

TERMS OF USE FOR WIKITUDE'S PUBLISHER PRODUCTS AND SERVICES

1 GENERAL

- 1.1 Wikitude offers products and services for publishers of augmented reality content (hereinafter referred to as “Publisher Products”). Publisher Products and ancillary services are licensed and provided to You subject to these terms of use (hereinafter referred to as “the Publisher Terms of Use”).
- 1.2 Deviating or additional provisions, in particular terms and conditions used by You, do not become part of the agreement between You and Wikitude unless the contrary is expressly declared to You in writing by Wikitude.

2 DEFINITIONS

- 2.1 “**Accredited Academic Institution**” means public or (upon condition of public status or recognition) private universities, colleges, vocational/trade schools as well as other educational entities.
- 2.2 “**Affiliate**” means, with respect to any legally recognizable entity, any other such entity Controlling, Controlled by, or under common Control with such entity. “**Control**” means direct or indirect: (i) ownership of more than fifty percent (50%) of the outstanding shares; or (ii) for an entity that does not have outstanding shares, more than fifty percent (50%) of the ownership interest representing the right to make decisions for such entity.
- 2.3 “**Applicable Laws**” means any applicable domestic or foreign law including any statute, subordinate legislation or treaty, and the common law and equity, any applicable judgment, injunction, award or decree of any domestic or foreign legislative, executive, judicial or administrative body or person having or purporting to have jurisdiction in the relevant circumstances or instrumentality thereof including any federal, state, provincial or municipal body or entity, in each case that relate to the use of a Publisher Product.
- 2.4 “**Authorized Users**” means Your employees and/or other sub-contractors using a Publisher Product exclusively on computers owned or controlled by You and exclusively for the purposes covered by Your license.
- 2.5 “**Claims**” mean any fines, damages (general, special and punitive), legal fees, costs, charges, expenses, lost profits, attorneys’ fees, engineering and other technical expert fees, settlement amounts, judgments and interest, arising from or related to any Third Party Claim, Third Party cause of action, Third Party demand, or Third Party lawsuit, any tax or penalty, any judicial or administrative investigation, or any inquiry or proceeding or any settlement thereof.

- 2.6 “**Commercial License**” means any license granted to You in return for payment of royalty fees and entitling You to use a Publisher Product on a commercial scale.
- 2.7 “**Consumer**” means any natural person who is acting for purposes which under any applicable consumer law are considered outside his/her trade, business, craft or profession.
- 2.8 “**Content**” means any content, data or other information that You link to a Target Object You create, store, process and/or make available using a Publisher Product, as, in particular written text, illustrative, photographic, animated, video or audio content.
- 2.9 “**Device**” means any mobile computing device able to install a Wikitude application for End Users, a Publisher Product or to grant access to a Publisher Product, including but not limited to smartphones or tablets.
- 2.10 “**Educational Purposes**” means the purpose of teaching, practicing and training within Accredited Academic Institutions. It does under no circumstances involve making available of a Publisher Product for use to any person that is not a member of an Accredited Academic Institution.
- 2.11 “**End User**” means any individual or legal entity that uses and has permission to use, for any purpose other than software development, an End user Application.
- 2.12 “**End User Application**” means any application created and/or made available by Wikitude, by You or by a Third Party that provides End Users access to Target Object Augmentations.
- 2.13 “**Enterprise License**” means a Commercial License that entitles You to use the Publisher Products for a purpose not covered by the Limited Augmentations License. You specifically require an Enterprise License in the following situations (i) You intend to use any of the Products to create an End User Application that is a tailored solution for a specific enterprise or a specific group of enterprises or any other specific limited number of enterprises; (ii) You intend to use the Wikitude Studio API and/or the enterprise script.
- 2.14 “**Intellectual Property Rights**” means all intellectual property rights, industrial property rights and other similar rights recognized throughout the world, whether existing under statute or at common law or equity, now or hereafter in force or recognized, including: (i) copyrights, rights in trade secrets, rights in marks, patents, design rights, data base rights, rights in processes, rights in methods, moral rights, mask work rights, publicity and personality rights, and privacy rights; and (ii) any application or right to apply for any of the rights referred to in paragraph (i), and all enhancements, improvements, renewals, extensions and restorations.
- 2.15 “**Limited Augmentations License**” means a license that entitles You to create, store, process and/or make available a limited number of Target Objects and/or Content for a limited number of Target Object Augmentations.
- 2.16 “**Person**” means an individual (and the heirs, executors, administrators, or other legal representatives of an individual), partnership, joint venture, corporation, company, government (or any department or agency or instrumentality thereof), trustee, trust, unincorporated organization, or any other legal entity of whatever kind or nature irrespective of jurisdiction of origin or formation.
- 2.17 “**Privacy Policy**” means Wikitude’s Privacy Policy as the same may be amended, modified, supplemented or restated from time to time in accordance with its terms by Wikitude.
- 2.18 “**Publisher**” means an individual person or legal entity that creates and/or makes available Content in Target Object Augmentations related to own products and/or services for End Users by use of a Publisher Product and/or stores or processes Target Objects or Content by use of a Publisher Product.

