

License Agreement

2024

These license terms of use (as amended from time to time, the "**Terms**") together with any supplements, rules and regulations, such as the [Privacy Policy](#), are entered into between you (the "**Licensee**") and spherene AG, Seehofstrasse 16, 8008 Zurich, Switzerland ("**spherene**").

1. DEFINITIONS

"**API**" means spherene's Application Programming Interface.

"**Client**" means a plugin, standalone app, stand-alone software or built-in or remotely deployed functionality, add-on, other software (scanner, mobile phone input etc.), script or similar, directly submitted or via third-party software or similar which the Licensee downloads on the Licensee's computer that enables the Licensee to use spherene's products and/or services.

"**EDU Licensee**" shall mean a non-commercial license granted to accredited educational institutions and students exclusively for educational and research purposes. This license prohibits any commercial use, including activities aimed at generating profit. Permitted uses shall include classroom teaching, academic research, and the production of academic papers and presentations. Licensees shall be restricted from sublicensing, selling, renting, distributing, modifying, reverse engineering, or disassembling the software. The software shall not be utilized for administrative purposes. Compliance with all applicable laws is mandatory, and any violation of these terms may result in the termination of the license.

"**Field of Use**" shall expressly exclude the following: weapons or parts thereof, other dangerous objects, illegal objects, children's toys or parts of the objects mentioned before or any other object for unlawful purpose or any illegal activities and as further described in Section 10.

"**Intellectual Property**" shall mean all ideas, concepts, protectable ideas, discoveries, inventions, improvements, developments, procedures, processes, formulations, know-how, formulae, moral rights, trademarks, trade secrets, service marks, trade dress, designs, industrial designs,

industrial property, logos, packaging, confidential information, technical information, techniques, works of authorship, privacy rights or right of publicity, drawings, models, manuals and systems, whether or not patentable or copyrightable or otherwise registerable, and all rights and registrations derived or derivable therefrom including, without limitation, any patents and patent applications incorporating, disclosing and/or claiming any of the above.

“**Input File**” shall mean the input which is provided by the Licensee which contains 3D model information that exist(s) inside of Client/CAD and other software (scanner, mobile phone input etc.) as well as additional information created within or imported into the Client/CAD. The source of this/these 3D model(s) may be (i) a file downloadable from the internet and imported into Client/CAD; (ii) Geometry created in Client/CAD or imported from another Client/CAD in which it was created; or (iii) Geometry that has been created using spherene’s services.

“**Metamaterial**” shall mean the result that is generated by spherene’s Service (as defined in Section 2.1) and which is covered by spherene IP and Patents.

“**Software**” shall mean the software used by spherene to process each Input File passed through the API in order to produce Metamaterial.

“**Patents**” means the patent application WO 2020/229692 and WO 2020/229883A1 (PCT/IB2019/054076 and PCT/EP2020/063727) and any subsequent applications and/or granted patents in any jurisdiction as well as any further applications of spherene.

“**Products**” means any product or part thereof which was made using Metamaterial.

“**Territory**” means worldwide.

“**spherene IP**” means all Intellectual Property, including the Patents, in and to the API, Client, Software and Metamaterial.

2. SERVICES

2.1 spherene offers to apply its Adaptive Density Minimal Surface (“**ADMS**”) technology (www.spherene.ch) to the Input File and to provide the Metamaterial to the Licensee (the “**Service**”).

2.2 Licensee’s access to the Service either via spherene’s website (<http://spherene.ch>), API or Client (together, the “**Access Possibilities**”) is subject to the Licensee’s acceptance of and compliance with these Terms.

2.3 To be able to use the Service via the Access Possibilities, the Licensee is required to open a user account with spherene (the “**Account**”), for which a valid e-mail address and first and last name is required. The Licensee acknowledges and accepts that the Licensee’s e-mail address is subject to verification by spherene.

- 2.4 By opening the Account, the Licensee agrees to accept and be bound by the current version of these Terms. The collection and use of the data which the Licensee provides are subject to spherene's [Privacy Policy](#). spherene reserves the right to amend the provisions of these Terms at any time and at its sole discretion. Such changes will be published by spherene on our digital offerings without delay. Amendments or additions to these Terms shall become part of the Terms if the Licensee does not object to the amended terms within 30 days of becoming aware of them.
- 2.5 After the Licensee opened an Account, the Licensee receives an API key which may solely be used by the Licensee and only for the Access Possibilities.
- 2.6 Further, the Licensee receives a purchase key, which may be used to link the Account with a reseller's purchase data without revealing the API key.

