vertigo
systems gmbh

Software License Agreement for "living surface" V.1.8 (Single-User License)

concluded by and between

Vertigo Systems GmbH, represented by its managing directors Mr. Frank Hasenbrink, Mr. Uli Lechner, Mr. Oliver Bunsen, of Engelbertstraße 30, 50674 Cologne, Federal Republic of Germany,

(hereinbelow referred to as "Licensor"),

and the user of the **"living surface" Version 1.8 software**,

(hereinbelow referred to as "Licensee").

(i) **Please read this software license agreement carefully before starting up the "living surface" Version 1.8 software. By using this software you agree to the provisions of the following license agreement. If you do not agree with the license agreement, please refrain from purchasing this software.**

Preamble

Licensor has developed the **"living surface" Version 1.8** software package, a computer software designed for creating interactive playgrounds for advertising and entertainment purposes. A playground is generated with the aid of hardware - specifically a video projection system, camera, audio system and computer - in conjunction with the "living surface" Version 1.8 software package.

Licensor wishes to acquire a single-user license for this software subject to the terms and conditions of this software license agreement.

In view of the foregoing, the parties herewith agree as follows:

1 Object of the agreement

1.1 The objects of this agreement are the "living surface" Version 1.8 software package comprising one selectable standard effect and all additionally purchased effects. The individual programs forming part of the **"living surface" Version 1.8** software package, its specific features and functions, and the hardware and software utilization requirements for this software are described in the user documentation. The "living surface" Version 1.8 software package and the individual programs included therein are referred to as "Software" hereinbelow.

1.2 The Software shall be supplied to Licensee in object code on standard data media, along with the user documentation. A hardware dongle, which is indispensable for the contractual use of the Software, is likewise supplied. The user documentation will be made available in English only and includes instructions for use but not for programming. The software source code is not an object of this agreement.

1.3 Licensor shall install and operate the Software himself at his own cost and responsibility. Save where expressly and separately agreed between the parties, Licensor is under no obligation to provide any advice, adaptation, upgrade and/or training services.

2 Grant of rights

2.1 Subject to the condition precedent of full payment of the agreed remuneration, Licensor grants to Licensee the non-exclusive right to install and use the Software permanently on one computer in conjunction with a projector covering a surface area not exceeding 25 sq.m. This license is of the single user type. No video splitting is permitted. Where multiple projectors are operated on one or more computers or via a network comprising multiple computers, additional single-user licenses must be purchased.

2.2 The Software shall not be copied or duplicated by Licensee except to the extent required for the contractual use thereof. Required copying operations within the meaning of the foregoing sentence include the installation of the Software on the bulk

memory device of the hardware employed and the process of loading the Software into the main memory. In addition, Licensee may make the absolutely indispensable number of back-up copies. However, any such backup copies shall be used exclusively for archiving purposes. Licensee is not permitted to produce any further copies, it being understood that "further copies" within the meaning of the foregoing prohibition clause includes the act of printing out program code via a printer or any duplication of the user documentation or of essential parts thereof.

2.3 The program code made available as part of the licensed software shall in no way be re- translated into other code forms (decompilation), nor otherwise retraced to prior software development stages (reverse engineering), save to the extent to which this is necessary to obtain information not otherwise available for the purpose of accomplishing the interoperability of an independently created computer program. However, Licensee shall first request the required information from Licensor against an expense allowance.

2.4 This license may be sold to third parties on the condition of their compliance with all terms and conditions hereof, and subject to the transfer of all terms and conditions hereof to such third parties. However, Licensee may permanently transfer his licensed rights to the Software to a third party only once, subject to the conditions (a) that such transfer includes the entire Software including all components, original media, printed matter and the present license agreement; (b) that the complete Software and all copies produced thereof (refer to item 2.2.) are surrendered to the purchaser, or else deleted; and (c) that the recipient of the Software shall read and accept the provisions of the present license agreement. All components of the Software are made available as part of a package and shall not be separated from such package and distributed as independent programs.

