

OTOY, INC.

OctaneRender®

OctaneRender Enterprise

OctaneRender Prime

OctaneRender Studio

OctaneRender Cloud®

OctaneRender Prime for Unity

OctaneRender Studio for Unity

OctaneRender Creator for Unity

END USER LICENSE AGREEMENT

GENERAL TERMS

THIS END USER LICENSE AGREEMENT (“Agreement”) is made by and between OTOY, Inc. and its affiliates and subsidiaries, with its principal offices at 1010 Wilshire Blvd., Los Angeles, CA 90017 (“**OTOY**”) and you (“you” or “**Customer**”), which governs your use of the OTOY Property (as defined herein). Do not access or use the OTOY Property until you have carefully read the following Standard Terms and Conditions. By accepting this Agreement, either by pressing the “Agree” button (or other button or mechanism designed to acknowledge agreement) indicating your acceptance or by using or accessing the OTOY Property, you agree to be legally bound by the terms and conditions of this Agreement. The date upon which You accept the terms and conditions of this Agreement or You use or access the OTOY Property, whichever date is earlier, shall be deemed to be the “Effective Date” of this Agreement. If you are entering into this Agreement on behalf of a company or other legal entity, you represent that you have the authority to legally bind such entity and its Affiliates to these terms and conditions, in which case the terms “You”, “Your” and/or “Customer” shall refer to such entity and its Affiliates. If you do not agree to the terms of this Agreement or you do not have the right, power and authority to legally bind your Company (if any) and yourself, then do not click the “Agree” button (or other button or mechanism designed to acknowledge agreement) and do not access or use the OTOY Property. This Agreement is effective between Customer and OTOY as of the date Customer accepts it. If you elect to not accept this Agreement when it is presented to you for acceptance and you have not yet used the applicable product, you will be entitled to a full refund of any payment that you previously made for the applicable product for which you elected not to accept this Agreement and which you have not used; if this applies to you and you wish to claim a refund, please contact OTOY customer support to arrange for the refund.

The Agreement, including the Standard Terms and Conditions, the Support and Maintenance Addendum (Exhibit A), and the terms and conditions set forth in each Customer Order (as defined herein) states the entire agreement between the parties regarding its subject matter and supersedes all prior and contemporaneous agreements, terms sheets, letters of intent, understandings, and communications, whether written or oral. All amounts paid by Customer under this Agreement shall be non-refundable and non-recoupable, unless otherwise provided herein. The provisions of this Agreement may be amended or changed from time to time in OTOY’s sole discretion. The rights granted herein are subject to the terms and conditions set forth in each Customer Order (as defined herein) and such terms and conditions are a part of this Agreement.

If you have ordered any of the OctaneRender for Unity products, you will also be required to accept one or more End User License Agreements with Unity-related companies, which may also affect your rights and obligations in and in connection with the OTOY Products; however, to the extent of any inconsistency between this Agreement and any End User License Agreement between you and any Unity-related company, this Agreement shall govern and control as between you and OTOY.

IF YOU ORDER A SUBSCRIPTION LICENSE, YOU WILL AUTOMATICALLY BE CHARGED IN ACCORDANCE WITH THE TERMS OF SECTION 8.2 BELOW. YOU MAY CANCEL AT ANY TIME PURSUANT TO THE INSTRUCTIONS IN SECTION 8.2 BELOW.

THESE TERMS INCLUDE A CLASS ACTION WAIVER AND A WAIVER OF JURY TRIALS, AND REQUIRE BINDING ARBITRATION ON AN INDIVIDUAL BASIS TO RESOLVE MOST DISPUTES. THESE TERMS LIMIT THE REMEDIES THAT MAY BE AVAILABLE TO YOU IN THE EVENT OF A DISPUTE.

STANDARD TERMS AND CONDITIONS

1. DEFINITIONS

1.1 “Cloud Services” means the OctaneRender Cloud® (“ORC”) and the services made available through the OctaneRender Cloud.

1.2 “Credits” means the credits that Customer may use to purchase Cloud Services.

1.3 “Customer” has the same meaning as used in the General Terms.

1.4 “Customer Content” means the content uploaded by Customer for rendering by either the Software or the Cloud Services.

1.5 “Customer System” means one or more computer systems that is: (a) owned or leased by Customer and (b) within the possession and control of Customer.

1.6 “User Generated Content” means digital assets created by End Users and uploaded to OTOY’s digital database, (e.g., “Live DB”), according to Section 2.11 of this Agreement.

1.7 “Documentation” means the standard end-user technical documentation, specifications, materials and other information OTOY supplies with the Software or Cloud Services. Advertising and marketing materials are not Documentation.

1.8 “Effective Date” has the same meaning as used in the General Terms.

1.9 “End User” means Customer authorized users of the Software and/or Cloud Services.

1.10 “Error” means a reproducible failure of the Software and/or Cloud Services to perform in substantial conformity with its Documentation.

1.11 “GPU” means a single graphics processing unit of a computer system.

1.12 “Intellectual Property Rights” means copyrights, trademarks, service marks, trade secrets, patents, patent applications, moral rights, contractual rights of non-disclosure or any other intellectual property or proprietary rights, however arising, throughout the world.

1.13 “Order” means the electronic request by Customer to purchase or access and use the OTOY Property in the form provided on OTOY’s websites located at <https://orc.otoy.com> for the Cloud Services, <https://home.otoy.com/render/octane-render/purchase/> for the Software, or any other OTOY website and subject to the terms and conditions of this Agreement at the prices quoted on each respective OTOY website for the applicable OTOY Property requested by Customer, and is subject to subsequent acceptance and fulfillment by OTOY; OctaneRender for Unity products may be purchased and accessed through Unity pursuant to the process provided by Unity without a separate order between OTOY and you.

1.14 “OTOY” has the same meaning as used in the General Terms.

1.15 “OTOY Property” means the Software, Cloud Services, Documentation, all information, content, and data therein, and all Intellectual Property Rights contained in the foregoing.

1.16 “Product Use Environment” means the number of GPUs on a Customer System as identified in this Agreement or as otherwise provided in an Order.

1.17 “Product Use Environment Upgrade” means the addition of any additional GPUs.

1.18 “Release” means any Update or Upgrade if and when such Update or Upgrade is made available to Customer by OTOY. In the event of a dispute as to whether a particular Release is an Upgrade or an Update, OTOY’s published designation will be dispositive.

1.19 “Software” means the software and plug-ins that OTOY provides to Customer (in object code format only) as identified on the Order or otherwise provided by OTOY (including OctaneBench) (or, in the case of the OctaneRender for Unity products, by Unity), and any Releases thereto if and when such Releases are made available by OTOY.

1.20 “Trial Period” means a limited period of days from the Effective Date as indicated in the Order or as otherwise communicated to Licensee in writing by OTOY unless terminated earlier in accordance with this Agreement.

1.21 “Trial Version” means a version of the Software provided by OTOY free of charge to an End User for specific uses and subject to any additional specific terms and conditions expressly stated by OTOY in a written communication with the End User for a Trial Period. OTOY will retain all rights to immediately revoke any Trial Version license without any cause or reason.

1.22 “Update” means, if and when available, any Error corrections, fixes, workarounds or other maintenance releases to the version of the Software and/or Cloud Services provided by OTOY to Customer.

