

3DSIM – SOFTWARE AS A SERVICE AGREEMENT FOR BETA PRODUCT

IMPORTANT – READ THIS AGREEMENT CAREFULLY BEFORE CONTINUING REGISTRATION.

BY CLICKING THE "I ACCEPT" BUTTON, YOU AGREE TO FOLLOW AND BE BOUND BY THE TERMS AND CONDITIONS OF THIS SOFTWARE AS A SERVICE AGREEMENT (THE "AGREEMENT"). IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THE TERMS AND CONDITIONS OF THIS AGREEMENT AND, IN SUCH EVENT, "YOU" AND "YOUR" AS USED IN THIS AGREEMENT SHALL REFER TO SUCH ENTITY. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE TO ALL THE TERMS AND CONDITIONS IN THIS AGREEMENT, YOU MUST SELECT THE "I DECLINE" BUTTON AND MAY NOT USE THE SERVICES.

This Agreement is a legal and binding contract between you, the USER (hereafter referred to as "you" and "your"), and 3DSIM, LLC, (hereafter referred to as "3DSIM", "we", "us", or "our").

1. Description of the Service and Your License.

1.1 Definition of the Service. In this Agreement, the term "**Service**" (with an initial capital letter) means the 3DSIM™ Software Product (including any updates or revisions) accessed from us and used by you as a licensed service provided to you through the Internet and which is identified in the purchase order, invoice or other order confirmation document or communication sent to you by 3DSIM (such document to be referred to hereinafter as the "Ordering Document").

1.2 Your License. Upon 3DSIM's acceptance of your order and for the duration of the Term, you have the nonexclusive, nontransferable, non-sublicensable right to access the Service from your computer (defined below) through the Internet (the "**License**") and to store and retrieve Your Data (defined below) on 3DSIM Servers (defined below) upon the terms of this Agreement. You may not transfer or assign the License, or lend, share or permit anyone to use the Service or your password to it who is not directly affiliated with you, which means an entity that shares common ownership or control. Rights not expressly granted to you are reserved to us.

1.3 Scope of Your Use. You may not sublicense or loan use of the Service, or any documentation on our website, except to an entity directly affiliated with you. You may use the Service only for your own internal business purposes. You may use our Service with services you provide to others, but you may not loan or time-share the Service or use it as storage service for another person or unaffiliated entity.

1.4 Limited Access to the Service. We strive for 24-7 availability of the Service. However, downtime of 3DSIM Servers (defined below) and of the Service for maintenance, relocation and other purposes will periodically be necessary and unintended interruptions and unscheduled downtime may also occur and are not a breach of this Agreement to the extent that the total downtime does not exceed an average of 10% during the Term.

1.5 Software Product. The Service covered under this agreement is the software product identified in the Ordering Document (the "Product").

1.6 Ownership of Intellectual Property. The Product and any and all intellectual property

owned by 3DSIM (the “Intellectual Property”) shall remain the exclusive property of 3DSIM. You agree that 3DSIM will retain sole ownership of all Intellectual Property even if enhancements suggested or requested by you become incorporated into the Service, including but not limited to, improvements to (i) 3DSIM’s core mathematical and algorithmic infrastructure; (ii) user functionality; (iii) machine/process models; and/or (iv) material models. You are not permitted to use 3DSIM’s Intellectual Property without our prior written consent or as expressly provided in this Agreement. 3DSIM is not permitted to use your Intellectual Property without your prior written consent or as expressly provided by a duly authorized representative of you.

2. Your Data. You may only use Your Data with the Service. “**Your Data**” means your inputs into the Service or outputs created by the Service from your inputs.

3. About 3DSIM Servers. Your Data will be stored on 3DSIM Servers. “**3DSIM Servers**” means the servers and any storage media, hardware, software or system selected by us for data storage and operation of the Service. 3DSIM Servers are not dedicated exclusively to you or the Service. 3DSIM Servers may be located at our site(s) or at our contractors’ sites.

4. Term of Subscription and Termination.

4.1 Term. Your rights with respect to the Service will terminate upon expiration of your License as identified in the Ordering Document.