Licensee shall neither rent nor lease out the Software, the associated hardware dongle, the user manual or other accompanying material to a third party, nor shall he otherwise transfer possession of any such items to a third party free of charge for an unlimited period of time. Any grant of sub-licenses hereunder is prohibited. Licensee shall not make the Software available to third parties if there are justified grounds for suspecting that any such third party will violate the contractual terms and conditions, specifically by making unauthorized copies. The foregoing shall also apply to Licensee's personnel.

2.5 The Software shall not be customized, except in compliance with the provisions of the user documentation. Licensee is authorized to use the Software for presentation purposes (e.g., advertising), provided that the content of such presentation does not infringe any third-party rights. Any presentation of materials violating the laws of the Federal Republic of Germany and/or of the country in which the system is installed, or of materials which are racist or demagogic in nature or otherwise unlawful, shall in any case be prohibited. The responsibility for any contents thus displayed or exhibited shall rest solely with Licensee.

2.6 The Software shall not be used in conjunction or connection with the operation of nuclear power plants, military installations, aircrafts, communication or flight surveillance systems, live- saving equipment or other machinery. In any such case, a software error might result in death, injury, or severe damage to property or to the environment.

2.7 Any further use ("excessive use") of the Software - i.e., its utilization beyond the above- described scope and specifically, beyond the limits set forth in para. 2.1 - shall require a further grant of rights to Licensee. Every single case of such excessive use shall constitute an infringement of the license agreement and must be reported to Licensor in writing without delay.

The parties shall endeavor to arrive at an amicable arrangement regarding any required expansion of the rights of use hereunder. For any excessive use of the Software not reported by Licensee, the latter shall pay a € 50,000 fine to Licensor per case of excessive use. Over and above such fine, Licensor shall be entitled to rescind the agreement as a whole. If Licensor avails himself of this option, Licensee shall discontinue all and any use of the Software forthwith, deleting all copies of such Software (or parts thereof) then in his possession, and shall return all hardware dongles to Licensor. Any further rights or remedies to which Licensor may be entitled, and particularly the right to compensation for loss or damage, shall remain unaffected by the above provisions.

2.8 In no case shall Licensee be entitled to remove, modify or deface any copyright notices, serial numbers, or other proprietary markings serving program identification purposes. The same shall apply to any act of suppressing the on-screen display of such notices and markings.

3 Defects of quality or title

3.1 A defect of quality shall be deemed to exist if and only if the Software fails to exhibit contractually agreed properties or turns out to be unfit for the contractually assumed purpose. The contractual properties of the Software are evident from the provisions hereof and from the definitions appearing in the user documentation. The existence of the dongle protection system forms part of the agreed product properties and does not, on principle, constitute a defect of the Software.

3.2 Where defects occur, they shall be documented by Licensee so as to be traceable and reproducible by Licensor, and shall be reported to the latter forthwith upon discovery. At Licensor's request, Licensee shall provide all information reasonably required by Licensor for the purposes of investigating and removing the defect. In addition, Licensee shall assist with the location of such defect.

3.3 For defects reported by Licensee in compliance with para. 3.2 above, Licensor shall provide supplementary performance as follows: Licensor has the right and – to the extent to which this does not involve an unreasonable expenditure of time, effort or cost – the duty to provide supplementary performance by re-working the product or supplying a new one. If Licensor does not succeed,

within an appropriate time period that must allow him to perform at least two re-working attempts, to remedy or bypass the defect so that Licensee can utilize the Software in the contractual manner, Licensee shall be entitled to claim further legal remedies for defects of quality.

3.4 Any time limits agreed upon for re-working the Software shall be reasonably consistent with those commonly stipulated under software license agreements and shall reflect the particular characteristics of software.

3.5 If Licensee has set Licensor a time limit for the remediation of defects and such time limit expires fruitlessly, Licensee shall thereupon declare in writing, without delay, how he intends to proceed with the agreement. If Licensee fails to make such declaration or does not communicate it forthwith as stated above, Licensor shall be entitled to assume that an unchanged continuation of the agreement is intended.