1.23 “Upgrade” means, if and when available, new releases or versions of the Software and/or Cloud Services, that materially improve the functionality of, or add material functional capabilities to the Software and/or Cloud Services, as applicable. “Upgrade” does not include the release of a new product for which there is a separate charge. If a question arises as to whether a release is an Upgrade or a new product, OTOY’s sole determination will prevail.

2. LICENSES; RESTRICTIONS; OBLIGATIONS

2.1 OTOY Licenses to Customer.

(i) **Software.** Subject to the terms and conditions of this Agreement, during the term specified on the Order and within the scope of the license type specified on the Order, OTOY hereby grants Customer and its End Users a non-exclusive, non-transferable, non-sublicensable, limited license, solely for the purposes set forth on the Order, to (a) download, install, execute, and use the Software solely within the Product Use Environment and (b) use the Documentation. Unless otherwise specifically agreed in writing by OTOY, Customer’s license herein to the Software for any Trial Version of the Software shall be limited to use solely for the purposes of internally evaluating the Software during the Trial Period and such use shall be limited to one individual Customer on one standalone computer system. If Customer orders OctaneRender Studio for Unity, the subscription will also include the right for Customer to use one plugin, which may be rotated by Customer on a monthly basis; if Customer orders OctaneRender Creator for Unity, the subscription will also include the right for Customer to use three plugins, which may be rotated by Customer on a monthly basis. Use of any plugin is subject to Customer’s acceptance of the separate End User License Agreement applicable to the specific plugin.

(ii) **Cloud Service.** Subject to the terms and conditions of this Agreement, during the term of the Agreement, OTOY hereby grants Customer a non-exclusive, non-transferable, non-sublicensable, limited license, solely for the purposes set forth on the Order, to (a) access and use the Cloud Services purchased by Customer and (b) use the Documentation. The Cloud Service is limited to use by one individual Customer only and such Customer is required to be an active subscriber of one of the other versions of the software that includes the Cloud Services in order to access the Cloud Service.

2.2 License Restrictions. Customer shall not (and shall not permit any End User to): (a) use the OTOY Property, except as expressly permitted under Section 2.1; (b) separate the components of any OTOY Property for use on different computers and/or use one (1) Software license on more than one single computer at the same time (it may require approximately one (1) hour in between de-activating and re-activating a Software license on another single computer); (c) copy, adapt, alter, publicly display, publicly perform, translate, create derivative works of, or otherwise

modify any OTOY Property, except as expressly permitted in this Agreement; (d) sublicense, lease, rent, loan, or distribute any OTOY Property to any third party; (e) transfer the OTOY Property to any third party (except as provided under Section 13.7); (f) reverse engineer, decompile, disassemble or otherwise attempt to derive the source code for any OTOY Property, except as permitted by applicable law; (g) remove, alter or obscure any proprietary notices on OTOY Property; (h) allow third parties to access or use any OTOY Property, including any use in any application service provider environment, service bureau, or time-sharing arrangements; (i) access or use any OTOY Property to build a competitive product or service or publish any performance, benchmark test, or analysis relating to the OTOY Property, without the prior written consent of OTOY; (j) attempt to engage in or engage in, any potentially harmful acts that are directed against the OTOY Properties, including but not limited to violating or attempting to violate any security features of the OTOY Properties, using manual or automated software, including without limitation, robots, spiders, or scripts, or other means to access OTOY Properties, introducing viruses, worms, or similar harmful code into the OTOY Properties, or interfering or attempting to interfere with use of the OTOY Properties by any other user, host or network, including obfuscation or impairment of direct communication between OTOY Properties and physical GPUs, virtualization, shimming, or use of custom BIOS; (k) impersonate any person or entity, or otherwise misrepresent affiliation with a person or entity; or (l) use any portion of the OTOY Properties in any manner that may give a false or misleading impression, attribution, or statement as to OTOY or any third party; (m) use the Software in a network or other multi-user arrangement or an electronic bulletin board system or other remote access arrangement; or (n) use the Software on a renderfarm or cloud rendering system of any kind where the use of the Software is not for private purposes (e.g., the Software cannot be made available for use to third parties by providing access to end-users to it on a commercial render-farm or cloud service). Customer shall not be permitted to transfer any license for a Trial Version to any other user and use is limited to a single machine. Usage and transferability rights of non-trial subscription versions shall be based on transferability and usage rights applicable to the account used to purchase the applicable product. Unless otherwise provided in the Order or agreed in writing by OTOY on a case by case basis, the Product Use Environment will be one GPU for a Trial Version, one GPU for free tier offerings OctaneRender Prime and OctaneRender Prime for Unity, two GPUs for OctaneRender Studio and OctaneRender Studio for Unity and 40 GPUs for OctaneRender Creator for Unity and OctaneRender Enterprise. For standalone OctaneRender, the Product Use Environment will be as set forth in the Order and will be one GPU unless otherwise provided. The standalone version of OctaneRender may be used only on a single computer, but may be uninstalled and reinstalled on a different computer after such waiting period as OTOY may establish from time to time, not to exceed one day. For a subscription or Trial Version of the Software or Cloud Services, Customer must be connected to the internet while accessing the Software and/or Cloud Services. No portion of the OTOY Properties may be duplicated by Customer, except as otherwise expressly authorized in writing by OTOY. Customer may, however, make a reasonable number of copies of the machine-readable portion of the Software solely for back-up purposes, provided that such back-up copy is used only to restore the Software on a Customer System, and not for any other use or purpose. Customer will reproduce on each such copy all notices of patent, copyright, trademark or trade secret, or other notices placed on such Software by OTOY or its suppliers.

2.3 Open Source. The Software is delivered with certain items of independent, third-party code that are licensed under separate terms provided by the authors or licensors (“*Third Party Code*”). This Third Party Code is licensed under the terms of the license that accompanies such Third Party Code. Nothing in this Agreement limits your rights under, or grants you rights that supersede, the terms and conditions of any applicable license for any Third Party Code delivered with the Software. None of the terms of this Agreement apply to such Third Party Code. A list of Third Party Code is attached here as **Exhibit B**.

2.4 License Keys. Customer acknowledges that the OTOY Property may require license keys or other codes (“*Keys*”) in order for Customer to install and/or use the OTOY Property. Such Keys may also control continued access to, and use of, the OTOY Property, and may prevent the use of the OTOY Property on any systems except a Customer System. Customer will not disclose the Keys or information about the Keys to any third party, except for authorized End Users. Customer shall not use any OTOY Property except pursuant to specific Keys issued by OTOY that authorizes such use.

2.5 Usernames and Passwords. For uses of the OTOY Products that require an OTOY account, OTOY will provide each Customer a unique username and password (to be determined by the Customer or End User) to enable such Customer or Customer’s End Users to access the OTOY Property pursuant to this Agreement. In the event that a Customer has an existing OTOY account, username and password, such existing account, username and password shall be used to access the OTOY Property. Each username and password may only be used to access the Software

during one (1) concurrent login session per applicable license. Customer will ensure that the username and password given to End User(s) will be used only by such End User(s). Customer is responsible for maintaining the confidentiality of all usernames and passwords, and is solely responsible for all activities that occur under these usernames. Customer agrees: (a) not to allow a third party (except for End Users) to use Customer's accounts, usernames or passwords at any time; and (b) to notify OTOY promptly of any actual or suspected unauthorized use of its account, usernames or passwords, or any other breach or suspected breach of this Agreement. OTOY reserves the right to terminate immediately any accounts, usernames, or passwords that OTOY reasonably determines may have been used by an unauthorized third party, as well as the software licenses associated with such accounts. Customer accounts and their associated usernames and passwords cannot be shared or used by third parties, but may be reassigned from time to time to a new End User by Customer where such new End User is replacing a former End User who has terminated employment or otherwise changed job status or function and no longer uses the Software. Notwithstanding the foregoing, Customers who only have access to a subscription (except for the professional subscription license) or Trial Version of the Software will not be able to have usernames and passwords for such Software reassigned to another End User; notwithstanding the foregoing, reassignment of usernames and passwords for the OctaneRender for Unity products will be governed by the applicable End User License Agreement between the Customer and the applicable Unity-related company. Customer is solely responsible for all access to and use of the Software by its End Users and all access to and use of the Software through any End User's account.