4.2 Termination. Any material breach of this Agreement by you will result in automatic termination of your License and this Agreement. At the termination of this Agreement you shall no longer be authorized to access the Service and you shall cease all use of the Product and 3DSIM reserves the right to interrupt or discontinue the functionality and/or support, if any, of the Service.

5. Effect of License Termination on Your Data. Termination of your License ends your right to use the Service and to access and retrieve Your Data. After termination, 3DSIM will continue to store Your Data for at least 30 days. If you renew or restore your License within thirty (30) days, access to Your Data will be restored. If you do not restore or renew your License within thirty (30) days, **you will lose access to Your Data and Your Data will be erased and permanently destroyed. We will have no liability to you for destruction of or access to Your Data after thirty (30) days from the date your License is terminated.**

6. Things You Must Not Do. We expect you to use the Service only for legitimate personal and business purposes, for legal activities. Therefore, **you agree not to** directly or indirectly do or permit any of the following:

You may not (a) license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make available to any unaffiliated third party or competitor of 3DSIM the Service in any way; (b) modify or make derivative works based upon the Service; (c) "frame" or "mirror" the Service on any other server or wireless or Internet-based device; or (d) reverse engineer or access the Service in order to (i) build or offer a competitive product or service, (ii) build or offer a product or service using similar ideas, features, functions or graphics of the Services, or (iii) copy any ideas, features, functions or graphics of the Service.

You may not: (a) intentionally interfere with or disrupt the integrity or performance of the Service; or (b) attempt to gain unauthorized access to the Service. Neither party shall intentionally send or store software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs intended to interfere with the Service or other users of the Service.

You may not store or process classified data on 3DSIM's Servers.

7. Your Obligations.

7.1 Your Premises and Equipment. You are responsible for maintaining adequate physical, technological and procedural access controls and system security to ensure no unauthorized or improper access to your computer, or use of the Service or 3DSIM Servers through your account, or violation of data privacy or confidentiality through your computer or your account. You are responsible for the security of your home or office facilities, and the area where you store and use your computer, and for your employees, contractors, customers, and affiliates, and anyone using your User ID and password with or without your permission.

7.2 Passwords and Access. You are responsible for all activity on 3DSIM Servers through your account. You must keep your User ID and password secure and prevent use of them by any unauthorized party. You must promptly notify us of any known unauthorized use of your account, and of any other breach of security that might affect us, the Service, Your Data, or 3DSIM Servers.

7.3 License Fee. Your use of the Service is permitted only upon your agreement to the terms of this Agreement and payment of the appropriate license fee set forth in the Ordering Document.

8. Data Security Obligations

8.1 Security of Your Data and Information.

(a) Commitment; Technology Protections. We are committed to protecting your information and Your Data securely. We use a variety of security technologies and procedures to help protect your information from unauthorized access, use, or disclosure including:

- All data is stored in a secured server environment
- Access to any server resource is controlled by 2-factor authentication
- Access to servers is locked down by IP through a secure VPN
- Access to servers is limited to only a few individuals at 3DSIM – all of which are US Citizens
- Access to data is on a need to know basis and only as a request from the customer to investigate a support issue.

You understand and agree that for purposes of technical support some of our technical personnel must have access to Your Data.

(b) Investigation of Your Data. 3DSIM (through authorized employees) has the unfettered right to fully investigate and prosecute allegations of violation by you of Section 6, including without limitation possible infringement of any intellectual property rights, security breaches, and interferences, and to involve, assist, and cooperate with law enforcement authorities and initiate criminal prosecution to the fullest extent of the law. This may include accessing and decrypting Your Data.

(c) Compliance with Agreement and Law Enforcement. Although we have no obligation to monitor your access to or use of the Service, we have the right to do so for the purpose of managing, operating, and optimizing the Service for business optimization, and to ensure your compliance with this Agreement and applicable laws, including any order or requirement of a court, or governmental agency or authority. For example, if law enforcement officials legally require access to Your Data, we will remove any 3DSIM encryption from Your Data and provide it to them.

(d) Access through Third Party Apps. If you choose to access the Service through a third-party application, such action has security risks that may or may not be disclosed in their privacy policies. You should be sure you are comfortable with the privacy and security measures of any third-party application, interface or network you use to access the Service.

