



## RealityCapture® End User License Agreement

This RealityCapture End User License Agreement (the “**Agreement**”) applies to your use of the Software, which includes the RealityCapture application and related image files and models. By downloading or using the Software, or by otherwise indicating your acceptance of this Agreement, you are agreeing to be bound by the terms of the Agreement. If you do not or cannot agree to the terms of this Agreement, please do not download or use this Software.

Users located, organized, or ordinarily resident in Russia or Belarus are not eligible to license RealityCapture.

Please review Epic’s Privacy Policy found at <https://www.epicgames.com/privacypolicy>, which also governs your use of the Software, to understand our practices. Your use of the Software is also governed by Epic’s Terms of Service, which may be found at <https://www.epicgames.com/tos>. By downloading or using the Software, you also agree to Epic’s Terms of Service and acknowledge that you have read Epic’s Privacy Policy.

If your primary residence (or primary place of business, if you are a legal entity like a corporation or an academic institution) is in the United States of America, your agreement is with Epic Games, Inc. If it is not in the United States of America, your agreement is with Epic Games Commerce GmbH.

Certain words or phrases are defined to have certain meanings when used in this Agreement. Those words and phrases are defined below in Section 14.

PLEASE READ THIS AGREEMENT CAREFULLY. IT CONTAINS A CLASS-ACTION WAIVER PROVISION. IF YOU ACCEPT THIS AGREEMENT, YOU AND EPIC AGREE TO RESOLVE DISPUTES ONLY IN YOUR INDIVIDUAL CAPACITIES AND NOT AS PART OF A CLASS ACTION (SEE SECTION 10). YOU HAVE A TIME-LIMITED RIGHT TO OPT OUT OF THIS WAIVER. BY AGREEING TO THE TERMS OF THIS AGREEMENT, YOU ARE ALSO AGREEING TO CONTRACTUAL TERMS THAT WILL LIMIT SOME OF YOUR LEGAL RIGHTS, INCLUDING A DISCLAIMER OF WARRANTY, AN EXCLUSION OF CERTAIN KINDS OF DAMAGES, AND A LIMITATION OF LIABILITY.

You and Epic agree to waive any jurisdictional, venue, or inconvenient forum objections to such courts (without affecting either party’s rights to remove a case to federal court if permissible), as well as any right to a jury trial.

### 1. License Grant

1.1 Software License. Licensor grants you a personal, non-exclusive, non-transferable, non- sublicensable

limited right and license to use the Software for any lawful purpose (the "License"); provided, however, that you may only use Sample Datasets for non-commercial purposes.

## 1.2 Restrictions and Limitations.

The rights that Licensor grants you under the License are subject to the limitations and other terms and restrictions specified in any applicable Software Order and the other terms of this Agreement, including full payment of all amounts due under Section 3 (if any), and you may only make use of the License if you comply with all applicable terms.

The License becomes effective on the date you accept this Agreement. The Software is licensed, not sold, to you under the License. The License does not grant you any title or ownership in the Software.

You may not do any of the following with respect to the Software or any of their parts: (a) copy, reproduce, display, perform, or otherwise use it in a way that is not expressly authorized in this Agreement; (b) sell, rent, lease, license, distribute, or otherwise transfer it; (c) allow a third party to use it; (d) make it available to third parties on a software-as-a-service, hosted service, time-sharing, service bureau or similar basis, (e) reverse engineer, derive source code from, modify, adapt, translate, decompile, or disassemble it or make derivative works based on it; (f) remove, disable, circumvent, or modify any proprietary notice or label or security technology included in it; (g) use it to infringe or violate the rights of any third party, including but not limited to any intellectual property, publicity, or privacy rights; or (h) use, export, or re-export it in violation of any applicable law or regulation.

## 2. Seat Limitations

You will need to purchase seat subscriptions (described below) for each User who accesses the Software unless you qualify for an exception. See Section 2(b) for exceptions related to personal hobbyists, small businesses (those making less than \$1,000,000 gross revenue a year), non-commercial uses, and educational institutions.

### a. Seat Subscriptions

Except as stated in Section 2(b), only Users (as defined in Section 15) who have been assigned a Seat may access the Software. "Seat" means the right granted to you by Epic to allow one User to access and use the Software on your behalf in accordance with the terms and conditions of this Agreement. Seats are offered as automatically renewing subscriptions.

An individual Seat is personal to the User to which it has been assigned, and you must reassign a Seat before allowing it to be utilized by a different User. A User may access the Software from multiple computers or workstations while still only occupying a single Seat. Conversely, two Users accessing the Software from a single computer or workstation would occupy two Seats.

### b. Exceptions to Seat Subscription Requirements

The following exceptions apply to the Seat subscription requirements stated in Section 6(a).

