



Subscription Agreement – CyberCity 3D City Model Streaming

CyberCity 3D, Inc. (“Provider”) will provide you access to the Web Services (defined below) and related website located at CyberCity 3D, Inc. or such other Web addresses or uniform resource locators as may be specified by the Provider (collectively, the "Site"), specifically and solely for the purposes of requesting and receiving Data (defined below), Third Party Data (defined below), and services under the related Subscription Plan (defined below) and Support Plan (defined below). This Agreement governs your access to and use of the 3D City Model Websites, Web Services, Data and Third Party Data, and constitutes a binding legal agreement between you (referred to herein as “You” or “Subscriber”) and Provider.

DEFINITIONS

- A. “Web Services” consist of a set of software programs, interfaces, and web pages running on computers hosted at Provider sites or at third-party hosting facilities accessible via the Internet as described in this Agreement and the Site.
- B. “Data” means the prices and other market data that is (i) owned by Provider and (ii) obtained by Provider from exchanges and other sources delivered to Subscriber via the Web Services and as described in this Agreement and on the Site.
- C. “Third Party Data” means the prices and other data that is (i) not owned by Provider and (ii) obtained by Provider from exchanges and other sources delivered to Subscriber via the Web Services and as described in this Agreement and on the Site.
- D. “Data Owner” means a legal entity that holds ownership rights to some of the Data or Third Party Data (defined below) and is the original licensing source of such portion of the Data or Third Party Data when such portion of the Data or Third Party Data is not in the public domain. In cases of Third Party Data, Provider has secured redistribution agreements with the Data Owner.
- E. “Distinct Software Applications” means software applications that automate substantially different business products, services, processes or functions of Subscriber. Provider reserves the right, in its sole discretion, to make a reasonable determination as to whether software applications that use the Web Services or the Data or Third Party Data constitute Distinct Software Applications.
- F. “Data Exchange Format” means an electronic version of the Data or Third Party Data used for sharing the Data or Third Party Data between software applications, including but not limited to any application programming interface (API), any database access (e.g., ODBC, etc.), any network transmission format (e.g., GLTF, COLLADA, I3S, XML, etc.) and any data file format (e.g., XLS, CSV, etc.). Provider reserves the right, in its sole discretion, to determine if a particular electronic version of the Data or Third Party Data constitutes a Data Exchange Format.
- G. “Subscription Plan” means all the subscription plans selected by the Subscriber in connection with the purchase of the use of the Web Services, Data and Third Party Data.



The Provider posts the available subscription plans and the specific use of the Web Services, Data and Third Party Data provided by each subscription plan on the Site, as they may be updated by the Provider from time to time. The current subscription plans offered with respect to the Web Services are available by the Provider.

- H. "Support Plan" means the Support Plan selected by the Subscriber in connection with the purchase of the use of the Web Services, Data, and Third Party Data. The Provider posts the available support plans and specific service levels provided by each support plan on the Site, as they may be updated by the Provider from time to time.

MODIFICATION

Provider reserves the right to modify, discontinue or terminate the Site, Web Services, Data and Third Party Data or to modify this Agreement, at any time and without prior notice. If Provider modifies this Agreement, Provider will post the modification on the Site or provide you with notice of the modification. Provider will also update the "Last Updated Date" at the top of this Agreement. By continuing to access or use the Site, Web Services, Data and Third Party Data after Provider has posted a modification on the Site or has provided you with notice of a modification, you are indicating that you agree to be bound by the modified Agreement. If the modified Agreement is not acceptable to You, Your only recourse is to cease using the Site, Web Services, Data and Third Party Data.

LICENSES AND DATA

Web Services License. Subject to Subscriber's compliance with the terms and conditions of this Agreement, Provider grants to Subscriber a limited, non-exclusive, non-transferable, license to access and use the Web Services solely for its business purposes. This Agreement governs Subscriber's access to and use of the Web Services and the Site. Subscriber acknowledges and agrees that but for this Agreement, Subscriber would have no rights or access to the Web Services and the Site.