3.6 No claim for defects of quality will be accepted in the case of deviations impairing the Software's suitability for the contractually assumed purpose to a merely immaterial extent (immaterial deviations). However, deviations affecting stored data in such a manner that the effective or economically reasonable use of key parts of the Software is precluded or severely restricted shall not be deemed immaterial. For the avoidance of doubt, a mere reduction in program execution speed shall be considered an immaterial deviation.

3.7 If it emerges upon review of a Licensee's defect notice that a defect does not, in fact, exist or, where it exists, is not attributable to the Software, Licensor may charge an expense allowance equivalent to his standard hourly rates for any investigation work performed in connection with the defect notice, as well as for such other work as he may have carried out in the context of the unjustified defect notice. In addition, he may demand a reimbursement of any expenditures necessarily incurred.

3.8 No claim for defects of quality will be accepted if existing defects are attributable to non- observation of the operating conditions for the Software as specified in the user docu- mentation.

3.9 Licensor and/or his licensor(s) hold copyrights to the Software within the meaning of sections 69(a) et seq. of the German Copyright Act. A defect in title shall be deemed to exist if and only if the rights to program code, as required for contractual use, cannot be effectively granted and made available to Licensee.

3.10 In the event of third-party claims being asserted against Licensee for infringement of intellectual property rights to the program code of the Software, Licensee shall notify Licensor thereof in writing forthwith and shall surrender the defense against such claims to Licensor at the earliest possible date. In this context, Licensee shall provide Licensor, at no cost to the latter, with any support he can be reasonably expected to provide. In particular, Licensee shall supply Licensor (in writing, wherever possible) with all requisite information concerning the use and any potential modifications of the Software, and shall make any requisite documents available to Licensor.

3.11 To the extent to which third-party rights are infringed, Licensor may, at his sole choice and discretion, remedy such defect by

a) acquiring, from the lawful holder of such intellectual property right, a right of use inuring to the benefit of Licensee that is sufficient for the purposes of this agreement; or

b) modifying the Software constituting such intellectual property right infringement, ensuring that such modification will not affect the Software's functions, at least not to an extent unacceptable to Licensee; or

c) supplying a new program version which, when contractually used, will not infringe any third- party intellectual property rights to the program code of the Software.

3.12 Aside from the foregoing, the provisions of this section 3 shall apply mutatis mutandis in the case of defects of title.

3.13 No claims for defects of quality or title will be accepted to the extent to which Licensee effects modifications to the Software himself, or causes such modifications to be carried out by third parties, except if Licensee can prove that such modifications are not the cause of the defect and that the investigation and removal of defects by Licensor is not impaired thereby.

3.14 Claims for defects of quality or title will become time-barred twelve (12) months from the delivery of the Software. In the case of malicious intent or extension of warranties by Licensor, the statutory regulations regarding defects of quality or title shall remain unaffected.

4 Liability

4.1 Licensor shall be liable without limitation for any loss or damage resulting from willful intent or gross negligence, or associated with death, physical injury, or health impairment.

4.2 For simple negligence, Licensor shall be liable only if he is in default of performing a material contractual duty (cardinal obligation).

4.3 In the case contemplated in para. 4.2 above, Licensor shall not be liable for lack of economic success, loss of profit, indirect damage or loss, consequential loss attributable to defects, or third-party claims (except for claims for infringement of third-party intellectual property rights).

The amount of indemnification payable under any of the above paras. 4.2 and 4.3, and of any compensation for wasted expenditures, shall be limited to an indemnification for such loss or damage as would have been foreseeable or typical in agreements of this nature.

4.5 The responsibility for periodic back-ups of his data shall rest with Licensee. In the event of a data loss culpably caused by Licensor, the latter's liability shall therefore be limited, subject to the above provision, to the cost of duplicating and making back-ups of, or of restoring/recovering, such data as would have been lost even if appropriate back-ups of Licensee's data had been duly made.

