

**LAST UPDATED: April 27, 2020**

## **RNDR NETWORK & OTOY PROPERTY AGREEMENT**

**THIS RNDR NETWORK AGREEMENT** including all exhibits hereto (collectively "**Agreement**") is made by and between OTOY, Inc. and its affiliates and subsidiaries (collectively, "**OTOY**" or "**we,**" "**us,**" or "**our**") and you ("**you,**" "**your,**" or "**Customer**"), which governs your use of the OTOY Property (as defined herein) and your use and access of the RNDR Network is subject to the terms and conditions of this Agreement. **By clicking "I Accept" or by using or accessing the RNDR Network or OTOY Property (as defined below), you agree to this Agreement, including the mandatory arbitration provision and class action waiver set forth herein.** If you do not agree to this Agreement, do not use or access the RNDR Network or OTOY Property.

You must be at least 13 years of age to access or use the RNDR Network or OTOY Property. If you are under 18 years of age (or the age of legal majority where you live), you may use our RNDR Network or OTOY Property only under the supervision of a parent or legal guardian who agrees to be bound by this Agreement. If you are a parent or legal guardian of a user under the age of 18 (or the age of legal majority), you agree to be fully responsible for the acts or omissions of such user in relation to the RNDR Network and OTOY Property. If you access or use the RNDR Network or OTOY Property on behalf of another person or entity, (a) all references to "you," "your," and "Customer" throughout this Agreement will include that person or entity, (b) you represent that you are authorized to accept this Agreement on that person's or entity's behalf, and (c) in the event you or the person or entity violates this Agreement, the person or entity agrees to be responsible to us.

This Agreement is entered into with reference to the following facts:

- A. OTOY has developed proprietary rendering software known as OctaneRender® and a version of OctaneRender® known as ORC, which enables rendering in the cloud;
- B. OTOY has built a blockchain-enabled distributed rendering network known as the "RNDR Network," which permits distributed peer-to-peer rendering on the computer systems of network participants.
- C. OTOY will provide to you the use of the RNDR Network and other OTOY Property on the terms and conditions set forth in this Agreement.

The Agreement is as follows:

### **1. PRIVACY**

For information about how we collect, use, share and otherwise process information about you please see our Privacy Policy located at <https://home.otoy.com/privacy-policy/> which may be updated from time to time. In order for us to provide the RNDR Network and use of the OTOY Property, you agree that we may process, transfer and store information about you in the United States and other countries, where you may not have the same rights and protections as you do under local law.

### **2. ACCESS**

Access to the RNDR Network and other OTOY Property will be provided by OTOY. OTOY may terminate your access to the RNDR Network and/or other OTOY Property at any time in its sole discretion, with or without notice, even if you have uncompleted jobs in process. OTOY may reject or cancel rendering jobs that it deems to be inappropriate, illicit or illegal or otherwise not in the best interests of the RNDR Network at any time in its sole discretion, and OTOY may schedule priority of jobs submitted for rendering so that there is no guarantee that any job will be completed within any particular time frame.

### **3. RIGHTS PERTAINING TO JOB RENDERING**

You will have the right to have your jobs rendered on the RNDR Network by using the ERC-20 compatible RNDR Token or by purchasing Credits from OTOY; however OTOY retains the right to prohibit, cancel or terminate any of

your jobs, without compensation to the parties involved, in its sole discretion. You agree to only use the RNDR Network for jobs that you solely own and control.

#### 4. DISCLAIMER

OTOY provides you access to and use of the RNDR Network, including any content therein, and OTOY Property on an "AS IS" and "AS AVAILABLE" basis and disclaims all warranties of any kind, either express or implied, including without limitation implied warranties of merchantability, fitness for a particular purpose, title, and non-infringement. You agree that you assume all risks associated with your access and use of the RNDR Network and OTOY Property. OTOY does not represent or warrant that the RNDR Network or OTOY Property is accurate, complete, reliable, current error-free or suitable for your rendering jobs, or that your access and use will remain secure or confidential. While OTOY attempts to make your access and use of the RNDR Network including any content therein and OTOY Property safe, we cannot and do not represent or warrant that the RNDR Network, other servers or OTOY Property are free of viruses or other harmful components. You assume the entire risk as to the quality and performance of the RNDR Network, OTOY Property and related aspects and as to the results of your rendering jobs. OTOY will have no liability for any security breach in which your information, confidential or otherwise, or intellectual property is compromised, misappropriated or disclosed. OTOY will endeavor in good faith to respond to support inquiries, but no support of any kind is guaranteed.

