

End User License Agreement

(Further as “Agreement” or “EULA”)

Last updated date: August 30, 2019

Capturing Reality, s.r.o. (further as "Capturing Reality" or “Licensor”) licenses this software product called RealityCapture 1.0, image files, all accompanying files, data and materials received with your order, as well as, all upgrades (collectively, further as "SOFTWARE PRODUCT" or “application”), excluding any open source software that is otherwise listed in this Agreement to You (further as “You” or “Licensee”). The conditions of SOFTWARE PRODUCT use are subject to this Agreement.

You should carefully read the following terms and conditions before using, installing or distributing this software, unless you have a different agreement signed by Capturing Reality. THIS IS AN AGREEMENT ON END-USER RIGHTS AND NOT AN AGREEMENT FOR SALE. The Capturing Reality continues to own the copy of the SOFTWARE PRODUCT and copies that the End User is authorized to make pursuant to this Agreement.

If you do not agree with any of the terms of this License, then do not install, distribute or use the SOFTWARE PRODUCT.

GENERAL

Software Product and EULA updates

Terms and Conditions of End User License Agreement may differ from those set in this Agreement for any subsequent licensing of the SOFTWARE PRODUCT.

Capturing Reality reserves the right to request from Licensee to accept an updated EULA in case of future downloads or installations of upgrades to SOFTWARE PRODUCT.

An update to this Agreement will be indicated by a change to the "Last Updated Date" indicated at the top of this Agreement.

Collecting the Usage Data

This SOFTWARE PRODUCT may require online activation. First time You run the program, You will be required to activate the application through the Internet. During this process, Capturing Reality may send information about licensee hardware to our servers. You may also be asked to provide some personal information. By activating the product, You consent to storing essential personal information for SOFTWARE PRODUCT usage.

SOFTWARE PRODUCT may collect and communicate to Capturing Reality also some non-personal information, both in online and offline mode. You consent to such communication, although You have the right to switch off sending this communication by changing the SOFTWARE PRODUCT settings. If the SOFTWARE PRODUCT settings do not contain the option to switch off the above mentioned communication, the SOFTWARE PRODUCT does not collect and communicate information to Capturing Reality.

In an event of SOFTWARE PRODUCT crash, You may be asked to upload crash report to Licensor server. Crash reports are anonymous and do not contain any personal information and can help Licensor to improve the SOFTWARE PRODUCT stability.

Licensor uses the collected information to enable the features You may desire or provide the services You request. Licensor also uses the collected information to improve its products and services. Licensor never provide collected Licensees information to any other companies.

For more on processing Personal Data, visit the Privacy Policy page.

Connection to the Internet

To operate correctly the SOFTWARE PRODUCT requires connection to the Internet and may require connecting at certain intervals to the Licensor's servers or third-party servers. Connection to the Internet is necessary for the following features of the Software:

- a) Updates to the SOFTWARE PRODUCT. The Licensor shall be entitled from time to time issue updates to the SOFTWARE PRODUCT (further as "Updates"), but shall not be obliged to provide Updates.
- b) Forwarding error messages and statistical data to the Licensor.

LICENSE TYPES

The limitations and restrictions of the applicable types of RealityCapture software licenses are listed here.

RealityCapture Promo

- 3-month license
- Node-locked
- Free updates
- Online during export **
- Max 2,500 images or 4 laser scan positions per project
- Max 50 Mpix/per image
- No technical support

*Please note that this license will not allow You to open bigger scene created in the previous version

**Licensee can use the application offline without limitations. The app sends a small batch with statistics like the count of images, scans or triangles only when exporting results.

The pricing applicable to RealityCapture Promo licenses is only available to hobbyists and small businesses who want to use RealityCapture tools for their private projects or during the incubation stage of their business (further as "Promo user"), where:

- (i) Such business, raised funds or contracted entities' annual gross revenue does not exceed \$250K USD (directly or indirectly);
- (ii) Such business employs 25 individuals or more;
- (iii) While the Promo user can purchase max 5 licenses of RealityCapture Promo for same period of time.

If the Promo user is taking advantage of the pricing applicable to Promo Licenses, the user warrants that it satisfies the criteria set out in this Section and grants to Capturing Reality irrevocable, royalty-free and non-sub-licensable rights to refer to and use the Promo user's trade name and trade mark on any marketing materials, including but not limited to the licensor's Website, or documents. This section is not applicable to a natural person (consumer).

You hereby agree to the Licensor using its own means to check whether You are using the SOFTWARE PRODUCT in accordance with the provisions of this Agreement. You hereby issue your agreement to data being transferred, during communication between the SOFTWARE PRODUCT and the Licensor's computer systems or those of its business partners, the purpose of which is to ensure functionality of and authorization to use the SOFTWARE PRODUCT and protection of the Licensor's rights. Following conclusion of this Agreement, the Licensor shall be entitled to transfer, process and store essential data identifying You, for billing purposes and performance of this Agreement.

