

Terms and Conditions

TECH SOFT 3D – EVALUATION AGREEMENT HOOPS

IMPORTANT – PLEASE CAREFULLY READ THE TERMS OF THIS EVALUATION AGREEMENT (THE “AGREEMENT”) FOR THE TECH SOFT 3D PRODUCTS AND OTHER PRODUCTS TECH SOFT 3D IS AUTHORIZED TO RESELL, AND MAY INCLUDE ASSOCIATED MEDIA, PRINTED MATERIALS AND “ONLINE” OR ELECTRONIC DOCUMENTATION (COLLECTIVELY, THE “TS3D PRODUCT”). THIS IS A LEGAL AGREEMENT THAT APPLIES TO THE USE OF THE TS3D PRODUCT. BY CLICKING ON THE “I AGREE” BUTTON, CREATING A USER ACCOUNT, OR ACCESSING OR USING THE TS3D PRODUCT, (1) YOU ACKNOWLEDGE THAT YOU HAVE READ, UNDERSTAND, AND AGREE TO BE BOUND BY THIS AGREEMENT (INCLUDING ALL OF THE TERMS AND CONDITIONS SPECIFIED OR REFERENCED BELOW), (2) YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO ENTER INTO THIS AGREEMENT (INCLUDING ALL OF THE TERMS AND CONDITIONS SPECIFIED OR REFERENCED BELOW), ON BEHALF OF THE ENTITY OR PERSON WHO REGISTERED A USER ACCOUNT TO ACCESS AND USE THE TS3D PRODUCT (SUCH ENTITY OR PERSON, “EVALUATOR”), AND TO BIND EVALUATOR TO THE TERMS OF THIS AGREEMENT, AND (3) YOU AGREE THAT EVALUATOR IS ENTERING INTO THIS AGREEMENT (INCLUDING ALL OF THE TERMS AND CONDITIONS SPECIFIED OR REFERENCED BELOW) WITH TECH SOFT 3D, INC., WITH A PRINCIPAL PLACE OF BUSINESS AT 1567 SW CHANDLER AVE. SUITE 100 BEND, OR 97702 (“TS3D”). IF YOU DO NOT AGREE TO ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, OR IF YOU DO NOT HAVE SUCH AUTHORITY, YOU SHOULD CLICK ON THE “CANCEL” BUTTON TO DISCONTINUE THE REGISTRATION PROCESS, AND DO NOT USE OR ACCESS THE TS3D PRODUCT. THIS AGREEMENT IS EFFECTIVE ON THE DATE EVALUATOR ACCEPTS THIS AGREEMENT (THE “EFFECTIVE DATE”)

1. Evaluation Period. Subject to the terms and conditions of this Agreement, Evaluator shall have an initial period of ninety (90) days from the Effective Date to evaluate the product (the “**Initial Evaluation**”); provided that, Evaluator may request an extension for up to an additional ninety (90) day period (“**Extended Evaluation**”) to evaluate the TS3D Product by providing such request to TS3D in writing notice at least ten (10) days prior to the end of the Initial Evaluation (the Initial Evaluation and any Extended Evaluation, if applicable, collectively, the “**Evaluation Period**”). If TS3D approves Evaluator’s request for an Extended Evaluation, TS3D shall provide written notice to Evaluator of such approval prior to the end of the Initial Evaluation. If TS3D does not provide written notice of approval prior to the end of the Initial Evaluation, Evaluator’s extension request shall be deemed rejected. Such extension request may be approved or denied at TS3D’s sole discretion.

2. Evaluation License. TS3D grants to Evaluator, subject to the terms and conditions of this Agreement, a non-exclusive, non-transferable, revocable, limited license, during the applicable Evaluation Period, to install, execute and use the TS3D Product, in object code only, to upload and test Evaluator’s files solely for its own internal evaluation purposes, but not for commercial or general production use, and subject to any usage restrictions or

parameters specified in the applicable documentation or any other materials provided or made available by TS3D regarding the scope of use of the TS3D Product by Evaluator.

