

## S3D Terms of Service

### 1. INTERPRETATION

#### 1.1 Documents forming the Agreement

These Terms of Service apply to all services and software purchased from S3D. Each Service Proposal shall be deemed to form a separate agreement between the Customer and S3D incorporating the S3D Terms of Service in each instance.

When used in these Terms of Service, the word "Agreement" shall mean the applicable Service Proposal and all additional contractual documentation incorporated therein, including these Terms of Service.

#### 1.2 Definitions

Capitalized terms have the meaning ascribed to them in Schedule A hereto.

### 2. INTEGRATION SERVICES

#### 2.1 Scope of Integration Services

The scope of the Integration Services is limited to what is set out in the Service Proposal. All configuration, training or other professional services to be provided to Customer from time to time by S3D, other than the Integration Services, shall be deemed to be Additional Services. Additional Services will be subject to a statement of work to be accepted by the Parties.

#### 2.2 Exclusivity

Customer agrees that S3D shall be the exclusive provider of configuration or integration services in connection with the Software. This provision shall not preclude Customer from obtaining consulting services from other persons in connection with the design or manufacturing of Authorized Product(s), as long as such consulting services do not incorporate the configuration of the Software.

#### 2.3 Cooperation

The Customer shall cooperate reasonably and in good faith with S3D to enable S3D to perform Integration Services including, without limitation, by:

- a. allocating sufficient resources and timely performing any tasks reasonably necessary to enable S3D to perform its obligations.
- b. timely delivering any materials and Customer Data required to perform the Integration Services.
- c. timely responding to S3D inquiries related to the Integration Services.
- d. actively participating in scheduled project meetings.

If the provision of the Integration Services is delayed by an act or omission by the Customer or its personnel, S3D shall not be responsible for applicable delays.

#### 2.4 Relationship of the Parties

S3D and Customer shall remain independent contractors and nothing in this Agreement shall be interpreted as submitting S3D to the authority of Customer. Except as specifically determined in this Agreement, S3D shall be free to determine how the Integration Services are provided and to subcontract Integration Services.

#### 2.5 Work Product

Except as provided otherwise in the Service Proposal, S3D shall retain all Intellectual Property Rights in work product resulting from Integration Services.

In any case and notwithstanding anything to the contrary in this Agreement, S3D shall retain all Intellectual Property Rights in and to the result of Integration Services consisting of improvements to the Software, including, without limitation, the

development of new features or Workflows for the Software, the customization of the Software, the development of new software to be operated in connection with the Software.

### **3. SUPPORT AND INCIDENTS**

#### **3.1 Technical Support**

At its sole discretion, S3D may, during the Term, provide technical support for the Software to Customer. Any such technical support shall be only available during Business Hours and will be limited to answering questions concerning the installation, use and operation of the Software. S3D shall not be obligated to provide technical support for the Software to ensure the proper operation or compatibility of the Software with any other software or hardware, or to correct any errors or defects in the Software, except Incidents.

#### **3.2 Incidents**

S3D shall provide response and corrective measures in case of an Incident.

#### **3.3 Response Time**

If an Incident is uncovered by S3D or by an Authorized User, S3D undertakes to respond (as applicable) and to begin the work required to correct the Incident within the response time indicated in the Service Proposal (the "Response Time").

When an Incident is reported outside Business Hours, S3D undertakes to deploy its best efforts to respond quickly, depending on the availability of its technical support team members and the severity of the anticipated impacts of the Incident. S3D cannot, however, guarantee a faster response than the Response Time.

The Response Time does not include the time required to correct the Incident, which may vary depending on the magnitude of the Incident.

#### **3.4 Exclusions**

The following events will not be considered Incidents, and S3D's obligations with respect to Incident response will not apply:

- a. Occurrences caused by Customer's hardware and software.
- b. Occurrences caused by Customer's Internet connection.
- c. Occurrences caused by force majeure.

Occurrences which are not considered Incidents may be remediated at the expense of the Customer, at S3D's discretion, as Additional Services.

### **4. SOFTWARE ACCESS AND USE**

#### **4.1 License**

S3D hereby grants to Customer, during the Term, solely in connection with the Authorized Product(s), for the Authorized Use and in the Authorized Territory, and subject to the terms of this Agreement, a revocable, non-exclusive, non-sublicensable and non-transferable right to access and Use the Software solely as authorized in this Agreement.

To the extent that any component of the Software may be installed or run locally on infrastructure controlled by the Customer, S3D grants the Customer a revocable, non-exclusive, non-sublicensable and non-transferable license to install, copy (only as required for the purpose of this Agreement) and use such components, in compiled code form, solely as authorized in this Agreement.

