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6.4.2 This Agreement does not grant end users the right to use the height map data. Kalloc is not liable to any legal issue arisen from using height map data. Any agreement regarding such data shall be between Licensee, end users and/or the height map data owner. If Licensee would like to use the height map data in any commercial, non-free resale, or redistribution, Licensee shall be required to obtain explicit written permission from CIAT. More information is available here:

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6.4.3 The GStreamer libraries are under the GNU Lesser General Public License. Kalloc shall not be liable to the licensor of the GStreamer libraries, and any agreement and/or license regarding the same shall be between the Licensee and GNU. More information is available here: <http://www.gnu.org/licenses/lgpl-2.1.html>

7. **Limitations of Liability**

7.1 Limitation on Type and Amount of Liability. IN NO EVENT SHALL KALLOC OR ITS SUPPLIERS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, RELIANCE OR CONSEQUENTIAL DAMAGES, WHETHER FORESEEABLE OR NOT, INCLUDING, BUT NOT LIMITED TO, DAMAGE OR LOSS OF PROPERTY, EQUIPMENT, INFORMATION OR DATA, LOSS OF PROFITS, REVENUE OR GOODWILL, COST OF CAPITAL, COST OF REPLACEMENT SERVICES, OR CLAIMS FOR SERVICE INTERRUPTIONS OR TRANSMISSION PROBLEMS, OCCASIONED BY ANY DEFECT IN THE KALLOC SOFTWARE OR THE LICENSED MATERIALS, THE INABILITY TO USE SERVICES PROVIDED HEREUNDER OR ANY OTHER CAUSE WHATSOEVER WITH RESPECT TO THE LICENSED MATERIALS AND/OR ANY OTHER KALLOC TECHNOLOGY OR THIS AGREEMENT, REGARDLESS OF THEORY OF LIABILITY. THIS LIMITATION WILL APPLY EVEN IF THE OTHER PARTY HAS BEEN ADVISED OR IS AWARE OF THE POSSIBILITY OF SUCH DAMAGES.

7.2 Application of and Basis for Limitations. THE LIMITATIONS OF LIABILITY IN THIS SECTION 7 (LIMITATIONS OF LIABILITY) WILL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW TO ANY DAMAGES OR OTHER LIABILITY, HOWEVER CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY, WHETHER DERIVED FROM CONTRACT, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE) OR OTHERWISE, EVEN IF KALLOC HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LIABILITY AND REGARDLESS OF WHETHER THE LIMITED REMEDIES AVAILABLE HEREUNDER FAIL OF THEIR ESSENTIAL PURPOSE. ALSO, LICENSEE AGREES THAT THE LICENSE, SUBSCRIPTION AND SERVICES FEES AND OTHER FEES CHARGED BY KALLOC AND PAID BY LICENSEE ARE BASED ON AND REFLECTIVE OF THE ALLOCATION OF RISK CONTEMPLATED BY THIS SECTION 7 (LIMITATIONS OF LIABILITY) AND THAT THE LIABILITY LIMITATIONS IN THIS SECTION 7 (LIMITATIONS OF LIABILITY) ARE AN ESSENTIAL ELEMENT OF THE AGREEMENT BETWEEN THE PARTIES.

7.3 IN NO EVENT SHALL KALLOC'S LIABILITY FOR ANY CLAIM ARISING OUT OF THIS AGREEMENT EXCEED THE AMOUNT OF FEES PAID BY LICENSEE TO KALLOC DURING THE TWELVE (12) MONTHS PRIOR TO THE OCCURRENCE GIVING RISE TO SUCH CLAIM.

8. **Indemnification**

8.1 Licensee shall indemnify, defend and hold Kalloc and its Affiliates, officers, directors, agents and employees harmless from any losses, liabilities, damages, costs or expenses, including reasonable attorney's fees, arising from any third party claim or action arising out of (a) the use of works or materials created by or owned by Licensee infringing the copyright, trademark and trade secret rights of a third party; (b) any breach by the Licensee of its obligations under this Agreement; or, (c) any unauthorized alteration, modification, adjustment or enhancement made by the Licensee to the Licensed Materials and/or any other

materials provided to Licensee by Kalloc hereunder, provided (i) Licensee is promptly notified of any and all threats, claims and proceedings related thereto, (ii) Licensee shall have sole control of the defense and/or settlement thereof, (iii) Kalloc furnishes to Licensee, upon request, information available to Kalloc for such defense, and (iv) Kalloc provides Licensee with reasonable assistance.