3. Restrictions. Evaluator will not, and will not permit others to: (a) reproduce or use the TS3D Product except to the extent permitted in Section 2; (b) modify, translate, or create derivative works of the TS3D Product or decompile, disassemble, reverse engineer, or otherwise attempt to derive the structure or source code form of the TS3D Product; (c) assign, share, timeshare, sell, rent, lease, sublicense, distribute, grant a security interest in, or otherwise transfer the TS3D Product, or the Evaluator's limited right to use the TS3D Product; (d) export the TS3D Product; (e) use the TS3D Product to upload, store or transmit malicious code or files, or infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights; (f) remove, alter, or obscure any proprietary notices or labels on the TS3D Product; (g) access the TS3D Product in order to build a similar or competitive product or service; or (h) violate any applicable local, state, national or international law in connection with the use of the TS3D Product. TS3D reserves all rights and licenses not expressly granted to Evaluator in Section 2 and no implied license is granted by TS3D.

4. User Accounts. In order to install, access and use the TS3D Product, Evaluator must create and register a user account ("**User Account**"). In registering a User Account, Evaluator agrees to provide and maintain up to date information that is true, accurate, current, up to date, and complete. Evaluator understands and agrees that Evaluator is solely responsible for maintaining the confidentiality of and protecting the password to the User Account and for any and all activity originating from the User Account. Evaluator shall immediately notify TS3D of any unauthorized use of the User Account.

5. User Data. During the Evaluation Period, Evaluator hereby grants to TS3D a non-exclusive, non-transferable, revocable, limited license, under all of Evaluator's intellectual property rights, to User Data as reasonably necessary for TS3D to provide Evaluator the TS3D Product. Evaluator represents and warrants that it has all the rights necessary to grant the licenses granted herein to TS3D. The parties agree that TS3D's obligation to maintain any User Data shall not extend beyond the term of this Agreement. "**User Data**" means any and all data, files, and/or information (including personally identifiable information) of Evaluator or provided or uploaded to TS3D Product, in connection with or resulting from Evaluator's evaluation of the TS3D Product. User Data may be stored in the User Account by Evaluator for up to 90 days; however, Evaluator may at any time delete their User Data. In addition, TS3D may remove User Data from the User Account at any time by providing notice to Evaluator that the files will be removed. For the avoidance of doubt, Evaluator acknowledges and agrees that TS3D may collect and use anonymous usage and performance data with respect to the use and performance of the TS3D Product for TS3D's internal business purposes and for improving, testing and providing the TS3D Product.

6. Fees. There shall be no payment from Evaluator to TS3D under this Agreement for the use of the TS3D Product during the Initial Evaluation in accordance with this Agreement. TS3D reserves the right to charge a fee for an Extended Evaluation, which, if applicable, shall be specified by TS3D upon approval of the Extended Evaluation (the "**Extended**

Evaluation Fee”). The Extended Evaluation Fee, if applicable, shall be due and payable by Evaluator upon Evaluator’s receipt of TS3D’s notice of approval for the Extended Evaluation as set forth in Section 1.

7. Ownership. TS3D and its suppliers retain all right, title and interest in and to all intellectual property rights in the TS3D Product, including, without limitation, any and all modifications, enhancements or updates thereto. Any and all feedback, including any flaws, errors, bugs, anomalies, problems with and/or suggestions for or regarding the TS3D Product provided to TS3D by Evaluator or any of its employees or agents (collectively, the “**Feedback**”), is hereby unconditionally and irrevocably assigned by Evaluator to TS3D, including any and all worldwide intellectual property rights relating thereto. In addition, Evaluator hereby licenses Anonymous Data to TS3D on a worldwide, perpetual, irrevocable, non-exclusive, freely-transferable, fully paid, and royalty-free basis, for TS3D to use and exploit in any manner and for any purpose “**Anonymous Data**” means any and all aggregated non-personally identifiable data or information resulting from Evaluator’s use of the TS3D Product.