(e) Use of Your Data for Statistical Purposes. 3DSIM may compile statistical information related to the performance of the services, and may make such information publicly available, provided that such information does not incorporate Your Data and/or identify your confidential information or include your company's name. 3DSIM retains all intellectual property rights in such information.

9. Service Support Terms.

9.1 Scope. These Support Terms state the terms on which we provide support services to users of the Service. These Support Terms may be modified at any time in our sole discretion without notice to you except for material changes which will require notice.

9.2 Entitlement to Support Services. You, the end user of the Service, are entitled to user support services as long as you are current on the payment of all required fees and in full compliance with this Agreement.

9.3 Conditions of Support. As a condition to receiving support services, you agree to exercise your reasonable best efforts to cooperate with and assist us in documenting and understanding any problems and in performing appropriate tests. We are not responsible for problems relating to your computer hardware or software not provided by us, including (but not limited to) any incompatibility of the Service with any other services. We cannot guarantee that support services will cause the Service to be error-free or to operate continuously, efficiently, optimally, or without interruption, for you, particularly on your computer and your chosen networks.

9.4 Updates. 3DSIM may, from time to time, release updates to or new versions of the Product. 3DSIM shall make available to you, provided that you are not in default under the terms of this Agreement, access to any new version of the Product, but solely to the extent that the functionality of the new version represents the same functionality comprising the Service under your existing License. 3DSIM has no obligation to provide you new functionality or components as part of regular Service updates or version releases. 3DSIM reserves the right to charge an additional fee for any new functionality in the software that is outside the scope of the current Product available at the time of execution of this Agreement.

10. Our Protections, Warranties, and Indemnification of You.

10.1 Disclaimers.

(a) General Disclaimer. YOU HEREBY ACKNOWLEDGE THAT THIS VERSION OF THE PRODUCT IS BETA SOFTWARE. IT IS UNDERSTOOD AND HEREBY EXPRESSLY ACKNOWLEDGED BY YOU THAT THE PRODUCT OR PORTIONS THEREOF MAY NOT HAVE BEEN THOROUGHLY TESTED, MAY CONTAIN DEFECTS, AND THAT WE MAKE NO EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES WHATSOEVER REGARDING THE PRODUCT'S USE, PERFORMANCE, OPERATION, PORTABILITY TO SUBSEQUENT BETA VERSIONS OR FINAL VERSION, OR SUPPORT. BY WAY OF EXAMPLE AND WITHOUT LIMITATION, WE MAKE NO REPRESENTATIONS OR WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, PERFORMANCE, ACCURACY, EFFORT, FITNESS FOR A PARTICULAR

PURPOSE, OR QUIET ENJOYMENT. IT IS FURTHER UNDERSTOOD BY YOU THAT NO COMMITMENT EXISTS ON THE PART OF US TO PROVIDE THE PRODUCT IN A CONDITION SUITABLE FOR ANY PARTICULAR USE BY YOU. YOU ACKNOWLEDGE THAT THE SOFTWARE IS DELIVERED ON AN “AS IS” AND AN “AS AVAILABLE” BASIS AND THAT YOUR USE OF THE PRODUCT SHALL BE AT YOUR SOLE RISK INCLUDING, WITHOUT LIMITATION, ANY RISK OF LOSS OF DATA OR BUSINESS INTERRUPTION.

(b) Disclaimer Regarding Access to Service and Data Loss. **WE ARE NOT RESPONSIBLE FOR LOSS OF USE OF THE SERVICE OR ANY WEBSITE, INTERNET ACCESS, HARDWARE OR SOFTWARE, LOSS OF DATA (INCLUDING YOUR DATA) IN TRANSIT TO OR FROM US, COSTS OF RECREATING LOST DATA, COST OF ANY SUBSTITUTE PERFORMANCE, EQUIPMENT, SOFTWARE, OR SYSTEM, OR CLAIMS BY ANYONE OTHER THAN YOU.**

(c) Disclaimers Regarding Reliance on Retrieved Data. You acknowledge the Service is a complex operation involving potential data calculation errors and data loss in transmitting data to us or back to you over the Internet. Therefore, you are expected to verify the accuracy of Your Data retrieved through the Service. **YOU ARE SOLELY RESPONSIBLE FOR YOUR USE OF YOUR DATA RETRIEVED THROUGH THE SERVICE, AND ANY RELIANCE THEREON.**