8.2 Kalloc shall indemnify, defend and hold Licensee and its officers, directors, agents and employees harmless from liability resulting from any third party action or claim that the Licensed Materials and/or other materials owned and provided by Kalloc infringe any: (a) third party copyright, trade secret or trademark; or (b) any patent or trademark of which Kalloc had actual knowledge; provided, however, that (i) Kalloc is promptly notified of any and all threats, claims and proceedings related thereto, (ii) Kalloc shall have sole control of the defense and/or settlement thereof, (iii) Licensee furnishes to Kalloc, upon request, information available to Licensee for such defense, and (iv) Licensee provides Kalloc with reasonable assistance. THE FOREGOING IS IN LIEU OF ANY WARRANTIES OF NON-INFRINGEMENT, WHICH ARE HEREBY DISCLAIMED.

8.3 The foregoing obligation of Kalloc does not apply to infringement claims pertaining to the Licensed Materials and/or other materials owned provided by Kalloc (a) where the Licensed Materials and/or other materials owned and/or provided by Kalloc are (i) modified by Licensee (other than modifications made pursuant to express instructions from Kalloc), if the alleged infringement relates to such modification, (ii) combined with other processes or materials not supplied by Kalloc and/or owned by Kalloc (ie third party materials used in conjunction with the Licensed Materials, including without limitation those set for in Section 6.4 above) where the combination is the main cause of infringement; (iii) not used in accordance with this Agreement, to extent the claim of infringement arises from such use that is not in accordance with this Agreement; or (b) where Licensee continues the allegedly infringing activity after being notified thereof or after being informed of modifications that would have avoided the alleged infringement.

8.4 If the Licensed Materials become subject to a claim of infringement for which Kalloc may become liable, Kalloc may at its option (a) obtain the right for Licensee to continue using the Licensed Materials; (b) replace or modify the Licensed Materials to make it non-infringing, so long as the replacement or modification meets substantially similar specifications; or (c) terminate this Agreement.

9 Confidentiality

9.1 Each Party (the "Receiving Party") acknowledges that, in the course of performing its duties and exercising its rights under this Agreement, it may obtain information relating to the technology or business of the other Party (the "Disclosing Party") that is of a confidential and proprietary nature ("Confidential Information"). Such Confidential Information includes, without limitation, computer codes (including without limitation all source and/or object code related to the Licensed Materials), documentation, trade secrets, know-how, inventions, techniques, processes, programs, algorithms, schematics, data and financial information. The Receiving Party and its officers, employees and agents shall, at all times, throughout the Term of this Agreement and for a period of five (5) years thereafter, keep in trust and confidence all such Confidential Information and shall not use such Confidential Information except in performing its duties and obligations and exercising its rights hereunder; nor shall the Receiving Party or its officers, employees or agents disclose any such Confidential Information to any person without the Disclosing Party's prior written consent. This Section shall not apply with respect to information the Receiving Party can document: (a) is in the public domain as a result of no act or omission of the Receiving Party or its employees, or agents; (b) is lawfully received by the Receiving Party from third parties without restriction and without breach of any duty of nondisclosure by any such third party; (c) is already in the Receiving Party's position without restriction to disclosure; (d) was independently developed by the Receiving Party; or (e) is required to be disclosed by operation of law or by order of a court or administrative body of competent jurisdiction (provided that prior to such disclosure the Disclosing Party shall first receive notice thereof from the Receiving Party and have the opportunity to contest such order or requirement of disclosure or seek appropriate protective order). . Notwithstanding the foregoing, the Receiving Party may disclose the Confidential Information received hereunder to its officers, employees and agents on a need to know basis, provided that such employees and agents execute a written agreement with substantially the same terms and conditions as this Section.