Rights in Data License. Subject to Subscriber's compliance with the terms and conditions of this Agreement, Provider grants to Subscriber a limited, non-exclusive, non-transferable, license to access and use the Data and Third Party Data available via the Web Services solely for its business purposes. In addition, any Third Party Data may be subject to restrictions of use and require additional license agreements with the Data Owner. While Provider may, in its sole discretion, offer administrative assistance to Subscriber in obtaining such additional licenses, Subscriber is solely responsible for obtaining all required license agreements with each Data Owner pursuant to Subscriber's use of such Third Party Data. If Subscriber does not obtain a required license agreement for any portion of the Third Party Data and as such is in violation of the Data Owner's licensing requirements, Provider may terminate access to the unlicensed portion of Third Party Data until Subscriber obtains such license agreements with the Data Owner.

Proprietary Rights. Subject to the limited rights expressly granted hereunder, Subscriber acknowledges that the Data, Third Party Data, Web Services, Site, and/or any developments to the



Data, Third Party Data, Web Services, and Site that result from services provided under the Support Plan (“Developments”) provided to Subscriber hereunder are proprietary in nature and owned exclusively by Provider and/or the Data Owners. The Data, Third Party Data, the Web Services, as well as the Developments are to be used exclusively as described herein.

Restrictions on the Web Services.

- Subscriber may use the Web Services solely with any software application owned or licensed by Subscriber.
- Subscriber may not use, adapt, modify, redistribute, sublicense, sell or otherwise make available any portion of the Web Services for use by software applications not owned or licensed by Subscriber.
- Neither party will attempt to access, tamper with, or use non-public areas of the other party’s website, computer systems, or the technical delivery systems of the other party’s providers.
- Neither party will attempt to probe, scan, or test the vulnerability of any of the other party’s systems or networks or breach any of the other party’s security or authentication measures.

Restrictions on the Data and Third Party Data.

- Subscriber may use the Data and Third Party Data solely with any software application owned or licensed by Subscriber.
- Subscriber will not use, redistribute, sublicense, sell or otherwise make available any portion of the Data or Third Party Data in any Data Exchange Format for use in software applications not owned or licensed by Subscriber.
- Subscriber may not display or make the Data or Third Party Data available in any Data Exchange Format to non-employee users, including but not limited to, vendors, contractors, partners and the general public (e.g., public websites, partner and vendor extranets, EDI applications, etc.).
- Subscriber may cache and store the Data and Third Party Data for use within each Distinct Software Application provided such use is in compliance with restrictions imposed by the Data Owners. The Data or Third Party Data may not be shared between Distinct Software Applications or made available in any Data Exchange Format for the purpose of sharing between Distinct Software Applications.

Enforcement. Except as otherwise provided herein, Subscriber is responsible for all of Subscriber’s activities occurring through its use of the Web Services.

Telecommunications and Internet Services. Subscriber acknowledges that the use of the Web Services by Subscriber is dependent upon access to telecommunications and Internet services. Subscriber will be solely responsible for acquiring and maintaining all telecommunications and Internet services and other hardware and software required to access and use the Web Services, including, without limitation, any and all costs, fees, expenses, and taxes of any kind related to the foregoing.



TERM AND TERMINATION

Term. This Agreement shall continue from the Start Date through the initial term specified by the Subscription Plan (the “Initial Term”). At the end of the Initial Term, this Agreement will automatically renew on the day following the last day of the Initial Term (“First Renewal Date”) and will automatically renew thereafter on the first day of each renewal period (“Renewal Period”) as specified by the Subscription Plan, unless either party provides to the other written or electronic notice of termination in accordance with the terms of this Agreement. The initial Term specified by the Start Date and the First Renewal Date of the Subscription Plan, and each subsequent renewal term specified by the First Renewal Date and the Renewal Period of the Subscription Plan are collectively the “Term”.

Right to Terminate. After the Start Date, either Party may terminate this Agreement for any reason prior to the beginning of each renewal term as indicated by the First Renewal Date and the Renewal Period of the Subscription Plan by delivering written or electronic notice of termination at least thirty (30) days prior to the beginning of each renewal term. Notwithstanding the foregoing, either party may terminate this Agreement at any time in the event that the other party breaches any material term of this Agreement and fails to remedy such breach within ten (10) business days after receipt of a written notice of any such breach, or if such breach cannot be remedied within that period of time, fails to demonstrate to the satisfaction of the non-breaching party that it is taking steps reasonably necessary to remedy the breach.