- 2.19 **“Publisher Product”** means any ready to use application or service for Target Objects and/or Target Object Augmentation that Wikitude provides to Publishers, including, if applicable subject to the Product Description, licenses, extensions, entitlement to upgrades and/or Support services as made available for You to order by Wikitude on their website. **“Product Description”** means the description of the Publisher Product You purchased, as provided by Wikitude on their website (at the time You effect Your order) and provided to You in the order confirmation that Wikitude sends to You upon acceptance of Your order. In particular the following products qualify as Publisher Products to which these Publisher Terms of Use apply:
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 - (b) Wikitude Cloud Recognition
 - (c) Wikitude Studio API
- 2.20 **“Software”** means all computer software and accompanying documentation (including all future upgrades, additions, substitutions, and other modifications thereof).
- 2.21 **“Support”** means the support services for the Software provided by Wikitude during the respective Support period; You may or may not be entitled to Support subject to the Product You ordered (see Product Description). Regular support hours are Monday to Friday from 9:00 AM to 5:00 PM (CET/CEST), no Support is provided on Saturday, Sunday and recognized public and bank holidays in Austria. Wikitude reserves the right to limit or suspend the Support subject to prior announcement on up to seven working days per year. You will be pre-notified about working days with limited or suspended service at least on week ahead.
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- 2.23 **“Third Party”** means any person that is neither You nor Wikitude nor an Authorized User.
- 2.24 **“Third Party Software”** means any Software that is subject to Intellectual Property Rights of a Third Party.
- 2.25 **“Trader”** means any natural person or any legal person, irrespective of whether privately or publicly owned, who is acting, including through any other person acting in his name or on his behalf, for purposes relating to his trade, business, craft or profession.
- 2.26 **“Unlimited Augmentations License”** means a license that entitles You to create, store, process and/or make available an unlimited number of Target Objects and/or Content for an unlimited number of Target Object Augmentations. An Unlimited Augmentations License may not be used for creating, storing and/or making available Target Objects and/or Content for a Target Object Augmentation for any other Publisher than You.
- 2.27 **“Wikitude”** means Wikitude GmbH, Schranngasse 6, 5020 Salzburg, Austria.
- 2.28 **„You”** (or **“Your”**) means any Publisher that orders and/or uses a Publisher Product and exercises permissions granted by the Publisher Terms of Use.