#### 5. MODIFYING THE AGREEMENT

The Agreement and the terms and conditions set forth in each 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. The provisions of this Agreement may be amended or changed from time to time in OTOY's sole discretion. If we make changes to this Agreement, we will provide you with notice of such changes, such as by sending an email, providing notice through the RNDR Network or other OTOY Property or updating the date at the top of this Agreement. Unless we say otherwise in our notice, the amended Agreement will be effective immediately, and your continued access or use of the RNDR Network or OTOY Property after we provide such notice will confirm your acceptance of the changes. If you do not agree to the amended Agreement, you must stop accessing and using the RNDR Network and OTOY Property. We reserve the right to modify the RNDR Network and/or OTOY Property or to suspend or stop providing all or portions of each thereof. We are not responsible for any loss or harm related to your inability to access or use the RNDR Network or OTOY Property.

#### 6. OTOY CONTACT INFORMATION

If you have any questions about this Agreement or the RNDR Network or OTOY Property, please contact us at [support@rendertoken.com](mailto:support@rendertoken.com).

#### 7. OTHER DEFINITIONS

A. "**Cloud Services**" means OctaneRender Cloud® ("ORC"), its add-ons and plug-ins and the services made available through the RNDR Network which may be enabled by OctaneRender® or other rendering software made available by OTOY on the RNDR Network.

B. "**Credits**" means the credits that Customer may use to purchase Cloud Services.

C. "**Customer**" has the same meaning as set forth above.

D. "**Customer Content**" means the content uploaded, produced or communicated by Customer for rendering by either the Software or the Cloud Services.

E. "**Documentation**" means the standard end-user technical documentation, specifications, materials and other information OTOY supplies with the Cloud Services. Advertising and marketing materials are not Documentation.

- F.** “*End User*” means Customer authorized users of the Software and/or Cloud Services.
- G.** “*Error*” means a reproducible failure of the Cloud Services to perform in substantial conformity with its Documentation.
- H.** “*GPU*” means a single graphics processing unit of a computer system.
- I.** “*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.
- J.** “*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://rndr.otoy.com> for the Cloud Services, 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.
- K.** “*OTOY*” has the same meaning as used above.
- L.** “*OTOY Property*” means the Software, Cloud Services, Documentation, all information, content, and data therein, and all Intellectual Property Rights contained in the foregoing.
- M.** “*Software*” means the software and plug-ins that are used by Customer as part of the Cloud Services or otherwise provided by OTOY (including OctaneBench).
- N.** “*User Generated Content*” means digital assets created, submitted or made accessible by Customer or End Users and uploaded to OTOY’s digital database, (e.g., “Live DB”) in accordance with this Agreement.

## **8. OWNERSHIP; LIMITED LICENSE AND RIGHT; RESTRICTIONS; OBLIGATIONS**

**A. OTOY Licenses to Customer.** Subject to the terms and conditions of this Agreement, during the term specified on the Order, OTOY hereby grants Customer a revocable, non-exclusive, non-transferable, limited right, solely for the purposes set forth on the Order, to (a) access and use the Cloud Services purchased by Customer and (b) use the corresponding Documentation. The Cloud Services are limited to use by one individual Customer only and such Customer is required to be an active subscriber or licensee of the applicable Software in order to access the Cloud Services. All other rights in the Cloud Services are reserved by us or our licensors. Any use of the Cloud Services other than as specifically authorized herein, without our prior written permission, is strictly prohibited, will terminate the Cloud Services right granted herein and violates our intellectual property right

**B. Restrictions.** Customer shall not (and shall prohibit any End User to): (a) use the OTOY Property, except as expressly permitted in this Agreement; (b) 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; (c) sublicense, lease, rent, loan, or distribute any OTOY Property to any third party; (d) transfer the OTOY Property or any usage rights or other rights therein to any third party (except as provided in this Agreement); (e) reverse engineer, decompile, disassemble or otherwise attempt to derive the source code for any OTOY Property, except as permitted by applicable law, including without limitation the attempt to or actual circumvention of measures employed to prevent or limit access to any part of OTOY Property; (f) remove, alter or obscure any proprietary notices on OTOY Property; (g) 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; (h) 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; (i) attempt to engage in or engage in, any potentially harmful acts that are directed against OTOY Property, including but not limited to violating or attempting to violate any security features of the respective OTOY Property, using manual or automated software, including without limitation, robots, spiders, or scripts, or other means to access OTOY Property, introducing viruses, worms,