8. Confidentiality. “**Confidential Information**” shall mean: (a) with respect to TS3D, the TS3D Product, Feedback, the fees, all proprietary and non-public information regarding TS3D’s products, services, and business, and all other materials and information disclosed under this Agreement that are marked “confidential” by TS3D or that Evaluator knows or should have known, under the circumstances, are considered confidential by TS3D; and (b) with respect to Evaluator, User Data and all materials and information disclosed under this Agreement that are marked “confidential” by Evaluator or that TS3D knows or should have known, under the circumstances, are considered confidential by Evaluator. Confidential Information shall not include any information that (i) was in the public domain at or subsequent to the time such information was communicated to the receiving party by the disclosing party through no fault of the receiving party; (ii) was rightfully in the receiving party’s possession free of any obligation of confidence at or subsequent to the time such information was communicated to the receiving party by the disclosing party; or (iii) is or was developed by the receiving party’s employees, contractors or agents independently of and without reference to any Confidential Information of the disclosing party. Neither party will use, disseminate or in any way disclose any Confidential Information of the other party to any person, firm or business. Each party shall treat all Confidential Information with the same degree of care as such party accords to its own confidential information but not less than reasonable care. Each party shall immediately give notice to the other party of any unauthorized use or disclosure of the other party’s Confidential Information. Each party shall assist the other party in remedying any such unauthorized use or disclosure of the other party’s Confidential Information. A disclosure of any Confidential Information by the receiving party (x) in response to a valid order by a court or other governmental body or (y) as otherwise required by law shall not be considered to be a breach of this Agreement or a waiver of confidentiality for other purposes; provided, however, that the receiving party shall provide prompt prior written notice thereof to the disclosing party to enable the disclosing party to seek a protective order or otherwise prevent such disclosure. All Confidential Information shall be the property of the disclosing party and no license or other rights to Confidential Information is granted or implied hereby. Within five (5) days

after any request by the disclosing party or upon the termination of this Agreement, the receiving party shall destroy or deliver to the disclosing party, at the disclosing party's option, all Confidential Information of the disclosing party in the possession of the receiving party. The receiving party will provide the disclosing party, upon request, a written certification of such party's compliance with the obligations under this Section.

9. Term and Termination. The term of this Agreement shall commence on the Effective Date and expire at the end of the Evaluation Period, unless earlier terminated by either party in accordance with the Agreement. Either party may terminate this Agreement at any time, effective ten (10) days after giving written notice of termination to the other party. If Evaluator breaches any term of this Agreement, TS3D may immediately terminate this Agreement upon written notice to Evaluator

10. Effects of Termination. Upon expiration or termination of this Agreement: (a) the licenses granted hereunder shall terminate effective immediately; (b) Evaluator shall promptly discontinue use of the TS3D Product; (c) each party shall comply with its obligations to return or destroy the other party's Confidential Information in such party's possession or control in accordance with Section 8; (d) User Data will be deleted; and (e) the following Sections will survive any such termination or expiration: Sections 3, 6, 7, 8, 10, 11, 12, 13, 14 and 15.

11. Disclaimer. THE TS3D PRODUCT AND ANY OTHER SERVICES AND MATERIALS PROVIDED BY TS3D HEREUNDER, ARE PROVIDED "AS IS" (WITH ALL FAULTS) AND THE ENTIRE RISK AS TO SATISFACTORY PERFORMANCE, ACCURACY, AND EFFORT IS WITH EVALUATOR. TS3D AND ITS SUPPLIERS SPECIFICALLY DISCLAIM ANY AND ALL REPRESENTATIONS, GUARANTEES, AND WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING THE WARRANTIES OF MERCHANTABILITY, ACCURACY, SATISFACTORY PURPOSE, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.