9.2 The Receiving Party acknowledges and agrees that due to the unique nature of the Disclosing Party Confidential Information, there may be no adequate remedy at law for any breach of its obligations hereunder, that any such breach may allow the Receiving Party or third parties to unfairly compete with the Disclosing Party resulting in irreparable harm to the Receiving Party and, therefore, that upon any such breach or any threat thereof, the Receiving Party shall be entitled to apply for appropriate equitable relief in addition to whatever remedies it might have at law. The Receiving Party will notify the Disclosing Party in writing immediately upon the occurrence of any such unauthorized release or other breach. Any breach of this Section will constitute a material breach of this Agreement.

10. Term and Termination

10.1 Term; Termination or Suspension. Each license under this Agreement, with respect to each specific set of Licensed Materials covered by this Agreement, will become effective as of the latest to occur of: (a) this Agreement becoming effective, (b) payment by Licensee of the applicable fees, excluding licenses where no fees are required, (c) delivery of the specific Licensed Materials, and (d) in the case of Kalloc Materials provided in connection with a Subscription, upon commencement of the applicable Subscription period. Either Kalloc or Licensee may terminate this Agreement, Licensee's license as to Licensed Materials, Licensee's Subscription, and/or the provision of Services relating to the Licensed Materials if the other party is in breach of this Agreement and fails to cure such breach within ten (10) days after written notice of the breach; however, if Licensee is in breach of Section 1 (License) or Section 2 (License Limitations/Prohibitions), Kalloc may terminate this Agreement, Licensee's license as to Licensed Materials, Licensee's Subscription, and/or the provision of Services relating to the Licensed Materials immediately upon written notice of the breach. In addition, Kalloc may, as an alternative to termination, suspend Licensee's license as to the Licensed Materials, Licensee's Subscription, the provision of Services relating to the Licensed Materials, and/or other Kalloc obligations or Licensee rights under this Agreement (or under other terms, if any, relating to materials associated with the Licensed Materials), if Licensee fails to make a payment to Kalloc or a Reseller or otherwise fails to comply with the provisions of this Agreement or other terms relating to any such license, Subscription, Services, or other associated materials. Kalloc may also terminate this Agreement if Licensee becomes subject to bankruptcy proceedings, becomes insolvent, or makes an arrangement with Licensee's creditors. This Agreement will terminate automatically without further notice or action by Kalloc if Licensee goes into liquidation. In the context of any bankruptcy proceeding, Licensee acknowledges and agrees this Agreement is and shall be treated as an executory contract that may not be assumed and/or assigned without Kalloc's prior written consent, which consent may be withheld in Kalloc's sole and absolute discretion whether pursuant to Section 365(c)(1) of Title 11 of the United States Code or any other applicable law respecting the treatment of executory contracts within bankruptcy.

Licensee acknowledges and agrees that Kalloc may assign or sub-contract any of its rights or obligations under this Agreement.

10.2 Effect of Termination of Agreement or License. Upon termination or expiration of this Agreement, the licenses granted hereunder will terminate. Upon termination or expiration of any license granted to Licensee, Licensee must cease all use of Kalloc Materials to which such license applies, any Subscription (including, without limitation, associated services), and any Services and Uninstall all copies of the Kalloc Materials. At Kalloc's request, Licensee agrees to destroy or return to Kalloc or the Reseller from which they were acquired all Kalloc Materials. Kalloc reserves the right to require Licensee to show satisfactory proof that all copies of the Kalloc Materials have been Uninstalled and, if so requested by Kalloc, destroyed or returned to Kalloc or the Reseller from which they were acquired. If Licensee's Subscription is terminated or expires, but this Agreement and Licensee's license to the Licensed Materials remains in effect, any rights of Licensee based on the Subscription (including, without limitation, rights with respect to Previous Versions) will terminate, and (unless otherwise authorized by the Subscription Program Terms) Licensee must comply with the obligations of Section 1.2.1 (Effect of Upgrades) with respect to (including the obligations to cease use of, Uninstall and destroy or return) all copies of such Previous Versions.