or similar harmful code into OTOY Property, or interfering or attempting to interfere with use of OTOY Property by any other user, host or network, including obfuscation or impairment of direct communication between OTOY Property and physical GPUs, virtualization, shimming, or use of custom BIOS or actions that will or might impair the functioning of the OTOY Property or RNDR Network by other users; (j) impersonate any person or entity, or otherwise misrepresent affiliation with a person or entity; or (k) use any portion of OTOY Property in any manner that may give a false or misleading impression, attribution, or statement as to OTOY or any third party; (l) use the OTOY Property other than for its intended purpose or in any manner that could interfere with, disrupt, negatively affect or inhibit other users or that could damage, disable, overburden or impair the functioning of any OTOY Property in any manner; or (m) use OTOY Property for any illegal or unauthorized purpose, or engage in, encourage or promote any activity that violates this Agreement. To use the RNDR Network and Cloud Services, Customer must be connected to the internet while accessing the same. No portion of OTOY Property may be duplicated by Customer, except as otherwise expressly authorized in writing by OTOY. Customer will not alter, delete or obscure notices of patent, copyright, trademark or trade secret, or other notices used by OTOY or its suppliers and service providers.

**C. 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 to you under the terms of the license that accompanies such Third Party Code. Your interaction and use of Third Party Code is solely between you and the provider of the Third Party Code. OTOY does not endorse or make any representations or warranties regarding 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. You are responsible for complying with those terms and conditions for any Third Party Code delivered and assume all risk and liability in using such Third Party Code. None of the terms of this Agreement apply to such Third Party Code. A list of Third Party Code can be found [here](#).

**D. User Account, Usernames and Passwords.** You may need to register for an OTOY account to access and use the RNDR Network or some or all of OTOY Property. If you register for an account, you must provide accurate account information and promptly update this information if it changes. You also must maintain the security of your account and promptly notify us if you discover or suspect that someone has accessed your account without your permission. If you permit others to use your account credentials, you are responsible for the activities of such users that occur in connection with your account. For uses of the OTOY Property or RNDR Network 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. We reserve the right to reclaim usernames, including on behalf of businesses or individuals that hold legal claim, including trademark rights, in those usernames. 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 certain OTOY Property 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 such 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 or other applicable OTOY Property. Notwithstanding the foregoing, Customers who only have access to a subscription (except for the professional subscription license) or Trial Version of the Software or other OTOY Property 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 and other OTOY Property by its End Users and all access to and use of the Software and other OTOY Property through any End User’s account.

**E. Customer Licenses to OTOY.** Customer grants OTOY an irrevocable, non-exclusive, worldwide, perpetual, sub-licensable, assignable, royalty-free and fully paid license (a) to use, copy, display, perform, and create derivative works of the Customer Content to fulfill Customer's requests, provide services to Customer in accordance with this Agreement, and market OTOY's products, services, developments, and use cases; (b) on a perpetual basis, to use, copy, display, perform, and make derivative works of anonymized data related to the rendering of Customer Content for internal research and development purposes, including measuring and improving the effectiveness of OTOY's products and services through metrics and event data capture; and (c) to commercialize derivative works of Customer Content that OTOY has received Customer consent to do so.

**F. Customer Obligations.**

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

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

a) Customer owns or has 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 8;

b) Customer has paid and/or will pay all fees, royalties and other obligations, of any kind, relating to Customer Content. Customer represents and warrants that OTOY will not be responsible for any such fees, royalties or other obligations in any regard;

c) Customer Content (i) does not violate, or encourage the violation of, any applicable laws, rules, or regulations or other contractual obligations; (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 expressly permitted by this Agreement.

(iii) Customer acknowledges that OTOY Property is not designed or intended for High Risk Uses and agrees to not use or allow any OTOY Property to be used for High Risk Uses. "**High Risk Uses**" are uses where failure of OTOY Property or Customer Content rendered by OTOY Property 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 itself and 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 all loss and any deterioration of the Customer Content.

**G. Investigations.** If OTOY becomes aware of any possible or actual 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 may have 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 Property 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. Customer agrees that it

has the affirmative duty to promptly disclose all actual or suspected criminal activity to OTOY that it or any of its End Users may have conducted or facilitated.