Inability to Provide Data and Third Party Data. If Provider ever loses the license, right or ability to provide any portion of the Data or Third Party Data, or such license or right is ever interrupted or otherwise impaired, then Provider agrees to notify Subscriber of such fact if permitted to do so and Subscriber may immediately terminate use of any portion of the Web Services and Provider will refund the prorated Subscription Fees (defined below) associated with the unused portion of the Web Services.

Survival. The provisions of the Definitions Section and Sections that by their nature should reasonably survive, and any amendments to the provisions of the aforementioned will survive any termination or expiration of this Agreement.

FEES

Subscription Fees. Subscriber will pay to Provider fees in connection with the Subscription Plan and the Support Plan selected by Subscriber to use the Web Services, Data, and Third Party Data (“Subscription Fees”). Thereafter, Subscription Fees for Subscriber’s use of the Web Services, Data and Third Party Data shall be (i) as described and/or as selected by You via the Site in connection with purchase to use the Web Services, Data and Third Party Data or (ii) negotiated between You and Provider by creating an addendum to this Agreement. Unless otherwise negotiated between You and Provider in an addendum to this agreement, all Subscription Fees are due at the beginning of each subscription term as specified in the Subscription Plan and Provider will charge the method



of payment You provide via the Site in the amount of the Subscription Fees in connection with the Subscription Plan that You select. Subscription Fees are exclusive of taxes, duties, levies, tariffs, and other governmental charges (including, without limitation, VAT) (collectively, "Taxes"). Subscriber shall be responsible for payment of all Taxes and any related interest and/or penalties resulting from any payments made hereunder, other than any taxes based on Provider's net income.

Prorated Refund of Subscription Fees. Upon termination of this Agreement, any unused prepaid Subscription Fees will be refunded to Subscriber no later than thirty (30) days from the date of termination. The refund amount will be the difference between the prepaid Subscription Fees and the pro-rated portion of the Subscription Fees due for use of the Web Services up to the date of termination calculated on a daily basis as the number of days in the current term prior to the date of termination divided by the total number of days in the current term.

SUPPORT SERVICES

Service Level. Provider will use its reasonable business efforts to ensure that the Web Services. Provider further agrees that it will use its reasonable business efforts to prevent and/or rapidly respond to and remedy any interruption to the operation of the Web Services caused by third parties from unlicensed use, viruses, malicious code, denial of service attacks, or other external tampering with the Web Services. HOWEVER, UNLESS OTHERWISE PROVIDED IN THIS AGREEMENT, PROVIDER MAKES NO OTHER WARRANTY REGARDING THE OPERATION OF THE WEB SERVICES.

Support Services. Provider will provide support to Subscriber related to the Web Services. Support services may include the following: (i) assistance with the proper use of the Web Services, and (ii) programming to correct any demonstrated errors in the Web Services necessary to enable the Web Services to operate in accordance with the service levels specified in the Support Plan.

Subscriber Responsibilities. Subscriber will promptly report any errors in the operation of the Web Services to Provider and will not take any actions that would increase the severity of the error. Subscriber will use the Web Services solely as described herein. In the event that Subscriber violates any of the requirements of this Section, Provider will have no responsibility to provide Support.

Enhancements and Modifications. Provider will provide to Subscriber enhancements or modifications ("Updates") to the Web Services as they become available. Subscriber acknowledges that additional Subscription Fees may be charged for the use of Updates, and that Provider has sole discretion in identifying which Updates require the payment of additional Subscription Fees. Provider acknowledges that Subscriber has sole discretion in deciding to use Updates and is only responsible for additional Subscription Fees for those Updates that Subscriber decides to use. Should Subscriber decide to use Updates that require additional Subscription Fees, then new Subscription



Fees for Subscriber's use of the Web Services shall be (i) as described and/or as selected by You via the Site in connection with purchase to use the Web Services, Data and Third Party Data or (ii) negotiated between You and Provider by creating an addendum to this Agreement. Provider agrees and acknowledges that Subscriber has spent time and resources to integrate the Web Services into Subscriber's computer systems. As a result, Provider agrees to notify Subscriber in writing at least thirty (30) business days prior to introducing any Update that will affect or impair the operation, functionality, or business purpose of the Web Services. Should any Update remove or alter any function of the Web Services or any portion the Data or Third Party Data that was available prior to the Update, such that it degrades the functioning of Subscriber's computer systems, Subscriber may immediately terminate this Agreement.