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- 4.2 If You provide any information that is untrue, inaccurate, not current or incomplete, or Wikitude has reasonable grounds to suspect that such information is untrue, inaccurate, not current or incomplete, Wikitude has the right to suspend or terminate Your Wikitude Publisher Account and refuse any and all current or future use of the Publisher Product (or any portion thereof). By creating Your Wikitude Publisher Account, You will agree that Wikitude may publish or use Your Registration Data for advertisement purposes to further promote the Wikitude Services and/or the Wikitude Publisher Account.
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- 4.4 Wikitude is entitled to delete Your Publisher Account at any time once Your licenses in the Publisher Products registered with the Publisher Account have terminated. Wikitude reserves the right, but is not obliged, to store all information related to Your Publisher Account for seven years after termination of the last license registered with Your Publisher Account.

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 - (b) a license for a version for Educational Purposes; or
 - (c) a Commercial License for a commercial version whereas a Commercial License may either be or a Limited Augmentations License, an Unlimited Augmentations License or an Enterprise License.

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- (b) create, store, process and/or make available any Target Object, Content and/or Target Object Augmentation that is unlawful, harmful, threatening, abusive, harassing, tortuous, defamatory, vulgar, obscene, libelous, invasive of another's privacy, hateful, or racially, ethnically or otherwise objectionable;
- (c) harm minors in any way;
- (d) create, store, process and/or make available any Target Object, Content and/or Target Object Augmentations by use of software/files including code that interferes with, disrupts, damages, or accesses in an unauthorized manner the servers, networks, or other properties or services of Wikitude or any Third Party including, but not limited to, mobile communications carrier;
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- (a) Used license key(s) and/or token(s); and
- (b) device IP addresses

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 - (iii) to modify, adapt and translate Your Target Object Augmentations and all Content included therein and to copy, reproduce, make available, or otherwise use such modified, adapted or translated versions of Your Target Object Augmentations and/or Content included therein for the above purposes. That includes (but is not limited to) reformatting as well as creating repurposing snippets and shrinking images.

This provision does not apply when You are using the enterprise script, as the target collections are solely created on Your servers and not on the servers of Wikitude.

7 PROVISION OF PUBLISHER PRODUCTS

7.1 General

- 7.1.1 You acknowledge and hereby accept that the nature and form of a Publisher Product may be subject to temporary and/or permanent changes without prior notice (including but not limited to updates, bug fixes and patches) and that future versions of a Publisher Product may be incompatible with applications developed on previous versions of a Publisher Product.
- 7.1.2 Wikitude reserves the right at any time and from time to time – at Wikitude’s sole discretion - to stop providing a Publisher Product, features within a Publisher Product, extensions, plugins or services to You or to any Third Party. Wikitude will usually provide notice of such decision at least 30 days prior to discontinuation of the respective Publisher Product; however, given that the occurrence of specific situations requiring Wikitude to make such decision on shorter notice cannot be entirely ruled out, Wikitude reserves the right to discontinue any Publisher Product with immediate effect. If a Publisher Product is discontinued prior to termination of Your Commercial License, You will be entitled to reimbursement of the proportionate part of the paid license fee. No further claims derive from discontinuation of a Publisher Product.
- 7.1.3 You acknowledge and agree that Wikitude shall not be liable to You or to any Third Party for any modification of the nature and form of a Publisher Product or for stopping to provide a Publisher Product.

- 7.1.4 You understand that You have under no circumstances no legal claim whatsoever by which Wikitude would be obliged to provide You with technical support concerning a Publisher Product and its parts, except explicitly stated otherwise in the Product Description or agreed individually in a separate written agreement.
- 7.1.5 Wikitude will strive for continuous availability of Publisher Products provided as a Service. However, interruptions of availability of such services may appear. Wikitude does not warrant any minimum availability of services unless a certain minimum liability has been expressly guaranteed in the Product Description or separately agreed in writing.