**H. Feedback.** Customer hereby grants to OTOY a perpetual, irrevocable, worldwide, sublicensable, assignable, transferable, fully paid up, royalty-free right to use, commercialize and otherwise exploit any posts, submissions, suggestions, comments, ideas, original or creative materials or other feedback provided by Customer or its End Users related to OTOY Property or the RNDR Network (“*Feedback*”) in any manner in our sole discretion including without limitation the ability to develop, copy, publish or improve the Feedback. You agree that such Feedback may be used without acknowledgment or compensation to you and that such Feedback may be treated as nonconfidential.

**I. User Generated Content.** OTOY does not claim any ownership or liability with respect to any User Generated Content. Customer hereby acknowledges that (i) OTOY has no obligation to and does not pre-screen the User Generated Content and, as such, does not guarantee the accuracy, integrity, legitimacy, legality or quality of such User Generated Content; (ii) Customer will evaluate and bear all risks and liability associated with any use of any User Generated Content, including any reliance on the accuracy, completeness, legality 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 User Generated Content, or for any losses, expenses, costs 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 or otherwise protected from disclosure or dissemination; b) Customer and its End Users have all 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, assignable, transferable, royalty-free, paid-up, worldwide, sub-licensable license to store, display, reproduce, modify, create derivative works of, use and transmit the User Generated Content for the purposes of providing, formatting, maintaining, repairing, and otherwise improving and administering the digital database, marketplace and related aspects; and d) Customer and its End Users grant OTOY a perpetual, irrevocable, non-exclusive, transferable, assignable, royalty-free, paid-up, worldwide, license to store, display, reproduce, modify, use and transmit the User Generated Content and create and use derivative works of the User Generated Content or any part thereof for any purpose on any platform, system, device or media, whether now known or hereafter created.. 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. Notwithstanding, any right to such relief is irrevocably waived by Customer and its End Users.

**J. OTOY responds 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: legalteam@otoy.com

**K. 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<sup>®</sup>. 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 or RNDR Tokens to have available to complete a rendering project (including Credits for storage and bandwidth (i.e., data)) via the Cloud Services

## **9. 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, in accordance with this Agreement, 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 by OTOY and its licensors. 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 Property as expressly permitted under this Agreement.

## **10. CONFIDENTIALITY**

**A. Confidential Information.** “*Confidential Information*” means any information disclosed by either party (“*Discloser*”) to the other party (“*Recipient*”), either directly or indirectly, in writing, orally or by inspection of tangible objects (including without limitation technical, marketing, financial, employee, planning, documents, prototypes, samples, the Software, Cloud Services and related documentation), which is: (i) designated as “Confidential,” “Proprietary” or some similar designation; or (ii) otherwise reasonably considered to be confidential due to its nature or the circumstances of its disclosure. Information communicated orally will be considered Confidential Information if such information is confirmed in writing as being Confidential Information within thirty (30) days after the initial disclosure. Confidential Information may also include information disclosed to a Discloser by third parties. Confidential Information will not, however, include any information which (i) was publicly known and made generally available in the public domain prior to the time of disclosure by the Discloser; (ii) becomes publicly known and made generally available after disclosure by the Discloser to the Recipient through no action or inaction of the Recipient; (iii) is already in the possession of the Recipient at the time of disclosure by the Discloser as shown by the Recipient’s files and records immediately prior to the time of disclosure; (iv) is obtained by the Recipient from a third party without a breach of such third party’s obligations of confidentiality; or (v) is independently developed by the Recipient without use of or reference to the Discloser’s Confidential Information, as shown by documents and other competent evidence in the Recipient’s possession. Notwithstanding the foregoing, the terms of this Agreement, as well as any Software or Cloud Services are the Confidential Information of OTOY.

**B. Non-Use and Non-Disclosure.** Recipient agrees not to use the Confidential Information of Discloser for any purpose except to exercise its rights and perform its obligations under this Agreement. Recipient agrees not to disclose any Confidential Information of Discloser to Recipient’s employees, except to those employees of Recipient with a need to know. Recipient agrees that it shall take reasonable measures to protect the secrecy of, and avoid disclosure and unauthorized use of, Discloser’s Confidential Information. Without limiting the foregoing, Recipient shall take at least those measures to protect Discloser’s Confidential Information that it takes to protect its own most highly confidential information and shall ensure that its employees who have access to Discloser’s Confidential Information are bound by confidentiality obligations at least as protective of the Confidential Information as those set forth in this Agreement, prior to any disclosure of Discloser’s Confidential Information to such employees. Recipient shall not disclose the Confidential Information to any third parties without Discloser’s prior consent. Confidential Information may only be disclosed to third-parties that need to know such information and, on the condition, that such third-party is subject to a written agreement with confidentiality obligations at least as protective of the Confidential Information as those set forth in this Agreement. Notwithstanding the foregoing, Recipient may disclose such Confidential Information to the extent it is required by applicable law to be disclosed by Recipient, provided that (to the maximum extent permitted by applicable law) Recipient gives Discloser written notice of such requirement prior to such disclosure and provides reasonable assistance to Recipient, upon request and at Recipient’s expense, in obtaining an order protecting the information from public disclosure. For the avoidance of

doubt, any Confidential Information required to be disclosed in accordance with the foregoing sentence shall remain Confidential Information subject to the obligations set forth in this Section IX for all other purposes.