12. Limitation of Liability. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL TS3D BE LIABLE FOR ANY INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE DAMAGES OR INDIRECT DAMAGES OF ANY KIND, OR ANY DAMAGES FOR INTERRUPTION OF BUSINESS, PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, LOST PROFITS, OR THE LIKE, FOR ANY CLAIMS ARISING OUT OF OR RELATED TO THIS AGREEMENT, THE TS3D PRODUCT OR ANY OTHER SERVICES OR MATERIALS PROVIDED BY TS3D HEREUNDER, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR ANY OTHER LEGAL OR EQUITABLE THEORY, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL TS3D'S AGGREGATE CUMULATIVE LIABILITY FOR ANY CLAIMS ARISING OUT OF OR RELATED TO THIS AGREEMENT, THE TS3D PRODUCT OR ANY OTHER SERVICES OR MATERIALS PROVIDED BY TS3D, EXCEED THE FEES PAID OR PAYABLE BY EVALUATOR TO TS3D, OR, IF NO FEES ARE PAYABLE BY EVALUATOR HEREUNDER, FIVE THOUSAND DOLLARS (\$5,000.00). THE EXISTENCE OF ONE OR MORE CLAIMS WILL NOT SERVE TO ENLARGE THIS LIMIT. THIS LIMITATION WILL APPLY NOTWITHSTANDING THE FAILURE

OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY SET FORTH HEREIN. THE WARRANTY DISCLAIMER AND LIMITATION OF LIABILITY ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES. TS3D'S SUPPLIERS SHALL HAVE NO LIABILITY ARISING FROM OR RELATED TO THIS AGREEMENT.

13. Government End Users. The TS3D Product provided under this Agreement is a commercial computer software program developed solely at private expense. As defined in U.S. Federal Acquisition Regulations (FAR) section 2.101 and U.S. Defense Federal Acquisition Regulations (DFAR) sections 252.227-7014(a)(1) and 252.227-7014(a)(5) (or otherwise as applicable to Evaluator), the TS3D Product licensed in this Agreement is deemed to be "commercial items" and "commercial computer software" and "commercial computer software documentation." Consistent with FAR section 12.212 and DFAR section 227.7202, (or such other similar provisions as may be applicable to Evaluator), any use, modification, reproduction, release, performance, display, or disclosure of such commercial software or commercial software documentation by the U.S. government (or any agency or contractor thereof) shall be governed solely by the terms of this Agreement.

14. Governing Law. This Agreement shall be governed by the laws of the State of California, U.S.A. without regard to conflict of laws principles. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from application to this Agreement.

15. General. This Agreement is not assignable or transferable, in whole or in part, by Evaluator, whether involuntarily, by merger, operation of law or otherwise without TS3D's prior written consent. If any provision hereof shall be held illegal, invalid or unenforceable, in whole or in part, such provision shall be modified to the minimum extent necessary to make it legal, valid and enforceable, and the remaining provisions of this Agreement shall not be affected thereby. All notices permitted or required under this Agreement shall be in writing and shall be delivered by personal delivery, e-mail, or by certified or registered mail, return receipt requested, and shall be deemed given upon personal delivery, five (5) business days after deposit in the U.S. mail, or upon confirmation of transmission if sent by e-mail. Notices shall be sent to each party at their respective addresses. The failure of either party to enforce any right or provision of this Agreement shall not constitute a waiver of such right or provision. Nothing contained herein shall be construed as creating an agency, partnership, or other form of joint enterprise between the parties. TS3D reserves the right to change, modify, and otherwise convert the technology used to provide the TS3D Product. No amendment to, or waiver of rights under, this Agreement shall be effective unless in a writing signed by authorized representatives of each party. This Agreement constitutes the entire agreement between the parties regarding the subject matter hereof and supersedes all prior or contemporaneous agreements, understandings, and communications, whether written or oral. The term "including" means "including without limitation."