

ONLINE SUBSCRIPTION AND SERVICES AGREEMENT

Last Update: May 24, 2018

HOLOGRUF, INC. (“**Hologruf**” or “**we**”) provide subscriptions to our cloud-based, content management platform used to remotely manage Hologruf devices and the 3D hologram content and visuals displayed thereby (including all new versions, updates, revisions, improvements and modifications of this platform, and including all desktop, mobile or other applications for use with such platform, the “**Software**”) as well as the Services described below, subject to the terms and conditions of this agreement (this “**Agreement**”).

1. Acceptance. By executing a Service Order with Hologruf or an authorized Hologruf distributor, or by accessing the Software and clicking “accept” when this option is made available to you, you also accept the terms of this Agreement. You should read this Agreement carefully for the terms and conditions that govern your use of the Software and your receipt of the Services. If you are an individual, you represent and warrant to us that you have legal capacity to form a binding contract with us in the jurisdiction where you reside, and if you are an entity or organization, the individual executing the Service Order on your behalf represents and warrants to us that he or she is fully and duly authorized to agree to be bound by this Agreement on your behalf.

2. Our Services.

a. Services. During the Term, we will use commercially reasonable efforts to provide to you and your Authorized Users the following services (the “**Services**”): (i) the hosting, management and operation of the Software for remote electronic access and use by you and your Authorized Users; and (ii) the Support Services described in Section 4.

b. Changes. We may make any changes to the Software that we deem necessary or useful to improve the Software or for any other reason. Additionally, we may revise and update this Agreement from time to time in our sole discretion. Changes to this Agreement are effective immediately when we post them, but are not retroactive. Your continued use of the Software following the posting of a revised Agreement means that you accept and agree to the changes. You must check this page frequently so that you are aware of any changes, and immediately discontinue access or use of the Software if you do not want to agree to the revised Agreement.

c. Subcontractors. We may, in our discretion, engage subcontractors to perform Services under this Agreement, but we will remain liable for any act or omission by such subcontractors that would be a breach or violation of this Agreement.

d. Suspension of Services. We may suspend or deny your or any Authorized User’s access to or use of all or any part of the Services or Software, without any liability to you or others, if (i) we are required to do so by law or court order, (ii) you or any Authorized User have accessed or used our Services or Software beyond the scope of the rights granted to you under this Agreement, (iii) you or any Authorized User are or have been involved in any fraudulent, misleading or unlawful activities relating to or in connection with the Software or any of the

Services, (iv) you or any Authorized User have failed to comply with the limitations and restrictions described in Section 3.b, or (v) you or any Authorized User have otherwise failed to comply with this Agreement and have failed to cure such breach within 10 days after we provide written notice to you. Our remedies in this Section are in addition to, and not in lieu of, our termination rights in Section 8.

3. Right to Access and Restrictions.

a. Authorization. Subject to your payment of the applicable fees listed on the Service Order, and so long as you and your Authorized Users otherwise comply with this Agreement, we hereby authorize you to remotely access and use, during the Term, the Services and the Software (including any provided Third-Party Materials), by and through your Authorized Users, in accordance with the documentation we provide with the Software (the “**Documentation**”). If we choose to provide the Software via desktop, mobile or other applications for download, then, subject to your payment of the applicable fees listed on the Service Order, and so long as you and your Authorized Users otherwise comply with this Agreement, your Authorized Users may download a single copy of such applications to his or her computer or mobile device and access and use the Software through such applications, during the Term, in object code form only, in accordance with its Documentation. The rights, licenses and authorizations provided in this Section are non-exclusive and non-transferable.

b. Limitations and Restrictions. You must not, and you must not permit any other person or entity to, access or use the Services or the Software except as we’ve specifically allowed in this Agreement and, in the case of any third-party materials (including open source components) we provide to you (“**Third-Party Materials**”), as allowed in the applicable third-party license agreement. You and your Authorized Users must not do any of the following:

i. exceed the maximum number of Authorized Users to which you are entitled as specified in your Service Order, if any, including by sharing any access credentials or login information with anyone other than the permitted number of Authorized Users;

ii. copy, modify or create derivative works or improvements of our Software;

iii. make our Software or Services available (e.g., sublicense, distribute or transfer) to any other person or entity, including through any time-sharing, service bureau or software as a service arrangement;

iv. reverse engineer, disassemble, decompile, decode, adapt or otherwise attempt to derive or gain access to the source code of our Software;

v. input, upload, transmit or otherwise provide to or through the Software or Services any information or materials that are unlawful or injurious, or contain, transmit or activate any Harmful Code;

vi. damage, destroy, disrupt, disable, impair, interfere with or otherwise impede or harm in any manner our Software or Services or our ability to provide services to any third party;

vii. access or use our Software or Services in any way that infringes, misappropriates or otherwise violates any intellectual property right, privacy right or other right of any third party, or that violates any applicable law or regulation; or

viii. access or use our Software or Services for the purposes of developing or providing a competing software service or product.