**C. Return of Confidential Information.** The Recipient will either return to the Discloser or destroy all Confidential Information of the Discloser in the Recipient's possession or control and permanently erase all electronic copies of such Confidential Information promptly upon the written request of the Discloser or the termination of this Agreement, whichever comes first. Upon request, the Recipient will certify in writing that it has fully complied with its obligations under this Section 10(C).

## **11. ACCEPTANCE OF ORDERS**

All Customer Orders purchased via electronic methods will be deemed accepted by OTOY only upon OTOY's electronic confirmation to Customer that OTOY has accepted Customer's Order.

## **12. TERM AND TERMINATION**

**A. Term.** The term of this Agreement will begin upon pressing the "I Accept" button and continue in force until this Agreement is terminated in accordance with this Agreement. 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.

**B. 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.

**C. 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 any breach or reasonably suspected breach by Customer. OTOY may allow Customer the opportunity to cure any breach or suspected breach, but has no obligation to do so. The foregoing rights of termination are in addition to any other rights and remedies provided in this Agreement or by law.

**D. Effect of Termination.** Upon termination of this Agreement, all rights of Customer to use OTOY Property will cease and: (a) all license rights granted to Customer under this Agreement will immediately terminate and Customer shall promptly cease all use of OTOY Property; (b) OTOY's obligation to provide support for OTOY Property 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 and its End Users have returned or destroyed such OTOY Property; and (e) Confidential Information will be returned or destroyed in accordance with this Agreement.

**E. Survival.** Except for Section 8(A), the provisions of this Agreement shall continue in full force and effect even after termination.

## **13. RENDER JOBS**

**IN THE EVENT THAT CUSTOMER ORDERS RENDERING OF CUSTOMER CONTENT VIA CLOUD SERVICES AND CUSTOMER'S OTOY ACCOUNT LACKS SUFFICIENT CREDITS OR RNDR TOKENS TO FINISH THE RENDERING JOB (INCLUDING LACK OF SUFFICIENT CREDITS OR RNDR TOKENS 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, UNLESS CUSTOMER HAS OPTED OUT OF SUCH NOTIFICATIONS. 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, 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.

## 14. PAYMENTS

**A. Payment Method.** OTOY will prompt you to select a payment method before you can order a Job through your RNDR Network account. Payments for Jobs can be made in RNDR Tokens or Euros ("EUR"). To make a payment with RNDR Tokens, you must have an ERC20-compatible Ethereum digital asset wallet. To make a payment with EUR, you must have an account in good standing with a supported third-party payment provider. A list of supported third-party payment providers is available at <https://rendertoken.com/faqs>. Your use of a third-party payment provider to make EUR payments for Jobs is governed by applicable terms of service maintained by such payment provider.

**B. Job Quote.** After you select a payment method for your Job, OTOY will display the estimated cost of your Job (a "Job Quote"), denominated according to the payment method you selected. Job Quotes will be inclusive of applicable OTOY fees. A list of current OTOY fees, which we may update from time to time, is available at <https://rendertoken.com/faqs>. Job Quotes will exclude any (i) Ethereum network processing fees (i.e., "gas") costs if you pay with RNDR Tokens, and (ii) fees charged by a third-party payment provider if you pay with EUR.

**C. Authorization of Payment and Commencement of Job.** By finalizing your order for a Job, you agree to the Job Quote and authorize payment to OTOY of the Job Quote amount. Your Job will not commence until OTOY has received full payment of the Job Quote amount.

**D. Additional Payments to Complete Job; Limited Refund Right.** The actual cost of your Job may differ from the Job Quote. If the actual cost of your Job exceeds the Job Quote, work on your Job will be paused and OTOY will notify you via email of the additional payment amount necessary to complete the Job. You will need to pay OTOY such additional amount, in the same payment method as your Job Quote payment, before work on your Job will resume. If you do not pay such additional amount within 48 hours, OTOY may terminate your Job at its discretion. If the actual cost of your Job is less than the Job Quote, OTOY will refund to you the difference between the Job Quote and the actual cost of the Job within 48 hours.

