

## ECHO3D MASTER SERVICES AGREEMENT

This Master Services Agreement (“**MSA**”) is entered into by and between echo3D, Inc., a Delaware corporation (“**echo3D**”) and the counterparty identified in the Order(s) to which this MSA relates (“**Client**”). echo3D and Client may each be individually **referred** to as a “**Party**” or collectively as the “**Parties**.”

### 1. DEFINITIONS

- 1.1. “**Acceptable Use Policy**” means echo3D’s Acceptable Use Policy, a copy of which can be found at [www.echo3D.com/terms](http://www.echo3D.com/terms) and provided upon request. The Acceptable Use Policy is incorporated into this Agreement by reference.
- 1.2. “**Affiliates**” means, with respect to any entity, any other entity directly or indirectly controlling or controlled by, or under direct or indirect common control with, such entity or one or more of the other Affiliates of that entity (or a combination thereof). For purposes of this definition, an entity shall control another entity if the first entity: (i) owns, beneficially or of record, more than fifty percent (50%) of the voting securities of the other entity; or (ii) has the ability to elect a majority of the directors of the other entity.
- 1.3. “**Agreement**” refers to this MSA, each Order, and the Acceptable Use Policy, collectively.
- 1.4. “**Claims**” means any and all claims, suits, action, or proceeding, and accompanying damages, losses, liabilities, costs, or expenses, including reasonable attorneys’ fees, brought by or owing to a third party.
- 1.5. “**Client Content**” means all content, models, data and materials that Client or its Representatives enter into the Services or that are otherwise provided by or on behalf of Client for use, storage, processing, or display via the Services.
- 1.6. “**Include**” and “**including**”, as such terms are used throughout the Agreement, shall not be interpreted as having a limiting effect, but rather as introducing a non-exhaustive example or list in the same fashion as “including without limitation” and “including, but not limited to”.
- 1.7. “**Order**” means a written order for the purchase of Services from echo3D that is entered into by the Parties.
- 1.8. “**Representatives**” means either Party’s respective agents, employees, contractors, consultants and other representatives.
- 1.9. “**Services**” means the services identified in an Order. For the avoidance of doubt, the Services include any hardware, software, equipment and technical support provided or otherwise made available to Client by or on behalf of echo3D in connection with echo3D’s performance of services purchased under an Order.

### 2. SERVICES

- 2.1. **The Services.** Subject to the terms and conditions of this Agreement, echo3D agrees to provide the Services throughout the Term of the relevant Order and grants Client a limited, revocable, nonexclusive right to access and use the Services during the Term of such Order, solely for Client’s internal business purposes, as permitted by the functionality of the Services, as may be changed from time to time. Except as expressly set forth in this Agreement, Client receives no other rights, title or interest in or to the Services. echo3D owns and retains all right, title, and interest in and to the Services, including all intellectual property and proprietary rights related thereto, as well as any suggestions, ideas, enhancement requests, recommendations, or other feedback provided by Client regarding the Services.
- 2.2. **Client Content.** Except as otherwise set forth in this Agreement: (i) Client owns and retains all right, title, and interest in and to Client Content, and (ii) echo3D may only use and otherwise process Client

Content to the extent necessary for echo3D to perform its obligations and exercise its rights under this Agreement. Client shall be solely responsible for any and all Client Content.

- 2.3. **Consent to Process Personal Data.** Client acknowledges that echo3D's provision of Services to Client may involve the collection, processing, and use of personal information or data that is protected by state, federal, or foreign privacy laws, rules, and regulations (the "**Privacy Laws**"), and that echo3D provision of Services may involve the installation of cookies on an individual's device. Client further acknowledges that certain Privacy Laws may require Client to obtain proper consent from individuals to which such personal information or data relates, or on whose devices cookies may be installed. To the extent that any Privacy Law requires the consent of any individual to process that individual's personal information or data, or to install cookies on that individual's device in connection with Client's use of the Services, Client must properly obtain and maintain and shall be solely responsible for properly obtaining and maintaining, all such consents.

3. **AFFILIATES.** Client's Affiliates may order Services by executing an Order referencing this MSA, and in such case, that Affiliate shall be (i) bound by the terms and conditions of this MSA and all associated agreements and (ii) considered to be "Client", as such term is used throughout the Agreement.