4. Support Services. Your subscription comes with our standard support (“**Support Services**”), which includes reasonable telephone and e-mail support during our regular business hours to provide technical and operational assistance for the use of the Software, including assistance with initial configuration of the Software, and to attempt to correct any reproducible failure of the Software to perform in accordance with its Documentation. You must provide all information and assistance that we reasonably request in connection with providing such Support Services. For the avoidance of doubt, unless otherwise expressly agreed to in a Service Order, our Support Services do not include: (a) after-hours support, (b) support for software or hardware that is not ours, (c) on-site training or assistance, or (d) performance of any professional, customization, consulting or advisory services.

5. Confidentiality. During the Term and for a period of five years thereafter, each receiving party (each, a “**Recipient**”) will hold in strict confidence any proprietary or confidential information (collectively, “**Confidential Information**”) of the other party (the “**Discloser**”) and will not disclose Discloser’s Confidential Information to any third party nor use the Discloser’s Confidential Information for any purpose except for carrying out its obligations or exercising its rights under this Agreement. To be clear, our Software and all information related to our Software are our Confidential Information, and Your Content is your Confidential Information. These restrictions will not restrict the use or disclosure of information disclosed by one party to the other that (i) is or becomes publicly known other than as a result of any act or omission by the Recipient, (ii) is lawfully received by the Recipient from a third party not in a confidential relationship with the Discloser, (iii) was already rightfully known by the Recipient prior to receipt thereof from the Discloser, or (iv) after notice and an opportunity to object, is required by law to be disclosed. Notwithstanding the foregoing, each party’s confidentiality obligations will survive with respect to the other party’s Confidential Information that is a trade secret for so long as such Confidential Information continues to be a trade secret under applicable law.

6. Fees and Payment.

a. Fees. You will pay to us or to an authorized Hologruf distributor the fees and charges described in your Service Order (the “**Fees**”) in accordance with your Service Order and this Section. All Fees are non-cancelable and once paid are non-refundable.

b. Taxes. Our Fees do not include taxes and similar assessments. We will pass along to you the cost of all sales and excise (and other similar) taxes, duties and charges of any

kind imposed by a governmental authority on amounts payable under this Agreement, other than taxes imposed on our income.

c. Payment. You will make all payments in US dollars. You will, upon request, establish and maintain valid and updated credit card information or a valid ACH auto debit account (in each case, the “Automatic Payment Method”). Upon establishment of an Automatic Payment Method, we (or, if applicable, the authorized Hologruf distributor that is party to your Service Order) may charge the Fees using that Automatic Payment Method. If instead we invoice you (or the authorized Hologruf distributor that is party to your Service Order invoices you) for the applicable Fees, invoiced amounts are due net 30 days from the invoice date. You are responsible for providing complete and accurate billing and contact information and notifying us (or, if applicable, the authorized Hologruf distributor that is party to your Service Order) of any changes to that information. If you fail to make any payment when due then, in addition to all other remedies that may be available to us: (a) we (or, if applicable, the authorized Hologruf distributor that is party to your Service Order) may charge interest on the past due amount at the rate of 1.5% per month, calculated daily and compounded monthly, or, if lower, the highest rate permitted under applicable law, and (b) you will reimburse us (or, if applicable, the authorized Hologruf distributor that is party to your Service Order) for all reasonable costs incurred in collecting any late payment of amounts due or related interest, including attorneys’ fees, court costs and collection agency fees.