2.6 Customer Licenses to OTOY. Customer grants OTOY a non-exclusive, worldwide, sub-licensable royalty-free and fully paid license (a) during the term of this Agreement, to use, copy, display, perform, and create derivative works of the Customer Content to fulfill Customer's requests and provide services to Customer in accordance with this Agreement and (b) on a perpetual basis, to use, copy, display, perform, and make derivative works of anonymized data related to the rendering of Customer Content solely for internal research and development purposes, including measuring and improving the effectiveness of OTOY's products and services through metrics and event data capture.

2.7 Customer Obligations.

(i) Customer shall use the OTOY Property only in accordance with this Agreement and the Documentation and in compliance with all applicable laws and regulations and be responsible for all Customer Content.

(ii) Customer represents, warrants, and covenants that:

a) Customer owns and/or licenses all rights necessary to use, distribute, publicly display, publicly perform, and make derivative works of Customer Content for the purposes contemplated under this Agreement and to grant OTOY the license set forth in Section 2.6;

b) Customer has paid and/or will pay all fees and other obligations, of any kind, relating to Customer Content;

c) Customer Content (i) does not violate, or encourage the violation of, any applicable laws, rules, or regulations; (ii) does not contain false, misleading, or inaccurate information; (iii) is not defamatory, libelous, threatening, or harassing of OTOY or any third party; (iv) does not infringe or misappropriate the intellectual property rights of OTOY or any third party; and (v) is not obscene, pornographic, or otherwise objectionable, as determined in the sole discretion of OTOY; and

d) Customer will not use OTOY's name, trademark, logo, or any other copyrighted material owned by OTOY without prior written consent of OTOY, except as permitted by this Agreement.

(iii) Customer acknowledges and agrees that OTOY Properties are not designed for High Risk Uses. If Customer elects to use OTOY Properties for High Risk Uses, Customer agrees such uses are solely at Customer's own risk and liability. "**High Risk Uses**" are uses where failure of the OTOY Properties or Customer Content rendered by OTOY Properties could lead to death or serious bodily injury of any person or severe physical

or environmental damage, including aircraft, motor vehicles or other modes of transportation, nuclear or chemical facilities, life support systems, implantable medical equipment, and weaponry systems.

(iv) Customer shall be solely responsible for all acts or omissions of its End Users and any breach of this Agreement by an End User of Customer shall be deemed a breach by Customer.

(v) Customer acknowledges and agrees that OTOY is not obligated to back-up any Customer Content and that Customer is solely responsible for creating back-up copies of any Customer Content at Customer's sole cost and expense. Customer is solely responsible for accidental loss and accidental deterioration of the Software and/or Customer Content.

2.8 Customer Privacy and Website Terms & Conditions. Customer agrees to the terms of OTOY's privacy policy, as may be updated by OTOY from time to time, and is currently available at <https://home.otoy.com/privacy-policy/>, as well as OTOY's Terms & Conditions for access and use of OTOY's websites, including [orc.otoy.com](https://home.otoy.com/terms-and-conditions/), as may be updated by OTOY from time to time, and is currently available at <https://home.otoy.com/terms-and-conditions/>.

2.9 Investigations. If OTOY becomes aware of any possible violations by Customer or any of its End Users of this Agreement, OTOY reserves the right to investigate such violations. If, as a result of the investigation, OTOY believes that criminal activity has occurred, OTOY reserves the right to refer the matter to, and to cooperate with, any and all applicable legal authorities, including disclosure of any information or materials on or in OTOY Properties related to Customer Content in OTOY's possession, as OTOY in its sole discretion believes to be necessary or appropriate, and to immediately terminate this Agreement without notice.

2.10 Feedback. Customer hereby grants to OTOY a perpetual, irrevocable, worldwide, sublicenseable, and royalty-free right to use and otherwise exploit any suggestions, comments, or other feedback provided by Customer or its End Users related to OTOY Properties ("**Feedback**") in any manner.

2.11 User Generated Content. OTOY does not claim any ownership or liability with respect to any User Generated Content that is uploaded to OTOY's digital database. Customer hereby acknowledges that i) OTOY does not pre-screen the User Generated Content and, as such, does not guarantee the accuracy, integrity, or quality of such User Generated Content; (ii) Customer will evaluate and bear all risks associated with the use of any User Generated Content, including any reliance on the accuracy, completeness, or usefulness of such User Generated Content, (iii) Customer and its End Users may be exposed to User Generated Content that is indecent, offensive or otherwise objectionable; and (iv) under no circumstances will OTOY be liable in any way for any User Generated Content, including but not limited to, any errors or omissions in the Content, or for any loss or damages of any kind incurred as a result of the use of any User Generated Content. If Customer or its End Users upload, post, submit, publish, transmit, or otherwise make available User Generated Content, Customer represents and warrants that a) Customer's and its End Users' User Generated Content is not confidential; b) Customer and its End Users have the requisite rights to upload, submit, post, publish, transmit and otherwise make available the User Generated Content; c) Customer and its End Users grant OTOY a perpetual, irrevocable, non-exclusive, royalty-free, paid-up, worldwide, sub-licensable license to store, display, reproduce, modify, use and transmit the User Generated Content for the purposes of providing, formatting, maintaining, repairing, and otherwise improving and administering the digital database and marketplace; and d) Customer and its End Users grant OTOY a perpetual, irrevocable, non-exclusive, royalty-free, paid-up, worldwide, license to store, display, reproduce, modify, use and transmit the User Generated Content and derivative works using or based on the User Generated Content or any part thereof and to sublicense all of these rights through multiple tiers of sublicensing, for any purpose on any platform, system, device or media, whether now known or hereafter created, including without limitation, sublicensing these rights to third party end users, OTOY's licensees, or any sub-licensees of OTOY's licensees through multiple tiers of sublicensing. Customer and its End Users hereby waive any approval rights, rights of attribution, integrity, or other similarly afforded "moral" rights that Customer may have with respect to any use of the User Generated Content as set forth herein. In no event will Customer have any right to any injunction or other form of relief that could limit or restrict OTOY's use of the User Generated Content, any right to which is waived by Customer and its End Users.