S3D hereby grants Customer, during the Term, solely in connection with Customer's Use of the Software and for the sole purpose of facilitating Customer's and Authorized Users' Use of the Software, a non-exclusive, non-sublicensable and non-transferable license to copy, distribute internally and use the Documentation.

S3D reserves all rights on the Software and Documentation not granted herein.

#### 4.2 No representation

The Customer declares that, except for Integration Services described in the Service Proposal, its procurement of the right to Use the Software is not contingent on the delivery of any future functionality or feature, or dependent on any oral or written public comments made by S3D regarding future functionality or features.

#### 4.3 Maintenance

From time to time, it will be necessary for S3D to perform maintenance on the Software. S3D shall use its commercially reasonable efforts to perform such maintenance at such times to minimize the impact of any downtime of the Software to Customer. To the extent reasonably possible, S3D shall notify Customer in advance of any scheduled maintenance by posting a message on the website or by sending an e-mail to the Customer Representative of the scheduled maintenance time and the anticipated duration and effect of such maintenance.

#### 4.4 Authorized Users and Authentication IDs

Only Authorized Users are authorized to Use the Software. Any change in the identity of Authorized Users must be approved in writing by S3D, which shall not unreasonably withhold its approval.

Customer shall control and maintain the security of all Authentication IDs. Customer shall be solely responsible for all instructions, commitments and other actions or communications taken under any of its Authentication IDs, whether or not such use is authorized by Customer. Customer shall promptly report to S3D any errors or irregularities in the Software or any unauthorized use of any part thereof and inform S3D immediately if any Authentication ID becomes known to any third person who is not authorized to possess such information. For the purpose of this Agreement any Use of the Software under any Customer Authentication ID shall be deemed to be use by Customer.

#### 4.5 Third-Party Hosting

Customer acknowledges that portions of the Software may be hosted by a third-party service providers, that the S3D servers may be one or more virtual instances provided by a third-party service provider and that the Customer Data may be hosted and processed by a third-party service provider, at the sole discretion of S3D. Except as set out in the Service Proposal, S3D shall have no restriction (a) on selecting a third-party service providers to host portions of the Software or (b) regarding the location of the facilities operated by third-party service providers.

#### 4.6 Permitted Use

Use of the Software is limited to (a) the features included in the Documentation or as set out in the Service Proposal, (b) the Authorized Product(s) and (c) the Authorized Territory. Customer is not authorized to Use the Software for any other purpose or in any other way without the prior written consent of S3D, which consent may be withheld at S3D absolute discretion. Customer acknowledges that S3D may have entered into agreements with third parties regarding exclusive Use of the Software for certain purposes or territories and that any non-authorized Use of the Software by Customer may cause significant harm to S3D.

#### 4.7 Prohibited Use

Without limiting the effect of Section 4.6, Customer shall not:

- a. Use the Software for unlawful purposes.
- b. Use the Software other than to in connection with Authorized Product(s) and for Authorized Use.
- c. Use the Software outside the Authorized Territory or for the benefit of a Person outside the Authorized Territory.
- d. remove any copyright or other proprietary rights notice on the Software or the Documentation or any copies thereof.
- e. reproduce, transmit or provide access to the Software on any computer that is not authorized under this Agreement, either because it is not owned or controlled by Customer, because it exceeds the limits on copying and use set by this Agreement or for the benefit of any Person that is not the Customer or an Authorized User.
- f. loan, sell, or otherwise distribute all or any part of the Software or Documentation except as specifically and explicitly permitted in this Agreement.
- g. modify, reverse engineer, decompile or disassemble the Software in whole or in part, or create any derivative works from or sublicense any rights in the Software or provide assistance to any effort of a third party to do so.
- h. modify or alter in any manner the Software or the Documentation or take part in any such an effort initiated by a third party.
- i. Use the Software to create similar software or provide assistance to any third party for that purpose.

- j. Use the Software for performance testing or benchmarking purposes; and
- k. access or attempt to access the source code of the Software.

Customer shall be responsible for any breach of the prohibitions listed above by its employees, officers, agents, contractors or any Person using Customer's Authentication ID's.

#### 4.8 Audit by S3D

S3D reserves the right to monitor and audit Customer's and its Authorized Users' Use of the Software for the purpose of ensuring compliance with the terms of this Agreement, for facilitating the maintenance and improvement of the Software and to analyze Software use in general. Any such audit may be carried out by S3D or a third party authorized by S3D, at its own expense.

If S3D's monitoring activities or audit reveals that Customer's or any Authorized User's Use of the Software is in breach of this Agreement, including any use in breach of any Applicable Laws, S3D may immediately suspend and discontinue Customer or any specific Authorized User's access to the Software without prior notice to Customer. S3D shall notify Customer of such suspension as soon as reasonably possible, which notice shall set out the reasons for the suspension. If Customer rectifies the situation to S3D's satisfaction, then S3D shall resume Customer's full access to the Software. If Customer does not rectify the situation within a reasonable period of time, then it shall be deemed a material breach of this Agreement and S3D shall be free to terminate this Agreement in accordance with Section 9.