7. Intellectual Property Rights.

a. Software and Services. We (or the respective rights holders in any Third-Party Materials) own all right, title and interest in and to the Services and our Software, including all related intellectual property rights. We are not granting you any right, license or authorization with respect to any of the Services, our Software, or any Third-Party Materials except as we’ve specifically provided in Section 3.a above (and subject to the limitations and restrictions in Section 3.b above). We and the respective rights holders in any Third-Party materials reserve all other rights in and to the Services, our Software, and any Third-Party Materials.

b. Your Content. As between you and us, you are and will remain the sole and exclusive owner of all right, title and interest in and to all of Your Content, including all intellectual property rights relating to Your Content, subject to the rights you grant to us in Section 7.c.

c. Right to Use Your Content. During the Term, you hereby grant all such rights and permissions in or relating to Your Content to us and our subcontractors as are necessary to perform the Services and provide our Software to you.

8. Term and Termination.

a. Term. The initial term of this Agreement is as indicated in your Service Order (the “**Initial Term**”). After the Initial Term, this Agreement will automatically renew for successive periods (if any) as indicated in your Service Order (each a “**Renewal Term**” and, together with the Initial Term, the “**Term**”) unless one of us (i) sends written notice of an intent

to cancel at least 30 days prior to the end of the then-current Initial Term or Renewal Term, or (ii) terminates this Agreement as provided below.

b. Termination. In addition to any other termination rights described in this Agreement, this Agreement may be terminated at any time:

i. By us, effective when we provide written notice to you, if you fail to pay any Fees when due and if you do not cure this failure within 10 days after our written notice regarding your late payment;

ii. By either party, effective when that party provides written notice to the other, if the other party materially breaches this Agreement and such breach (A) is incapable of cure, or (B) being capable of cure, remains uncured 15 days after the non-breaching party provides the breaching party with written notice regarding such breach; and

iii. By either party, effective immediately, if the other: (A) is dissolved or liquidated or takes any corporate action for such purpose; (B) becomes insolvent or is generally unable to pay its debts as they become due; (C) becomes the subject of any voluntary or involuntary bankruptcy proceeding under any domestic or foreign bankruptcy or insolvency law; (D) makes or seeks to make a general assignment for the benefit of its creditors; or (E) applies for, or consents to, the appointment of a trustee, receiver or custodian for a substantial part of its property.

c. Effect of Termination. If this Agreement is terminated or expires, then: (i) all rights, licenses and authorizations granted by one party to the other will immediately terminate, (ii) we may disable your and your Authorized Users' access to the Software, and (iii) we each will cease all use of the other party's Confidential Information and promptly destroy or (at such other party's request and, in the case that you are the requesting party, upon your payment to us of a mutually agreeable fee) return all of the other party's Confidential Information, except that each party may retain Confidential Information in its backups, archives and disaster recovery systems until such Confidential Information is deleted in the ordinary course (so long as it remains subject to all confidentiality and other applicable requirements of this Agreement).

d. Surviving Terms. Sections 3.b (Limitations and Restrictions), 5 (Confidentiality), 7 (Intellectual Property Rights), 8.c (Effect of Termination), 9.a (Your Assurances), 9.f (Disclaimer of Warranties), 10 (Indemnification), 11 (Limitations of Liability), 12 (Miscellaneous), 13 (Definitions) and this Section will survive any expiration or termination of this Agreement.

9. Assurances; Disclaimers.

a. By You. You represent and warrant to us that you own, or have all necessary and valid rights in and to, Your Content and that your possession and use of any of Your Content with the Software and Hologruf devices does not and will not infringe, misappropriate or otherwise violate any intellectual property right or privacy right of any third party. You will indemnify, defend and hold us and our subcontractors and personnel harmless from any third

party claim arising from allegations that you or your Authorized Users have breached any representation or warranty in this Section.

b. By Us Regarding Our Services. We warrant that we will perform all Services in a timely, professional and workmanlike manner and using adequate resources and appropriately qualified personnel.

c. By Us Regarding Our Software. We warrant that the Software will at all times during the Term substantially conform in all material respects to the specifications set forth in your Service Order and its Documentation.

d. Warranty Limitations. The warranties in Section 9.c above do not apply to any non-conformance resulting from: (i) your use of the Software in a manner inconsistent with this Agreement or its Documentation, (ii) the operation of or access to your or a third party's system or network, or (iii) any Third-Party Materials.