RealityCapture PGM

- Perpetual license
- Node-locked
- Offline license

- Max 3,500 images
- Max 200 Mpix/per image
- No laser scans
- 1st year free technical support & updates
- 25% Maintenance fee after 1st year

RealityCapture ENTERPRISE

- Perpetual license
- Node-locked
- Offline license
- Unlimited number of inputs
- 1st year free technical support & updates
- 25% Maintenance fee after 1st year

RealityCapture CLI

- 1,3,6,12-month license plans
- Fully-featured application
- GUI with Commandline Interface (CLI)
- Free updates
- Offline license
- Unlimited number of inputs
- Technical support & updates included

RealityCapture PPI®

- Py-Per-Input® licensing
- Fully-featured application
- Unlimited number of inputs
- Free updates
- Online during export**
- Licensing individual inputs

**Licensee can use the application offline without limitations. The app sends a small batch with statistics like the count of images, scans or triangles only when exporting results.

Cloud Services

RealityCapture may be installed on a server or a computer provided by/rented from the Cloud Services provider.

LICENSE AND RIGHTS

Subject to the condition that You have agreed to the terms of this Agreement, You pay the license fee within the maturity period and You comply with all the terms and conditions stipulated herein, the Licensor shall grant You the following rights:

- a) Installation and use. You shall have the non-exclusive, non-transferable right to install the SOFTWARE PRODUCT on the computer storage or another permanent medium for data storage, installation and storage of the Software in the memory of a computer system and to implement, store and display the SOFTWARE PRODUCT.
- b) Stipulation of the number of licenses. Shall be governed by the type of the SOFTWARE PRODUCT license.
- c) Term of the License. Your right to use the SOFTWARE PRODUCT shall be time-limited.

- d) Termination of the License. The License shall terminate automatically at the end of the period for which granted. If You fail to comply with any of the provisions of this Agreement, the Licensor shall be entitled to withdraw from the Agreement, without prejudice to any entitlement or legal remedy open to the Licensor in such eventualities.

RESTRICTIONS

Open-source Software

SOFTWARE PRODUCT contains source code derived from libtiff, libgeotiff, zlib, fbxsdk, alembic, openexr, Leaflet, Leaflet.RotatedMarker and proj4 libraries and ODbL and CC BY-SA licenses. Licenses for these libraries are included as required by respective license holders. SOFTWARE PRODUCT contains source code provided by NVIDIA Corporation.

Exercising End User rights

You must exercise End User rights in person or via your employees. You are only entitled to use the SOFTWARE PRODUCT to safeguard your operations and protect those computer systems for which You have obtained a license.

Restrictions to rights

You may not copy, distribute, extract components or make derivative works of the SOFTWARE PRODUCT. When using the SOFTWARE PRODUCT You are required to comply with the following restrictions:

- a) You may not use, modify, translate or reproduce the SOFTWARE PRODUCT or transfer rights to use the SOFTWARE PRODUCT or copies of the SOFTWARE PRODUCT in any manner other than as provided for in this Agreement.
- b) You may not sell, sub-license, lease or rent or borrow the SOFTWARE PRODUCT or use the SOFTWARE PRODUCT for the provision of commercial services.
- c) You may not reverse engineer, reverse compile or disassemble the SOFTWARE PRODUCT or otherwise attempt to discover the source code of the SOFTWARE PRODUCT, except to the extent that this restriction is expressly prohibited by law.
- d) You agree that You will only use the SOFTWARE PRODUCT in a manner that complies with all applicable laws in the jurisdiction in which You use the SOFTWARE PRODUCT, including, but not limited to, applicable restrictions concerning copyright and other intellectual property rights.

Intellectual property rights

By purchase of this SOFTWARE PRODUCT license, no title to the Software or such rights is transferred to Licensee by this Agreement. Capturing Reality is the sole owner of this SOFTWARE PRODUCT and its intellectual rights and its trade secret.

All rights of any kind, which are not expressly granted in this License, are entirely and exclusively reserved to and by Capturing Reality. You may not rent, lease, transfer, modify, translate, reverse engineer, de-compile, disassemble or create derivative works based on this SOFTWARE PRODUCT. You may not make access to SOFTWARE PRODUCT available to others in connection with a service bureau, application service provider, or similar business. There are no third party beneficiaries of any promises, obligations or representations made by Capturing Reality herein.

You may not disclose to other persons the data or techniques relating to this SOFTWARE PRODUCT that you know or should know that it is a trade secret of the Capturing Reality in any manner that will cause damage to Capturing Reality.

You are explicitly not allowed to enable use of your RealityCapture SOFTWARE PRODUCT by any third party online - neither directly, nor indirectly. This restriction also includes a creation of public services of such kind.

FEES, TAXES & REFUND POLICY

Fees

Fees for SOFTWARE PRODUCT licenses are set forth on the website. Capturing Reality reserves the right to increase, modify or add new fees and charges for any of the licenses by posting such changes to the website. Licensor guarantees to provide licensee with at least 30 days' notice of any changes affecting existing SOFTWARE PRODUCT and/or Continued use of such SOFTWARE PRODUCT.

Licensee agrees to pay all applicable fees due as set forth in the price quote or invoice and within the period set out in the invoice.