**E. Termination of Jobs Before Completion.** If you terminate a Job before completion, or if OTOY terminates your Job because of your failure to pay an additional amount due under Section 15.D, OTOY will not allow you to download your partially-completed Job or any portion thereof. If your Job is terminated by OTOY for another reason, OTOY may, at its discretion, refund part or all of your payment and/or allow you to download your partially-completed Job.

**F. Verification and Download of Completed Jobs.** Once OTOY has determined that a Job has been completed, OTOY will notify you via email that the Job is available for download through your account on the RNDR Network and provide a receipt listing the total cost of your Job.

**G. Payments Final.** Other than as expressly set forth in Section 15.D and 15.E, all payments you make to OTOY for Jobs are final and non-refundable.

**H. Technical Risks and Costs.** You acknowledge that the processing time and actual cost of Jobs depends on certain technical factors outside our control, including the operation and integrity of the decentralized Ethereum blockchain on which the RNDR Network is based, as well as any Ethereum wallet you use to pay for Jobs (if you pay with RNDR Tokens). You agree that your use of the Ethereum blockchain and, if applicable, Ethereum digital asset wallets, is solely at your own risk. In addition, you acknowledge that you are solely responsible for any risks or costs arising from your use of the Ethereum blockchain and/or Ethereum digital asset wallets to pay for and obtain Jobs.

**I. Taxes.** You are solely responsible for any and all taxes resulting from your payment for a Job, including sales taxes, value-added taxes, income taxes and any other taxes that may be charged or incurred.

**J. Calculation of Payment Amounts; Disputes.** You acknowledge that all amounts you pay for Jobs under this Section 15 are calculated by OTOY in its sole, reasonable discretion. If you dispute any payment for a Job, you must notify OTOY at [support@rendertoken.com](mailto:support@rendertoken.com) within seven days of the date you made the applicable payment to OTOY. While OTOY will attempt to resolve your dispute in good faith, any determination OTOY makes regarding your dispute is final.

## **15. INDEMNITY**

**A. Customer's Indemnity.** To the fullest extent permitted by applicable law, you will indemnify, defend and hold harmless OTOY and each of our respective officers, directors, agents, partners and employees (individually and collectively, the "**OTOY Parties**") from and against any losses, liabilities, claims, demands, damages, expenses or costs ("**Claims**") arising out of or related to (a) your access to or use of the RNDR Network or OTOY Property; (b) your User Generated Content or Feedback; (c) your violation of this Agreement; (d) your violation, misappropriation or infringement of any rights of another (including intellectual property rights or privacy rights); or (e) your conduct in connection with this Agreement, the RNDR Network or OTOY Property. You agree to promptly notify OTOY Parties of any third-party Claims, cooperate with OTOY Parties in defending such Claims and pay all fees, costs and expenses associated with defending such Claims (including, but not limited to, attorneys' fees). You also agree that the OTOY Parties will have control of the defense or settlement, at OTOY's sole option, of any third-party Claims. This indemnity is in addition to, and not in lieu of, any other indemnities set forth in a written agreement between you and OTOY or the other OTOY Parties.

## **16. LIMITATION OF LIABILITY**

IN NO EVENT WILL OTOY AND OTHER OTOY PARTIES BE LIABLE TO CUSTOMER OR ANY OTHER PARTY UNDER ANY THEORY OF LIABILITY, WHETHER BASED IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, WARRANTY, OR OTHERWISE, ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, PUNITIVE, OR SPECIAL DAMAGES OR FOR LOSS OF DATA, LOSS OF THE USE OR PERFORMANCE OF ANY PRODUCTS, LOSS OF REVENUES, LOSS OF PROFITS, OR BUSINESS INTERRUPTION, EVEN IF OTOY OR THE OTHER OTOY PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL THE TOTAL CUMULATIVE LIABILITY OF OTOY AND THE OTHER OTOY PARTIES FOR ANY CLAIM ARISING OUT OF OR RELATED TO THIS AGREEMENT, THE RNDR NETWORK, OR OTOY PROPERTY EXCEED \$100. THIS SECTION 17 WILL APPLY EVEN IF AN EXCLUSIVE REMEDY OF CUSTOMER UNDER THIS AGREEMENT HAS FAILED OF ITS ESSENTIAL PURPOSE. THE LIMITATIONS SET FORTH IN THIS SECTION 17 WILL NOT LIMIT OR EXCLUDE LIABILITY FOR GROSS NEGLIGENCE, FRAUD OR INTENTIONAL MISCONDUCT OF OTOY OR THE OTHER OTOY PARTIES OR FOR ANY OTHER MATTERS IN WHICH LIABILITY CANNOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW.