e. Remedies. If we breach the warranty in Section 9.b above, we will, upon your written request, and at our sole cost and expense, re-perform the affected Services until such Services comply with such warranty. If we breach the warranty in Section 9.c above, we will, upon your written request, and at our sole option and sole cost and expense, either (i) modify, fix or correct the Software to remedy such non-conformity, or (ii) replace the non-conforming portion of the Software, in each case without causing a material loss of features or functionality of the Software. If we do not cure a breach as provided in the two preceding sentences within 30 days after receiving your request, then you may terminate this Agreement effective upon further written notice to us. **THE REMEDIES DESCRIBED IN THIS SECTION 9.e ARE YOUR SOLE REMEDIES AND OUR ENTIRE OBLIGATION AND LIABILITY TO YOU OR ANY OTHER PERSON OR ENTITY FOR ANY BREACH OF THE WARRANTIES PROVIDED IN SECTION 9.b OR 9.c.**

f. Disclaimer of Warranties. **EXCEPT FOR THE EXPRESS LIMITED WARRANTIES IN SECTION 9.b AND 9.c, ALL SERVICES AND OUR SOFTWARE ARE PROVIDED "AS IS" AND WE HEREBY DISCLAIM ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHER, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. WITHOUT LIMITING THE FOREGOING, WE MAKE NO WARRANTY OF ANY KIND THAT THE SERVICES OR SOFTWARE, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET YOUR OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE OR ERROR FREE. ALL THIRD-PARTY MATERIALS ARE PROVIDED "AS IS" AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY THIRD PARTY MATERIALS IS STRICTLY BETWEEN CUSTOMER AND THE THIRD-PARTY OWNER OR DISTRIBUTOR OF THE THIRD-PARTY MATERIALS.**

10. Indemnification.

a. By Us. We will defend, indemnify and hold you harmless from any loss, damage or expense (including reasonable attorneys' fees) finally awarded by a court of competent jurisdiction, or paid in accordance with a settlement agreement signed by us (subject to your advance written consent and approval, not to be unreasonably withheld, conditioned or delayed), in connection with any third-party claim alleging that your use of the Software as permitted hereunder infringes upon any U.S. patent, copyright or trademark of such third party, or misappropriates the trade secret of such third party (each, an "**Infringement Claim**"). Notwithstanding the foregoing, we will have no liability or obligation to the extent any Infringement Claim is based upon or arises out of: (i) the use of the Software, as applicable, in combination with any software or hardware not expressly authorized by us, (ii) any modifications or configurations made to the Software, as applicable, by anyone other than us without our prior written consent, (iii) any design specifications requested by you, (iv) any use by you of the Software that is outside the scope of the licenses granted herein, and/or (v) any matter for which you are obligated to indemnify us under Section 9.a above.

b. Mitigation. If the Software is, or in our opinion is likely to be, the subject of an Infringement Claim, we may, at our option and our sole cost and expense: (i) obtain the right for you to continue to use the Software as contemplated by this Agreement, (ii) modify or replace the Software to make the Software (as so modified or replaced) non-infringing, without causing a material loss of features or functionality, or (iii) if the remedies in clauses (i) and (ii) are not feasible within commercially reasonable standards, then we may terminate this Agreement upon written notice and without any liability to you.

c. Procedures. You must immediately notify us of any Infringement Claim, allow us to control the defense and settlement of the claim, and provide reasonable cooperation to us in the defense of the claim.

d. Sole Remedy. THIS SECTION 10 SETS FORTH YOUR SOLE REMEDIES AND OUR SOLE LIABILITY AND OBLIGATION TO YOU OR ANY OTHER PERSON OR ENTITY FOR ANY ACTUAL, THREATENED OR ALLEGED CLAIMS THAT THIS AGREEMENT OR ANY SUBJECT MATTER HEREOF (INCLUDING THE SERVICES AND SOFTWARE) INFRINGES, MISAPPROPRIATES OR OTHERWISE VIOLATES ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

11. Limitations of Liability. IN NO EVENT SHALL WE BE LIABLE TO YOU OR TO YOUR SUBSIDIARIES OR AFFILIATES (OR THEIR RESPECTIVE OFFICERS, EMPLOYEES, MEMBERS, MANAGERS, AGENTS AND ASSIGNS) OR TO ANY OTHER THIRD PARTY, AS APPLICABLE, FOR ANY AMOUNTS IN EXCESS OF THE AMOUNT OF FEES PAID BY YOU FOR THE SOFTWARE OR ANY HOLOGRUF DEVICE DURING THE TWELVE MONTH PERIOD IMMEDIATELY PRECEDING THE EVENTS GIVING RISE TO SUCH LIABILITY. UNDER NO CIRCUMSTANCES SHALL WE HAVE ANY LIABILITY WITH RESPECT TO OUR OBLIGATIONS UNDER THIS AGREEMENT OR OTHERWISE FOR LOSS OF PROFITS OR FOR CONSEQUENTIAL, SPECIAL, INDIRECT, EXEMPLARY, INCIDENTAL OR PUNITIVE DAMAGES, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OCCURRING, AND WHETHER

SUCH LIABILITY IS BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, PRODUCTS LIABILITY OR OTHERWISE.