Taxes

Listed pricing is exclusive of any taxes. If there is a legal obligation to pay or collect taxes on given order, the appropriate amount shall be invoiced to and paid by Licensee. Exception will be granted upon providing the tax exemption certificate issued by the taxing authority.

Refund Policy

If you are a natural person (e.g. consumer) or legal person, who has purchased a license of the SOFTWARE PRODUCT from Capturing Reality or an authorized distributor, reseller or any retail channel, any refund request will be subject to Capturing Reality's prior authorization, and acceptance thereof shall be at their's sole discretion.

As a natural person (e.g. consumer) the refund (right of withdrawal) is not applicable according to the article 16 Exceptions from the right of withdrawal, sec. (m), directive 2011/83/EU, in which withdrawal is not applicable in case of: *the supply of digital content which is not supplied on a tangible medium if the performance has begun with the consumer's prior express consent and his acknowledgment that he thereby loses his right of withdrawal*. By accepting this Agreement You, if You are in a position of a consumer, expressly consent that You lose the right of withdrawal.

Any refund request upon activation of a SOFTWARE PRODUCT license, redeem of a purchased PPI credit, or return of an unused PPI credit will be subject to Capturing Reality's prior authorization, and acceptance thereof shall be at their's sole discretion. Please be aware that by agreeing to these terms, you may lose the right for the refund.

WARRANTY & LIMITATION OF LIABILITY

Warrantee covers defects in the software, which prevents successfully installing the software on the buyer's PC. Warrantee does not cover fitness of purpose, not meeting of expectations or needs in the mind of the buyer.

This SOFTWARE PRODUCT, all accompanying files, data and materials, are distributed "AS IS" and with no warranties of any kind, whether express or implied. The user must assume all risk of using the program. This disclaimer of warranty constitutes an essential part of the agreement.

Any liability of Capturing Reality will be limited exclusively to refund of purchase price. In addition, in no event shall Capturing Reality, or its principals, shareholders, officers, employees, affiliates, contractors, subsidiaries, or parent organizations, be liable for any incidental, consequential, punitive or any other damages whatsoever relating to the use of SOFTWARE PRODUCT.

In addition, in no event does Capturing Reality authorize licensee to use this SOFTWARE PRODUCT in applications or systems where SOFTWARE PRODUCT's failure to perform can reasonably be expected to result in a physical injury, or in loss of life. Any such use by you is entirely at licensee's own risk, and licensee agree to hold Capturing Reality harmless from any claims or losses relating to such unauthorized use.

This SOFTWARE PRODUCT and all services provided may be used for lawful purposes only. Transmission, storage, or presentation of any information, data or material in violation of your Country, State or City law is strictly prohibited. This includes, but is not limited to: copyrighted material, material we judge to be threatening or obscene, or material protected by trade secret and other statute. You agree to indemnify and hold Capturing Reality harmless from any claims resulting from the use of this SOFTWARE PRODUCT, which may damage any other party.

TERM AND TERMINATION

If any provision of this Agreement is held to be invalid or unenforceable the remaining provisions will not be affected.

Term

Licensee's right to Use the Software pursuant to any given License shall terminate at the end of the term for the License Type associated with such License.

Otherwise, this Agreement will continue in effect unless terminated as described below.

Termination by licensor

Capturing Reality may terminate this Agreement by providing written notice if licensee breaches any provision of this Agreement and the breach is not curable or, if it is curable, licensee fails to cure the breach within fifteen (15) days of notice of the breach.

Upon any termination, the SOFTWARE PRODUCT licenses will automatically terminate and licensee may no longer exercise any of the rights granted by licensor.

Termination by licensee

Licensee may terminate this Agreement at any time by providing Capturing Reality with written notice of same to info@capturingreality.com. License fees are however non-refundable.

MARKETING

You agree to be identified as a customer of the Capturing Reality, that may refer to You and use Your name, trade name, trademark and may briefly describe the nature of your business on any marketing materials, including but not limited to the licensor's Website, or documents.

These rights granted to the licensor are royalty-free and non-sub-licensable, you may choose to opt-out by sending an email request to privacy@capturingreality.com. This section is not applicable to natural person (consumer).

GOVERNING LAW AND JURISDICTION

This Agreement shall be governed by and construed in accordance with the laws of the Slovak Republic.

Licensee further agrees that:

- conflict provisions of the governing law shall not apply
- United Nations Convention on Contracts for the International Sale of Goods shall not apply
- exclusive jurisdiction for any claim or dispute with the Capturing Reality resides in District Court Bratislava I., Slovakia (relating in any way to licensee use of the Software and MY Account)
- the exercise of the personal jurisdiction is in the District Court Bratislava I (w.r.t. any such dispute or claim)
- Slovak language is used for all documentation, documents, disputes, communication etc. (w.r.t. any claim etc.)

GENERAL PROVISIONS

Should any of the provisions of this Agreement be invalid or unenforceable, this shall not affect the validity of the other provisions of the Agreement, which shall remain valid and enforceable in accordance with the conditions stipulated therein. This Agreement may only be modified in written form, signed by an authorized representative of the Licensor or a person expressly authorized to act in this capacity under the terms of a power of attorney.

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