## **17. RELEASE**

To the fullest extent permitted by applicable law, you release OTOY and the other OTOY Parties from responsibility, liability, claims, demands and/or damages (actual and consequential) of every kind and nature, known and unknown (including, but not limited to, claims of negligence), arising out of or related to disputes between users and the acts or omissions of third parties. If you are a consumer who resides in California, you hereby waive your rights under California Civil Code § 1542, which provides: "A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her would have materially affected his or her settlement with the debtor or released party."

## **18. ARBITRATION**

**Please read the following section carefully because it requires you to arbitrate certain disputes and claims with OTOY and limits the manner in which you can seek relief from us, unless you opt out of arbitration by following**

**the instructions set forth below. No class or representative actions or arbitrations are allowed under this arbitration agreement. In addition, arbitration precludes you from suing in court or having a jury trial.**

**A. No Representative Actions.** You and OTOY agree that any dispute arising out of or related to this Agreement, the RNDR Network or OTOY Property is personal to you and OTOY and that any dispute will be resolved solely through individual action, and will not be brought as a class arbitration, class action or any other type of representative proceeding.

**B. Arbitration of Disputes.** Except for small claims disputes in which you or OTOY seeks to bring an individual action in small claims court located in the county of your billing address or disputes in which you or OTOY seeks injunctive or other equitable relief for the alleged unlawful use of intellectual property, **you and OTOY waive your rights to a jury trial and to have any dispute arising out of or related to this Agreement, the RNDR Network or OTOY Property resolved in court.** Instead, for any dispute or claim that you have against OTOY or relating in any way to this Agreement, the RNDR Network or OTOY Property, you agree to first contact OTOY and attempt to resolve the claim informally by sending a written notice of your claim ("**Notice**") to OTOY by email at [legalteam@otoy.com](mailto:legalteam@otoy.com) or by certified mail addressed to Legal Department, OTOY, Inc., 1010 Wilshire Boulevard, Suite 1604, Los Angeles, CA 90017. The Notice must (a) include your name, residence address, email address, and telephone number; (b) describe the nature and basis of the claim; and (c) set forth the specific relief sought. Our notice to you will be similar in form to that described above. If you and OTOY cannot reach an agreement to resolve the claim within thirty (30) days after such Notice is received, then either party may submit the dispute to binding arbitration administered by JAMS or, under the limited circumstances set forth above, in court. All disputes submitted to JAMS will be resolved through confidential, binding arbitration before one arbitrator. Arbitration proceedings will be held in Los Angeles County, California or may be conducted telephonically or via video conference for disputes alleging damages less than \$10,000, in accordance with the JAMS Streamlined Arbitration Rules and Procedures ("**JAMS Rules**"). The most recent version of the JAMS Rules are available on the JAMS website and are hereby incorporated by reference. You either acknowledge and agree that you have read and understand the JAMS Rules or waive your opportunity to read the JAMS Rules and waive any claim that the JAMS Rules are unfair or should not apply for any reason.

You and OTOY agree that this Agreement affects interstate commerce and that the enforceability of this Section 19 will be substantively and procedurally governed by the Federal Arbitration Act, 9 U.S.C. § 1, et seq. (the "**FAA**"), to the maximum extent permitted by applicable law. As limited by the FAA, this Agreement and the JAMS Rules, the arbitrator will have exclusive authority to make all procedural and substantive decisions regarding any dispute and to grant any remedy that would otherwise be available in court, including the power to determine the question of arbitrability. The arbitrator may conduct only an individual arbitration and may not consolidate more than one individual's claims, preside over any type of class or representative proceeding or preside over any proceeding involving more than one individual.

The arbitrator, OTOY, and you will maintain the confidentiality of any arbitration proceedings, judgments and awards, including, but not limited to, all information gathered, prepared and presented for purposes of the arbitration or related to the dispute(s) therein. The arbitrator will have the authority to make appropriate rulings to safeguard confidentiality, unless the law provides to the contrary. The duty of confidentiality does not apply to the extent that disclosure is necessary to prepare for or conduct the arbitration hearing on the merits, in connection with a court application for a preliminary remedy or in connection with a judicial challenge to an arbitration award or its enforcement, or to the extent that disclosure is otherwise required by law or judicial decision.