#### 4.9 Technical requirements

Customer shall procure and maintain computer systems and an internet connection meeting the technical requirements set out in the Documentation and/or in the Service Proposal, where applicable, or reasonably required by S3D from time to time.

Customer acknowledges that portions of the operation of the Software depends on remote servers and that the Software will not function properly without a high-speed Internet connection and appropriate network configuration.

### **5. PERFORMANCE STANDARDS**

S3D shall use all commercially reasonable efforts to ensure that the Software availability and uptime are consistent with industry standards. S3D shall provide the Services with reasonable skill and care and undertakes that on delivery the Services will conform in all material respects (i) to specifications set forth in the Service Proposal or in other documents accepted by the parties and (ii) to applicable industry standards.

If the Services or Software do not conform with the foregoing undertaking, S3D will, at its expense, use all commercially reasonable efforts to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. **Without prejudice to Customer's termination rights, such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in this Section.**

Notwithstanding the foregoing, S3D:

- a. does not warrant that the Customer's Use of the Software will be uninterrupted or error-free; or that the Services and/or the information obtained by the Customer through the Services will meet the Customer's requirements (to the extent that the same exceed requirements expressly set forth in this Agreement); and
- b. is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities other than those of S3D, including the internet, and the Customer acknowledges that the Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- c. is not responsible for any delay in the performance of Services caused by Customer's lack of cooperation or by delays in Customer provision of materials to S3D.

### **6. FEES**

#### 6.1 Fees

Fees, payment and invoicing terms and conditions are as set out in the Service Proposal.

## 6.2 Additional Fees

Customer agrees to pay the applicable additional fees for all services provided by S3D outside the scope of the services set out in the Service Proposal or as agreed from time to time between Customer and S3D.

## 6.3 Taxes

Fees stated in the Service Proposal do not include any applicable taxes. Customer shall pay all taxes, however designated or incurred, which are paid or payable as a result of or otherwise in connection with the transactions contemplated in this Agreement including, without limitation, federal, provincial and local, excise, sales, use, goods and services, harmonized, value added and any taxes or other amounts in lieu thereof, except for any taxes based on S3D's income.

## 6.4 Interest

Where Customer fails to pay any amount in accordance with the payment terms set out in the Service Proposal, S3D shall have the right, in addition to any other rights or remedies available to it, to charge, and Customer shall pay, interest on such overdue amounts at the rate of 1.5% per month calculated daily, compounded monthly (18% per annum) both before and after any court judgment in respect of the same from the date such payment was due.

## 6.5 Reporting and Audit

Customer shall at all times cooperate with S3D or its representatives to verify and resolve questions respecting the calculation of Fees, including by promptly providing S3D with any documentation relating to the calculation of the Fees. S3D may audit (or may appoint a third-party to audit, at S3D's expense) Customer operations at any time and Customer shall provide access to and copies of all relevant records at Customer's sole cost and expense for such purpose.

# **7. PROPRIETARY RIGHTS**

## 7.1 S3D Ownership

Customer acknowledges and agrees that, as between Customer and S3D, S3D owns all worldwide right, title and interest, including all Intellectual Property Rights, in and to: (i) the Software; (iii) the "look and feel" and the user interface of the Software; (iv) the Documentation; and (v) any modifications, enhancements, upgrades, updates or customization to the Software or Documentation. Customer does not acquire any rights, title or ownership interests of any kind whatsoever, express or implied, in any of the foregoing other than the authorization to Use the Software granted herein.

## 7.2 Customer Data

S3D acknowledges and agrees that as between Customer and S3D, all worldwide right, title and interest, including all Intellectual Property Rights in and to the Customer Data, shall be the exclusive property of Customer. S3D does not acquire any rights, title or ownership interest of any kind whatsoever, express or implied, in any of the Customer Data, other than the license granted herein. Output Files shall be deemed to be Customer Data. S3D has no obligation to host or keep backup copies of Customer Data.

## 7.3 License on Customer Data

Customer hereby grants to S3D a royalty-free, non-exclusive, non-transferable right and license to use, copy, store and display the Customer Data for the purpose of enabling S3D to perform the Services and provide access to the Software under this Agreement and generating Software Data.

S3D may use Customer Data, including Personal Data, where applicable, in connection with the improvement of the Software and the processes involved in the operation of the Software (such as algorithms, machine learning models, etc.), as long as such use does not involve data associated with identifiable individuals.

