

Reseller number: \_\_\_\_\_

## RESELLER AGREEMENT



<http://gis.anything3d.com>

This Agreement is made as of the \_\_\_\_ day of \_\_\_\_\_, 2002 (the "Effective Date"), by and between Anything3D Corporation, San Francisco with offices at 20 S. Linden Ave. #2A S.San Francisco, CA 94080 U.S.A. (here forth know as "Anything3D"), and \_\_\_\_\_, \_\_\_\_\_ corporation with offices at \_\_\_\_\_ (here forth know as "Reseller").

### Background.

Anything3D is a software developer and owns the exclusive rights to distribute the following software products (here forth know as Software):

1. «A3D Scheduler System» that contains :
  - a. «A3D Scheduler Server».
  - b. «A3D Mapping Server».
  - c. «A3D Scheduler Client».
  - d. «A3D Scheduler Administrator».
  - e. «A3D Scheduler Integration Tools».

Reseller, on the terms and conditions of this Agreement, intends to provide copies of the Software to Reseller's customers for such customers' internal use. Anything3D, on the terms and conditions set forth in this Agreement, has agreed to permit Reseller to offer and distribute the Software to its customers.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the parties hereby agree as:

## 1. GRANT; RELATED PROVISIONS.

### 1.1 Grant.

Anything3D, subject to the terms and conditions of this Agreement, hereby grants Reseller a nonexclusive, nontransferable right and license during the term of this Agreement to offer and distribute the Software to individuals and companies (here forth know an "End User") for such End Users' internal use and not for resale.

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## **1.2 Procedure.**

Anything3D offers two procedures for Software distribution (1.2.1, 1.2.2). Reseller can choose the procedure at his discretion:

1.2.1 Anything3D gives Reseller the personal Media-Code. Reseller can pass this Media-Code to End User and refer him to Anything3D for purchasing the Software and(or) License Fees with a discount according to the Subsection (2.1.1) of this Agreement. The personal Media-Code guarantees that the Reseller receives the commission according to the Subsection (2.1.1) of this Agreement. Anything3D is obligated to inform the Reseller about any purchase of the Software with Reseller's personal Media-Code.

1.2.2 Reseller can purchase the Software and(or) License Fees with a discount according to the Subsection (2.1.2) of this Agreement for reselling the Software to the End User at a price fixed by Reseller according to Subsection (2.1.2) of this Agreement.

## **1.3 Customization notes.**

Anything3D allows the possibility of signing other agreement between Anything3D and Reseller for customization, additions to the Software, but this Agreement do not describe such procedure.

## **1.4 End-User Licenses.**

Reseller (or End User) can review Anything3D's then-current End User License Agreement (here forth know as User License Agreement) at the website <http://gis.anything3d.com> or such other Internet site as Anything3D may specify from time to time by written notice (here forth know as "Anything3D Site").

If Reseller sells Software according to Subsection (1.2.2) of this Agreement, Reseller acknowledges that each End User is required to accept User License Agreement that is active on day of sale of Software, before its first use of the Software. Reseller agrees that it shall either (i) refrain from clicking the "Accept" button on installation of the Software for use by an End User, or (ii) obtain the End User's separate agreement to abide by and be bound by the terms of User License Agreement or (iii) indemnify Anything3D against all costs, expenses, losses and liabilities arising from Reseller's failure to perform under subsection (i) or (ii) of this Section (1.4).

## **1.5 Technical support.**

Anything3D guarantees that technical support of End User is carried out by Anything3D according to the terms and conditions defined in User License Agreement.

## **2. PRICES and PAYMENT; TAXES.**

### **2.1 Prices and payment.**

Anything3D owns the exclusive rights to set the price for sale of the Software to the End User without Reseller's mediation (here forth know as "Street Price"). Reseller has to review then-current Street Price at the Anything3D Site to define prices, discounts and margins indicated in Tables ( 1 and 2) of this Agreement.

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2.1.1 The Reseller’s Media-Code (procedure 1.2.1) guarantees discounts and pay commissions according to Table (1) of this Agreement to the End User and Reseller.

Table 1.

Product	End User’s discount (from Street Price). %				Reseller’s commission (from Street Price) %
	for 1 seat license	for 5 seat licenses	for 10 seat licenses	for every following seat	
<i>A3D Scheduler System</i>					

Anything3D pay the cumulative commissions to Reseller by bank check or by wire transfer any time by Reseller request but not more that one time in a month.

2.1.1 In the case when Reseller purchases the Software directly from Anything3D (procedure 1.2.2) Anything3D has to sell the Software and(or) License Fees to the Reseller according to discounts indicated in Table (2) of this Agreement.

Table 2.

Product	Reseller’s discount (from Street Price). %				Recommended margin. %
	for 1 seat license	for 5 seat licenses	for 10 seat licenses	For every following seat	
<i>A3D Scheduler System</i>					

Reseller shall pay Software and(or) License Fees in advance by wire transfer, which wire transfer will reference the Reseller Number set forth in the header of this Agreement (here forth know as “Advance”).

NOTE: Anything3D recommends to the Reseller to increase the Software price by not more than the percentage indicated in a column «Recommended margin» (Table 2).

