



GD3D® / Garsdale Design Limited – Data Streaming Agreement

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This agreement (“Agreement”) is between Garsdale Design Limited (“GD3D” or “GDL”) and you (as an individual using the service, data, software, infrastructure or platform, and also, where applicable, the organisation on whose behalf the individual is acting) (“Customer”).

**IMPORTANT:**

BY ELECTING TO USE THE SERVICE, AND/OR DATA, SOFTWARE, THE CUSTOMER AGREES TO BE BOUND BY THE THEN CURRENT TERMS OF THIS AGREEMENT, AS MAY BE AMENDED FROM TIME TO TIME BY GD3D.

IF THE CUSTOMER DOES NOT WISH TO ACCEPT THE TERMS OF THIS AGREEMENT AS STATED, THEN GD3D IS UNWILLING TO PROVIDE THE SERVICE AND/OR DATA. IF THE CUSTOMER IS REQUIRED TO AGREE TO THIS AGREEMENT AS PART OF THE ACCESS PROCESS TO THE SERVICE AND/OR DATA, AND THE CUSTOMER DOES NOT ACCEPT THE TERMS OF THE AGREEMENT, THE CUSTOMER MUST SELECT THE “I DISAGREE” OPTION AND/OR CLICK THE “CANCEL” BUTTON AND MUST NOT USE THE SERVICE AND/OR DATA.

If you are accepting this Agreement on behalf of the Customer, you warrant and represent to GD3D that you have the Customer’s authority to do so. If you are not so authorised, you assume sole personal liability for the Customer’s obligations and compliance with the terms of this Agreement.

Any Service or Data provided under this Agreement is provided subject to a licence, and not an agreement for sale.

This Agreement gives the Customer certain limited rights to use the applicable Service, Data, Software, Infrastructure or Platform ( “Service” and/or “Data respectively) that is made available to the Customer as an online service (together with any online or hard copy technical documentation supplied with such service) provided through a third party infrastructure provider (the “Online Service”), only for the Customer’s internal use and (unless otherwise stated) only for use within the United Kingdom and subject to the terms of this Agreement (the “Purpose”) including, where applicable, the special terms in clause **13** (“Special Terms”).

All rights not specifically granted in this Agreement are reserved to GD3D and its third-party licensor(s).



## 1 Reservation of ownership and grant of licence

- 1.1. The Service or Data are protected by applicable United Kingdom and international laws, treaties and conventions regarding intellectual property or proprietary rights. GD3D and its third-party licensor(s) retain exclusive title and ownership of the Service and Data.
- 1.2. In consideration of the payment of the applicable charges in accordance with clause 8 below, GD3D hereby grants to the Customer, a personal nonexclusive non-transferable license to use the Online Service solely for the Purpose subject to the terms and conditions of this Agreement and any Special Terms. The Customer shall use its best endeavours to protect the Service or Data from any use, reproduction, exploitation, distribution, or publication not specifically permitted under this Agreement and shall, upon the request of GD3D, provide feedback on the Customer's user experiences of the Online Service.
- 1.3. During the term of this Agreement and subject to any restriction in the Special Terms, the Customer may only permit third party consultants and contractors access and use of the Online Service for the Purpose. The Customer shall ensure that such consultants and contractors discontinue use of, and access to, the Online Service upon completion of the work for the Customer.
- 1.4. The Customer warrants that it will provide full and accurate contact details during the registration process for access to the Online Service. GD3D reserves the right to suspend or terminate any account created by a Customer where valid contact details cannot be verified with the Customer. The Customer will promptly notify GD3D of any change to such contact details.
- 1.5. In the event that the individual who registered to use the Online Service leaves the Customer's organisation, the Customer and individual shall promptly notify GD3D and appropriate arrangements for the transfer, amendment or termination of the relevant account (as determined solely by GD3D) will be made by GD3D. Where GD3D is not informed and subsequently discovers that individual has left the Customer organisation, GD3D, at its sole discretion, shall have the right to immediately terminate such individual's account.