## 7.4 Software Data

S3D shall retain ownership of Software Data. S3D shall ensure that Software Data does not contain Personal Data and shall only disclose Software Data in aggregated form ensuring that the Customer may not be identified.

### 7.5 Personal Data

To the extent that Customer Data includes Personal Data:

- a. the Customer shall be deemed to control the purposes for which Personal Data is processed through the Software or the Services;
- b. the Customer shall be solely responsible to determine its legal basis for processing Personal Data;
- c. S3D shall process Personal Data solely pursuant to instructions from the Customer and for no other purpose;
- d. any action taken by an Authorized User on the Software interface shall be deemed to be a valid instruction from Customer with respect to the processing of Personal Data;
- e. S3D shall be authorized to use sub-contractors to process Customer Data.

### 7.6 Security Measures

S3D shall implement commercially reasonable technical and organizational security measures to ensure that Personal Data under its control, if any, is not subject to unauthorized disclosure, modification, or destruction. Customer acknowledges that security measures and the information security standards used by S3D may change based on requirements or changes in the practices of third-party service providers.

### 7.7 Inquiries

Each party shall notify the other party promptly if it receives any inquiry from a data subject or a supervisory authority regarding Personal Data collected or processed in connection with the Services.

S3D shall direct data subject requests regarding Personal Data to Customer.

### 7.8 Feedback from Customer

If Customer, including any employee, officer, agent or contractor of Customer, contacts S3D about improvements to the Software, the Documentation or the Services ("Feedback"), Customer authorizes S3D to use the Feedback without restriction. Customer warrants that the Feedback contains no information that is confidential or proprietary to third parties and agrees that (i) except with respect to Customer Data which may be included with the Feedback, S3D has no expressed or implied obligation of confidentiality with respect to the Feedback; (ii) S3D is authorized to use or disclose (or choose not to use or disclose) the Feedback for any purpose whatsoever, in any way whatsoever, on any medium whatsoever, anywhere in the world; (iii) S3D may already have considered or be in the process of developing elements identical or similar to those mentioned in the Feedback; and (iv) Customer will not be compensated in any way with regards to S3D's use of the Feedback.

## **8. CONFIDENTIALITY**

### 8.1 Acknowledgement

Each Party acknowledges that all Confidential Information is confidential and proprietary information of the disclosing Party.

### 8.2 Undertaking

Each Party shall, and shall cause its employees, officers, agents and contractors to hold Confidential Information of the other Party in confidence and shall use the same degree of care by instruction, agreement or otherwise, to maintain the confidentiality of the other Party's Confidential Information that it uses to maintain the confidentiality of its own Confidential Information, but with at least a reasonable degree of care. Each Party agrees not to make use of Confidential Information other than for the exercise of rights or the performance of obligations under this Agreement, and not to release, disclose, communicate it or make it available to any third party other than employees, officers, agents and contractors of the Party who reasonably need to know it in connection with the exercise of rights or the performance of obligations under this Agreement and which agreed in writing to keep Confidential Information confidential.

### 8.3 Exceptions

The receiving Party's obligations set forth in paragraph 8.2 shall not apply to information:

- a. that, at the time of disclosure by the disclosing Party, is part of the public domain, through no act or failure on the part of the receiving Party, whether through breach of this Agreement or otherwise;
- b. that, prior to disclosure by the disclosing Party, was already in the possession of the receiving party, as evidenced by written records kept by the receiving party in the ordinary course of its business, or as evidenced by proof of actual prior use by the receiving party;
- c. independently developed by the receiving Party, by Persons having no direct or indirect access to the disclosing Party's Confidential Information provided that the receiving Party provides clear and convincing evidence of such independent development;
- d. which, subsequent to disclosure, is obtained from a third Person: (A) who is lawfully in possession of the such information; (B) who is not in violation of any contractual, legal, or fiduciary obligation to either Party, as applicable, with respect to such information; and (C) who does not prohibit either Party from disclosing such information to others; or
- e. that is further disclosed with the prior written consent of the disclosing Party, but only to the extent of such consent.

#### 8.4 User Interface

Without limiting the obligations of Customer pursuant to this Section, Customer further acknowledges that the Software user interface, the look and feel of the Software, and the specific features of the Software are proprietary to S3D and that S3D has a legitimate interest in keeping such elements confidential. Customer agrees not to disclose such information other than as necessary to Use the Software. Customer specifically agrees to not give access to the Software to outside consultants, except as agreed in writing with S3D.

#### 8.5 Forced Disclosure

In the event that a Party (including an employee, officer, agent or contractors of said Party) is ordered to disclose all or any part of the Confidential Information under the terms of a valid and effective order issued by a court of competent jurisdiction or by a Governmental Authority, such Party agrees to: (i) immediately notify the other Party of the existence, terms and circumstances surrounding such a request; (ii) consult with the other Party on the advisability of taking legally available steps to resist or narrow such request; and (iii) if disclosure of such Confidential Information is required, exercise commercially reasonable efforts to obtain an order or other reliable assurance that confidential treatment will be accorded to such portion of the disclosed Confidential Information which the other Party so designates.