#### 4. **PAYMENT TERMS**

- 4.1. **Payments, Invoicing.** Client shall pay all fees, including all recurring and non-recurring fees, set forth in each Order. Except as the Parties may otherwise agree to in an Order: (i) all recurring fees will be invoiced annually in advance, (ii) all one-time fees (excluding usage and overage fees) will be invoiced in advance, (iii) all usage and overage fees will be invoiced monthly in arrears, and (iv) Client shall remit payment for all amounts owed hereunder within thirty (30) days from the date of invoice. In the event that Client fails to remit payment of any amounts owed under this Agreement when due, Client agrees to pay interest on all such past-due amounts equal to the lesser of three percent (3%) per month or the maximum amount permitted by law until such past-due amounts have been fully paid. Except as expressly set forth in this Agreement, all payments, when made, are non-cancelable, non-contingent and non-refundable.
- 4.2. **Changes to Fees.** Fees owed under an Order for Services rendered during a given Term of that Order may not be modified by echo3D during that Term. echo3D may, however, modify the fees for the Services purchased under an Order for any subsequent Renewal Term (as such term is defined below) by providing Client with notice of such change no less than ninety (90) days prior to the commencement of the relevant Renewal Term. Client is not obligated to accept such change in the fees, but if Client renews the Order for the relevant Renewal Term, then Client will be deemed to have accepted the change in fees. If Client does not accept the changes in fees, then Client can elect not to renew the Order in accordance with the terms of this Agreement.
- 4.3. **Taxes.** Client is solely responsible for and will pay any tax that is applicable to the purchase or use of the Services and any hardware or other equipment Client orders or uses in connection with the Services, including sales, use, value add, property and other taxes or duties. If Client is required to make any deduction(s) or withholding(s) for taxes in any jurisdiction on amounts payable to echo3D, the amounts payable to echo3D will be increased such that after making such deduction or withholding, echo3D receives an amount equal to what it would have received if such deduction or withholding had not been made. Nothing in this Section 4.3 shall be construed to make Client responsible for any general income or gross receipts tax due from and chargeable against echo3D.

#### 5. **CONFIDENTIALITY**

- 5.1. **Confidential Information.** In connection with this Agreement, there may be a desire or need for Confidential Information to be disclosed by one Party (the "**Disclosing Party**") to the other Party (the "**Receiving Party**"); although neither Party is under any obligation to make such a disclosure.

**“Confidential Information”** means any information or material of a Disclosing Party designated in writing as confidential or that the Receiving Party should reasonably understand to be confidential based on the nature of the information or materials and the circumstances surrounding its disclosure. Confidential Information does not include any information or materials that are: (a) at the time of its disclosure, previously known by or in the possession of the Receiving Party; (b) in the public domain or becomes generally known or published through no fault of the Receiving Party; (c) lawfully disclosed to the Receiving Party by a third party free to disclose such information; or (d) independently developed or owned by the Receiving Party.

- 5.2. **Use & Disclosure.** A Receiving Party shall not use the Disclosing Party’s Confidential Information for any purpose other than to exercise its rights and perform its obligations under this Agreement and shall not disclose Confidential Information to any other party other than to its Representatives who are bound by a duty of confidentiality no less protective than the terms of this Section 5. Notwithstanding the foregoing, a Receiving Party may disclose Confidential Information to the extent required by law, a court order or competent government authority, provided that in such case the Receiving Party shall promptly inform the Disclosing Party of such requirement and shall cooperate with the Disclosing Party to allow such Party to obtain a protective order at the Disclosing Party’s expense. The Receiving Party shall take reasonable precautions to protect the Disclosing Party’s Confidential Information from unauthorized uses or disclosure, but in no event shall such precautions be less protective than those used by the Receiving Party to protect its own information of similar import.
- 5.3. **Equitable Relief.** The Parties agree that money damages will not be an adequate remedy for any breach of this Section 5, and that a Disclosing Party shall be entitled as a matter of right without proof of actual damages, to seek equitable relief, including an injunction and specific performance, in the event of any breach or threatened breach of this Section 5, in addition to any other remedies available to the Disclosing Party at law or hereunder.