3. LICENSE

- 3.1 spherene grants to the Licensee, who accepts, a non-exclusive, non-transferable, non-assignable, license subject to a license fee, as per Section 8, to use the Metamaterial to produce, make, have made, commercially exploit (except for EDU Licensee's which shall not have the right to commercially exploit), sell, have sold the Products within the Field of Use in the Territory on the terms and conditions set out in these Terms (the "**License**"). For sake of clarity, the Licensee is not granted the right to use the Metamaterial for any other purpose, and, except for the limited license set forth herein, nothing in these Terms shall be deemed to grant the Licensee a right, title or interest in the Metamaterial and/or the spherene IP.
- 3.2 The Licensee is not entitled to further grant sublicenses.
- 3.3 The Licensee grants spherene a limited, non-exclusive, irrevocable, non-sublicensable (except to affiliates, subcontractors and partners of spherene), royalty-free, fully paid-up license, to use, copy, change and transform the Input File and to undertake any other actions necessary for the Service.
- 3.4 Subject to the Licensee's compliance with these Terms, spherene grants the Licensee a non-exclusive, non-transferable, non-sublicensable, revocable license to use and display the Client, including but not limited to plugins or add-ons to the Licensees application solely for the Licensees own use as permitted by these Terms and subject to third party open source license or other intellectual property. For sake of clarity, the Licensee is not granted a license to use the Client for any other purpose, and, except for the limited license set forth herein, nothing in these Terms shall be deemed to grant the Licensee a right, title or interest in the Client and spherene IP.

4. API KEY

- 4.1 The Client that identifies itself with the Licensee's API Key can operate the API to give user instructions. By storing the API key through the Client, the Licensee does authorize the Client to send spherene user instructions on the Licensee's behalf. The Licensee shall ensure that the security of the device from which the Licensee accesses such Client is sufficiently and adequately secure from compromise.
- 4.2 The Licensee acknowledges that sharing their API key is akin to sharing their login credentials. Sharing the Licensee's API Key with a third party also means the third-party can and will have access to all of the Licensee's account details, data, and authority to make and give instructions via the Client to spherene's API on the Licensee's behalf. The Licensee is responsible for safeguarding the API key. spherene may invalidate the Licensee's API Key if loss, sharing (including newly generating the API key), violation of these Terms or fraudulent use is detected.

5. SECURITY

- 5.1 The Licensee is responsible for safeguarding (i) the password that the Licensee uses to access the Account with spherene and (ii) for any actions taken by using the Licensee's password. For data security purposes, spherene requires the Licensee to use "strong" passwords for the Account (i.e., passwords combining upper- and lower-case letters, numbers, and symbols). Any liability for any damage arising from the Licensee's failure to comply with these requirements is excluded. In case the Licensee wishes to change the e-mail address, the Licensee shall notify spherene at support@spherene.ch.

6. LIMITATION OF NUMBER OF UPLOADS

- 6.1 To maintain the quality of spherene's service and to ensure fair access for all the Licensees, spherene may place a limitation on the number of the Input Files a Licensee can upload in a given time period. The specific limit will be clearly stated on the Licensee's dashboard website and may be updated from time to time at spherene's discretion (the "**Upload Limit**").
- 6.2 In the event that a Licensee exceeds the Upload Limit, spherene reserves the right to delay the processing of any subsequent uploads until the next permissible period or to decline additional uploads until such time the Licensee is again within their limit.
- 6.3 If the Licensee is seeking to upload files beyond the Upload Limit, the Licensee may contact spherene for potential accommodations, although spherene is under no obligation to grant such requests.

7. INTELLECTUAL PROPERTY OWNERSHIP AND LICENSE

- 7.1 All rights in and to the Metamaterial, the Patents and the spherene IP (including, but not limited to the ADMS technology and related/adjacent products such as API, job and user management, cloud technology, data retention and analyses) belong to spherene, including any embodiment to the extent that the embodiment results from the process covered by Patents and any Intellectual Property created during the Services (including, but not limited to, the Metamaterial and any other derivative works of the Input File). The Licensee acknowledges that nothing in these Terms assigns the ownership of spherene IP to the Licensee.
- 7.2 These Terms do not constitute an assignment or transfer of any Intellectual Property related to spherene's products or any part thereof from spherene to the Licensee.

