be payable by the Licensee at the rate and in the manner prescribed by law against submission of a valid tax invoice.

3.3 The Licensor shall have the right to charge interest on overdue payments at the rate of 4% per year above the base rate of the Royal Bank of Scotland plc, calculated from the date when payment of the Licence Fee becomes due for payment up to and including the date of actual payment whether before or after judgement. For the avoidance of doubt the Licence Fee shall be considered late if not received within 14 days of the date of payment, being the first day of each month during the Term.

3.4 The Licensor has the right to modify the software from time to time, including modifying, adding or deleting features and functions, in an effort to improve your experience. No changes will be made that materially reduce the functionality of the software provided to you at the time of purchase.

4. **Licensee's Undertakings**

By accepting the terms and conditions of this Licence Agreement you hereby undertake:

4.1 Not to copy the Software except as permitted by sub-Clause 1.2;

4.2 Not to modify, disassemble, decompile or otherwise reverse-engineer the Software;

4.3 Not to use the Software on more than one Computer at any one time in violation of this Licence Agreement;

4.4 To ensure that your employees, agents and other parties under your control who will use the Software do so in accordance with the terms and conditions of this Licence Agreement and are accordingly notified of the

same;

4.5 To reproduce and include any and all copyright notices of the Licensor as they appear in or on the Software and any and all copies thereof;

4.6 Not to permit or facilitate the Use of the Software in any manner which would constitute a breach of the terms and conditions of this Licence Agreement;

4.7 Not to place or distribute the Software on any website, ftp server or similar location without the express prior written consent of the Licensor; and

4.8 Not to Use the Software for any purpose which may be deemed immoral, illegal, offensive, threatening, abusive or otherwise harmful.

5. **Limited Warranty**

5.1 Subject to the limitations and exclusions of liability below, the Licensor warrants that (a) the Software will be free from material defects under normal use; and (b) the Software will materially conform with any documentation that accompanies it and with any specifications or descriptions provided by the Licensor. The warranty period is twelve months from the date of purchase (the "Warranty Period").

5.2 The Licensor shall not be liable under the said warranty above if the Software fails to operate in accordance with the said warranty as a result of any modification, variation or addition to the Software not performed by the Licensor or caused by any abuse, corruption or incorrect use of the Software, including use of the Software with equipment or other software which is incompatible.

6. **No Other Warranties**

The foregoing warranty is made in lieu of any other warranties, representations or guarantees of any kind, whether expressed or implied, including, but not limited to, any implied warranties of quality, merchantability, fitness for a particular purpose or ability to achieve a particular result. You assume the entire risk as to the quality and performance of the Software. The Licensor does not warrant that the Software will meet your requirements or that its operation will be uninterrupted or error free.

7. **Limitation of Liability**

The Licensor's entire liability and your exclusive remedy shall be:

7.1 The replacement of any Software (either with new Software or with the download of the required installation and setup materials) not meeting the Licensor's Limited Warranty and which is returned to the Licensor together with dated proof of purchase; or

7.2 If, during the Warranty Period, the Licensor is unable to deliver replacement Software or to provide a suitable downloadable replacement which is free of material defects, you may terminate this Licence Agreement by destroying the Software with all copies in any form and, on proof of the destruction any money paid to the Licensor will be refunded.

8. **Exclusion of Liability**

Except in respect of personal injury or death caused directly by the negligence of the Licensor or its employees, in no event will the Licensor be liable to you for any damages, including any lost profits, lost savings, loss of

data or any indirect, special, incidental or consequential damages arising out of the use of or inability to use the Software, even if the Licensor has been advised of the possibility of such damages. Nothing in this Licence Agreement limits liability for fraudulent misrepresentation.

9. **Your Statutory Rights**

   This Licence Agreement gives you specific legal rights and you may also have other rights that vary from country to country. Some jurisdictions do not allow the exclusion of implied warranties, or certain kinds of limitations or exclusions of liability, so the above limitations and exclusions may not apply to you. Other jurisdictions allow limitations and exclusions subject to certain conditions. In such a case the above limitations and exclusions shall apply to the fullest extent permitted by the laws of such applicable jurisdictions. If any part of the above limitations or exclusions is held to be void or unenforceable, such part shall be deemed to be deleted from this Licence Agreement and the remainder of the limitation or exclusion shall continue in full force and effect. Any rights that you may have as a consumer (i.e. a purchaser for private as opposed to business, academic or government use) are not affected.

10. **Intellectual Property Rights**

    The Software and related documentation are copyright works of authorship and are also protected under applicable database laws. The Licensor retains ownership of the Software, all subsequent copies of the Software and all intellectual property rights subsisting therein, regardless of the form in which such copies may exist. This Licence Agreement is not a sale of the original Software or any copies thereof.