## 6. TERM AND TERMINATION

- 6.1. **Term of MSA.** Subject to the terms of this Agreement, the term of this MSA shall commence on the effective date set forth in the first Order entered into by the Parties and will continue in effect until that Order and each subsequent Order (if any) have either terminated or expired.
- 6.2. **Term of Orders.** Except as otherwise set forth in an Order: (i) the initial term of each Order shall commence on the effective date of the Order and run for the period of one (1) year therefrom (the **“Initial Term”**); and (ii) upon the expiration of the Initial Term of an Order, the Order will automatically renew for subsequent renewal terms (each a **“Renewal Term”**) – with each renewal period running for a period of (1) year – until the Order is terminated in accordance with the terms of this Agreement. Notwithstanding the foregoing, either Party may elect not to renew an Order by providing the other Party with written notice of such election no less than sixty (60) days prior to the expiration of the then current Term of that Order. The Initial Term and each Renewal Term of an Order may be individually and collectively referred to as the **“Term,”** depending upon the circumstances.
- 6.3. **Termination for Breach.** Should a Party materially breach this Agreement and fail to cure the breach within thirty (30) days of receiving written notice from the other Party, then the non-breaching Party may terminate this Agreement immediately by providing the breaching Party written notice of such termination.
- 6.4. **Suspension.** echo3D may immediately suspend the Services without notice if: (i) Client fails to pay any amounts owed hereunder when due, or (ii) echo3D, in its sole discretion, determines that Client’s or its Representatives’ use of Services violates the Acceptable Use Policy or negatively affects echo3D or its systems or networks.

- 6.5. **Effect of Termination.** The rights granted to Client under this Agreement shall end upon the termination or expiration of this Agreement. Upon the termination or expiration of an Order, Client shall immediately stop using the Services purchased under that Order. Except for Orders terminated by Client in accordance with Section 6.3, in the event of the early termination of an Order, all fees for the remainder of the then-current term of the Order shall be accelerated and immediately due and payable within thirty (30) days of the date of such termination. Furthermore, in the event that echo3D suspends the Services or terminates an Order for cause, echo3D may repossess any of its software or equipment in Client's possession or control and impose a reconnection fee if Client requests restored access to the Services. Client will reimburse echo3D for any collection or legal costs incurred by echo3D in connection with the foregoing or any failure by Client to pay any amounts owed under this Agreement. Except as otherwise set forth in this Agreement, the Parties' respective rights and remedies under this Section 6 shall be in addition to any other rights or remedies the Parties may have.

## 7. WARRANTIES

- 7.1. **Mutual Warranties.** Each Party represents and warrants the following: (i) that it has the full power and authority to consent to and perform this Agreement; and (ii) this Agreement has been duly and validly executed and constitutes the legal, valid and binding obligation of such Party, enforceable against such Party in accordance with its terms.
- 7.2. **Client Warranties.** Client represents and warrants that Client will not, and will not permit others to, violate: (i) any applicable law, rule, or regulation in connection with this Agreement, or (ii) the Acceptable Use Policy.
- 7.3. **echo3D Warranties.**
- 7.3.1. **General Warranties.** echo3D warrants that: (i) to its knowledge, the Services do not infringe upon any letter of patent or copyright issued to a third party by the federal government of the United States; (ii) to the extent applicable, the Services shall meet or exceed the service levels expressly set forth in the relevant Order, (iii) the Services shall conform to the descriptions set forth in the relevant Order in all material respects, (iv) echo3D shall comply with all applicable laws, rules, and regulations of the jurisdictions in which echo3D's principle places of business are located. To the maximum extent permitted by law, Client's sole and exclusive remedy, and echo3D's sole and exclusive liability, arising from or related to a breach of the warranties described in clauses (ii) and (iii) above shall be: (i) in the case of Services other than Professional Services, the issuance of credits pursuant to the relevant Order, and (ii) in the case of Professional Services, the limited remedies and liabilities described in Section 7.3.2.
- 7.3.2. **Professional Service Warranties.** echo3D warrants that any Professional Services purchased under will be performed in a professional manner with a level of care, skill and diligence performed by experienced and knowledgeable professionals in the performance of similar services. If any of the Professional Services fail to conform to the foregoing warranty, echo3D promptly will, at its option and expense, correct the Services as necessary to conform to the warranties. If echo3D does not correct or re-perform the Professional Services to conform to the warranty within thirty (30) days, then, as Client's sole remedy and echo3D's sole and exclusive liability, Client may terminate the relevant subscription to the Professional Services and receive a refund of any prepaid fees prorated for the unused portion of the subscription and the portion of the subscription's noncompliance, as measured from the time Client reports the noncompliance to echo3D pursuant to the relevant Order. The foregoing limitation on remedies and liability shall only apply to the maximum extent permitted by law.
- 7.3.3. **Warranty Exclusions.** echo3D will have no liability or obligation with respect to any warranty to the extent attributable to any: (a) use of the Services by Client in violation of this Agreement or any

applicable law, rule or regulation; (b) unauthorized modifications to the Services made by Client or its Representatives; (c) use of the Services in combination with third-party equipment or software not provided by echo3D or contemplated by echo3D's documentation; or (d) use by Client of the Services in conflict with this Agreement or the echo3D's documentation.