WARRANTIES, INDEMNITY, AND LIMITATION OF LIABILITY

Indemnification by Provider. Provider agrees to defend (or settle), indemnify and hold Subscriber, its employees, directors and officers harmless from and against any and all liabilities, losses, damages, or expenses (including court costs and reasonable attorneys fees) in connection with any third party claim that the Web Services, Data or Third Party Data infringe or misappropriate any Intellectual Property Rights (defined below) of any third party, only to the extent the liabilities, damages, or expenses result from use of the Web Services that is within the scope of this Agreement, provided that Subscriber does not make any admission of Provider guilt without Provider's prior written approval and provided that Subscriber gives Provider (i) prompt written notification of the claim or action, (ii) sole control and authority over the defense or settlement thereof, and (iii) all reasonably available information, assistance and authority to settle and/or defend any such claim or action. As used in this Section, "Intellectual Property Rights" specifically includes, without limitation, any patent, copyright, trade mark, trade name, trade dress, trade secret, service mark, service name, title, slogan, proprietary process, or any other intellectual property right.

Indemnification by Subscriber. Subscriber agrees to defend (or settle), indemnify and hold Provider, its employees, directors and officers harmless from and against any and all liabilities, losses, damages, or expenses (including court costs and reasonable attorneys fees) in connection with any third party claim that the Subscriber's use of the Web Services or Data in violation of this Agreement infringes or misappropriates any Intellectual Property Rights of any third party, provided that Provider does not make any admission of Subscriber guilt without Subscriber's prior written approval and provided that Provider gives Subscriber (i) prompt written notification of the claim or action, (ii) sole control and authority over the defense or settlement thereof, and (iii) all reasonably available information, assistance and authority to settle and/or defend any such claim or action.

Warranty Disclaimers. OTHER THAN SPECIFICALLY SET FORTH HEREIN, (i) THE WEB SERVICES, SITE, DATA, AND THIRD PARTY DATA ARE DELIVERED TO SUBSCRIBER ON AN "AS IS" BASIS, WITHOUT ANY WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, ACCURACY OF INFORMATION PROVIDED, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR



PURPOSE, QUALITY, OR PERFORMANCE, (ii) PROVIDER MAKES NO WARRANTY THAT THE SITE, DATA, OR THIRD PARTY DATA WILL MEET SUBSCRIBER'S SPECIFIC OBJECTIVES OR NEEDS; (iii) PROVIDER MAKES NO WARRANTY THAT THE WEB SERVICES, SITE, DATA, OR THIRD PARTY DATA WILL BE FREE FROM ERRORS OR BUGS; and (iv) PROVIDER MAKES NO WARRANTY THAT THERE WILL BE UNINTERRUPTED OPERATION OF THE WEB SERVICES, SITE, DATA, AND THIRD PARTY DATA. SUBSCRIBER ACKNOWLEDGES THAT (i) ANY DATA DOWNLOADED THROUGH THE USE OF THE WEB SERVICES AND SITE IS DONE AT ITS OWN DISCRETION AND RISK, AND THAT SUBSCRIBER WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO ITS COMPUTER SYSTEM OR LOSS OF APPLICATIONS OR DATA THAT RESULTS FROM THE DOWNLOAD OF SUCH DATA and (ii) THE FOREGOING EXCLUSIONS AND DISCLAIMERS OF WARRANTIES ARE AN ESSENTIAL PART OF THIS AGREEMENT AND FORMED THE BASIS FOR DETERMINING THE PRICE CHARGED FOR THE PRODUCTS. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED FROM PROVIDER OR ELSEWHERE SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THIS AGREEMENT. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES IN CERTAIN CIRCUMSTANCES. ACCORDINGLY, SOME OF THE LIMITATIONS SET FORTH ABOVE MAY NOT APPLY.

Accuracy of Data and Third Party Data. PROVIDER MAKES NO WARRANTY REGARDING THE DATA, THIRD PARTY DATA OR ANY OTHER INFORMATION PURCHASED OR OBTAINED THROUGH PROVIDER'S SITE AND/OR THE WEB SERVICES, OR THE ACCURACY, TIMELINESS, TRUTHFULNESS, COMPLETENESS OR RELIABILITY OF ANY DATA, THIRD PARTY DATA OR OTHER INFORMATION OBTAINED THROUGH PROVIDER'S WEBSITE AND/OR THE WEB SERVICES.