## 2 Online Service

- 2.1. In order to use the Online Service the Customer must ensure that it has in place any pre-requisite licences required to use the Online Service (as advised by GD3D from time to time) prior to such use. Unless otherwise stated to the contrary, the procurement of any such licences are the sole responsibility of the Customer. The Customer shall be responsible for obtaining, maintaining for the term of the Agreement, and directly entering into such relevant licences with the appropriate third parties for any service, data, software, infrastructure or platform not supplied by GD3D.
- 2.2. The Customer shall not:
- 2.2.1. either directly or indirectly engage in any form of commercial exploitation of the Online Service or any constituent part of the Online Service (including any Data or Software). “Commercial exploitation” for the purposes of this clause 2.2.1 means allowing third parties access to the Online Service (save that, subject to the Special Terms, the Customer may make output of the Online Service publicly available), regardless of whether revenue is generated by the Customer; or
  - 2.2.2. without prejudice to clause 2.2.1, sell, rent, lease, sublicense, lend, assign, time-share, or transfer, in whole or in part, or provide third parties access to the Online Service or any constituent part of the Online Service (including any Data or Software); or
  - 2.2.3. decompile, reverse engineer, disassemble or otherwise reduce any part of the Online Service or any constituent part of the Online Service (including any Data or Software) to human-readable form nor permit any third party to do so, save as permitted by law and in such circumstances on 30 (thirty) days prior written notice to GD3D;
  - 2.2.4. copy, make error corrections to or otherwise modify or alter or tamper with or repair or adapt or translate, or create derivative works based upon, the Online Service or any constituent part of the Online Service (including any Data or Software), nor permit a third party to do so; or
  - 2.2.5. remove or obscure any copyright, trademark notice, or restrictive legend of GD3D or its third-party licensor(s) nor permit a third party to do so; or
  - 2.2.6. access or use the Online Service in a way intended to avoid incurring fees or exceeding usage limits or quotas.
- 2.3. Any additional services outside of this Agreement required by the Customer in relation to the Online Service may be provided by GD3D by separate agreement between the parties.
- 2.4. The Customer is responsible for ensuring that it has appropriate hardware and bandwidth to access and use the Online Service.



- 2.5. The Customer shall not share with any third party any url, web address, usernames, passwords or access codes in relation to the Online Service provided by GD3D to the Customer. The Customer shall ensure that it has in place sufficient and no less than reasonable technological security measures to prevent unauthorised disclosure of access and/or login details, and unauthorised access to and use of the Online Service.
- 2.6. The Customer acknowledges and accepts that GD3D may need to change or update features or functionality or the aesthetic appearance of the Online Service from time to time (for example, to improve functionality or undertake emergency repair). GD3D will try to provide prior written notice where this is the case.
- 2.7. Export Control Regulations: The Customer agrees to comply with all applicable laws and regulations, including United Kingdom and United States export control laws and regulations. In particular, the Customer agrees not to export, re-export, provide or make available the Online Service to any person or entity located in a U.S. embargoed country or to any person or entity on the U.S. Treasury Department's Specially Designated National List or the U.S. Commerce Department's Denied Persons List, Entity List, or Unverified List. By use of the Online Service, the Customer represents and warrants that it (a) is not located in or under the control of a U.S. embargoed country; (b) is not identified on any U.S. Treasury or U.S. Commerce Department restricted list; and (c) will not use the Online Service for nuclear, missile, chemical or biological weapon end use.
- 2.8. The Customer shall ensure that it and its third-party contractors and consultants do not use the Online Service:
- 2.8.1. to upload any illegal, harmful, fraudulent, offensive or infringing material and/or content; or
  - 2.8.2. for any illegal, harmful, fraudulent activities; or
  - 2.8.3. to violate the security or integrity of any network, computer or communications system.
- 2.9. During the term of the Agreement, unless otherwise stated, the Online Service shall be subject to GD3D's then current Online Service – Service Level Agreement ("SLA") available at [gd3d.co.uk/terms-and-conditions/](http://gd3d.co.uk/terms-and-conditions/). The SLA shall not apply to Online Services which are provided free of charge or for evaluation purposes only.



### 3 Data

- 3.1. Access to the Data through the Online Service is offered either on an organisational basis (where the Data can be accessed by all employees of such organisation) or on a per user basis (where the Data can only be accessed by a named user within an organisation).
- 3.2. The Customer acknowledges that the Data (which is provided as part of the Online Service) is owned by the relevant third-party licensor and the use of such Data shall be subject to any applicable third-party licensing terms or other terms detailed within the Special Terms.
- 3.3. In addition, the Customer agrees to ensure that any relevant copyright and database right attribution statements are reproduced on every copy of the Data made or used by the Customer.
- 3.4. GD3D does its best to ensure accuracy and completeness of its data however GD3D shall not be liable for any inaccuracies, faults or omissions.
- 3.5. During the term of the Agreement, unless otherwise stated in the Special Terms, technical support for the Data is provided subject to the then current GD3D Support Policy available [gd3d.co.uk/terms-and-conditions/](http://gd3d.co.uk/terms-and-conditions/). (“GD3D Support Policy”).
- 3.6. Data purchased and/or accessed by Customer via Esri Inc’s ArcGIS Marketplace: Data obtained via the ArcGIS Marketplace is also subject to Esri Inc’s ArcGIS Marketplace terms on the ArcGIS Marketplace website and the applicable terms detailed in section 3 (as applicable) below. Customer is responsible for ensuring that it has a valid Esri ArcGIS Online (“AGOL”) subscription for the duration of its use of such Data. Customer will not be reimbursed for any period when Customer cannot use the Data due to an expired AGOL subscription.