8. **DISCLAIMERS.** EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE SERVICES, INCLUDING ALL SERVERS AND OTHER EQUIPMENT PROVIDED IN CONNECTION THEREWITH, ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS WITH NO WARRANTY WHATSOEVER. ECHO3D DOES NOT GUARANTEE THE ACCURACY OF THE SERVICES OR THAT THE SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE OR ERROR-FREE, OR THAT KNOWN OR DISCOVERED ERRORS WILL BE CORRECTED, OR THAT THE SERVICES WILL ACHIEVE ANY PARTICULAR RESULTS. TO THE MAXIMUM EXTENT PERMITTED BY LAW, AND WITH THE EXCEPTION OF THOSE WARRANTIES EXPRESSLY SET FORTH HEREIN, ECHO3D EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER STATUTORY, EXPRESS, IMPLIED OR OTHERWISE, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT, AND ANY WARRANTIES ARISING OUT OF ANY COURSE OF DEALINGS OR USAGE OF TRADE.
9. **LIMITATION OF LIABILITY.** NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, IN NO EVENT SHALL EITHER PARTY BE LIABLE (WHETHER IN CONTRACT, TORT OR OTHERWISE AT LAW) FOR ANY LOST PROFITS, LOST DATA, OR LOST OPPORTUNITIES, OR COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR ANY FOR INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND ARISING FROM OR RELATED TO THIS AGREEMENT, EVEN IF ADVISED IN ADVANCE OF THE POSSIBILITY THEREOF. TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL ECHO3D'S TOTAL LIABILITY ARISING FROM OR RELATED TO THIS AGREEMENT EXCEED, IN THE AGGREGATE, THE AMOUNT THAT IS PAID OR PAYABLE BY CLIENT TO ECHO3D UNDER THE APPLICABLE ORDER(S) IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE ON WHICH THE FIRST CLAIM STARTED TO ACCRUE.

## 10. INDEMNIFICATION

- 10.1. **Client Indemnification.** Client agrees to defend, indemnify and hold echo3D, its Representatives and their respective Affiliates, successors and assigns harmless from any Claim brought by or owing to a third party in relation to a breach of any of the warranties made by Client in Section 7.
- 10.2. **echo3D Indemnification.** echo3D will defend, indemnify and hold Client harmless against any and all Claims brought by or owing to a third party alleging that the Services infringe or violate a letter of patent or copyright issued to such third party by the federal government of the United States. Notwithstanding the foregoing, echo3D shall have no obligations under this Section 10.2 and shall not be liable for any Claim if such Claim relates to any: (i) Client Content, (ii) use of the Services in a manner other than as expressly authorized in this Agreement, (iii) breach of this Agreement by Client or its Representatives, (iv) modification of the Services by any party other than echo3D, or (v) combination of the Services with any other service, product, data, or software not provided or expressly authorized by echo3D. THIS SECTION 10.2 PROVIDES ECHO3D'S SOLE LIABILITY AND CLIENT'S SOLE AND EXCLUSIVE REMEDY FOR ANY SUCH CLAIMS.
- 10.3. **Additional Options.** In the event of a Claim alleging that any of the Services infringe upon or misappropriates any third-party intellectual property rights, echo3D may, in its sole discretion and at no cost to Client, (i) modify the Services so that they no longer infringe or misappropriate such third-party intellectual property rights, (ii) procure the right for Client to continue its use of the Services as intended under this Agreement, or (iii) terminate this Agreement. In the event that echo3D terminates an Order

in accordance with this Section 10.3, echo3D will issue a refund of any fees paid by Client for Services not rendered as of the date of such termination.

- 10.4. **Conditions to Indemnification.** Each Party's duty to indemnify the other Party in accordance with this Section 10 is subject to the indemnified Party providing the indemnifying Party with: (i) prompt written notice of the Claim, except that any failure to give prompt notice shall only relieve the indemnifying Party of its indemnification obligations hereunder to the extent such failure materially prejudices such Party; (ii) reasonable assistance with the Claim, at the indemnifying Party's expense; and (iii) sole control over the defense and settlement of the Claim.

