

# CONCEPT3D

## SOFTWARE AS A SERVICE AGREEMENT END USER TERMS OF USE Last Revised 4/16/15

*THIS TERMS OF USE AGREEMENT (THE "AGREEMENT") GOVERNS THE CONCEPT3D SERVICES AND YOUR ONGOING USE OF THOSE SERVICES. BY ACCEPTING THIS AGREEMENT THROUGH YOUR USE OF THE SERVICES, YOU AGREE TO THE TERMS OF THIS AGREEMENT.*

This Agreement was last updated on April 16, 2015. It is effective between You and Us as of the date of You accepting this Agreement.

### 1. DEFINITIONS

"Affiliate" means any entity which directly or indirectly controls, is controlled by, or is under common control with the subject entity. "Control," for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

"Malicious Code" means viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs.

"Services" means the online, Web-based applications and platform provided by Us [known as CampusBird].

"Third-Party Applications" means online, Web-based applications and offline software products that are provided by third parties, interoperate with the Services, and are identified as third-party applications.

"Unsupported Activity" means any activity relating to the drafting, planning, development, or implementation of any materials, documents, policies, procedures, guidelines, guidance, or standards relating to any one of the following: (1) emergencies, including without limitation, any natural or man-made disaster, building evacuation routes, medical emergency response plans, first-responder access, police access, fire department access, or medical access; (2) design or construction activities; (3) determining compliance with any federal, state or local law, including without limitation, the Americans with Disabilities Act, 42 U.S.C. §12101, et seq.; or (4) the dissemination to any third party of any information relating to the foregoing.

"Users" means individuals who are authorized to use the Services

"We," "Us" or "Our" means concept3D, Inc., a Delaware corporation and its authorized licensees.

"You" or "Your" means, as applicable, you and Your Users.

"Your Data" means all electronic data or information submitted by You to Us.

## **2. USE OF THE SERVICES**

2.1. Your Responsibilities. You shall (i) be responsible for Users' compliance with this Agreement, (ii) be solely responsible for the accuracy, quality, integrity and legality of Your Data and the means by which You acquired Your Data, (iii) use commercially reasonable efforts to prevent unauthorized access to or use of the Services, and notify Us promptly of any such unauthorized access or use, and (iv) use the Services only in accordance with all applicable laws and government regulations. You shall not (a) make the Services available to anyone other than Users, (b) sell, resell, rent or lease the Services, (c) use the Services to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (d) use the Services to store or transmit Malicious Code, (e) interfere with or disrupt the integrity or performance of the Services or third-party data contained therein, or (f) attempt to gain unauthorized access to the Services or their related systems or networks.

2.2. Unsupported Activity. You expressly acknowledge and agree that the Services have not been designed to support any Unsupported Activity. You hereby expressly disclaim and release Us from any and all claims, damages, or liabilities whatsoever arising from or relating to Your use of the Services for any Unsupported Activity. You hereby expressly agree to indemnify and hold Us harmless from any and all claims, damages, or liabilities whatsoever arising from or relating to Your use of the Services for any Unsupported Activity

2.3. Usage Limitations. Services may be subject to other limitations as We may specify from time to time.

## **3. THIRD-PARTY PROVIDERS**

3.1. Acquisition of Third-Party Products and Services. Any other acquisition by You of third-party products or services, including but not limited to Third-Party Applications and implementation, customization and other consulting services, and any exchange of data between You and any third-party provider, is solely between You and the applicable third-party provider. No purchase of third-party products or services is required to use the Services.

3.2. Third-Party Applications and Your Data. We shall not be responsible for any disclosure, modification or deletion of Your Data resulting from any such access by Third-Party Application providers. We do not warrant or support third-party products or services.

## **4. PROPRIETARY RIGHTS**

4.1. Reservation of Rights. Subject to the limited rights expressly granted hereunder, we reserve all rights, title and interest in and to the Services, including all related intellectual property rights. No rights are granted to You hereunder other than as expressly set forth herein.

4.2. Restrictions. You shall not (i) permit any third party to access the Services except as permitted herein, (ii) create derivative works based on the Services, (iii) copy, frame or mirror any part or content of the Services, other than copying or framing on Your own intranets or otherwise for Your own internal business purposes, (iv) reverse engineer the Services, or (v) access the

Services in order to (a) build a competitive product or service, or (b) copy any features, functions or graphics of the Services.