- i. Personal and small business exception. During any period that you, together with any entities in your corporate group, have generated less than \$1,000,000 USD in gross revenue over the last 12 months, the Seat subscription requirement will not apply to your Users. For purposes of this calculation, your corporate group means any entities that control, are controlled by, or are under common control with you and revenue includes any advances received or other funds raised.
- ii. Educational exception. If you are an educational institution, like a school or a library, the Seat subscription requirement does not apply to your Users when they are accessing the Software only for educational purposes.
- iii. Non-commercial exception. The Seat subscription requirement does not apply to your Users when they are accessing the Software only for non-commercial purposes. Non-commercial purpose means a purpose without any direct or indirect commercial benefit. All uses of the Software by or on behalf of commercial entities are regarded as being for commercial purposes.

### **3. License Fees**

Your License will be subject to payment of applicable License Fees unless your Software Order states otherwise. You are responsible for all taxes on all payments required to be made to Licensor (other than taxes Licensor are required to make on its income, which is Licensor's responsibility). Licensor may charge sales tax, value added taxes, goods and services taxes, or other similar indirect taxes as required by law to Licensee unless Licensee provides a valid sales tax resale certificate, exemption certificate, VAT ID, GST ID, or other similar tax ID to Epic prior to execution of this Agreement. Both parties shall take all measures in accordance with their respective domestic law and double taxation agreement, if any, to ensure a reduction or exemption of withholding income tax, which might become payable in connection with the Agreement. For the aforementioned purpose, on or before providing a Software Order, Licensor will provide Licensee with documentation sufficient to substantiate reduced or exemption (if any) of withholding income tax subject to the Tax Treaty. If you are required by a government agency to reduce your payment to Licensor for any reason, you are required to provide sufficient documentation to Licensor supporting the withholding.

### **4. Updates and Patches**

Licensor may provide patches, updates, or upgrades to the Software that must be installed in order for you to continue to use the Software. Licensor may update the Software remotely without notifying you, and you hereby consent to Licensor applying patches, updates, and upgrades. Licensor may modify, suspend, discontinue, substitute, replace, or limit your access to any aspect of the Software.

Licensor does not have any support obligations with respect to the Software under this Agreement. Support resources may be obtained at [www.unrealengine.com/support](http://www.unrealengine.com/support). Licensor does not have any obligation to make any patches, updates, or upgrades of the Software available, nor does Licensor have any obligation to continue to make available for access or download any or all versions of the Software.

### **5. Feedback and Contributions**

You grant Epic a right to freely use and disclose any feedback or suggestions that you provide to us regarding the Software (the "Feedback"). You acknowledge that we may use any Feedback, including any ideas contained in Feedback, for any purpose, commercial or otherwise, without acknowledgment or compensation to you, including to develop, copy, publish, modify, or improve the Software in our sole discretion. You understand that we may treat Feedback as non-confidential.

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You represent and warrant that you have sufficient rights in any Feedback or Contribution that you provide to Epic to grant Epic and other affected parties the rights described above. This includes but is not limited to intellectual property rights and other proprietary or personal rights. If any rights to be licensed under this Section 67(c) may not be licensed under applicable law (such as moral and other personal rights), you hereby waive and agree not to assert any of those rights.

If you provide Licensor with any Feedback, you hereby grant Licensor a non-exclusive, fully-paid, royalty-free, irrevocable, perpetual, transferable, sublicensable license to use, reproduce, distribute, modify, adapt, prepare derivative works based on, publicly perform, publicly display, make, have made, use, sell, offer to sell, import, and otherwise exploit that Feedback for any purposes, for all current and future methods and forms of exploitation in any country.

## **6. Ownership**

Your use of the Software does not grant to Licensor any right, title, or interest in any of the content that you produce using the Software or any of the content that you import into the Software.

Licensor and its licensors own all title, ownership rights, and intellectual property rights in the Software. The Capturing Reality logo is a trademark of Licensor. All rights granted to you under this Agreement are granted by express license only and not by sale. No license or other rights shall be created hereunder by implication, estoppel, or otherwise.

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

**Nothing in this Agreement will prejudice any statutory rights that you have that may not be waived. Some countries, states, provinces or other jurisdictions do not allow the exclusion of certain warranties or the limitation of liability as stated in this and the next sections, so the below terms may not fully apply to you. In those jurisdictions, the exclusions and limitations below apply only to the extent permitted by the applicable laws of such jurisdictions.**