## 11. MISCELLANEOUS

- 11.1. **Entire Agreement.** This Agreement constitutes the complete and exclusive statement of all mutual understandings between the Parties with respect to the subject matter hereof, superseding all prior or contemporaneous proposals, communications and understandings, whether oral or written. Without limiting the generality of the foregoing, any terms and conditions contained in any purchase order, vendor registration form, questionnaire or any other form or document that Client may provide to echo3D in connection with this Agreement or the Services shall be void, regardless of whether echo3D fails to object to such terms and whether such forms were provided prior to or after the execution of this Agreement. With the exception of the Acceptable Use Policy, which echo3D may amend in accordance with the terms thereof, this Agreement may only be amended, modified or supplemented by signed written agreement of the Parties.
- 11.2. **Assignment.** Neither Party may assign or otherwise transfer any of its rights and obligations under this Agreement without other Party's prior written consent, which shall not be unreasonably withheld. Notwithstanding the foregoing, either Party may assign this Agreement, in connection with a merger, reorganization, acquisition, or sale of all or substantially all of its assets to which this Agreement relates, provided the assignee agrees in writing to be bound by the terms of this Agreement. Any purported assignment in violation of this Section 11.2 shall be null and void. This Agreement will be binding upon and inure to the benefit of each Party's permitted successors and assigns.
- 11.3. **Force Majeure.** Each Party will be excused from delays in performing or from failing to perform its obligations under this Agreement or any Order to the extent the delays or failures result from a Force Majeure. "**Force Majeure**" refers to any cause beyond the reasonable control of a Party including without limitation, any act of nature (including floods, fires, earthquakes, pandemics), government, war or terrorism (including cyber terrorism), or any strike, internet service provider failure or delay, or an application over which a Party has no control.
- 11.4. **Notices.** Notices that are required to be sent to echo3D under this Agreement must be sent by personal delivery, overnight courier or registered or certified mail to echo3D, Inc., 175 Varick Street, New York, NY 10014. Notices that are required to be sent to Client under this Agreement must be sent by email to a contact associated with Client's account, unless the notice relates to a Claim under Section 10, in which case such notice must be sent by personal delivery, overnight courier or registered or certified mail to the Client address listed in the most recent Order on file at the time when the notice is sent.
- 11.5. **Governing Law and Venue.** This Agreement shall be governed by, interpreted, construed, and enforced in accordance with the laws of the State of New York, without regard to any conflict of laws principles (whether of the State of New York or any other jurisdiction) that would cause the application of the laws of any jurisdiction. All disputes arising out of or related to this Agreement will be subject to the exclusive jurisdiction of the state and federal courts located in New York County, New York, and the parties hereby agree and consent to the exclusive jurisdiction and venue of these courts.

- 11.6. **No Third-Party Beneficiaries.** Nothing in this Agreement grants any rights or remedies to any person or entity that is not a party to this Agreement. There shall be no third-party beneficiaries to this Agreement.
- 11.7. **Severability.** If any portion of this Agreement is held to be invalid or unenforceable, the remaining portions of this Agreement will remain in full force and effect. Any invalid or unenforceable portions will be interpreted to give effect to the original intent of the Parties to the maximum extent permitted by law. If such construction is not possible, then the invalid or unenforceable portion will be severed from this Agreement, but the rest of the Agreement will remain in full force and effect.
- 11.8. **Order of Precedence.** In the event of a conflict between this MSA, an Order, or the Acceptable Use Policy, such conflict shall be resolved in the following order (ranked from most controlling (Orders) to least controlling (the Acceptable Use Policy)): (1) Orders, (2) this MSA, and (3) the Acceptable Use Policy.
- 11.9. **Survival.** Those provisions of this Agreement which, by their nature, are ordinarily deemed to survive any termination or expiration, including Sections 2, 4.3, 5, 6.5, 8, 9, 10, and 11, shall survive any expiration or termination of this Agreement.
- 11.10. **Waivers.** Neither a delay nor a failure of either Party to enforce any of the provisions of this Agreement shall be interpreted or construed to be a waiver of that party to enforce the same or any other provision hereof.
- 11.11. **Counterparts.** Each Order, and by extension, this Agreement, may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.
- 11.12. **Relationship of the Parties.** Each of the parties is an independent contractor and this Agreement does not create any employment, partnership, joint venture, fiduciary, agency, or other relationship between the Parties. Neither Party will have the power to bind the other or incur obligations on the other's behalf.