(i) It is OTOY's policy to respond to all claims of intellectual property infringement. We will investigate notices of alleged infringement and will take appropriate actions required under the Digital Millennium

Copyright Act, Title 17, US Code Section 512 (c)(2) (“DMCA”) and other applicable intellectual property laws. Notices should be sent to the below address, and in order to be effective, shall include i) a physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed; ii) identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works at that site; iii) identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit the service provider to locate the material; iv) information reasonably sufficient to permit the service provider to contact the complaining party, such as an address, telephone number and, if available, an electronic mail address at which the complaining party may be contacted; v) a statement that the complaining party has a good-faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent or the law; and vi) a statement that the information in the notification is accurate and, under penalty of perjury, that the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

OTOY, Inc. attn.: Legal 1010 Wilshire Blvd., Suite 1604 Los Angeles, CA 90017, email: legal@otoy.com

2.12 Rendering Time Calculator. It is not possible to accurately determine how many rendering hours are required for rendering Customer Content via Cloud Services. However, OTOY may provide features which allow Customer to attempt to estimate the number of rendering hours that will be required to perform rendering services via the Cloud Services, such as a rendering time calculator and/or OctaneBench. OTOY makes no guarantee as to the accuracy of such estimates and such estimates are not binding on Customer or OTOY. Customer is solely responsible for determining how many Credits to purchase to complete a rendering project (including Credits for storage and bandwidth (i.e., data)) via the Cloud Services. If Customer does not purchase enough Credits to complete a rendering project via the Cloud Services, Customer’s rendering job will be paused and Customer will be notified as further set forth in Section 8.3, unless Customer elects to opt out of receiving notifications under Customer’s account preferences or settings.

3. PROPRIETARY RIGHTS. Customer acknowledges and agrees that the OTOY Property contains valuable Intellectual Property Rights of OTOY and its licensors. The OTOY Property is licensed and not sold to Customer, and no title or ownership to the OTOY Property passes as a result of this Agreement or any act pursuant to this Agreement. OTOY and its licensors own all right, title, and interest in and to the OTOY Property. All rights not expressly granted to Customer in this Agreement are reserved. Nothing in this Agreement will be deemed to grant, by implication, estoppel or otherwise, a license under any existing or future patents of OTOY, except to the extent necessary for Customer to use the OTOY Properties as expressly permitted under this Agreement.

4. CONFIDENTIALITY

4.1 Confidential Information. Each party (the “*Disclosing Party*”) may during the term of this Agreement disclose to the other party (the “*Receiving Party*”) non-public information regarding the Disclosing Party’s business, including technical, marketing, financial, employee, planning, and other confidential or proprietary information (“*Confidential Information*”). Without limiting the generality of the foregoing, the Software and Cloud Services shall constitute OTOY’s Confidential Information. The Disclosing Party will identify Confidential Information as “confidential” or “proprietary” at the time of disclosure and, if disclosed in oral form, provide a written summary of such Confidential Information to the Receiving Party within thirty (30) days after such oral disclosure.

4.2 Protection of Confidential Information. The Receiving Party will not use any Confidential Information of the Disclosing Party for any purpose not permitted by this Agreement, and will disclose the Confidential Information of the Disclosing Party only to employees or contractors of the Receiving Party who have a need to know such Confidential Information for purposes of this Agreement and are under a duty of confidentiality no less restrictive than the Receiving Party’s duty hereunder. The Receiving Party will protect the Disclosing Party’s Confidential Information from unauthorized use, access, or disclosure in the same manner as the Receiving Party protects its own confidential or proprietary information of a similar nature and with no less than reasonable care.

4.3 Exceptions. The Receiving Party’s obligations under Section 4.2 with respect to Confidential Information of the Disclosing Party will terminate to the extent such information: (a) was already known to the Receiving Party at the time of disclosure by the Disclosing Party; (b) is disclosed to the Receiving Party by a third

party who had the right to make such disclosure without any confidentiality restrictions; (c) is, or through no fault of the Receiving Party has become, generally available to the public; or (d) is independently developed by the Receiving Party without access to, or use of, the Disclosing Party's Confidential Information. In addition, the Receiving Party will be allowed to disclose Confidential Information of the Disclosing Party to the extent that such disclosure is (i) approved in writing by the Disclosing Party, (ii) necessary for the Receiving Party to enforce its rights under this Agreement in connection with a legal proceeding; or (iii) required by law or by the order of a court of similar judicial or administrative body, provided that the Receiving Party notifies the Disclosing Party of such required disclosure promptly and in writing and cooperates with the Disclosing Party, at the Disclosing Party's reasonable request and expense, in any lawful action to contest or limit the scope of such required disclosure.

4.4 Return of Confidential Information. The Receiving Party will either return to the Disclosing Party or destroy all Confidential Information of the Disclosing Party in the Receiving Party's possession or control and permanently erase all electronic copies of such Confidential Information promptly upon the written request of the Disclosing Party or the termination of this Agreement, whichever comes first. Upon request, the Receiving Party will certify in writing that it has fully complied with its obligations under this Section 4.4.

5. ACCEPTANCE OF ORDERS; ADDITIONAL ORDERS; DELIVERY AND INSTALLATION

5.1 Acceptance of Orders. All Customer Orders purchased via electronic methods, including orders for Additional Products and Services, will be deemed accepted by OTOY only upon OTOY's electronic confirmation to Customer that OTOY has accepted Customer's Order.

5.2 Additional Orders. Subject to the terms and conditions of this Agreement, Customer may place additional Orders with OTOY for renewals to Software licenses, additional Software licenses, Product Use Environment Upgrades, Cloud Services, and additional professional services, if applicable (collectively "**Additional Products and Services**").

5.3 Delivery and Installation of Software. OTOY will make available the Software and Documentation purchased by Customer, electronically to Customer on OTOY's websites ("**Delivery**"). Customer will be solely responsible for downloading and installing Software onto Customer Systems in accordance with OTOY's instructions located on OTOY's websites. OTOY is not responsible for any time of delivery requirement Customer may have. Customer can access all applicable Releases from OTOY in accordance with this Agreement by electronic delivery. Customer shall promptly provide to OTOY all information that is necessary to enable OTOY to transmit electronically all such items to Customer. Customer acknowledges that certain internet connections and hardware capabilities are necessary to complete electronic deliveries and that the Software may require internet connectivity at all times (Customer shall be responsible for all fees and costs associated with internet connectivity). Customer acknowledges that the electronic deliveries may be slow and time-consuming depending upon network traffic and reliability. In furtherance of the purpose of the electronic deliveries, OTOY will not deliver to Customer, and Customer will not accept from OTOY, any Software deliverable under this Agreement in any tangible medium including, but not limited to, CD-ROM, tape or paper. Customer will be deemed to have unconditionally and irrevocably accepted the Software upon Delivery.

6. UPDATES.

6.1 Updates. OTOY may provide Customer with Releases from time to time, as they become available. OTOY reserves the right to change the services and functionalities provided by the OTOY Properties at any time in its sole discretion.

7. TERM AND TERMINATION

7.1 Term. The term of this Agreement will begin on the Effective Date and continue in force until this Agreement is terminated in accordance with Section 7.3. The term of Software licenses shall be as set forth in the Order, or with respect to subscription versions, for as long as the subscription continues and has not been terminated.

7.2 Discontinuation of Features or Functions. OTOY reserves the right to discontinue any products or services, in whole or in part, at any time, without liability to Customer. In the event of a discontinuation of all products and services, OTOY shall refund to Customer a pro rata amount of any pre-paid Credits that have not been used (and are not expired) by Customer for such discontinued products or services.

7.3 Termination of Agreement. Either party may terminate this Agreement for convenience by providing the other party with thirty (30) days prior written notice. OTOY may immediately terminate without notice this Agreement and all licenses granted hereunder for material breach by CUSTOMER, including any breach of Section 2 hereof. OTOY may terminate this Agreement for uncured, non-material breach if such breach remains uncured following three (3) days after delivery of written notice of such breach to Customer. The foregoing rights of termination are in addition to any other rights and remedies provided in this Agreement or by law.