10.3 Survival. Sections 1.2 (Additional Terms), 1.3 (Other Materials), 1.4 (Authorized Users), 1.5 (Third-Party Licensed Materials), 1.11 (APIs), 2.1.1 (No License Granted/Unauthorized Activities), 2.1.4 (Effect of Unauthorized Use), 2.2 (Circumvention), 3 (Ownership/All Rights Reserved), 4 (Privacy; Use of Information; Connectivity), 5.2 (Warranties and Disclaimers), 6 (Warnings), 7 (Limitations of Liability), 8 (Indemnity) 9 (Confidentiality) 10 (Term and Termination), and 12 (General Provisions) and Exhibit A will survive any termination or expiration of this Agreement.

11. Additional Terms: Educational Suites.

If Licensee is an educational institution, Licensee's Territory is the United States of America or Canada, and the Licensed Materials include an Educational Suite, defined below, then the following additional terms and conditions set forth in this Section 12 shall apply.

12.1 Additional Definitions.

12.1.1 "Educational Site" means computer labs, classrooms or offices located at one of Licensee's facilities in a single state or province, and may include Licensee's main campus or a satellite campus provided that such satellite campus offers the same curricula as the main campus.

12.1.2 "Secondary Institution" means an educational institution commonly referred to as "high school" or "secondary school" (in the United States this typically means grades 9 through 12).

12.1.3 "Post-secondary Institution" means an educational institution commonly referred to as a "college", "university", "post-secondary school" or "tertiary school".

12.1.5 "Educational Suite" means any Software that is to be used in educational institutions.

12.1.6 "Public Educational Institution" means an educational institution that is legal branch or agency of a state or local government.

12.2 Educational Site Restrictions.

12.2.1 If Licensee is a Secondary Institution, then Licensee's use of Licensed Materials shall be limited to use at one (1) Educational Site.

12.2.2 If Licensee is a Post-secondary Institution, then Licensee's use of Licensed Materials shall be limited to use at no more than five (5) Educational Sites.

12. General Provisions

12.1 Notices. Notices in connection with this Agreement by either party will be in writing and will be sent by electronic mail, postal service, or a delivery service (such as UPS, FedEx or DHL), except that Licensee may not provide notice to Kalloc of an Kalloc breach or provide notice of termination of this Agreement by electronic mail. Notices from Kalloc to Licensee will be effective (a) in the case of notices by email, one (1) day after sending to the email address provided to Kalloc, or (b) in the case of notices by mail or delivery service, five (5) days after sending by regular post or delivery service to the address provided to Kalloc. Licensee hereby consents to service of process being effected on Licensee by registered mail sent to the address set forth on Licensee's Customer Information Form (or, if no Customer Information Form has been provided, Licensee's last address known by Kalloc) if so permitted by applicable law. Notices from Licensee to Kalloc will be effective (a) in the case of notices by email, one (1) day after sending to (and receipt by Kalloc at) info.hk@Kalloc.com, or (b) in the case of notices by mail or delivery service, when received by Kalloc at Kalloc Studios Asia Limited., unit 803, IC Development Centre, 6 Science Park West Avenue, Hong Kong Science Park, Shatin, N.T., Hong Kong. If Licensee has a Subscription, either party may also provide notice as set forth in the Subscription Program Terms.

12.2 Governing Law, Forum and Jurisdiction. The validity, construction, interpretation and legal effect of

this Agreement shall be governed by the laws and judicial decisions of the State of California and the U.S. without giving effect to principles of conflicts of law. Kalloc and Licensee expressly agree that any action at law or in equity arising out of or relating to this Agreement shall be filed only in the courts of the State of California for the County of San Diego, or the United States District Court for the Southern District of California. The parties hereby consent and submit to the personal jurisdiction of such courts for the purposes of litigating any such action.