8. LICENSE FEE

- 8.1 In exchange for the rights granted under Section 3, the Licensee hereby agrees to pay to spherene a fixed license fee as per spherene's or the reseller's pricing page, which the Licensee undertakes to pay to the reseller or, in case the Licensee did not engage spherene Services via a reseller, to spherene. The Parties agree that with payment to the reseller, if any, the Licensee has fulfilled his payment obligations toward spherene.
- 8.2 Any applicable tax legally due shall be paid by the Licensee in addition to the amounts due to spherene under these Terms. Should any withholding tax be legally due, then the Licensee hereby agrees to pay to spherene such additional amounts as are necessary to ensure receipt of the full amount which it would have received but for the deduction of the withholding tax.

9. INFRINGEMENT

- 9.1 The Licensee acknowledges, without any reservation or limitation whatsoever, the property rights of spherene in relation to the Metamaterial and the Patents. Therefore, the Licensee undertakes not to lay claim to the ownership of the rights granted hereunder. In this respect, the Licensee represents that it has not registered or exploited – either directly or indirectly, or by means of connected entities or entities under its control – and undertakes not to register or exploit during the term of these Terms or any time thereafter, trademarks, trade-names, service marks, logos, domain names, patents, designs or the like, that are identical or confusingly similar to the rights in and to the Metamaterial or spherene IP.
- 9.2 The Licensee shall promptly inform spherene when it becomes aware of any act, conduct or claim of a third party, with respect to spherene's

Intellectual Property Rights (including any rights in and to the Metamaterial and spherene IP).

10. USE LIMITATIONS

- 10.1 **Unlawful Use.** The Licensee shall not upload an Input File aimed at producing a weapon or parts thereof, or other dangerous objects, illegal objects, children's toys or parts of the objects mentioned before or use the Services for any unlawful purpose or in furtherance of any illegal activities. International Licensees are required to comply with all applicable local laws regarding online conduct and acceptable content. If the Licensee nevertheless uploads an Input File of such object for any unlawful use specified above, spherene is entitled to (i) refuse the order; and (ii) inform the authorities if it deems it necessary or appropriate. Notwithstanding the foregoing, spherene is not obliged to examine if the Input File is intended to create forbidden objects or objects for unlawful use. The Licensee is not entitled to redistribute the Metamaterial, its design and look or any information or to reproduce, store, link, frame or deep-link it on any other application or website or in any other medium or format without our prior written consent. The Licensee further shall not use the Metamaterial for unlawful use.
- 10.2 **Unauthorized Access.** The Licensee shall not do any of the following while accessing or using the Services via the Access Possibilities: (i) access, tamper with or use non-public areas of the Access Possibilities (except for the Licensee's own account), spherene computer systems or the technical delivery systems of spherene's providers; (ii) probe, scan or test the vulnerability of any system or network or breach or circumvent any security or authentication measures; (iii) attempt to access or search the Access Possibilities or any data by any means (automated or otherwise) other than through spherene's currently available, published interfaces; or (iv) interfere with or disrupt, or attempt to do so, the access of any user, host or network.
- 10.3 **No Reproduction.** The Licensee is not entitled to modify or redistribute the Access Possibilities and the API key, its design and look or any information or to reproduce, store, link, frame or deep-link it on any other application or website or in any other medium or format without our prior written consent.
- 10.4 **No Malware.** The Licensee shall not upload any file, which contains viruses, trojans or similar malware. If the Licensee violates this obligation, the Licensee undertakes to fully indemnify spherene.

11. CONFIDENTIALITY

- 11.1 The parties shall not use or disclose to any person any confidential information (as defined below) about the business or affairs of the other

party or any of its business contacts, or about any other confidential matters which may come to the party's knowledge in the course of the fulfillment of the obligations set forth in these Terms. For the purposes of this Section 7, the "**Confidential Information**" shall mean any information or matter which is not in the public domain and which relates to the affairs of spherene or the Licensee.

- 11.2 The restriction in this Section 11 does not apply to:
- a) any use or disclosure authorized by a party or as required by law; or
 - b) any information which is already in, or comes into, the public domain otherwise than through the other party's unauthorized disclosure.
- 11.3 This confidentiality obligation shall also apply to all employees of the parties who work or are otherwise involved in the Services. Therefore, the parties are responsible that all employees comply with this provision.

12. PERSONAL DATA

- 12.1 Any personal data provided by the Licensee to spherene is collected and used in accordance with spherene's current [Privacy Policy](#).