#### 8.6 Publicity

Except with the prior written consent of S3D, Customer shall not make any report to any third party (other than an affiliate) or any social media posting (whether written, oral or otherwise) concerning its use or evaluation of the Software nor give any interview to the media about the Software.

Except as otherwise stated in the Service Proposal, S3D may reasonably use Customer's name, Customer's trademarks, visual representations of Output Files and pictures or illustrations of Authorized Product(s) manufactured using Output Files (excluding any Customer Confidential Information) to include in a list of its customers and devices for marketing purposes.

### **9. TERM, RENEWAL AND TERMINATION**

#### 9.1 Term

This Agreement and the rights and obligations of the Parties hereto shall commence and expire as set forth in the Service Proposal, unless terminated earlier in accordance with the provisions contained herein.

#### 9.2 No Termination for Convenience

The Parties hereby exclude any applicable remedy provided by law which may afford Customer the right to terminate this Agreement before the end of the Term other than as expressly stated herein, including articles 2125 to 2129 of the Civil Code, to the extent applicable. If Customer chooses to terminate the Agreement for convenience before the end of the Term, Customer shall remain liable for the payment of all applicable fees for the complete Term and shall receive no refund.

#### 9.3 Renewal

The Agreement shall be renewed as set forth in the Service Proposal.

#### 9.4 Immediate Termination

Either party shall have the option to terminate this Agreement immediately, upon giving written notice to the other Party if:

- a. The other party becomes or is adjudicated insolvent or bankrupt, admits in writing its inability to pay its debts as they mature, or makes an assignment for the benefit of creditors.
- b. The other party applies for or consents to the appointment of any receiver, trustee or similar officer for it or for all or any substantial part of its property or such receiver, trustee or similar officer is appointed without the consent of said party.
- c. The other party institutes any bankruptcy, insolvency, reorganization, moratorium, arrangement, readjustment or debt, dissolution, liquidation or similar proceeding relating to it under the laws of any jurisdiction, or any such proceeding is instituted against a party and is not dismissed within sixty (60) days.

#### 9.5 Termination by Customer

Customer may terminate this Agreement and the rights granted hereunder without prejudice to its enforcement of any other legal right or remedy, immediately upon giving written notice of such termination if S3D:

- a. breaches any material provision of this Agreement and such breach continues for a period of 30 days after delivery of a written notice by Customer requiring S3D to correct such breach.
- b. breaches its obligations under Section 8, thereby causing material harm to Customer.

#### 9.6 Termination by S3D

S3D may terminate this Agreement and the rights granted hereunder without prejudice to its enforcement of any other legal right or remedy, immediately upon giving written notice of such termination if:

- a. Customer fails to pay in full any sum owing by it under this Agreement by the due date thereof and such failure continues for a period of 15 days after delivery of a written notice by S3D requiring Customer to correct such failure.
- b. Customer or any person using Customer's Authentication IDs infringes the Intellectual Property Rights of S3D, including by the breach of Customer's confidentiality obligations.
- c. Customer or any person using Customer's Authentication IDs engages in any prohibited Use of the Software and, where the cure of Customer's breach is possible, Customer fails to cure such breach within 5 days of the delivery of a written notice by S3D.
- d. Customer materially breaches any other provision of this Agreement and such breach continues for a period of 30 days after delivery of a written notice by S3D requiring Customer to correct such failure.

#### 9.7 Fees upon Termination

Unless this Agreement is terminated by Customer as a result of a default by S3D, upon termination of this Agreement, all Fees payable during the Term will become immediately payable, notwithstanding payment terms set out in the Service Proposal.

#### 9.8 Effect of Termination

When this Agreement is terminated or expires for any reason, including at the end of the Term, Customer shall either, as directed by S3D, promptly return to S3D or destroy all copies of the Software, together with all Documentation, data or reports and all related materials containing S3D Confidential Information, whether prepared by Customer or S3D. If requested by the S3D, Customer shall promptly provide to S3D a written statement certifying that it no longer has possession of any copy of the Software and other materials described above.

Upon termination of this Agreement, S3D shall allow Customer to download any Customer Data hosted by S3D for a period of 30 days following termination. After such 30-day period, S3D shall delete any Customer Data and Confidential Information of the Customer under its control. If requested by the Customer, S3D shall promptly provide Customer a written statement certifying the destruction.