4.6 The limitations of liability shall also apply, mutatis mutandis, for the benefit of Licensor's employees and agents.

4.7 Nothing contained herein shall be deemed to affect any liability of the Licensor for warranties extended, for infringement of third-party copyrights, or for claims arising under the German Product Liability Act.

5 Replacement dongle

5.1 In the event of a malfunction of the dongle supplied with the Software, Licensee may demand a replacement dongle from Licensor against return of the defective one. Within the defect warranty period (refer to para. 3.41), such replacement delivery will be made free of charge. Upon expiry of the defect warranty period, a lump-sum expense allowance of € 30.00 plus shipping charges shall be payable.

5.2 In the case of theft of the dongle or loss thereof for other reasons, Licensee shall not be entitled to a replacement under para. 5.1

6 Export

6.1 Licensee shall be liable for ensuring that any export of the Software will conducted in full compliance with all applicable export regulations of the country in which he maintains his registered office or domicile; of the country into which the Software is to be sold or otherwise transferred; of the Federal Republic of Germany; and of the United States of America.

6.2 In particular, the Software shall neither be exported or re-exported into any country on which the Federal Republic of Germany or the United States of America have imposed an embargo, nor shall possession thereof be transferred to a national or inhabitant of any such country. Furthermore, possession of the Software shall not be transferred to any person appearing on the US Treasury Department's List of Specially Designated Nationals or on the U.S. Department of Commerce's Denied Persons List or Denied Entity List.

7 Remuneration

7.1 Licensee shall pay to Licensor, in consideration of the latter's permission to use the Software and of the grant of the rights of use referred to in section 2, the remuneration specified inAppendix 1 hereto, augmented by sales tax at the then legal rate.

7.2 The remuneration becomes payable upon receipt of the invoice. Payment thereof shall be effected, without any deduction, within ten (10) days from the invoice date. In the case of delayed payment, Licensor shall charge default interest at the then legal rate.

8 Confidentiality

8.1 Each contracting party agrees to treat confidential information and documents of the respective other contracting party like a business secret, regardless of whether such information and documents must merely be inferred to be confidential from the nature and appearance thereof or has been explicitly designated as such by the other contracting party.

8.2 Licensee shall treat all software, codes, documentation and designs supplied by Licensor as the latter's business and trade secrets.

8.3 A data confidentiality obligation shall be imposed on Licensee's employees.

8.4 Licensor shall be entitled to include Licensee's name in a list of references. Any further reference to Licensee shall be co-ordinated with the latter beforehand.

9 General provisions

9.1 No agreement changing or amending the provisions hereof, or rendering the latter in more specific terms, and no special representations, warranties or covenants shall be valid unless made in writing. Where they are declared by Licensor's representatives or agents, they shall not be binding except with Licensor's written consent.

9.2 Licensee shall have no right to offset counterclaims except to the extent to which they are established and enforceable at law, or have been recognized or are uncontested by Licensor. Licensee shall not exercise any retaining right or lien except in respect of claims arising from this Agreement.

9.3 It is agreed between the parties that the law of the Federal Republic of Germany, to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG), shall apply with regard to all legal relations arising from the present Agreement.

9.4 The place of performance for Licensor's supplies and services, and the place of payment for Licensee, shall be Licensor's corporate domicile.

9.5 The courts at the place of Licensor's corporate domicile shall have exclusive jurisdiction of all legal disputes arising herefrom. However, Licensor reserves the right to sue any customer at the place of general jurisdiction. The foregoing shall also apply in the case of transactions across national boundaries.

9.6 If any provision hereof should be or become ineffective or void, the validity of the remaining provisions shall not be affected thereby. The parties shall have the duty, within the confines of what can be reasonably expected of them, to replace any such ineffective or void provision with a lawful and valid one, acting in good faith, it being understood that such new provisions shall come as close as possible to achieving the same economic result as the original ineffective or void one and must not materially alter the content of this Agreement.