12.3 No Assignment; Insolvency. Licensee may not assign this Agreement or any rights hereunder (whether by purchase of stock or assets, merger, change of control, operation of law, or otherwise) without Kalloc's prior written consent, which may be withheld in Kalloc's sole and absolute discretion, and any unauthorized purported assignment by Licensee will be void. In the context of any bankruptcy or similar proceeding, this Agreement is and will be treated as an executory contract of the type described by Section 365(c)(1) of Title 11 of the United States Code and may not be assigned without Kalloc's prior written consent, which may be withheld in Kalloc's sole and absolute discretion. Any assignment (regardless of how or on what basis the assignment may occur) will be conditioned on compliance with the following: at least thirty (30) days before assigning or agreeing to any assignment of rights under this Agreement (including transferring any copies of or right to use the Software), (a) Licensee must provide written notice to Kalloc, Uninstall all copies of the Software, and (without limitation of the generality of Section 9.7 (Audits)) allow Kalloc or its designee to inspect the records, systems and facilities of (or operated for) Licensee and its subsidiaries and affiliates to verify (by any means available to Kalloc, whether remotely or on premises) that all copies of the Software have been Uninstalled (b) the proposed assignee must agree to comply (and Licensee must ensure that the assignee will comply) with all of the obligations of this Agreement with respect to such Software, which agreement must provide that Kalloc is a third-party beneficiary of the assignee's agreement, and the assignee must provide a copy of the agreement to Kalloc, and (c) Licensee and proposed assignee must comply with all other transfer procedures identified by Kalloc.

12.4 No Third-Party Beneficiaries. No person not a party to this Agreement shall have or acquire any rights by reason of this Agreement nor shall any party hereto have any obligation or liability whatsoever to any such person by reason of this Agreement, except as otherwise expressly provided for herein.

12.5 Kalloc Subsidiaries and Affiliates. Licensee acknowledges and agrees that Kalloc may arrange to have its subsidiaries and affiliates engage in activities in connection with this Agreement, including, without limitation, delivering Kalloc Materials and providing Subscriptions and Services, provided that Kalloc (and not such subsidiaries and affiliates) will remain subject to the obligations of Kalloc under this Agreement. Licensee also agrees that Kalloc's subsidiaries and affiliates may enforce (including taking actions for breach of) this Agreement.

12.6 Exceptions to Prohibitions; Severability.

12.6.1 The prohibitions contained in this Agreement will not apply where and to the extent applicable law does not allow such prohibitions to be enforced. Licensee may have other rights under the laws of the state or country within the Territory where the Licensed Materials are acquired, and this Agreement does not change Licensee's rights under the laws of such state or country if and to the extent the laws of such state or country do not permit this Agreement to do so. Licensee will bear the burden of proof to demonstrate that applicable law does not allow (i) the enforcement of such prohibitions; or (ii) this Agreement to change particular rights in a state or country (and that Licensee has not exceeded the bounds of the unenforceable prohibitions and unchangeable rights).

12.6.2 If and to the extent any provision of this Agreement is held illegal, invalid, or unenforceable in whole or in part under applicable law, such provision or such portion thereof will be ineffective as to the jurisdiction in which it is illegal, invalid, or unenforceable to the extent of its illegality, invalidity, or unenforceability and will be deemed modified to the extent necessary to conform to applicable law so as to give the maximum effect to the intent of the parties. The illegality, invalidity, or unenforceability of such provision in that jurisdiction will not in any way affect the legality, validity, or enforceability of such provision or any other provision of this

Agreement in any other jurisdiction.

12.7 No Waiver. No term or provision of this Agreement will be considered waived, and no breach excused, unless such waiver is in writing signed on behalf of the party against which the waiver is asserted. No waiver (whether express or implied) will constitute consent to, waiver of, or excuse of any other, different, or subsequent breach.

12.8 Cumulative Remedies. Except as may be specifically set forth in this Agreement with respect to certain matters, the rights and remedies of either party as set forth in this Agreement are not exclusive and are in addition to any other rights and remedies provided under this Agreement or now or hereafter provided by law.