7.4 Effect of Termination. Upon termination of this Agreement, all rights of Customer to use the OTOY Properties will cease and: (a) all license rights granted under this Agreement will immediately terminate and Customer shall promptly cease all use of the OTOY Properties; (b) OTOY's obligation to provide support for the OTOY Properties will terminate; (c) Customer shall erase all copies of the OTOY Property from Customer's and its End Users' computers, and destroy all copies of the OTOY Property in Customer's and/or End Users' possession or control or return such copies to OTOY; (d) upon request by OTOY, Customer shall certify in writing to OTOY that that it has returned or destroyed such OTOY Property; and (e) Confidential Information will be returned or destroyed in accordance with Section 4.4.

7.5 Survival. Sections 1, 2.2, 2.3, 2.6, 2.7, 2.8, 2.9, 2.10, 2.11, 3, 4, 7.4, 7.5, 8.4, 9, 10, 11, 12, and 13 will survive the termination of this Agreement.

8. FEES.

8.1 Fees. Customer shall pay OTOY the fees set forth on OTOY's websites by either credit card purchase or by purchasing Credits. Payment for the OctaneRender for Unity products shall be made through the mechanism provided by Unity and all questions regarding payments shall be resolved by the Customer directly with Unity. Customer has no right to offset any payments for any claims Customer may have against OTOY. All payments shall be made in US Dollars unless otherwise determined by OTOY. Except as set forth in this Agreement, all fees are non-refundable. OTOY reserves the right to increase fees at its sole discretion and without notice, except with respect to Automatic Renewals of Subscription Licenses (as set forth in Section 8.2). With respect to Automatic Renewals of Subscription Licenses, OTOY may change the renewal price of Customer's subscription prior to the next Renewal Commencement Date, as applicable, provided that OTOY provides Customer with prior notice of such increases and the opportunity to cancel such Automatic Renewals of Subscription Licenses as further set forth in Section 8.2.

(i) **Payment by Credit Card.** OTOY shall have the right to use a third party service provider for payment services. Customer must provide OTOY's third party service provider with a valid credit card (Visa, MasterCard, or any other issuer accepted by us) ("**Payment Provider**"). Your Payment Provider agreement governs your use of the designated credit card, and you must refer to that agreement to determine your rights and liabilities in connection with the credit card payments. By providing OTOY's third party service provider with the credit card number and associated payment information, Customer agrees that OTOY is authorized to immediately charge Customer for all fees and charges due and payable to OTOY hereunder and that no additional notice or consent is required. Customer agrees to immediately notify OTOY's third party service provider of any change in Customer's billing address or the credit card used for payment hereunder. OTOY currently uses Paypal, Inc. ("**Paypal**") as its third party service provider for payment services (e.g., credit card transaction processing, merchant settlement, and related services). Customer agrees to be bound by, where applicable, Paypal's User Agreement available at <https://www.paypal.com/us/webapps/mpp/ua/useragreement-full> and its Privacy Policy available at <https://www.paypal.com/us/webapps/mpp/ua/privacy-full> as well as any other applicable legal agreements for Paypal services which can be located at <https://www.paypal.com/us/webapps/mpp/ua/legalhub-full>. Customer hereby consents to provide and authorize OTOY and/or Paypal to share any information and payment instructions Customer provides to the extent required to complete the payment transactions in accordance with this Agreement, including personal, financial, credit card payment, and transaction information. OTOY may choose a different third party service provider for payment services in its sole discretion, in which case all of the above references to Paypal will be

deemed to refer instead to the different third party service provider and, as applicable, its terms of use and privacy policy located on such third party service provider's website.

(ii) OTOY, in its sole discretion, may accept payment by other means such as international bank transfer, wire transfer, ACH, or other means of payment, however, Customer must contact OTOY customer support at support@octanerender.com and receive prior written confirmation that such other means of payment will be accepted by OTOY.

(iii) If OTOY is unable to process payments using the payment method provided by Customer for Customer's Order, or if OTOY does not receive payment from Customer for Customer's order, or receives a chargeback claim from Customer's credit card merchant or OTOY's third party service provider for payment services or if OTOY has reason to believe that Customer is i) ineligible to purchase OTOY Property from OTOY either as a result of a breach of this Agreement or by virtue of applicable law or otherwise, ii) is otherwise in breach of this Agreement, iii) engaged in fraud or criminal activity in connection with Customer's use of any OTOY Property, then, without prejudice to any of OTOY's other rights, may do any or all of the following: a) stop any of the OTOY Property from being fulfilled to Customer; b) stop or suspend ongoing access to OTOY Property; or c) cancel any automatic renewal plan in which Customer elected to participate.

8.2 Automatic Renewal of Subscription Licenses. If Customer orders a subscription license for the Software and Cloud Services (if applicable), Customer's subscription will continue indefinitely in accordance with the terms of the Order until terminated in accordance with this Agreement. **After Customer's initial subscription period, and again after any subsequent subscription period, Customer's subscription will automatically commence on the first day following the end of such period (each a "Renewal Commencement Date") and continue for an additional equivalent period, at the OTOY's then-current price for such subscription. Customer agrees to be subject to this automatic renewal feature unless Customer cancels its subscription at any time prior the Renewal Commencement Date by either cancelling through Customer's OTOY account, by contacting OTOY via email at support@octanerender.com, or by cancelling the recurring payment directly with the third party payment service provider (e.g., Paypal).** If Customer cancels its subscription prior to the Renewal Commencement Date, then Customer may use its subscription until the end of Customer's then-current subscription term; Customer's subscription will not be renewed after Customer's then-current term expires. If notice of cancellation is received by OTOY prior to the Renewal Commencement Date, then Customer may use its subscription until the end of such last subscription period and will not be charged for another subscription period unless Customer places an additional Order. Customer will not be eligible for a pro rata refund of any portion of the subscription fee paid for the then-current subscription period. Customer authorizes OTOY to charge Customer's Payment Provider at the beginning of applicable subscription period. Upon renewal of Customer's subscription, if OTOY does not receive payment: (i) Customer agrees that the Company may either terminate or suspend Customer's subscription immediately, (ii) if OTOY does not receive payment from Customer's Payment Provider (if applicable), Customer agrees to pay all amounts due upon demand, (iii) OTOY may continue to attempt to charge Customer's Payment Provider until payment is received. Upon receipt of payment, Customer's account will be re-activated and for purposes of automatic renewal, Customer's new subscription commitment period will begin as of the day payment was received.

8.3 Credits.

(i) **Purchase of Credits.** Customer may purchase Credits for Cloud Services, including for rendering and for maintenance, storage and/or bandwidth for downloads of Customer Content ("Data Management"). All Credits purchased by Customer are saved in Customer's OTOY account and are automatically debited upon rendering and for Data Management via the Cloud Services, as applicable. Customer may allocate Credits to Data Management within Customer's OTOY account settings or preferences. By submitting an Order to purchase Credits, Customer authorizes OTOY's payment service provider to charge the credit card account Customer provides for the payment, for the total amount specified at check-out. All payments must be made using a credit card or other approved payment method. Credits can be utilized for Cloud Services only (including rendering and Data Management) and cannot be used for any amounts otherwise due to OTOY from Customer. OTOY shall, in its discretion, modify the cost of Credits, and Credit requirements for rendering and/or Data Management from time to time, and such changes

shall be specified on OTOY's website at orc.otoy.com, as well as by written notice of such changes by email notification to Customer via Customer's email address on record.