7.2 Hosting Services

- 7.2.1 Some of the Publisher Products allow You to upload Target Objects and/or Content related to Target Objects to servers hosted by Wikitude and/or Third Parties cooperating with Wikitude for the purpose of storage of Target Objects, processing of Content related to Target Objects and/or making available of Target Object Augmentations.
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- 7.2.3 Notwithstanding the above, Wikitude reserves the right to amend, remove or block any Target Object or Content uploaded by You if Wikitude considers or a Third Party claims such Target Object or Content or the purpose or effect of the Target Object Augmentation being inaccurate or inappropriate or in violation of Applicable Law or the Publisher Terms of Use.
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8 CONFIDENTIALITY

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9 PRIVACY

- 9.1 You must comply with all Applicable Laws including all applicable privacy laws; and with Wikitude’s publicly disseminated Privacy Policy; and with all provisions of the “Google Analytics Publisher Terms of Use” at any time. If You use Personal Data in a way that is not covered by the Wikitude End User license agreement, You shall be solely responsible to obtain all necessary consents and approvals of Your End Users. In particular You are responsible to provide End Users with all information required and to obtain all required consents in the required form under Applicable Law.
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- 9.3 Wikitude does not track individual usage of the Target Object Augmentations You created. However, You acknowledge and hereby agree that Wikitude may anonymously track and report the End User requests of Target Object Augmentations through use of information set out in section 5.6.1. If You make available Target Object Augmentations via an End User Application provided to End Users by You or by a Third Party, You must make sure that End Users validly acknowledge and consent to such anonymous tracking and reporting and You must provide all required information to the End Users. If required by Applicable Law, You must obtain the End User’s consent hereto before the End User accesses an End User Application provided to the End User by You or by a Third Party.
- 9.4 In particular if You intend to distribute or make available within the European Union End User Applications that gain access to any other information stored in the mobile device of the End User than information technically required for the purpose of enabling You to provide a service requested by the End-User, You undertake to get the End User’s consent based on the required comprehensive information, including but not limited to the type of collected information, the purposes for which such information is being collected, the way it is being used and, if applicable the Third Parties to which such information will be transmitted. The aforesaid is applicable to any information irrespective of such information qualifying as “personal data” or not. You are aware that under the EU privacy regime You need to meet in particular the following requirements:
- (a) Ask for consent before You start to retrieve or place information on a Device. Such consent has to be freely given, specific and informed;
 - (b) ask for granular consent for each type of data the End User Application will access; at least, if accessed, for the following categories: Location, Contacts, Unique Device Identifier, Identity of the data subject, Identity of the phone, Credit card and payment data, Telephony and SMS, Browsing history, Email, Social networks credentials and Biometrics;
 - (c) be aware that consent does not legitimize excessive or disproportionate data processing;
 - (d) provide well-defined and comprehensible purposes of the data processing in advance to installation of the app, and not change these purposes without renewed consent;
 - (e) provide comprehensive information if the data will be used for third party purposes, such as advertising or analytics;
 - (f) allow users to revoke their consent and uninstall the End User Application, and delete data where appropriate;

- (g) respect the principle of data minimization and only collect those data that are strictly necessary to perform the desired functionality; take the necessary organizational and technical measures to ensure the protection of the personal data You process, at all stages of the design and implementation of the application (privacy by design);
- (h) provide a single point of contact for the users of the application. Provide a readable, understandable and easily accessible privacy policy that in particular fulfils the information duties set out in Art. 12 to 14 of the EU General Data Protection Regulation (GDPR);
- (i) enable End User Application users to exercise their rights of access, rectification, erasure and their right to object to data processing and inform them about the existence of these mechanisms;
- (j) define a reasonable retention period for data collected with the End User Application and predefine a period of inactivity after which the account will be treated as expired;
- (k) with regard to End User Application aimed at children: pay attention to the age limit defining children or minors in Art. 8 GDPR and in national legislation, choose the most restrictive data processing approach in full respect of the principles of data minimization and purpose limitation, refrain from processing children's data for behavioural advertising purposes, either directly or indirectly and refrain from collecting data through the children about their relatives and/or friends.

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