## 4 Warranty

- 4.1. The Customer represents and warrants that the Customer or the Customer's third-party licensors own all right, title and interest in and to any content and data it uploads to the Online Service.
- 4.2. If access to the Online Service has been provided to the Customer free of charge or for evaluation purposes only, the Customer expressly agrees and acknowledges that it is fair and reasonable for it to be provided by GD3D "as is", without warranty or condition of any kind, either express or implied, including, but not limited to, warranties of non-infringement, merchantability, satisfactory quality, use of reasonable skill and care or fitness for any particular purpose.
- 4.3. Subject to clause 3, if access to the Online Service has been provided to the Customer for a charge, GD3D shall provide the Online Service using reasonable skill and care.
- 4.4. All other warranties express or implied are hereby excluded by GD3D to the fullest extent permitted by law.

## 5 Charges

- 5.1. The Customer shall pay GD3D the applicable charges as advised by GD3D.
- 5.2. All charges are exclusive of VAT (which, where applicable, shall be paid by the Customer together with other applicable tax in the manner prescribed by law from time to time) and shall be due and payable by the Customer in advance in respect of the relevant period for which the Online Service is purchased.
- 5.3. If the Customer fails to pay such charges by the due date, GD3D shall be entitled to charge interest on the overdue amount. Any such interest shall be paid by the Customer to GD3D on demand, from the due date up to the date of actual payment, after as well as before judgement, at the rate of 4% per annum above the base rate from time to time of the National Westminster Bank Plc. Any interest shall accrue on a daily basis and be compounded quarterly. GD3D reserves the right to suspend the use of the Online Service by the Customer until any such overdue charges are paid.



## 6 Term and Termination

- 6.1. This Agreement shall commence on the latter of (i) the date of acceptance of this Agreement; or (ii) the date that the Customer is provided access to the Online Service (“Commencement Date”), and shall continue on a monthly or annual basis (as applicable) until the earlier of the following events:
- 6.1.1. GD3D terminates for the Customer’s breach of this Agreement; or
  - 6.1.2. GD3D provides 4 (four) weeks’ notice in writing (including by email) to the Customer; or
  - 6.1.3. Expiry of the Customer’s relevant subscription licence; or
  - 6.1.4. The Customer elects to discontinue use of the Online Service.
- 6.2. The Customer’s subscription shall automatically renew either monthly, quarterly, bi-annually or annually (as applicable) unless the Customer provides GD3D with (for an annual subscription) 30 (thirty) days’ written notice to terminate prior to the expiry of the then current annual period or (for a monthly, quarterly or bi-annual subscription) 30 (thirty) days’ written notice to terminate at the end of the next applicable monthly, quarterly or bi-annual period. Failure to notify GD3D of termination within these time periods will result in continued charges for the Online Service.
- 6.3. Upon termination or expiry of this Agreement, all Customer’s rights under this Agreement (including those detailed in clause 1) terminate and GD3D reserves the right to delete the Customer’s data and any content from the Online Service.
- 6.4. In the event of termination by GD3D pursuant to Clause 6.1.2, GD3D shall repay to the Customer a prorated portion of any unused subscription charges prepaid by the Customer.
- 6.5. If the Online Service is provided for evaluation purposes only, access to the Online Service shall expire 30 days after access is made available by GD3D, at which point the Customer must stop using the Software or Data.



## 7 Limitation of liability

- 7.1. Except in respect of death or personal injury caused by GD3D, or for GD3D's fraudulent misrepresentation, GD3D's total aggregate liability (whether in contract, tort or howsoever arising) in relation to this Agreement shall be limited to the lesser of (i) the subscription fees paid by the Customer for the Online Service or (ii) 12 (twelve) months subscription fees for the Online Service.
- 7.2. Except in respect of death or personal injury caused by GD3D, or for GD3D's fraudulent misrepresentation, GD3D shall not have any liability to the Customer in contract, tort (including negligence) or otherwise arising out of or in connection with this Agreement for any:
- 7.2.1. Loss of goodwill, profits, revenue, business, contracts or anticipated savings;
  - 7.2.2. Special, indirect or consequential loss or damage (not falling within 10.2.1);  
and
  - 7.2.3. Loss of data.