THE SOFTWARE, INCLUDING ALL INFORMATION, CONTENT, MATERIALS, CODE, AND SOFTWARE, ARE PROVIDED BY EPIC ON AN “AS IS” AND “AS AVAILABLE” BASIS. EPIC AND ITS AFFILIATES, LICENSORS AND SERVICE PROVIDERS (THE “EPIC PARTIES”) MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, REGARDING THE SOFTWARE. YOUR USE OF THE SOFTWARE IS AT YOUR SOLE RISK. TO THE FULL EXTENT PERMISSIBLE BY APPLICABLE LAW, THE EPIC PARTIES DISCLAIM ALL WARRANTIES, CONDITIONS, COMMON LAW DUTIES, AND REPRESENTATIONS, EXPRESS OR IMPLIED, INCLUDING IMPLIED OR STATUTORY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NONINFRINGEMENT. THE EPIC PARTIES DO NOT WARRANT THAT THE SOFTWARE IS FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. THE PARTIES ACKNOWLEDGE AND AGREE THAT THE FOREGOING WARRANTY DISCLAIMERS WERE AN ESSENTIAL ELEMENT IN SETTING CONSIDERATION UNDER THIS AGREEMENT.

TO THE FULL EXTENT PERMITTED BY APPLICABLE LAW, THE EPIC PARTIES, WILL NOT BE LIABLE FOR ANY LOSS OF PROFITS OR ANY INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT. FURTHER, TO THE FULL EXTENT PERMITTED BY APPLICABLE LAW, THE EPIC PARTIES’ AGGREGATE LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT WILL NOT EXCEED THE GREATER OF \$1,000 AND THE TOTAL AMOUNTS YOU HAVE PAID (IF ANY) TO EPIC UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENTS GIVING RISE TO SUCH LIABILITY. SEEKING DAMAGES AS LIMITED BY THIS SECTION 14 SHALL BE YOUR SOLE AND EXCLUSIVE REMEDY FOR ANY ACT OR OMISSION OF THE EPIC PARTIES. THE PARTIES ACKNOWLEDGE AND AGREE THAT THESE LIMITATIONS OF LIABILITY AND EXCLUSIONS OF POTENTIAL DAMAGES WERE AN ESSENTIAL ELEMENT IN SETTING CONSIDERATION UNDER THIS AGREEMENT.

## **8. Termination**

Without limiting any other rights of Licensor, this Agreement will terminate automatically without notice if you fail to comply with any of its terms and conditions. You may also terminate this Agreement by deleting all copies of the Software. Upon any termination, the License will automatically terminate, you may no longer exercise any of the rights granted to you by the License, and you must destroy all copies of the Software in your possession.

Sections 1.2 (third paragraph only), 2, 3, and 5-14 will survive any termination of this Agreement.

## **9. Governing Law and Jurisdiction**

Any dispute or claim by you arising out of or related to this Agreement will be governed by New York law, exclusive of its choice of law rules. You and Epic agree to submit to the exclusive jurisdiction of the Supreme Court of New York County, New York, or, if federal court jurisdiction exists, the United States District Court for the Southern District of New York. You and Epic agree to waive any jurisdictional, venue, or inconvenient forum objections to such courts (without affecting either party’s rights to remove a case to federal court if permissible),

as well as any right to a jury trial. The Convention on Contracts for the International Sale of Goods will not apply. Any law or regulation which provides that the language of a contract will be construed against the drafter will not apply to this Agreement. This paragraph will be interpreted as broadly as applicable law permits.

## **10. Class Action Waiver**

To the maximum extent permitted by applicable law, you and Epic agree to only bring disputes arising out of or related to this Agreement in an individual capacity and will not:

- seek to bring, join, or participate in any class or representative action, collective or class-wide arbitration, or any other action where another individual or entity acts in a representative capacity (e.g., private attorney general actions); or
- consolidate or combine individual proceedings or permit another to do so without the express consent of all parties to this Agreement.

You have the right to opt-out of this class action waiver within 30 days of the date on which you first accepted this Agreement unless a longer period is required by applicable law. To exercise this right, you must send written notice of your decision to the following address: Epic Games, Inc., Legal Department, ATTN: CLASS ACTION OPT-OUT, Box 254, 2474 Walnut Street, Cary, North Carolina, 27518, U.S.A. Your notice must include your name, mailing address, and account name, and state that you wish opt-out of this class action waiver. To be effective, this notice must be received by Epic and postmarked or deposited within 30 days of the date on which you first accepted this Agreement. You are responsible for ensuring that Epic receives your opt-out notice, so you may wish to send it by a means that provides for a delivery receipt.

## **11. U.S. Government Matters; Export Controls**

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

You understand and agree that the Software may not be used, accessed, downloaded, or otherwise exported, reexported, or transferred in violation of applicable export control, economic sanctions, or import laws and regulations, such as the U.S. Export Administration Regulations and U.S. Department of the Treasury’s Office of Foreign Assets Control regulations.