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## **2.2 Taxes**

Reseller shall pay directly all income, franchise, sales, use, personal property, ad valorem, value added, stamp or other taxes, levies, customs, duties or other imposts or fees, including withheld taxes (except only a tax levied by the United States of America or any political subdivision thereof based on the net income of Anything3D), together with all penalties, fines and interest thereon that in any way arise out of this Agreement, whether on or measured by the price, the charges, the programs or the services furnished, or their use, however designated, levied or based (collectively a "Tax").

## **3. OWNERSHIP; RESTRICTIONS.**

### **3.1 Ownership.**

Reseller hereby acknowledges that, as between Reseller and Anything3D, all patents, copyrights, trade secret rights and other intellectual property rights embodied in the Software are and at all times shall remain the sole and exclusive property of Anything3D. The existence of a copyright notice shall not cause, or be construed as causing, any of the Software to be anything other than a copyrighted work with all rights reserved under the applicable copyright laws.

### **3.2 Further Limitations.**

Reseller shall not, and shall not permit or cause any third party to, reverse engineer, disassemble, decompile or otherwise decode by any method any of the Software in whole or in part for any purpose whatsoever. Reseller shall not, and shall not permit or cause any third party, to update, upgrade, modify or revise the Software. Nothing in this Agreement shall be construed to grant Reseller any rights with respect to the source code version of the Software.

## **4. TERM; TERMINATION.**

### **4.1 Term.**

The term of this Agreement will commence on the Effective Date, and will continue until terminated in accordance with this Section (4).

### **4.2 Termination for Convenience.**

Either party may terminate this Agreement for convenience on thirty (30) days' prior written notice.

### **4.3 Termination for Cause.**

Either party may terminate this Agreement for cause if the other party breaches any of its obligations under this Agreement and fails to remedy such breach within thirty (30) days after the first party gives written notice thereof.

## **5. WARRANTIES**

### **5.1 By Anything3D.**

Anything3D represents and warrants to Reseller that Anything3D has sufficient rights in and to the Software to grant the rights contemplated by this Agreement without obtaining the consent of any other person, and the Software does not infringe any U.S. copyright, U.S. patent or other U.S. intellectual property right. ANYTHING3D EXPRESSLY DISCLAIMS ANY AND ALL OTHER WARRANTIES, WHETHER

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EXPRESS OR IMPLIED, INCLUDING (x) ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE SOFTWARE, (y) ALL WARRANTIES THAT THE SOFTWARE WILL MEET THE REQUIREMENTS OF RESELLER OR ANY END USER OR OPERATE IN ANY COMBINATION SELECTED BY RESELLER OR ANY END USER, AND (z) ALL WARRANTIES THAT THE SOFTWARE WILL BE BUG-FREE OR OPERATE ERROR-FREE.

### **5.2 By Reseller.**

Reseller represents and warrants to Anything3D that Reseller will make no representation, warranty, claim or promise to any party relating to the Software except as Anything3D has expressly authorized in writing.

## **6. LIMITATION OF LIABILITY**

**6.1 Anything3D's** liability to Reseller or to any third party, in tort, contract or otherwise, for claims, losses, damages or injuries arising out of or relating to this Agreement will be limited to the Software and(or) License Fees paid by Reseller. NO EVENT SHALL ANYTHING3D BE LIABLE TO RESELLER OR ANY THIRD PARTY FOR ANY CONSEQUENTIAL OR SPECIAL DAMAGES OR LOST PROFITS, INCLUDING, WITHOUT LIMITATION, CONSEQUENTIAL OR SPECIAL DAMAGES FOR LOSS OF GOODWILL, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, LOSS OF WORK PRODUCT, OR ANY AND ALL OTHER COMMERCIAL DAMAGES OR LOSSES, DIRECT OR INDIRECT, EVEN IF ANYTHING3D HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES.

**6.2 Reseller 's** sole and exclusive remedy for any damage or loss in any way connected with the Software, whether or not caused by Anything3D's breach of warranty, negligence or any breach of any other duty, shall, at Anything3D's option, be replacement of the affected copies of the Software. Any replacement of the Software shall be effected by Anything3D free of charge.

## **7. MISCELLANEOUS**

### **7.1 Notices.**

All notices, requests, demands, and other communications under this Agreement shall be in writing and shall be deemed to have been duly given when delivered in person or, if mailed, when mailed by the appropriate postal service, postage prepaid, to the parties at the addresses first set forth above or at such other address as may be given in writing by either party to the other in accordance with this Section 7.

### **7.2 Choice of Law.**

This Agreement shall be governed by, and construed in accordance with, the laws of the State of California without reference to conflicts of laws principles.

### **7.3 Entire Agreement; Amendment.**

This Agreement constitutes the entire understanding between the parties relating to the subject matter of this Agreement and supersedes all prior writings, negotiations or understandings with respect thereto.

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Without limiting the foregoing, this Agreement shall not be amended or supplemented by the preprinted terms or conditions on any purchase order, acknowledgment or other business form employed by either party. No modification or addition to this Agreement shall have any effect unless it is set forth in writing and signed by both parties.

**7.4 Waiver.**

The waiver by either party of a breach of any provision of this Agreement shall not be construed as a continuing waiver of such breach or as a waiver of other breaches of the same or of other provisions of this Agreement.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the effective date.

**Reseller**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**Anything3D**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_