#### 9.9 Survival

Notwithstanding the termination or expiration of this Agreement for any reason, the obligations of the parties that by their nature shall reasonably survive the termination of the Agreement, including the rights and obligations set forth in Sections 7 (Proprietary Rights), 8 (Confidentiality), 9 (Termination), 10 (Warranties), 11 (Limitation of Liability), 13 (Indemnification) of the Agreement shall survive the termination or expiration.



## 10. REPRESENTATIONS AND WARRANTIES

### 10.1 S3D Representations

S3D represents and warrants that for the duration of the Term, the Software will substantially operate in accordance with, and have the functions set out in, the Specifications or the Service Proposal.

### 10.2 Limitation of Warranty

**Except as expressly provided in this Agreement, S3D offers no warranty of any nature regarding the Software and the Services. S3D offers no warranty with respect to the results obtained by Customer by using the Software, nor with respect to the accuracy of the results provided by the Software. S3D disclaims any implied warranty that may be applicable to the Software or the Services.**

## 11. LIMITATION OF LIABILITY

### 11.1 Risk Allocation

Customer acknowledges that the Services and the Fees set forth in the Service Proposal are contingent on S3D's liability under this Agreement being strictly limited as set forth in this Section and that the cost of the Services provided to the Customer would be substantially greater if S3D's liability was not subject to all such limitations.

### 11.2 Exclusion of Consequential Damages

Subject to the restrictions of public order provided by law, S3D shall not be liable for any indirect, punitive, incidental, special or consequential damage, including, without limitation, damages for loss of use of data, loss of profits, loss of revenue or loss of anticipated savings arising out of the use or performance of the Software, or related thereto, or of the content of the Services or the inability to Use the Software or the Services, whether based on contract, fault, tort, negligence, strict liability or otherwise, even if S3D has been advised of the possibility of damages that may be caused to Customer by any interruption or suspension of access to the Software.

### 11.3 Monetary Limitation of Liability

Subject to the restrictions of public order provided by applicable law, S3D's liability and/or responsibility to Customer under this Agreement or related to the Software or Services shall be strictly limited to the Fees paid by Customer to S3D during the 12-month period immediately preceding the occurrence giving rise to liability.

## 12. FORCE MAJEURE

Except for any obligation to pay a sum of money, any delay or failure of either Party to perform its obligations under this Agreement shall be excused if, and to the extent, that the delay or failure is caused by an event or occurrence beyond the reasonable control of the Party and without its fault or negligence, such as, by way of example and not by way of limitation, acts of God, action by any Governmental Authority (whether valid or invalid), fires, flood, wind storms, explosions, riots, natural disasters, wars, terrorist acts, sabotage, labour problems (including lock-outs, strikes and slow downs, except for any labour problems of the Party claiming a force majeure event), or court order or injunction; provided that written notice of delay (including anticipated duration of the delay) shall be given by the affected Party to the other Party within five (5) days of the affected Party first becoming aware of such event. The Party not affected by a force majeure event may terminate this Agreement if the delay or failure causes said Party substantial harm.

## 13. INDEMNIFICATION

### 13.1 Indemnification by S3D

S3D shall defend at its own expense any claim, proceeding or suit (a “**Claim**”) brought against Customer or any of its Authorized Users to the extent such Claim alleges that the Software or Documentation provided by S3D infringes any copyright, patent or registered trademark of a third person within the Authorized Territory and will indemnify and pay all damages which by final judgment or settlement may be assessed against Customer on account of such infringement, provided that:

- a. S3D is given prompt written notice of the Claim or of any allegations or circumstances known to Customer which could result in a Claim;
- b. S3D is given all reasonable information and assistance from Customer, at S3D’s expense, which S3D may require to defend the Claim;
- c. S3D is given sole control of the defense of the Claim, and all negotiations for the settlement or compromise thereof; and
- d. the alleged infringement(s) do(es) not result or arise from any non-permitted uses, alterations, modifications or enhancements carried out by Customer or on its behalf by a third person.

If such Claim has occurred, or in S3D’s opinion is likely to occur, S3D may, at its option and expense, either procure for Customer the right to continue using the Software and Documentation or modify the same so that it becomes non-infringing without loss of functionality, or, at S3D’s discretion, discontinue the Service and Use of the Software and refund to Customer any pre-paid and unused portion of the Fees paid by Customer in respect to Use of the Software. The foregoing states the entire obligations of S3D with respect to any infringement of Intellectual Property Rights of any third Person.