## 8 Indemnity to GD3D by the Customer

- 8.1. The Customer shall fully indemnify and hold harmless GD3D and its third-party licensor(s) from and against all liabilities, claims, suits, losses or damages (including, but not limited to, legal fees, costs, judgements and reasonable expenses incurred) arising out of (a) any use of the Online Service (or its constituent parts (including Data and Software) by the Customer (or its authorised third party consultants and contractors in accordance with clause 1.3) not permitted by this Agreement; and (b) any violation by the Customer of this Agreement; and (c) any violation of laws or regulations.
- 8.2. The Customer agrees that, if the Customer breaches this Agreement, GD3D may not adequately be compensated by money damages alone and therefore GD3D shall be entitled without proof of special damage, in addition to any other right or remedy available to it (including, but not limited to, an action for damages), to the remedies of injunction, specific performance and other equitable relief in any court of competent jurisdiction for any actual, threatened or potential breach.





## 9 General

- 9.1. Neither party shall be liable to the other party for a failure to perform its obligations under this Agreement if such failure results from circumstances beyond the party's reasonable control, provided the party seeking to claim force majeure informs the other party as soon as practical and shall use reasonable endeavours to bring the force majeure event to a close or to find a solution by which the obligation may be performed despite the continuance of the force majeure event.
- 9.2. The Customer may not assign, novate, or otherwise transfer any of its rights under this Agreement without the prior written consent of GD3D.
- 9.3. This Agreement, any Special Terms, the SLA (where applicable), and the then current GD3D Support Policy constitute the whole understanding between GD3D and the Customer in relation to the subject matter of this Agreement and shall supersede any prior promises, representations, undertakings or implications made orally or in writing.
- 9.4. No delay, neglect, or forbearance on the part of either party in enforcing against the other party any term or condition of the Agreement shall either be or be deemed to be a waiver or in any way prejudice any right of that party under the Agreement.
- 9.5. Any clauses that are intended to survive termination including clauses 1, 2, 3, 4, 5, 8, 9, and 10 will survive termination of this Agreement and will continue in full force and effect.
- 9.6. Any notice required to be given under this Agreement will be in writing and may be delivered by post, by hand, by email, or by facsimile transmission. A notice will be deemed given when delivered. The Customer will send all notices to GD3D for the attention of the Legal Department at GD3D's registered address. GD3D will send all notices to the Customer at one or more of the addresses provided in accordance with clause 1.4. Either party may change its address and person to be notified by notifying the other party in writing of that change.
- 9.7. This Agreement shall be subject to and construed and interpreted in accordance with the Laws of England and Wales and shall be subject to the exclusive jurisdiction of the Courts of England.



## 10 Special Terms

These additional terms apply to particular Services, Data, provided as part of the Online Service. In the event of conflict the terms and conditions of these Special Terms shall override the remaining terms of this Agreement.

- 10.1. “baseBuildings” provided by GD3D’s Online Service to Customer’s AGOL (defined above) account (“Premium Service”);
  - 10.1.1. “baseBuildings” is built using a variety of open data sources.
  - 10.1.2. The Customer expressly agrees and acknowledges that it is fair and reasonable for the GD3D “baseBuildings” Data Service to be provided by GD3D “as is”, without warranty or condition of any kind, either express or implied, including, but not limited to, warranties of non-infringement, merchantability, satisfactory quality, use of reasonable skill and care or fitness for any particular purpose.
  - 10.1.3. The Customer’s use of AGOL is subject to the Esri Inc License Agreement available at [www.esriuk.com/legal/terms-and-conditions](http://www.esriuk.com/legal/terms-and-conditions).
  
- 10.2. “proBuildings” provided by GD3D’s Online Service to Customer’s AGOL (defined above) account (“Premium Service”);
  - 10.2.1. “proBuildings” are currently sourced from CyberCity3D LLC
  - 10.2.2. The Customer expressly agrees and acknowledges that it is fair and reasonable for the GD3D proBuildings” Data Service to be provided by GD3D “as is”, without warranty or condition of any kind, either express or implied, including, but not limited to, warranties of non-infringement, merchantability, satisfactory quality, use of reasonable skill and care or fitness for any particular purpose.
  - 10.2.3. The Customer’s use of AGOL is subject to the Esri Inc License Agreement available at [www.esriuk.com/legal/terms-and-conditions](http://www.esriuk.com/legal/terms-and-conditions).