4.3. Suggestions. We shall have a royalty-free, worldwide, transferable, sublicensable, irrevocable, perpetual license to use or incorporate into the Services any suggestions, enhancement requests, recommendations or other feedback provided by You, including Users, relating to the operation of the Services.

4.4. Federal Government End Use Provisions. We provide the Services, including related software and technology, for ultimate federal government end use solely in accordance with the following: Government technical data and software rights related to the Services include only those rights customarily provided to the public as defined in this Agreement. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data – Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If a government agency has a need for rights not conveyed under these terms, it must negotiate with Us to determine if there are acceptable terms for granting such rights, and a mutually acceptable written addendum specifically granting such rights must be included in any applicable contract or agreement.

## **5. WARRANTIES AND DISCLAIMERS**

5.1. Warranties. You represent and warrant that (i) You have the legal power to enter into this Agreement, (ii) You will not transmit to Us any Malicious Code or any content or materials that violate or infringe any third-party's intellectual property or proprietary rights and (iii) You will not use the Services for any illegal purpose or in violation of any applicable law.

5.2. Disclaimer. EXCEPT AS EXPRESSLY PROVIDED HEREIN, WE MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND WE SPECIFICALLY DISCLAIM ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

## **6. INDEMNIFICATION**

Indemnification by You. You shall defend Us against any claim, loss, liability, demand, suit or proceeding ("Claim") made or brought against Us relating to or arising out of Your use of the Services or alleging that Your Data infringes or misappropriates the intellectual property rights of a third party or violates applicable law, and shall indemnify Us for any Claim against Us, and for reasonable attorney's fees incurred by Us in connection with any such Claim.

## **7. LIMITATION OF LIABILITY**

7.1. Exclusion of Consequential and Related Damages. IN NO EVENT SHALL WE HAVE ANY LIABILITY TO YOU FOR ANY LOST PROFITS OR REVENUES OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER OR PUNITIVE DAMAGES

HOWEVER CAUSED, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, AND WHETHER OR NOT WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING DISCLAIMER SHALL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

## **8. TERM AND TERMINATION**

8.1. Term of Agreement. This Agreement commences on the date You accept it and continues until the applicable User subscriptions granted in accordance with this Agreement have expired or been terminated.

8.2. Termination for Cause. We may terminate a User's access to the Services at any time if We determine that You have violated these Terms of Use.

8.3. Surviving Provisions. 4 (Proprietary Rights), 5 (Confidentiality), 5.2 (Disclaimer), 6 (Mutual Indemnification), 7 (Limitation of Liability), 9 (Notices, Governing Law and Jurisdiction) and 10 (General Provisions) shall survive any termination or expiration of this Agreement.

## **9. GOVERNING LAW AND JURISDICTION**

9.1. Agreement to Governing Law and Jurisdiction. Each party agrees that this Agreement and Your use of the Services shall be governed by the laws of the State of Colorado, without regard to choice or conflicts of law rules, and to the exclusive jurisdiction of the federal district court in Denver, Colorado.

9.2. Waiver of Jury Trial. YOU HEREBY EXPRESSLY WAIVE ANY RIGHT TO JURY TRIAL IN CONNECTION WITH ANY ACTION OR LITIGATION IN ANY WAY ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE SERVICES.

## **10. GENERAL PROVISIONS**

10.1. Export Compliance. Each party shall comply with the export laws and regulations of the United States and other applicable jurisdictions in providing and using the Services. Without limiting the foregoing, (i) You represent that You are not named on any U.S. government list of persons or entities prohibited from receiving exports, and (ii) You shall not access or use Services in violation of any U.S. export embargo, prohibition or restriction.

10.2. Relationship of the Parties. The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.

10.3. No Third-Party Beneficiaries. There are no third-party beneficiaries to this Agreement.

10.4. Waiver and Cumulative Remedies. No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.

10.5. Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.

10.6. Attorney Fees. You shall pay on demand all of Our reasonable attorney fees in connection with any action brought by Us to enforce Our rights under this Agreement.

10.7. Entire Agreement. This Agreement, including all exhibits and addenda hereto, constitutes the entire agreement between the parties.