(d) Disclaimer Regarding Timing of Destruction of Your Data. **WE HAVE NO LIABILITY FOR DESTRUCTION OF YOUR DATA AS PROVIDED IN THIS AGREEMENT. WE ALSO HAVE NO LIABILITY FOR ANY DELAY ON OUR PART IN NOT DESTROYING YOUR DATA PROMPTLY WHEN OUR RIGHT AND OBLIGATION TO DESTROY IT ARISES.**

10.2 Limitations of Liability.

(a) NOTWITHSTANDING ANYTHING CONTAINED IN THIS AGREEMENT OR OTHERWISE, WE WILL NOT BE LIABLE WITH RESPECT TO THE PRODUCT OR THE SERVICE UNDER ANY CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES OF ANY KIND, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FURTHER, IN NO EVENT WILL WE BE LIABLE FOR ANY CLAIM BY ANY THIRD PARTY ARISING OUT OF YOUR USE OF THE SERVICE. SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE EXCLUSIONS AND LIMITATIONS MAY NOT APPLY TO YOU.

(b) Third Party Websites. The Service may enable you to add links to Web sites and access to content, products and services of third parties, including users, advertisers, affiliates and sponsors of such third parties. 3DSIM is not responsible for any third party Web sites or third party content provided on or through the Service and you bear all risks associated with the access and use of such Web sites and third party content, products and services.

(c) Time Limit to Bring Your Claims. **YOU MUST BRING ALL YOUR CLAIMS AGAINST US WITHIN THE EARLIEST OF ONE YEAR FROM THE DATE THE CLAIM ARISES, OR THE TERMINATION DATE OF THIS AGREEMENT.**

10.3 We Rely on Your Instructions. We may rely on and act on instructions, requests or

information provided to us by you or your employees, officers, agents, volunteers, affiliates or contractors, and we incur no liability in doing so. You will indemnify us and our officers, directors, employees and representatives against, and hold them harmless from, any and all claims, liabilities, costs and expenses, including without limitation reasonable attorney fees and costs, resulting from our reliance on such instructions, requests or information.

10.4 No Third Party Beneficiaries. Our warranties and obligations under this Agreement run only to you. Under no circumstances shall you or any user of the Service through you, or any of your affiliates, agents, representatives, contractors, clients, customers or other persons, be considered a third party beneficiary of this Agreement or otherwise entitled to any rights or remedies under and based only on this Agreement. You have no rights or remedies against 3DSIM except as specifically permitted by this Agreement. We will not be deemed your official record keeper for regulatory, government or other purposes. Other than Your Data as currently stored, we have no obligation to retain any deleted records or data on your behalf during the Term. After termination of this Agreement, and if you have not entered into a subsequent agreement with 3DSIM, there is no further storage of Your Data, except as provided in this Agreement.

10.5 Third-Party Providers. The disclaimers, limitations, allocation of risk, right to rely, and protections set forth above will be extended through us to third parties who provide us software, data, services, products, or intellectual property for our Service, documentation, services, or other products, if any.

10.6 Our Warranty to You. We warrant to you that if the Service does not comply with its then-current documentation in any material respect and you notify us of the non-compliance, we will at our option either correct the Service to render it fully functional, perform support services, or extend the Term of the License for an amount of time equal to the time the Service was non-functional.

10.7 Your Warranty to Us. You warrant that you will not access or use the Service, or any right under this Agreement, for any unlawful, immoral or illegitimate purpose, including use or activity prohibited by this Agreement.

10.8 Our Obligation to Indemnify You. If a third party makes a claim against you that any information, software, service, data, or material furnished by us and used by you infringes its intellectual property rights, we will, at our sole cost and expense, defend you against the claim and indemnify you from the damages, liabilities, costs and expenses awarded by the court to the third party claiming infringement or the settlement agreed to by us, if you: (a) notify us promptly in writing, not later than 30 days after you receive notice of the claim (or sooner if required by applicable law); (b) give us sole control of the defense and any settlement negotiations; and (c) give us the information, authority, and assistance we need to defend against or settle the claim.