13. WARRANTIES / LIABILITY

- 13.1 spherene offers the Services and the Metamaterial «as is» and as available. Any and all representations and warranties of any kind, whether express, implied, statutory or other, are expressly excluded to the maximum extent permitted by the governing law. This includes, without limitation, the exclusion of any warranty of merchantability, fitness for a particular purpose, non-infringement of third-party rights, absence of latent or other defects, accuracy, or the presence or absence of errors, whether or not known or discoverable of the Metamaterial and the Products.
- 13.2 The Licensee understands and agrees that the Licensee will use the Metamaterial, the Product at its own discretion, subject to the Field of Use and will be solely responsible for any related damage. To the maximum extent permissible under the governing law, the liability of spherene for any and all damages, including without limitation direct, indirect, exemplary, special or consequential damages (including but not limited to lost profit, revenue, business value, opportunities, anticipated savings, goodwill, reputation, use or data) is expressly excluded.
- 13.3 Notwithstanding the foregoing, spherene disclaims
- a) any warranties, including with respect to the availability or uptime and backup time, respectively, of the Input File and the Result.

spherene may conduct maintenance on or stop providing relevant services at any time, with or without prior notice;

- b) any warranties relating to third party services, including but not limited to the availability of the Metamaterial, to the maximum extent permitted under the governing law. The Licensee cannot claim any damages against spherene in case the download of the Metamaterial is not possible.

13.4 The Licensee warrants that either (i) the Input File is free from any third-party intellectual property rights; or (ii) it owns or has licensed the intellectual property rights and similar rights necessary to fulfill its obligations according to these Terms.

13.5 The Licensee undertakes to

- a) fully indemnify, hold harmless and defend spherene and its affiliates, subcontractors and partners and their employees and officers from and against any and all claims and liabilities incurred or alleged as a result of the Licensee's use of the Metamaterial or the Product; and
- b) fully indemnify, hold harmless and defend spherene and its affiliates, subcontractors and partners and their employees and officers from and against claims raised against any or all of them based on an actual or alleged infringement of intellectual property or similar rights.

14. TERM AND EFFECTS OF TERMINATION

14.1 These Terms shall become effective as of the Effective Date and will remain in force for 1 (one) year, starting from the Effective Date (the "**Initial Period**").

14.2 These Terms shall be automatically extended by another year in each case after the Initial Period or each extension unless these Terms have been (i) terminated by one Party with a prior written notice of at least 3 (three) months before the end of the Initial Period or the extension period; or (ii) is subject to a termination according to Section 14.3.

14.3 spherene reserves the right to suspend or terminate these Terms immediately and consequently delete an Account as well as the API key without prior notice if (i) the Licensee violates these Terms or any other policies; (ii) the Account or the API key are used for illegal or unauthorized purposes; (iii) if spherene suspects fraudulent or suspicious behavior (such as the usage of the API key from more than 3 (three) IP addresses or scripted access); or (iv) if there is a prolonged period of inactivity.

14.4 At the discretion of spherene, and depending on the cause of termination, the Licensee might be allowed to reinstate the Account and/or get a new API key.

- 14.5 Upon termination,
- a) any data associated with the Account will be deleted, subject to spherene's [Privacy Policy](#);
 - b) the Licensee will lose access to the Account, and any associated data will be deleted;
 - c) the Licensee will immediately cease any use of Metamaterial; and
 - d) neither Party will have any rights to receive any compensation from the other Party in connection with any goodwill created hereunder.

15. MISCELLANEOUS

15.1 Entire Agreement

The Agreement constitutes the entire agreement between the Parties with respect to the subject matter of the Agreement and supersedes all other prior written and oral agreements of the Parties relating thereto.

15.2 No Assignment

Any assignment of rights is prohibited without the prior written consent of the other Party.

15.3 Form Requirements

This Agreement shall be concluded in writing. Any amendments or modifications of the Agreement need to be made in writing (including by email) duly executed by both Parties hereto in order to have legal effect. This undertaking itself may only be modified by an agreement in writing in order to have legal effect.

15.4 Severability

If any provision of this Agreement is held to be invalid or unenforceable for any reason it shall be adjusted rather than voided, if possible, in order to achieve the intent of the Parties to the fullest extent possible. In any event, all other provisions of this Agreement shall be deemed and remain valid and enforceable to the fullest extent possible, unless such invalidity or unenforceability significantly restricts or changes the Parties' rights and obligations under this Agreement.

15.5 **Governing Law**

This Agreement shall in all respects be governed by and construed in accordance with Swiss law to the exclusion of Swiss private international law and any treaties (including the UN Convention on the sale of goods (CISG)).

15.6 **Jurisdiction**

Any dispute, controversy or claim arising out of or in relation to this Agreement, including the validity, invalidity, breach, or termination thereof, shall be subject to the exclusive jurisdiction of the courts of Zurich, Switzerland, the venue being Zurich 1, Switzerland.

(By ticking the checkbox online, the user provides their signature.)