### 13.2 Indemnification by Customer

Customer shall defend at its own expense any Claim brought against S3D, its affiliates, directors, officers, employees and agents, to the extent such Claim: (i) alleges that any Customer Data infringes any copyright, patent or registered trademark of a third person within the Authorized Territory or in Canada; (ii) alleges, directly or indirectly, that the Customer Data contains any Objectionable Content; (iii) arises from Customer’s or its Authorized Users’ non authorized Use of the Software, including where non authorized use is not directly approved by Customer (iv) arises from S3D’s authorized processing of Customer Data, including Personal Data, provided that Customer is given:

- a. prompt written notice of the Claim or of any allegations or circumstances known to Customer which could result in a Claim;
- b. all reasonable information and assistance from S3D, at Customer’s expense, which Customer may require to defend the Claim; and
- c. sole control of the defense of the Claim, and all negotiations for its settlement or compromise thereof.

## 14. GENERAL PROVISIONS

### 14.1 Assignments

S3D may assign or otherwise transfer its rights and obligations under this Agreement without Customer’s prior consent. Customer may not assign or otherwise transfer its rights and obligations under this Agreement without S3D’s prior consent, which shall be at S3D’s sole discretion.

### 14.2 Successors and Assigns

All references to the parties in this Agreement are deemed to also include, if applicable, a reference to their successors and respective permitted assigns. These provisions shall be binding and shall also benefit these successors and permitted assigns.

### 14.3 Amendments

This Agreement cannot be amended, modified, replaced, canceled, renewed or extended, and its provisions may only be subject to a waiver of their performance by a written document signed by all the parties hereof, or in the case of a waiver to exercise any of its provisions, by the waiving party. Any party’s failing or neglecting to require the performance of any provision hereof at any time shall not affect their right to demand performance at a later time.

S3D may update the Terms of Service from time to time. During the term, (a) if S3D updates these Terms of Service in a manner that benefits Customer or to increase clarity of the language, Customer will be informed of such changes during a routine communication from S3D to all customers ; (b) if S3D desires to update the Terms of Service in a manner that could be perceived as detrimental to Customer, S3D shall notify Customer at least thirty (30) days in advance of the proposed change and to obtain the written content of Customer before making the change applicable to Customer. At the end of the Term of at the renewal of the Agreement, S3D may submit updated Terms of Service to the Customer and the Parties shall agree on such amended Terms of Service in order for the Agreement to be renewed.

#### 14.4 Cumulative Remedies

Any rights, remedies and any repairs enforceable by S3D under this Agreement are cumulative and may be exercised simultaneously or separately.

#### 14.5 Invalidity of Provisions

To the extent possible, each provision of this Agreement must be interpreted so as to be enforceable and valid under applicable law, but in the event that any of its provisions is deemed invalid, illegal or unenforceable for any reason whatsoever under the applicable law or regulation in any jurisdiction, this invalidity, illegality or unenforceability shall not affect the validity of the other provisions of this Agreement.

#### 14.6 Applicable Law and Jurisdiction

This Agreement is subject to the laws in force in the province of Quebec. The parties agree to submit any dispute concerning this Agreement to the exclusive jurisdiction of the courts sitting in the judicial district of Montreal, province of Quebec.

#### 14.7 Entire Agreement

This Agreement cancels and replaces any previous agreements between S3D and Customer concerning the Software and the Services, including any previous oral or written services offers, orders and agreements. Customer acknowledges and declares that other than as set out in this Agreement, it is not relying on any representations from S3D or any other Person regarding the performance or features of the Software.

### Schedule A - Definitions

**"Additional Fees"** means fees not expressly set forth in the Service Proposal to be agreed between the Parties in a separate statement of work.

**"Additional Services"** means services not included in the Service Proposal and for which Additional Fees will apply.

**"Applicable Laws"** means any and all (i) laws, statutes, rules, regulations, by laws, codes, treaties, constitutions and ordinances; (ii) order, directive, judgment, decree, award or writ of any court (including a court of equity), arbitrator or arbitration panel, or any Governmental Authority or other body exercising adjudicative, regulatory, judicial or quasi-judicial powers, including any stock exchange and (iii) policies, guidelines, standards, requirements, notices and protocols of any Governmental Authority; which are applicable to or govern Customer, S3D or the transactions contemplated by this Agreement.

**"Authentication ID"** means a security mechanism by which an Authorized User identifies herself or himself to the Software and gains access thereto, which security mechanism may include user identification, passwords, digital certificates or any other similar process mechanism for authentication and recognition as determined by S3D from time to time.

**"Authorized Product"** means a device or item designated in the Service Proposal for which the Software may be used by Customer to generate Output Files.

**"Authorized Use"** means training Authorized Users and generating Output Files for the purpose of manufacturing Authorized Products.

**"Authorized User"** means an end-user who Customer and S3D have authorized to access and use the Software.

**"Business Hour"** except if specified otherwise in the Service Proposal, means the hours between 9:00 AM and 5:00 PM Eastern Time, Monday to Friday except on any statutory holiday observed in Canada.