11. **Term and Termination**

    11.1 This Licence Agreement is effective for an initial period of 12 months (the "Initial Term") and will continue beyond the Initial Term on either a month-by-month basis for the monthly plan or a yearly basis for the annual plan until terminated by either party on giving one month's notice.

    11.2 During the term of this Licence Agreement you will receive updates from the Licensor of the Software for free. You will be notified by email of their availability and provided with a URL for downloading.

    11.3 If at any time after the Initial Term you choose to terminate this Licence Agreement the Licence Agreement you may continue to use the Software but you will not receive the free updates.

    11.4 The Licensor may terminate this Licence Agreement at any time or may choose not to renew this Licence Agreement after the Initial Term on giving you not less than one month's prior written notice.

    11.5 This Licence Agreement shall also terminate upon conditions set out elsewhere in this Licence Agreement or if you fail to comply with the terms and conditions of this Licence Agreement, including the or yearly payment of the Licence Fee pursuant to clause 3.

    11.6 You agree that, upon such termination pursuant to Clauses 11.3 to 11.5 (inclusive), you will destroy the Software including any copies in whatever form.

12. **Data Protection**

    12.1 When downloading and using the Software you may be required to

provide certain personal information including, but not limited to, your name and email address. Under certain circumstances we may also obtain details about your computer's system configuration and its IP and MAC addresses.

12.2 Any data collected by us will be collected, processed and held in accordance with the Company's rights and obligations arising under the provisions and principles of the Data Protection Act 1998.

12.3 All data collected and held by us will be governed by our Privacy Policy found at http://twobigears.com/privacy.html.

13. **Confidentiality and Non-disclosure**

13.1 For the purposes of this Clause 14, "Confidential Information" means the Software itself **.**

13.2 You acknowledge and undertake that, except as provided by sub-Clause 14.3 or as authorised in writing by the Company, you shall, at all times during the term of the Licence and for five years after its conclusion:

13.2.1 keep confidential all Confidential Information;

13.2.2 not disclose any Confidential Information to any other party;

13.2.3 not use any Confidential Information for any purpose other than as contemplated by and subject to these Terms and Conditions; and

13.2.4 not make any copies of or part with possession of any Confidential Information.

13.3 You may:

13.3.1 disclose any Confidential Information to any governmental or other authority or regulatory body to such extent only as is required by law, subject to the you first informing the person or body in question that the Confidential Information is confidential; and

13.3.2 use any Confidential Information for any purpose, or disclose it to any other person, to the extent only that it is at the date of your acceptance of these Terms and Conditions, or at any time after that date becomes, public knowledge through no fault of your own, provided that in doing so you do not disclose any part of that Confidential Information which is not public knowledge.

13.4 The provisions of this Clause 14 shall continue in force in accordance with their terms, notwithstanding the termination of this Agreement or licence to use the Software.

14. **Indemnification**

You hereby acknowledge that you shall be liable for, and shall indemnify the Licensor against any costs, liability, damages, loss, claims or proceedings from any third party which arise out of your use of the Software.

15. **General**

15.1 Each party irrevocably agrees that the courts of the country of registration of the Licensor, its subsidiary office, or reseller which issues an invoice for the Software, shall have exclusive jurisdiction to resolve any controversy or claim of whatever nature arising out of or in relation to this Licence Agreement and the place of performance of this Licence Agreement shall be that country and the laws of that country shall govern such controversy or claim.

15.2 This Licence Agreement constitutes the complete and exclusive statement of the Licence Agreement between the Licensor and you with

respect to the subject matter of this Licence Agreement and supersedes all proposals, representations, understandings and prior agreements, whether oral or written, and all other communications between us relating to that subject matter.

15.3 Any Clause in this Licence Agreement that is found to be invalid or unenforceable shall be deemed deleted and the remainder of this Licence Agreement shall not be affected by that deletion.

15.4 Failure or neglect by either party to exercise any of its rights or remedies under this Licence agreement will not be construed as a waiver of that party's rights nor in any way affect the validity off the whole or part of this Licence Agreement nor prejudice that party's right to take subsequent action.

15.5 This Licence Agreement is personal to you and you may not assign, transfer, sub-contract or otherwise part with this Licence Agreement or any right or obligation under it without the Licensor's prior written consent.

Any questions concerning this Licence Agreement or the Software should be directed to the Licensor. Contact details are available from http://twobigears.com.