12. Miscellaneous. (a) *Entire Agreement.* This Agreement and the Service Order constitute the entire agreement, and supersede all prior negotiations, understandings or agreements (oral or written), between the parties regarding the subject matter of this Agreement (and all past dealing or industry custom). (b) *Severability and Waiver.* Any delay or failure of either party to enforce its rights, powers or privileges under this Agreement, at any time or for any period, will not be construed as a waiver of such rights, powers and privileges, and the exercise of one right or remedy will not be deemed a waiver of any other right or remedy. If any provision of this Agreement is determined to be illegal or unenforceable, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable. (c) *Governing Law and Venue.* This Agreement will be deemed to have been made in, and will be governed by and construed in accordance with the laws of, the State of North Carolina, without regard to its conflicts of law provisions. The sole jurisdiction and venue for actions related to this Agreement will be the state or federal courts located in Wake County, North Carolina, and both parties consent to the exclusive jurisdiction of such courts with respect to any such action. (d) *Notices.* All notices under this Agreement will be in writing and may be delivered by electronic mail in portable document format (.pdf), certified or registered mail, overnight courier, or personal delivery, in each case to the address or e-mail address specified in the Service Order. (e) *Assignment.* You may not assign, delegate or otherwise transfer your rights or obligations under this Agreement without our prior written consent. We may assign, delegate or otherwise transfer our rights or obligations under this Agreement without restriction, including to our affiliates or to an entity that acquires all or substantially all of our business or assets to which this Agreement pertains, whether by merger, reorganization, acquisition, sale or otherwise. This Agreement will be binding upon, and inure to the benefit of, the successors and permitted assigns of the parties. (f) *No Third Party Beneficiaries.* This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or will confer on any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement. (g) *Relationship of the Parties.* The relationship between the parties is that of independent contractors. Nothing contained in this Agreement will be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party will have authority to contract for or bind the other party in any manner whatsoever. (h) *Force Majeure.* Neither party will be liable for any delays or non-performance of its obligations (excluding the obligation to pay fees due hereunder) arising out of causes not within such party's reasonable control, including, without limitation, actions or decrees of governmental authorities, criminal acts of third parties, earthquakes, flood, and other natural disasters, war, terrorism, acts of God, or fire (a "**Force Majeure Event**"). (i) *Equitable Remedies.* Each party acknowledges and agrees that a breach or threatened breach by such party of any of its obligations under Section 3.b (Limitations and Restrictions) or Section 5 (Confidentiality) of this Agreement would cause the other party irreparable harm for which monetary damages would not be an adequate remedy and that, in the event of such breach or threatened breach, the other party will be entitled to equitable relief, including in a restraining order, an injunction, specific performance and any other relief that may be available from any court of competent jurisdiction,

without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity or otherwise.

13. Other Definitions. The terms “**you**” and “**your**” as used throughout this Agreement refers to the party (other than Hologruf or its authorized distributor) that has entered into a Service Order to obtain, or has otherwise accessed and used, a subscription to our Software and Services. In addition, capitalized terms that are used in this Agreement have the meanings described below:

“**Authorized User**” means each of your employees that has been granted valid access credentials for the Software.

“**Harmful Code**” means any software, hardware or other technology, device or means, including any virus, worm, malware or other malicious computer code, the purpose or effect of which is to permit unauthorized access to, or to destroy, disrupt, disable, distort, or otherwise harm or impede in any manner any (a) computer, software, firmware, hardware, system or network or (b) any application or function of any of the foregoing or the security, integrity, confidentiality or use of any data processed thereby.

“**Service Order**” means the written order form, proposal, service order, customer agreement, lease agreement or similar document executed by you and us (or the authorized Hologruf distributor), which is incorporated into this Agreement for all purposes.

“**Your Content**” means information, data, content and other materials that are supplied by you for use with the Software.