Limitation of Liability. UNLESS OTHERWISE PROVIDED HEREIN, IN NO EVENT WILL PROVIDER'S AGGREGATE LIABILITY TO SUBSCRIBER AND ANY THIRD PARTY IN CONNECTION WITH THIS AGREEMENT OR SUBSCRIBER'S ACCESS TO OR USE OF THE WEB SERVICES EXCEED THREE (3) MONTHS PRORATED SUBSCRIPTION FEES, REGARDLESS OF THE FORM OR THEORY OF THE CLAIM OR ACTION. PROVIDER WILL NOT BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, PUNITIVE, EXEMPLARY OR RELIANCE DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, OR ANY DAMAGES RESULTING FROM ANY INTERRUPTION OR DISRUPTION IN COMMUNICATIONS OR SERVICES, UNAVAILABILITY OR INOPERABILITY OF SERVICES, TECHNICAL MALFUNCTION, LOST DATA, OR LOST PROFITS, EVEN IF PROVIDER KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF OR COULD HAVE REASONABLY PREVENTED SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

MISCELLANEOUS PROVISIONS



Excusable Delays. Any delay in performance of any provision of this Agreement caused by conditions beyond the reasonable control of either party will not constitute a breach of this Agreement, provided that the delaying party has taken reasonable measures to notify the affected party of the delay in writing and uses reasonable efforts to perform in accordance with this Agreement notwithstanding such conditions. The delayed party's time for performance will be deemed extended for a period equal to the duration of the conditions beyond its control. Conditions beyond a party's reasonable control include, but are not limited to, natural disasters, acts of government, acts of terrorism, power failures, major network failures, fires, riots, and acts of war (collectively, "Excusable Delays").

Compliance with Laws and Policies. The parties hereby agree to abide by and comply with all applicable local, state, national, and international laws and regulations (including applicable laws that pertain to the transmission of technical data, privacy, the encryption of software, the export of technology, the transmission of obscenity, or the permissible uses of intellectual property).

Controlling Law. The parties agree the laws of the State of California, excluding conflict of laws provisions, will govern this Agreement and all matters arising out of or related to this Agreement. The parties submit to the jurisdiction of the courts of the State of California. The parties expressly agree to venue in the state and federal courts located in Los Angeles County, California and waive any objection based on personal jurisdiction.

Entire Agreement and Severability. This Agreement, including the Subscription Plan and Support Plan, as amended from time to time according to its terms, shall constitute the entire agreement between Subscriber and the Provider respecting the Site, the Web Services, the Support, the Data, and the Third Party Data described herein, and shall supersede all prior agreements, arrangements, representations or promises, whether oral or written, as to its subject matter. This Agreement may be amended only in a written agreement that is duly executed by authorized representatives of the parties.

Force Majeure. The Provider and their respective affiliates shall not be deemed to be in default of any provision hereof or be liable for any delay, failure in performance, or interruption of service resulting directly or indirectly from acts of God, civil or military authority, civil disturbance, war, terrorism, strikes, fires, other catastrophes, power or telecommunications failure or any other cause beyond its reasonable control.

Waiver. No waiver by either party of any default by the other in the performance of any provisions of this Agreement shall operate as a waiver of any continuing or future default, whether of a like or different character.

Assignment. Neither party may assign this Agreement without prior written consent unless in connection with a merger or acquisition of either party.



Severability. If any provision of this Agreement (or any portion thereof) shall be invalid, illegal or unenforceable, the validity, legality or enforceability of the remainder of this Agreement shall not in any way be affected or impaired thereby.

Relationship Between the Parties. Nothing in this Agreement shall be construed to create a partnership, joint venture or agency relationship between the parties. Neither party will have the power to bind the other or to incur obligations on the other's behalf without such other party's prior written consent.

No Third-Party Beneficiaries. This Agreement is intended for the sole and exclusive benefit of the signatories and is not intended to benefit any third party. Only the parties to this Agreement may enforce it.

Notice. The parties may give notice to each other via email, fax or certified mail. Notices sent to Provider should be directed to info@cybercity3d.com . Notices sent to Subscriber will be sent to Subscriber at the email address provided during registration to use the Web Services.