C: SOFTWARE TERMS AND CONDITIONS — FOR NON-COMMERCIAL USE — Non-Commercial Version

BACKGROUND:

These Terms and Conditions create an agreement between you and Two Big Ears Limited, a company registered in Scotland with company number SC444737 and having its registered office at 9/9 Brighton Street, Edinburgh, EH1 1HD (hereinafter referred to by name or as "the Company", "us", "we", "our"). These Terms and Conditions (also referred to herein as "this Agreement") govern your use of the evaluation version of 3Dception, a software library for real-time binaural spatialisation of sound limited for the purposes of this non-commercial testing licence ("the Software"), including any and all related components and documentation. Two Big Ears Limited is the sole owner of the Software and all intellectual property, including source code, relating to the Software.

1. **Agreement**
   1.1 By accepting these Terms and Conditions and continuing to download and install the Software, you agree to be bound by these Terms and Conditions and hereby enter into a legally binding Agreement with us.
   1.2 If you do not accept these Terms and Conditions, you will not be permitted to download, install or use the Software.

2. **Interpretation**

   2.1 Unless the context otherwise requires, each reference in these Terms and Conditions to:

   2.1.1 "writing", and any related expression, includes a reference to any communication effected by electronic transmission or similar means;

   2.1.2 a statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time;

   2.1.3 "these Terms and Conditions" is a reference to these Terms and Conditions;

   2.1.4 a Schedule is a schedule to these Terms and Conditions; and

   2.1.5 a Clause or paragraph is a reference to a Clause of these Terms and Conditions; and

   2.1.6 a "Party" or the "Parties" refer to the parties to these Terms and Conditions.

   2.2 The headings used in these Terms and Conditions are for convenience only and shall have no effect upon the interpretation of these Terms and Conditions.

   2.3 Words imparting the singular number shall include the plural and vice versa.

   2.4 References to any gender shall include the other gender.

3. **Licence and Use of Software**

   3.1 You are hereby granted a non-exclusive licence to use the Software subject to these terms and conditions.

   3.2 This licence entitles you to download, install and use the Software for testing and evaluation or personal, home and academic purposes only.

   3.3 This licence also entitles you to use the Software for non-commercial projects, being projects which do not have a commercial objective or emphasis and are not revenue generating. In relation to such projects you shall be entitled to incorporate the Software into your products, which you may then distribute to third parties, providing they do not have a commercial objective or emphasis and are not revenue generating.

   3.4 If the Software is used for the non-commercial projects referred to at clause 3.3 you are required to exhibit the 3Dception logo and banner, [found at http://twobigears.com/download/3Dception_Logo.zip] in the non-commercial project for which the Software is used.

   3.5 You may not:

   3.5.1 Modify the Software in any way;

   3.5.2 Reverse engineer, decompile or disassemble the Software;

   3.5.3 Create derivative works based on the Software;

   3.5.4 Redistribute or reproduce the Software other than as permitted by sub-Clause 3.3;

   3.5.5 make any copies beyond those necessary to install the Software on the number of computers permitted by sub-Clause 3.2;

   3.5.6 Resell the Software;

   3.5.7 Sub-licence the Software; or

   3.5.8 Use the Software for commercial purposes.

4. **Disclaimer of Warranties and Liability**

   4.1 The Software is currently in development and is released solely for the

purposes of evaluation and testing. You hereby acknowledge that the Software is not a finished product and as such may contain defects. The Software is provided "as is".

4.2 We make no representation or warranty that the Software will meet your requirements, be of satisfactory quality, be fit for a particular purpose, be compatible with all computer systems, or will be secure.

4.3 You acknowledge that use of the Software may lead to data loss or other damage to your IT systems, computer(s) or the data held thereon.

4.4 You acknowledge that your use of the Software is at your own risk.

4.5 We shall not be liable for any direct, indirect, consequential or incidental loss or damage of any kind resulting from or relating to the Software or its use.

5. **Evaluation Term**

   5.1 The non-exclusive licence granted pursuant to Clause 3 above (the "**Licence**") may be extended, reduced or terminated immediately at our sole discretion.

   5.2 On termination by us of the Licence, the Software shall automatically cease to function.

6. **Software Updates and Technical Specification**

   6.1 We may from time to time during the term of the Licence release updates for the Software. You will be notified by email of their availability and provided with a URL for downloading.

   6.2 You are under no obligation to install updates, however it is preferred that you do so as this enables us to collect up-to-date data on the performance of the Software and any updates that we issue.

   6.3 The Software comprises of a software library, to include compiled binaries, helper scripts and documentation, expressly no source code is provided under the licence of the Software pursuant to this Agreement.