You and OTOY agree that for any arbitration you initiate, you will pay the filing fee and OTOY will pay the remaining JAMS fees and costs. For any arbitration initiated by Company, OTOY will pay all JAMS fees and costs. You and OTOY agree that the state or federal courts of the State of California and the United States sitting in Los Angeles County, California have exclusive jurisdiction over any appeals and the enforcement of an arbitration award.

**Any claim arising out of or related to this Agreement, the RNDR Network or OTOY Property must be filed within one year after such claim arose; otherwise, the claim is permanently barred, which means that you and OTOY will not have the right to assert the claim.**

**You have the right to opt out of binding arbitration within 30 days of the date you first accepted the terms of this Section 19 by notifying us via email at [legalteam@otoy.com](mailto:legalteam@otoy.com) or by certified mail addressed to Legal Department, OTOY, Inc., 1010 Wilshire Boulevard, Suite 1604, Los Angeles, CA 90017.** In order to be effective, the opt-out notice must include your full name and address and clearly indicate your intent to opt out of binding arbitration. By opting out of binding arbitration, you are agreeing to resolve disputes in accordance with Section 20(I).

If any portion of this Section 19 is found to be unenforceable or unlawful for any reason, (a) the unenforceable or unlawful provision shall be severed from this Agreement; (b) severance of the unenforceable or unlawful provision shall have no impact whatsoever on the remainder of this Section 19 or the parties' ability to compel arbitration of any remaining claims on an individual basis pursuant to this Section 19; and (c) to the extent that any claims must therefore proceed on a class, collective, consolidated, or representative basis, such claims must be litigated in a civil court of competent jurisdiction and not in arbitration, and the parties agree that litigation of those claims shall be stayed pending the outcome of any individual claims in arbitration. Further, if any part of this Section 19 is found to prohibit an individual claim seeking public injunctive relief, that provision will have no effect to the extent such relief is allowed to be sought out of arbitration, and the remainder of this Section 19 will be enforceable.

## **19. GENERAL**

**A. Government End Users.** The Software, Cloud Services, Documentation and certain other OTOY Property 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.

**B. Audit Rights.** 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 twice every twelve (12) months, unless an earlier audit uncovered an underpayment of any 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, plus interest and any fees charged by OTOY's designated representative, if any. If any audit reveals an underpayment of fees greater than \$1,000 or five (5%) percent of the fees due and payable with respect to the period audited, Customer will reimburse OTOY for all audit fees, costs and expenses incurred.

**C. 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, unless expressly stated otherwise, 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.

**D. Trademarks.** OTOY and its brand, logos, product or service names, slogans, and the look and feel of the RNDR Network and OTOY Property are trademarks of OTOY and may not be copied, imitated or used, in whole or in part, without our prior written permission. All other trademarks, registered trademarks, product names and company names or logos mentioned on the RNDR Network and OTOY Property are the property of their respective owners. Reference to any products, services, processes or other information by trade name, trademark, manufacturer, supplier or otherwise does not constitute or imply endorsement, sponsorship or recommendation by us.

**E. 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.

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

**G. Compliance with Export Control Laws.** The OTOY Property 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.

**H. 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 or Cloud Services) 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.

**I. 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.

**J. Governing Law and Venue.** Any dispute arising from this Agreement or your access or use of the RNDR Network or OTOY Property will be governed by and construed and enforced in accordance with the laws of California, except to the extent preempted by U.S. federal law, without regard to conflict of law rules or principles (whether of California or any other jurisdiction) that would cause the application of the laws of any other jurisdiction. Any dispute between the parties that is not subject to arbitration or cannot be heard in small claims court will be resolved in the state or federal courts of California and the United States, respectively, sitting in Los Angeles County, California. Additionally, the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

**K. Remedies.** 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.

**L. 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.

**M. Order of Precedence; Construction; Electronic Communication.** The provisions of this Agreement 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." Except as otherwise provided herein, this Agreement is intended solely for the benefit of the parties and are not intended to confer third-party beneficiary rights upon any other person or entity. You agree that communications and transactions between us may be conducted electronically.

**EXHIBIT A**

**SUPPORT AND MAINTENANCE ADDENDUM**

OTOY shall provide support services via email, during regular business hours and will endeavor in good faith to respond to customer support inquiries within two (2) business days. Customer support inquiries shall be sent to email: [support@rendertoken.com](mailto:support@rendertoken.com).