12.9 Audits. Licensee agrees that Kalloc has the right to require an audit (electronic or otherwise) of the Kalloc Materials and the Installation thereof and Access thereto. As part of any such audit, Kalloc or its authorized representative will have the right, on fifteen (15) days' prior notice to Licensee, to inspect Licensee's records, systems and facilities, including machine IDs, serial numbers and related information, to verify that the use of any and all Kalloc Materials is in conformance with this Agreement. Licensee will provide full cooperation to enable any such audit. If Kalloc determines that Licensee's use is not in conformity with the Agreement, Licensee will obtain immediately and pay for valid license(s) to bring Licensee's use into compliance with this Agreement and other applicable terms and pay the reasonable costs of the audit. In addition to such payment rights, Kalloc reserves the right to seek any other remedies available at law or in equity, whether under this Agreement or otherwise.

12.10 Language. The English language version of this Agreement is legally binding in case of any inconsistencies between the English version and any translations. If Licensee purchased the license for the Licensed Materials in Canada, Licensee agrees to the following: The parties hereto confirm that it is their wish that this Agreement, as well as other documents relating hereto, including notices, have been and shall be written in the English language only.

12.11 Construction. Ambiguities in this Agreement will not be construed against the drafter.

12.12 Force Majeure. Kalloc will not be liable for any loss, damage or penalty resulting from delays or failures in performance resulting from causes beyond Kalloc's reasonable control, including, but not limited to, acts of God or public enemy, the acts or failure to act of any governmental authority, acts of civil or military authority, labor disputes, supplier delays, fires, wars, embargoes, epidemics, floods, unusually severe weather, or shortage or absence of power (including primary power and failure of backup systems).

12.13 Export Control. Licensee acknowledges and agrees that the Kalloc Materials and Services (including any data submitted by Licensee in connection with a Service and any Licensee-specific output generated by a Service) are subject to compliance with United States and other applicable country export control and trade sanctions laws, rules and regulations, including, without limitation the regulations promulgated by the U.S. Department of Commerce and the U.S. Department of the Treasury (collectively, "Export Control Laws"). Licensee represents, warrants and covenants that neither Licensee nor Licensee's Personnel (i) are a citizen or resident of, or located within, a nation that is subject to U.S. trade sanctions or other significant trade restrictions (including, without limitation, Cuba, Iran, Sudan, Syria and North Korea), (ii) are identified on any of the U.S. government restricted party lists (including, without limitation, the U.S. Treasury Department's List of Specially Designated Nationals and Blocked Persons, the U.S. Department of Commerce's Denied Party List, Entity List and Unverified List and the U.S. Department of State's proliferation-related lists), (iii) will, unless otherwise authorized under the Export Control Laws, use Kalloc Materials or Services in any restricted end use, including, without limitation, design, analysis, simulation, estimation, testing, or other activities related to nuclear, chemical/biological weapons, rocket systems or unmanned air vehicles applications, or (iv) will use the Kalloc Materials or Services to disclose, transfer, download, export, or re-export, directly or indirectly, any Licensee-specific output generated by the Kalloc Materials or Services, Licensee content, third party content, or any other content or material to any country, entity, or party that is ineligible to receive such items under the Export Control Laws or other laws or regulations to which Licensee may be subject. Licensee understands that the requirements and restrictions of the Export Control Laws as applicable to Licensee may vary depending on the Kalloc Materials or

Services provided under this Agreement and may change over time. Licensee shall be solely responsible for (i) determining the precise controls applicable to the Kalloc Materials or Services, and (ii) complying with the Export Control Laws and monitoring any modifications to them.

12.14 Compliance With Other Laws. The Licensed Materials and related documentation are “Commercial Items”, as that term is defined at 48 C.F.R. §2.101, consisting of “Commercial Computer Software” and “Commercial Computer Software Documentation”, as such terms are used in 48 C.F.R. §12.212 or 48 C.F.R. §227.7202, as applicable. Consistent with 48 C.F.R. §12.212 or 48 C.F.R. §227.7202-1 through 227.7202-4, as applicable, the Commercial Computer Software and Commercial Computer Software Documentation are being licensed to U.S. Government end users (a) only as Commercial Items and (b) with only those rights as are granted to all other end users pursuant to the terms and conditions herein. Unpublished-rights reserved under the copyright laws of the United States.