## **12. Amendments of this Agreement**

Licensor may issue an amended Agreement at any time in its discretion by posting the amended Agreement on its website or by providing you with digital access to the amended Agreement through the Software or other

means. The amended agreement may include a new Software Order for a new version of the Software. You are not required to accept the amended Agreement or new Software Order. However, in order to download or use a new version of the Software, you must accept the amended Agreement and new Software Order. If you do not accept the amended Agreement and new Software Order, you may not download or use any new version of the Software that is made available by Licensor contemporaneously with or after the issuance of that amended Agreement (but this will not terminate your license for the Software that you downloaded prior to the issuance of the amended Agreement). By using any new version of the Software after the amended Agreement becomes effective or otherwise indicating your acceptance of the amended Agreement or new Software Order, you are agreeing to be bound by the terms of the amended Agreement and new Software Order.

### **13. Assignment**

You may not assign your rights or obligations under this Agreement, including any rights to use the Software. Any attempted assignment in violation of the foregoing will be void. We may assign this Agreement, in whole or in part, or delegate our rights or obligations hereunder with or without notice to you.

### **14. Definitions**

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

“**Feedback**” means any feedback or suggestions that you provide to Licensor regarding the Software or other Licensor products and services.

“**License Fees**” mean, with respect to any Software Order, the license fees set forth therein.

“**Licensor**” means, depending on the location of your primary residence or primary place of business:

a. Epic Games, Inc., a Maryland Corporation having its principal business offices at Box 254, 2474 Walnut Street, Cary, North Carolina, 27518, U.S.A.; or

b. Epic Games Commerce GmbH, having its principal business offices at Platz 3, 6039 Root D4, Switzerland.

“**Sample Dataset**” means any content for use with RealityCapture made available by Licensor to you and identified by Licensor as a sample dataset.

“**Software**” means Licensor’s proprietary application known as RealityCapture. The term “Software” also includes any patches, updates, and upgrades to such Software you receive while you have an active Software Order, and all related content and documentation provided with or for the Software.

“**Software Order**” means an agreement incorporated by reference into this Agreement through which you contract with Licensor, directly or indirectly, to order a license to the Software and agree to any restrictions on use specified in the order. Such restrictions will include, but are not limited to, a maximum number of Seats.

“User” means individuals who have accessed it by using a valid user account. If you are an individual, you are the User. If you are a legal entity, the individual employees or agents exercising your rights under this Agreement are Users. When exercising a legal entity’s rights under this Agreement, Users are not required to accept this Agreement as individuals.

## **15. Miscellaneous**

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

To the fullest extent permitted by applicable law, the controlling language for this Agreement is English. It is the express wish of the parties that this Agreement and all related documents have been drawn up in English. Any translation has been provided for your convenience.

Any act by Epic to exercise, or failure or delay in exercise of, any of its rights under this Agreement, at law or in equity will not be deemed a waiver of those or any other rights or remedies available in contract, at law or in equity. Unless otherwise stated in this Agreement, if any term of this Agreement is held by a court or tribunal of competent jurisdiction to be unenforceable, the term will be enforced to the maximum extent permissible and the remaining terms of this Agreement will remain in full force and effect. You agree that this Agreement does not confer any rights or remedies on any person other than the parties to this Agreement, except as expressly stated. Epic’s obligations are subject to existing laws and legal process, and Epic may comply with law enforcement or regulatory requests or requirements despite any contrary term in this Agreement.

## **16. Records and Audits**

You will keep accurate books and records that are reasonably sufficient to verify your compliance with the Seat subscription requirements and License Fees. Epic or its designated representatives may upon reasonable prior notice to you conduct reasonable audits of those books and records. Any such audit (a) will be conducted by an independent third party auditor designated by Epic, (b) will not unreasonably interfere with your business activities, (c) may be conducted no more frequently than once every twelve (12) months, and (d) will be conducted during regular business hours. Provided you have complied with this Section 12, Epic will bear the costs of audits unless the results show a shortfall in payments in excess of 5% during the period audited. In all other cases, you will reimburse Epic for the cost of the audit.

## **17. Eligibility for This Agreement**

Users located, organized, or ordinarily resident in Russia or Belarus are not eligible to license RealityCapture.

If you are under the age of legal majority where you live or otherwise require the consent of a parent or legal guardian to enter into this Agreement under applicable law, you may use the Software only under the supervision of a parent or legal guardian who also agrees to be bound by this Agreement.



You are not eligible to enter into this Agreement and may not download or use the Software if you are, or are acting on behalf of any person or entity that is (i) listed on or otherwise subject to restrictions applicable to the Specially Designated Nationals and Blocked Persons List or other similar lists maintained by any U.S. government entity pursuant to economic sanctions laws or (ii) located in, organized in, or ordinarily resident in any country or territory that is subject to a U.S. embargo or other legal prohibition against receiving the Software, in each case unless your use of the Software is authorized by U.S. law.