**"Confidential Information"** means the content of this Agreement, the Software, Customer Data and all ideas, designs, business models, databases, drawings, documents, diagrams, formulas, test data, marketing, financial or personnel data, sales information, customer or supplier information, including information provided by such customers or suppliers, or any other information already furnished and to be furnished or made available by one Party to the other, whether in oral, written, graphic or electronic form including any such information exchanged during informational sessions designated as confidential, including, without limitation, information concerning a Party's actual and potential customers and other Intellectual Property Rights of such Party.

**"Customer Data"** means collectively any data, files, documentation or other information: (i) that Customer or any of its Authorized Users may upload to the Software; and (ii) is processed through the use of the Software.

**"Customer"** means the entity purchasing services from S3D identified in the Service Proposal.

**"Documentation"** means the documents, user manuals and guides with respect to the operation, use and functions of the Software, which may be amended or updated by S3D from time to time.

**"Effective Date"** means the date designated as such in the Service Proposal.

**"Fees"** means the fees set forth in the Service Proposal or any additional statement of work or similar document accepted by the Parties.

**"Governmental Authority"** means any domestic, foreign or supranational government, whether federal, provincial, state, territorial or municipal; and any governmental agency, ministry, department, tribunal, commission, bureau, board or other instrumentality, including international institutions, exercising or purporting to exercise legislative, judicial, regulatory or administrative functions of, or pertaining to, government.

**"Incident"** means an unscheduled event or occurrence originating from S3D, the Software or S3D Infrastructure that negatively and substantially affects the Software or its use by Customer or Authorized Users, subject to exceptions provided by this Agreement.

**"Integration Services"** means services to be provided to Customer by S3D as set forth in a statement of work included in the Service Proposal.

**"Intellectual Property Rights"** means: (a) any and all proprietary rights anywhere in the world provided under: (i) patent law; (ii) copyright law, including moral rights; (iii) trademark law; (iv) design patent or industrial design law; (v) semiconductor chip or mask work law; (vi) trade secret law; (vii) privacy law; or (viii) any other statutory provision or common law principle applicable to this Agreement which may provide a right in either: (A) Intellectual Property; or (B) the expression or use of Intellectual

Property; and (b) any and all applications, registrations, licenses, sub-licenses, franchises, agreements or any other evidence of a right in any of the foregoing.

**"Intellectual Property"** means any property, tangible or intangible, that may be subject to Intellectual Property Rights, including without limitation, ideas, formulae, algorithms, concepts, techniques, processes, procedures, approaches, methodologies, plans, systems, research, information, documentation, data, data compilations, specifications, requirements, designs, diagrams, programs, inventions, technologies, software (including its source code), tools, products knowledge, know-how, including without limitation, trade secrets, and other materials or things.

**"Objectionable Content"** means content that infringes any Applicable Laws, regulations or third-party rights, and content which is obscene, indecent, pornographic, seditious, offensive, defamatory, threatening, liable to incite racial hatred, menacing, blasphemous, misleading, deceptive or in breach of any person's Intellectual Property Rights.

**"Output Files"** means files generated and exported by the Software representing three-dimensional object for the purpose of digital manufacturing.

**"Party"** means either S3D or Customer; and "Parties" means both of them.

**"Person"** means any individual, estate, sole proprietorship, firm, partnership, unincorporated association, unincorporated syndicate, unincorporated organization, limited liability company, corporation, body corporate, trustee, trust, Governmental Authority or other entity or organization and includes any successor to any of the foregoing.

**"Personal Data"** means information that relates to an identifiable individual or information deemed personal data or personal information by Applicable Law governing privacy.

**"S3D Infrastructure"** means the servers and such other devices and peripherals, including all computer hardware, software, network components, and electrical and telecommunications infrastructure operated or controlled by S3D, either itself or through a service provider.

**"Service Proposal"** means a document outlining the details and specifications of the Services accepted by the Parties.

**"Services"** means collectively the services to be provided by S3D to Customer as described and set out in this Agreement.

**"Software Data"** means data, files and/or information provided to Customer by S3D (such as files and data used for demonstration or testing purposes) or generated by S3D from Customer's use of the Software, including the results of analyses performed by S3D about Customer's use of the Software. For clarity, Software Data may not include Customer's Confidential Information.

**"Software"** means the application described in the Service Proposal and/or the Documentation, which is accessible via a distant connection to the S3D Infrastructure.

**"Specifications"** means, with respect to the Software, the functional specifications for the performance, operation and use of the Software, as set out in the Documentation.

**"Term"** means the duration of the Services set forth in the Service Proposal.

**"Use"** in relation to the Software, means to activate the processing capabilities of the Software, load, execute, access, employ the Software, or display information resulting from such capabilities.

**"Workflow"** means a set of instructions for the operation of the Software created by S3D for the specific needs of Customer with respect to an Authorized Product.