(ii) Refunds, Expiration and Abandoned Credits. Purchases of Credits are not refundable, whether or not used, and are not transferable. Abandoned Credits may be subject to applicable U.S. state escheat laws governing unclaimed property. Credits may be subject to deductions required by law, including deductions, if any, resulting from the escheat of Credits under applicable state laws governing unclaimed property. If OTOY's records show that Customer has not used Customer's Credits within a time period set by state law, the amount remaining in Customer's OTOY account may become unclaimed property subject to escheat under state unclaimed property laws. If the amount remaining in Customer's OTOY account becomes unclaimed property subject to a state unclaimed property law, OTOY will be required to escheat the available balance to the state in an amount and at the time required by state law. At that time, Customer will lose the ability to use the Credits. If escheat occurs, Customer may inquire about the status of the Credits by emailing legal@otoy.com.

(iii) Render Jobs. In the event that Customer orders rendering of Customer Content via Cloud Services and Customer's OTOY account lacks sufficient Credits to finish the rendering job (including lack of sufficient Credits to render the project and/or for Data Management), such rendering job will pause and OTOY shall notify Customer via Customer's email address on record of the inability to complete the rendering job. In such event, any work in progress will be stored and accessible to Customer for download so long as the Customer's applicable subscription license is active and not terminated, expired or suspended per Section 8.2 above, and provided that Customer has sufficient Data Management capacity (e.g., Customer enters into a premium data plan, as offered by OTOY, if the data requirements for such action exceed the free data limits provided by OTOY). In the event that Customer's subscription license expires or terminates for any reason, or Customer fails to have sufficient Credits in Customer's account for Data Management, the Customer Content will be deleted, without recovery, Thirty (30) days from such expiration or termination of the applicable subscription license or the applicable premium data plan.

8.4 Taxes. All fees are exclusive of any sales, use, excise, import, export or value-added tax, levy, duty or similar governmental charge which may be assessed based on any payment due hereunder, including any related penalties and interest ("**Taxes**"). Customer is solely responsible for all Taxes resulting from transactions under this Agreement, except Taxes based on OTOY's net income and any applicable GST for purchases made within New Zealand. Customer will indemnify and hold OTOY harmless from (a) the Customer's failure to pay (or reimburse OTOY for the payment of) all such Taxes; and (b) the imposition of and failure to pay (or reimburse OTOY for the payment of) all governmental permit fees, license fees, customs fees and similar fees which OTOY may incur in respect of this Agreement or any other fees required to be made by Customer under this Agreement, together with any penalties, interest, and collection or withholding costs associated therewith.

8.5 Disputes. Customer must notify OTOY in writing within seven (7) days after receiving Customer's credit card statement or invoice, if Customer disputes any of OTOY's charges or such dispute will be deemed waived. Billing disputes should be notified to support@octanerender.com.

9. LIMITED WARRANTY

9.1 Software Warranty. OTOY warrants to, and for the sole benefit of, Customer that, subject to Section 9.2, any Software, as delivered by OTOY and properly installed and operated within the Product Use Environment and used as permitted under this Agreement and in accordance with the Documentation, will perform substantially in accordance with the Documentation for sixty (60) days from the date of Delivery. Customer's sole and exclusive remedy and OTOY's sole liability for breach of this warranty is for OTOY, at its own expense, to replace the Software with a version of the Software that corrects those Errors that Customer reports to OTOY during such warranty period. Any Error correction provided will not extend the original warranty period. This warranty does not apply to the free tier Software, namely, OctaneRender Prime or OctaneRender Prime for Unity.

9.2 Exclusions. OTOY will have no obligation under this Agreement to correct, and OTOY makes no warranty with respect to, Errors related to: (a) improper installation of the applicable Software; (b) changes that Customer has made to the applicable Software; (c) use of the applicable Software in a manner inconsistent with the Documentation and this Agreement; or (d) use or combination of the applicable Software with third party hardware

or software not conforming to the operating environment specified in the Documentation. (e) with respect to OctaneBench, the accuracy of any benchmark provided; or (f) with respect to any completion windows provided by OTOY for rendering jobs as completion dates cannot be guaranteed.

9.3 Cloud Services Warranty. OTOY warrants to, and for the sole benefit of, Customer that, the Cloud Services will render Customer Content in substantial accordance with the Order. Customer agrees that any estimated rendering times that may be provided by OTOY to Customer are solely estimates and OTOY will not be responsible for any delays or issues in rendering. OTOY does not warrant the quality of rendering results. Customer's sole and exclusive remedy and OTOY's sole liability for breach of this warranty or for any other failure of the Cloud Services to perform in accordance with the requirements of this Agreement is for OTOY, at its own expense, to re-render Customer Content-

9.4 Exclusions. OTOY will have no obligation under this Agreement to correct, and OTOY makes no warranty with respect to the accuracy of any benchmark provided by OctaneBench and/or the accuracy of any completion windows provided by OTOY for rendering jobs as completion dates cannot be guaranteed.

9.5 Disclaimer. EXCEPT AS PROVIDED IN SECTIONS 9.1 THROUGH 9.5, OTOY HEREBY DISCLAIMS ALL WARRANTIES WHETHER EXPRESS, IMPLIED OR STATUTORY WITH RESPECT TO THE OTOY PROPERTIES AND PROFESSIONAL SERVICES AND ANY OTHER PRODUCTS OR SERVICES PROVIDED TO CUSTOMER UNDER THIS AGREEMENT, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, AND ANY WARRANTY AGAINST INTERFERENCE WITH CUSTOMER'S ENJOYMENT OF THE PRODUCTS OR SERVICES PROVIDED TO CUSTOMER UNDER THIS AGREEMENT. OTOY DOES NOT WARRANT THAT ALL ERRORS CAN BE CORRECTED, OR THAT OPERATION OF THE OTOY PROPERTIES SHALL BE UNINTERRUPTED OR ERROR-FREE. CERTAIN STATE LAWS DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES. IF THESE LAWS APPLY TO YOU, SOME OR ALL OF THE FOREGOING DISCLAIMERS, EXCLUSIONS AND LIMITATIONS MAY NOT APPLY TO YOU, AND YOU MIGHT HAVE ADDITIONAL RIGHTS.

10. INDEMNITY

10.1 OTOY's Indemnity. OTOY shall defend at its own expense any action against Customer brought by a third party to the extent that the action is based upon a claim that the Software or Cloud Services infringe any U.S. copyrights or misappropriates any trade secrets recognized as such under the Uniform Trade Secret law, and OTOY will pay those costs and damages finally awarded against Customer in any such action that are specifically attributable to such claim or those costs and damages agreed to in a monetary settlement of such action. The foregoing obligations are conditioned on Customer giving OTOY (a) prompt written notice of such claim; (b) authority to control and direct the defense and/or settlement of such claim; and (c) such information and assistance as OTOY may reasonably request, at OTOY's expense, in connection with such defense and/or settlement. Notwithstanding the foregoing, OTOY shall have no obligation or liability to the extent that the alleged infringement or misappropriation arises from (1) Customer Content or the combination, operation, or use of the Software or Cloud Services with products, services, deliverables, materials, technologies, business methods or processes not furnished by OTOY; (2) modifications which were not made by OTOY; or (3) Customer's breach of this Agreement or use of the Software or Cloud Services other than in accordance with this Agreement (collectively, "**IP Exclusions**"). Upon the occurrence of any claim for which indemnification is or may be due under this Section, or in the event that OTOY believes that such a claim is likely, OTOY may, at its option (i) modify or replace the Software or Cloud Services so that it becomes non-infringing; (ii) obtain a license to the applicable third-party intellectual property; or (iii) terminate this Agreement (or the applicable Orders) on written notice to Customer and refund to Customer a pro rata amount of any pre-paid fees for the remainder of the applicable term. The obligations set forth in this Section shall constitute OTOY's entire liability and Customer's sole remedy for any such claims.