11. Export. Export laws and regulations of the United States and any other relevant local export laws and regulations apply to the Product. You agree that such export control laws govern your use of the Service and you agree to comply with all such export laws and regulations. You agree that no data, information software programs and/or materials resulting from your use of the Service (or a direct product thereof) will be exported, directly or indirectly, in violation of these laws, or will be used for any purpose prohibited by these laws.

12. Indemnification. Each party agree to indemnify, defend and hold harmless the other, their members, officers, agents, contractors and employees from and against any and all costs incurred by it as a result of the other party's breach of any material term of this Agreement, including, but not limited to the provisions relating to exports controls and any of the restrictions outlined in Section 6 of this Agreement.

13. General Provisions.

13.1 Assignment; Successors. This Agreement may not be assigned by you without our prior written consent, which shall not be unreasonably withheld. We may assign this Agreement without notice to you at any time to any person who acquires substantially all of our business assets relative to the Service, who will assume our rights and obligations under this Agreement.

13.2 Governing Law and Forum. This Agreement shall be governed by the laws of the State of Utah without giving effect to any conflict of laws principles that may provide for the application of the law of another jurisdiction. You and 3DSIM agree to submit to the exclusive personal jurisdiction of, and agree that venue is proper in, the state and federal courts located in Utah in such legal action or proceeding. Notwithstanding the foregoing, 3DSIM may seek injunctive or other equitable relief to protect its intellectual property rights in any court of competent jurisdiction.

13.3 Force Majeure. Except for obligations to make payment, neither you nor 3DSIM will be deemed in breach of this Agreement or liable for any failure to perform an obligation where such failure is caused by an Act of God, fire, flood, earthquake, storm, terrorism, war, crime, change in law or regulation, any disruption, outage or malfunction of or interference in communications, network, equipment or software, act of any military, civil or regulatory authority, the Internet, any third party, any disruption or delay in supplies, power, or other utilities, any labor dispute or shortage, or circumstances beyond your, or our, control, as the case may be.

13.4 Waiver. The failure or delay of you or us at any time to enforce performance of this Agreement shall not be construed as a waiver of the right to enforce performance of this Agreement at any subsequent time. Any waiver of a breach or obligation under this Agreement must be in writing.

13.5 Interpretation. Headings in this Agreement are for convenience of reference only and shall not affect interpretation of this Agreement. Whenever the context reasonably permits, the singular shall include the plural, the plural shall include the singular, and the whole shall include any part thereof.

13.6 Severability. If any provision of this Agreement is invalid under applicable law, such provision shall be limited, narrowed, or construed as necessary to the extent necessary to make it valid. If necessary, the invalid provision shall be eliminated from this Agreement with the remainder of this Agreement in full force and effect.

13.7 Relationship. You agree that no partnership, joint venture, or agency relationship is created by this Agreement. Both you and 3DSIM will be responsible for paying our own employees, including employment related taxes and insurance.

13.8 Our Contractors. We may delegate our obligations to subcontractors but this will not excuse us from responsibility for such obligations.

13.9 Entire Agreement. This Agreement and the Ordering Document represent the entire agreement between you and 3DSIM relating to its subject matter, supersedes all prior agreements, understandings, representations and warranties; and may only be amended, canceled or rescinded as provided in this Agreement, or by a writing executed by you and us. In the event of a conflict between the terms or conditions of the Ordering Document and this Agreement, this Agreement shall govern.

13.10 Notices. Notices sent to us under this Agreement must be sent to the following:

3DSIM, LLC

Attn: Legal
1794 Olympic Parkway, Suite 110
Park City, Utah 84098

Notices to you will be sent to the name and address as shown on the Ordering Document or, if different, then as otherwise provided to us in writing.

13.11 Survival. Provisions that survive termination or expiration of this Agreement are those relating to limitation of liability, indemnity, payment, and others which by their nature are intended to survive.

13.12 Customer Reference. You agree that 3DSIM may identify you as a recipient of services and use your logo in sales presentations, marketing materials, press releases and on 3DSIM.com for promotional purposes.