12.15 Entire Agreement. This Agreement and any other terms referenced in this Agreement (such as the Subscription Program Terms and the Services Terms) constitute the entire agreement between the parties (and merges and supersedes any prior or contemporaneous agreements, discussions, communications, agreements, representations, warranties, advertising or understandings) with respect to the subject matter hereof, except that particular Kalloc Materials may be subject to additional or different terms associated with such Kalloc Materials. The parties acknowledge that, in entering into this Agreement, they are not relying on any agreements, discussions, communications, agreements, representations, warranties, advertising or understandings other than as expressly set forth in this Agreement. Licensee acknowledges and agrees that Kalloc may add to or change the Subscription Program Terms and the Services Terms from time to time, provided that Kalloc will provide written notice of the additions or changes (and may allow Licensee not to renew, may permit Licensee to terminate, and may offer other options with respect to Subscriptions or Services) before the additions or changes are effective as to Licensee. In the event of a conflict between this Agreement and any other terms of Kalloc (including, without limitation, or such additional or different terms), the other terms will apply. Terms stipulated by Licensee in any communication by Licensee which purport to vary this Agreement or such other terms will be void and of no effect unless agreed in a writing signed by an authorized representative of Kalloc. Any other modifications to this Agreement will also be invalid unless agreed to in a writing signed by an authorized representative of Kalloc.

Exhibit A

Definitions

1. “Access” or “Accessible” means, with respect to a computer program or other materials, (a) to use or execute the computer program or other materials or (b) to use or otherwise benefit from the features or functionality of the computer program or other materials.
2. “Agreement” means this License and Services Agreement, including all exhibits and schedules thereto, as the License and Services Agreement may be amended from time to time in accordance with the terms thereof.
3. “Authorized User” means any individual person who Installs or Accesses, or is authorized to Install or Access, any of the Licensed Materials.
4. “Kalloc” means Kalloc Studios Asia Limited, a Hong Kong corporation, locating at unit 803, IC Development Centre, 6 Science Park West Avenue, Hong Kong Science Park, N.T. Hong Kong.
5. “Kalloc License Manager” means the tool known as Kalloc License Manager or any future Kalloc tool for managing, monitoring or controlling Installation of or Access to Kalloc Materials.
6. “Kalloc Materials” means any materials distributed or made available by Kalloc, directly or indirectly,

including Software, Supplemental Materials, User Documentation and Excluded Materials (whether or not licensed to Licensee).

7. “Computer” means (i) a single electronic device, with one or more central processing units (CPUs), that accepts information in digital or similar form and manipulates the information for a specific result based on a sequence of instructions, or (ii) a software implementation of such a device (or so-called virtual machine).

8. “Customer Information Form” means a form completed by or on behalf of Licensee and submitted to Kalloc or a Reseller, directly or indirectly, in connection with Licensee’s order for a license of Kalloc Materials, Subscription or Services.

9. “Educational Purposes” means purposes directly related to learning, teaching, training, and research and development that are part of the instructional functions performed by a primary or secondary educational institution or any degree-granting or certificate-granting institution or any learning, teaching or training facilities, but does not include commercial, professional or for-profit instructional or other purposes.

10. “Evaluation Purposes” means purposes of evaluation and demonstration of the capabilities of the Software or Supplemental Materials but excludes competitive analysis and any commercial, professional, or other for-profit purposes.

11. “Excluded Materials” means any materials, including Software, Supplemental Materials or User Documentation (and including, without limitation, any computer programs, modules or components of a computer program, functionality or features of a computer program, explanatory printed or electronic materials, content or other materials, if any), that may be provided or become available to Licensee, by any means, or that are on any media delivered to Licensee, for which (a) Licensee does not have a License Identification, or (b) Licensee has not paid (and continued to pay) the applicable fees. Licensee acknowledges that Excluded Materials are included on media or via download for convenience of the licensing mechanism used by Kalloc, and inclusion does not in any way authorize, expressly or impliedly, a right to use such Excluded Materials.