10.2 Customer's Indemnity. Customer shall indemnify, hold harmless, and, at OTOY's option, defend OTOY from and against all costs and reasonable expenses (including reasonable attorneys' fees), damages, losses, and liabilities arising out of any (a) IP Exclusions or (b) Customer Content (including any third party claim that any Client Content is false, misleading, disparaging, infringing or a misappropriation, as applicable, of any intellectual property rights of a third party) or (c) any breach or alleged breach by Customer of this Agreement. OTOY agrees to

give Customer: (i) prompt written notice of such claim; and (ii) such information and assistance as Customer may reasonably request, at Customer's expense, in connection with such defense and/or settlement. Notwithstanding the foregoing, Customer shall not settle any third-party claim, unless such settlement completely and forever releases OTOY with respect thereto or unless OTOY provides its prior written consent to such settlement. In any action for which Customer provides defense on behalf of OTOY, OTOY may participate in such defense at its own expense by counsel of its choice.

11. LIMITATION OF LIABILITY. IN NO EVENT WILL OTOY BE LIABLE TO CUSTOMER OR ANY OTHER PARTY FOR LOSS OF DATA, LOSS OF THE USE OR PERFORMANCE OF ANY PRODUCTS, LOSS OF REVENUES, LOSS OF PROFITS, OR BUSINESS INTERRUPTION OR ANY SPECIAL, PUNITIVE, INDIRECT, INCIDENTAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT UNDER ANY LEGAL THEORY, EVEN IF OTOY KNOWS OF OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL OTOY'S TOTAL CUMULATIVE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT OF FEES RECEIVED BY OTOY FROM CUSTOMER UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING SUCH CLAIM. THIS SECTION 11 WILL APPLY EVEN IF AN EXCLUSIVE REMEDY OF CUSTOMER UNDER THIS AGREEMENT HAS FAILED OF ITS ESSENTIAL PURPOSE. THE LAWS OF SOME STATES DO NOT ALLOW FOR THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES. IF THESE LAWS APPLY TO YOU, SOME OR ALL OF THE FOREGOING DISCLAIMERS, EXCLUSIONS AND LIMITATIONS MAY NOT APPLY TO YOU AND YOU MIGHT HAVE OTHER RIGHTS.

12. ARBITRATION.

12.1 Dispute Resolution. Please read this Arbitration Agreement carefully. It is part of your contract with OTOY and affects your rights. It contains procedures for MANDATORY BINDING ARBITRATION AND A CLASS ACTION WAIVER.

(i) **Applicability of Arbitration Agreement.** All claims and disputes (excluding claims for injunctive or other equitable relief as set forth below) in connection with the Agreement or the use of any product or service provided by OTOY that cannot be resolved informally or in small claims court shall be resolved by binding arbitration on an individual basis under the terms of this Arbitration Agreement. Unless otherwise agreed, all arbitration proceedings shall be held in English. This Arbitration Agreement applies to you and OTOY, and to any subsidiaries, affiliates, agents, employees, predecessors in interest, successors, and assigns, as well as all authorized or unauthorized users or beneficiaries of services or goods provided under the Agreement.

(ii) **Notice Requirement and Informal Dispute Resolution.** Before either party may seek arbitration, the party must first send to the other party a written Notice of Dispute ("**Notice**") describing the nature and basis of the claim or dispute, and the requested relief. A Notice to OTOY should be sent to: OTOY, Inc., 1010 Wilshire Blvd., Los Angeles, CA 90017, Attn: Legal Department. After the Notice is received, you and OTOY may attempt to resolve the claim or dispute informally. If you and OTOY do not resolve the claim or dispute within thirty (30) days after the Notice is received, either party may begin an arbitration proceeding. The amount of any settlement offer made by any party may not be disclosed to the arbitrator until after the arbitrator has determined the amount of the award, if any, to which either party is entitled.

(iii) **Arbitration Rules.** Arbitration shall be initiated through JAMS, an established alternative dispute resolution provider ("**ADR Provider**") that offers arbitration as set forth in this section. If JAMS is not available to arbitrate, the parties shall agree to select an alternative ADR Provider. The rules of the ADR Provider shall govern all aspects of the arbitration, including but not limited to the method of initiating and/or demanding arbitration, except to the extent such rules are in conflict with the Agreement. The arbitration shall be conducted by a single, neutral arbitrator. Any claims or disputes where the total amount of the award sought is less than Ten Thousand U.S. Dollars (US \$10,000.00) may be resolved through binding non-appearance-based arbitration, at the option of the party seeking relief. For claims or disputes where the total amount of the award sought is Ten Thousand U.S. Dollars (US \$10,000.00) or more, the right to a hearing will be determined by the Arbitration Rules. Any hearing will be held in a location within 100 miles of your residence, unless you reside outside of the United States, and unless the parties agree otherwise. If you reside outside of the U.S., the arbitrator shall give the parties reasonable notice of

the date, time and place of any oral hearing. Any judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction. If the arbitrator grants you an award that is greater than the last settlement offer that OTOY made to you prior to the initiation of arbitration, OTOY will pay you the greater of the award or \$2,500. Each party shall bear its own costs (including attorney's fees) and disbursements arising out of the arbitration and shall pay an equal share of the fees and costs of the ADR Provider.

(iv) Additional Rules for Non-Appearance Based Arbitration. If non-appearance based arbitration is elected, the arbitration shall be conducted by telephone, online and/or based solely on written submissions; the specific manner shall be chosen by the party initiating the arbitration. The arbitration shall not involve any personal appearance by the parties or witnesses unless otherwise agreed by the parties.

(v) Time Limits. If you or OTOY pursues arbitration, the arbitration action must be initiated and/or demanded within the statute of limitations (i.e., the legal deadline for filing a claim) and within any deadline imposed under the JAMS rules for the pertinent claim.

(vi) Authority of Arbitrator. If arbitration is initiated, the arbitrator will decide the rights and liabilities, if any, of you and OTOY, and the dispute will not be consolidated with any other matters or joined with any other cases or parties. The arbitrator shall have the authority to grant motions dispositive of all or part of any claim. The arbitrator shall have the authority to award monetary damages, and to grant any non-monetary remedy or relief available to an individual under applicable law, the JAMS rules, and the Agreement. The arbitrator shall issue a written award and statement of decision describing the essential findings and conclusions on which the award is based, including the calculation of any damages awarded. The arbitrator has the same authority to award relief on an individual basis that a judge in a court of law would have. The award of the arbitrator is final and binding upon you and OTOY.