7. **Support**

   No specific technical support is provided for the Software. You are free to submit general enquiries to us, however we are under no obligation to answer them or to provide support for the Software.

8. **Reporting and Feedback**

   8.1 The Software produces its own error reports, other diagnostic files and anonymised platform usage statistics. You should ensure that, where possible, your computer is connected to the internet and any firewall or other internet security you may have is configured to allow the Software to send such reports and files to us.

   8.2 You will from time to time be requested to submit feedback to us.

   8.3 You hereby acknowledge that upon submitting feedback to us you automatically grant us a worldwide, perpetual, irrevocable, royalty free licence to use that feedback in any way we deem appropriate including, but not limited to:

   8.3.1 The use, publication, distribution, transmission, broadcasting, licensing, sub-licensing, leasing, lending and sale of the feedback; and

   8.3.2 The creation, use, publication, distribution, transmission, broadcasting, licensing, sub-licensing, leasing, lending and sale of any derivative works based upon the feedback.

8.4 Our use of the feedback shall not bestow any rights or interests upon you whatsoever.

9. **Data Protection**

9.1 When downloading and using the Software you may be required to provide certain personal information including, but not limited to, your name and email address. Under certain circumstances we may also obtain details about you computer's system configuration and its IP and MAC addresses.

9.2 Any data collected by us will be collected, processed and held in accordance with the Company's rights and obligations arising under the provisions and principles of the Data Protection Act 1998.

9.3 All data collected and held by us will be governed by our Privacy Policy which can be found at http://twobigears.com/privacy.html.

10. **Confidentiality and Non-disclosure**

10.1 For the purposes of this Clause 10, "Confidential Information" means the Software itself .

10.2 You acknowledge and undertake that, except as provided by sub-Clause 10.3 or as authorised in writing by the Company, you shall, at all times during the term of the Licence and for five years after its conclusion:

10.2.1 keep confidential all Confidential Information;

10.2.2 not disclose any Confidential Information to any other party;

10.2.3 not use any Confidential Information for any purpose other than as contemplated by and subject to these Terms and Conditions; and

10.2.4 not make any copies of or part with possession of any Confidential Information.

10.3 You may:

10.3.1 disclose any Confidential Information to any governmental or other authority or regulatory body to such extent only as is required by law, subject to the you first informing the person or body in question that the Confidential Information is confidential; and

10.3.2 use any Confidential Information for any purpose, or disclose it to any other person, to the extent only that it is at the date of your acceptance of these Terms and Conditions, or at any time after that date becomes, public knowledge through no fault of your own, provided that in doing so you do not disclose any part of that Confidential Information which is not public knowledge.

10.4 The provisions of this Clause 10 shall continue in force in accordance with their terms, notwithstanding the termination of this Agreement or licence to use the Software.

11. **Termination**

11.1 Your licence to use the Software shall terminate immediately on notice by us to you of the termination of the Licence.

11.2 We reserve the right to immediately terminate this Agreement if you commit a material breach of these Terms and Conditions.

11.3 We reserve the right to terminate the Licence and this Agreement in accordance with sub-Clause 5.1 in which case your licence to use the Software shall also terminate.

11.4 Any and all obligations which either expressly or by their nature

continue beyond the termination, cancellation or expiration of the Licence and/or this Agreement shall survive termination under this Clause 11.

12. **Indemnification**

You hereby acknowledge that you shall be liable for, and shall indemnify Two Big Ears Limited against any costs, liability, damages, loss, claims or proceedings from any third party which arise out of your use of the Software.

13. **Assignation**

You may not assign, transfer, sub-licence, or in any other manner make over to any third party these Terms and Conditions without our prior written consent.

14. **Relationship of Parties**

Nothing in these Terms and Conditions shall create, or be deemed to create, a partnership, the relationship of principal and agent, or of employer and employee between you and the Company.

15. **Severance**

In the event that one or more of the provisions of these Terms and Conditions is found to be unlawful, invalid or otherwise unenforceable, that / those provisions shall be deemed severed from the remainder of these Terms and Conditions. The remainder of these Terms and Conditions shall be valid and enforceable.

16. **Modification**

16.1 We may modify the Software and / or these Terms and Conditions at any time. In the event that modifications are made, we will publish details of them on our website at [http://twobigears.com/terms.html] and may also send you an email detailing the modifications.

16.2 If you do not agree to be bound by any modified terms and conditions we may introduce, you should immediately cease using the Software upon publication of those terms and conditions.

17. **Law and Jurisdiction**

These Terms and Conditions shall be governed by and construed in accordance with the laws of Scotland and the Parties hereby prorogate the exclusive jurisdiction of the courts of Scotland.