12. “Faculty” means Personnel of a primary or secondary educational institution or any degree-granting or certificate-granting educational institution or any learning, teaching or training facilities and who upon request by Kalloc is able to provide proof of such status.

13. “Install” and “Installation” means, with respect to a computer program or other materials, to copy the program or other materials onto a hard disk or other storage medium.

14. “License Identification” means one or more designations by Kalloc that set forth the License Type (among other things) for Licensee’s license of the Licensed Materials. The License Identification may be (a) located (i) in the Licensed Materials (e.g., in an “About” box, license information dialog box, or text file of Software), (ii) on or with Kalloc packaging, or (iii) in a written confirmation or other notice issued to Licensee by Kalloc and transmitted via email, facsimile, physical delivery, or otherwise, or (b) obtained from Kalloc on request. For clarification, License Identification does not include a designation, confirmation, packaging or other document provided by a Reseller or other third party.

15. “License Type” means a type of license specified by Kalloc for Kalloc Materials, including the types set forth in Exhibit B. License Type includes the terms specified by Kalloc for each type of license, including the applicable terms set forth in Exhibit B. License Type is determined by Kalloc and may be specified in the applicable License Identification.

16. “Licensed Materials” means Software, Supplemental Materials and User Documentation (a) downloaded by clicking on the “I accept” button or other button or mechanism associated with this Agreement or by otherwise indicating assent to this Agreement, (b) delivered prepackaged with this Agreement, or (c) otherwise accompanied by this Agreement, provided that (i) in the case of Software, the Software is identified in an applicable License Identification, and (ii) Licensee has paid (and continues to pay) the applicable fees. Licensed Materials also includes Supplemental Materials and User Documentation that Kalloc provides or makes available to Licensee for use with Software licensed under this Agreement if there are no separate terms for such materials specified by Kalloc. Licensed Materials includes, without

limitation, any error corrections, patches, service packs, updates and upgrades to, and new versions of, the Licensed Materials that Kalloc provides or makes available to Licensee under Licensee's then-current license. Licensee acknowledges that availability of Upgrades and new versions may be subject to additional fees and the Subscription Program Terms. In addition, Licensed Materials includes, without limitation, any Previous Versions and other Kalloc Materials that Licensee receives or retains pursuant to the Subscription Program Terms, but only for so long as and to the extent expressly authorized by the Subscription Program Terms. Notwithstanding the foregoing (or any other provision of this Agreement), Licensed Materials in all cases excludes Excluded Materials.

17. "Licensee" means (a) the company or other legal entity on behalf of which Kalloc Materials are acquired, if the Kalloc Materials are acquired on behalf of such an entity (e.g., by an employee, independent contractor, or other authorized representative), or (b) if there is no such entity, the individual who accepts this Agreement (e.g., by selecting the "I accept" button or other button or mechanism associated with this Agreement or otherwise indicating assent to this Agreement, or by installing, downloading, accessing, or otherwise copying or using all or any portion of the Kalloc Materials). For clarification, "Licensee" refers only to a single, specifically identified legal entity or individual, and does not include any subsidiary or affiliate of any such legal entity or individual or any other related person.

18. "Licensee's Internal Business Needs" means, in reference to Licensed Materials, the use of such Licensed Materials (and the features and functionality thereof) by Licensee's own Personnel to meet the internal requirements of Licensee's business in the ordinary course of such business, provided that Internal Business Needs will in no event include providing or making available such Licensed Materials (or the features or functionality thereof) to any third party.

19. "Networked Basis" means a computing environment that includes a Computer acting as a file server which allows the Licensed Materials Installed on such Computer to be uploaded and Installed to, and operated, viewed or otherwise Accessed from, other Computers through a local area network connection or through a VPN connection subject to compliance with the VPN Requirements.

20. "Permitted Number" means a maximum number (e.g., number of authorized users, number of concurrent users, number of computers, sessions, etc.) applicable to a license of the Licensed Materials and to the License Type associated with such license. Such number is determined by Kalloc and may be specified in the applicable License Identification.

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