(vii) Waiver of Jury Trial. THE PARTIES HEREBY WAIVE THEIR CONSTITUTIONAL AND STATUTORY RIGHTS TO GO TO COURT AND HAVE A TRIAL IN FRONT OF A JUDGE OR A JURY, instead electing that all claims and disputes shall be resolved by arbitration under this Arbitration Agreement. Arbitration procedures are typically more limited, more efficient and less costly than rules applicable in a court and are subject to very limited review by a court.

(viii) Waiver of Class or Consolidated Actions. ALL CLAIMS AND DISPUTES WITHIN THE SCOPE OF THIS ARBITRATION AGREEMENT MUST BE ARBITRATED ON AN INDIVIDUAL BASIS AND NOT ON A CLASS BASIS, AND CLAIMS OF MORE THAN ONE CUSTOMER OR USER CANNOT BE ARBITRATED JOINTLY OR CONSOLIDATED WITH THOSE OF ANY OTHER CUSTOMER.

(ix) Confidentiality. All aspects of the arbitration proceeding, including but not limited to the award of the arbitrator and compliance therewith, shall be strictly confidential. The parties agree to maintain confidentiality unless otherwise required by law. This Section 12 shall not prevent a party from submitting to a court of law any information necessary to enforce this Agreement, to enforce an arbitration award, or to seek injunctive or equitable relief.

(x) Severability. If any part or parts of this Arbitration Agreement are found under the law to be invalid or unenforceable by a court of competent jurisdiction, then such specific part or parts shall be of no force and effect and shall be severed and the remainder of the Agreement shall continue in full force and effect.

(xi) Right to Waive. Any or all of the rights and limitations set forth in this Arbitration Agreement may be waived by the party against whom the claim is asserted. Such waiver shall not waive or affect any other portion of this Arbitration Agreement.

(xii) Survival of Agreement. This Arbitration Agreement will survive the termination of your relationship with OTOY.

(xiii) Small Claims Court. Notwithstanding the foregoing, either you or OTOY may bring an individual action in small claims court.

(xiv) Emergency Equitable Relief. Notwithstanding the foregoing, either party may seek emergency equitable relief before a state or federal court in order to maintain the status quo pending arbitration. A request for interim measures shall not be deemed a waiver of any other rights or obligations under this Arbitration Agreement.

(xv) Claims Not Subject to Arbitration. Notwithstanding the foregoing, claims of defamation, violation of the Computer Fraud and Abuse Act, and infringement or misappropriation of the other party's patent, copyright, trademark or trade secrets shall not be subject to this Arbitration Agreement.

(xvi) Courts. In any circumstances where the foregoing Arbitration Agreement permits the parties to litigate in court, the parties hereby agree to submit to the personal jurisdiction of the courts located within Los Angeles County, California, for such purpose.

13. GENERAL

13.1 Government End Users. The Software, Cloud Services and Documentation are deemed to be "commercial items" consisting of "commercial computer software" and "commercial computer software documentation" pursuant to DFAR Section 227.7202 and FAR Section 12.212(b), as applicable. Any use, modification, reproduction, release, performing, displaying, or disclosing of the Software, Cloud Services and Documentation by the U.S. Government shall be governed solely by the terms of this Agreement.

13.2 Audit Rights. Unless Customer is solely using the OTOY Property solely for non-commercial purposes, during the term of this Agreement and for two (2) years thereafter, OTOY or its representatives, may upon at least ten (10) days' written notice, inspect and audit records, Customer Systems, and premises of Customer during normal business hours to verify Customer's compliance with this Agreement. In no event will such audits be conducted more frequently than once every twelve (12) months, unless an earlier audit uncovered an underpayment greater than one percent (1%) of the fees due and payable with respect to the period audited. Customer will promptly pay any fees revealed by the audit to be due and payable. Customer will pay any fees charged by OTOY's designated representative, if any; provided that if any audit reveals an underpayment of fees greater than five (5%) percent of the fees due and payable with respect to the period audited, Customer will reimburse OTOY for any such audit fees.

13.3 Notices. All notices, consents and approvals under this Agreement must be delivered in writing by courier, by facsimile or by certified or registered mail (postage prepaid and return receipt requested) to the other party at the address set forth above, and will be effective upon receipt or three (3) business days after being deposited in the mail as required above, whichever occurs sooner. Either party may change its address by giving notice of the new address to the other party.

13.4 Relationship of Parties. The parties hereto are independent contractors. Nothing in this Agreement will be deemed to create an agency, employment, partnership, fiduciary or joint venture relationship between the parties.

13.5 Publicity. Each party may use the other party's name for investor relations and marketing purposes with the other party's prior written consent.

13.6 Compliance with Export Control Laws. The Software may contain encryption technology controlled under U.S. export law, the export of which may require an export license from the U.S. Commerce Department. Customer will comply with all applicable export control laws and regulations of the U.S. and all other applicable jurisdictions. Customer will defend, indemnify, and hold harmless OTOY from and against all fines, penalties, liabilities, damages, costs and expenses (including reasonable attorneys' fees) incurred by OTOY as a result of Customer's breach of this Section.

13.7 Assignment. Customer may not assign or transfer, by operation of law, merger or otherwise, any of its rights or delegate any of its duties under this Agreement (including, without limitation, its licenses for the Software) to any third party without OTOY's prior written consent. Any attempted assignment or transfer in violation of the foregoing will be null and void. OTOY may assign its rights or delegate its obligations under this Agreement.

13.8 Force Majeure. Any delay in or failure of performance by either party under this Agreement, other than a failure to pay amounts when due, will not be considered a breach of this Agreement and will be excused to the extent caused by any occurrence beyond the reasonable control of such party, including any act of God, terrorism, war, strike, lock-out, industrial action, Internet or power outage, fire, flood, drought, and storm.

13.9 Governing Law. This Agreement shall be governed by the laws of the state of California, excluding any conflict of law provisions that would require the application of the laws of any other jurisdiction. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

13.10 Remedies. Except as provided in Sections 9 (Warranty) and 10 (Indemnity) of this Agreement, the parties' rights and remedies under this Agreement are cumulative. If any legal action is brought to enforce this Agreement, the prevailing party will be entitled to receive its attorneys' fees, court costs, and other collection expenses, in addition to any other relief it may receive.

13.11 Waiver; Severability. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion. If any provision of this Agreement is adjudicated to be unenforceable, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions will continue in full force and effect.

13.12 Order of Precedence; Construction. The provisions of the standard terms and conditions will prevail regardless of any inconsistent or conflicting provisions on any Order. The Section headings of this Agreement are for convenience and will not be used to interpret this Agreement. As used in this Agreement, the word "including" means "including but not limited to."

EXHIBIT A

SUPPORT AND MAINTENANCE ADDENDUM

OTOY shall provide support services for paid Software via email, during regular business hours and will endeavor in good faith to respond to customer support inquiries within Two (2) business days, provided that Customers have installed the most current Updates of the Software. Customer support inquiries shall be sent to email: support@octanerender.com.

EXHIBIT B

Additional terms applicable to the Third Party Code are set forth below:

For OctaneRender®:

--- ALEMBIC ---

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Sony Pictures Imageworks, Inc. and
Industrial Light & Magic, a division of Lucasfilm Entertainment Company Ltd.

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--- BITSHUFFLE ---

Bitshuffle - Filter for improving compression of typed binary data.

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FastLZ - lightning-fast lossless compression library

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--- LZ4 ---

LZ4 - Fast LZ compression algorithm

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You can contact the author at :

- LZ4 homepage : <http://fastcompression.blogspot.com/p/lz4.html>
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