



This SOFTWARE EVALUATION USE AGREEMENT (this "Agreement") dated as of \_\_\_\_\_(mo) \_\_\_\_\_(day) \_\_\_\_\_(year) ("Effective Date"), is entered into by and between Interactive Data Visualization, Inc. ("IDV"), a South Carolina corporation having its principal place of business at 5446 Sunset Boulevard, Suite 201, Lexington, SC 29072, and \_\_\_\_\_ ("Customer"), a \_\_\_\_\_, with a place of business at \_\_\_\_\_, with a place of business at \_\_\_\_\_.

In consideration of the promises and the mutual covenants and agreements hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, IDV and Customer hereby agree as follows:

SECTION 1: DEFINITIONS

Capitalized terms used in this Agreement shall have the following meanings:

- 1.1 "Authorized Location" shall mean the Customer address listed above or such other address that IDV approves in writing.
1.2 "Authorized Users" shall mean employees of Customer subject to compliance with Section 3.2.
1.3 "Software" shall mean the object code versions of (i) any SpeedTree software product or version or related software developed or licensed by IDV and provided or made available to Customer and (ii) the "Supplemental Code," if any, specifically indicated in Section 7 and defined therein.
1.4 "Application" shall mean any object code or software product that uses or utilizes the Software, in particular any demonstration-only version of a Customer software product.

SECTION 2: GRANT OF RIGHTS FOR THE EVALUATION USE; RESTRICTIONS

- 2.1 The "Evaluation Use" period, as further described herein, shall commence on the Effective Date and shall expire on the thirtieth (30) day thereafter; provided, however, that IDV may, in its sole discretion, extend the Evaluation Use period either by providing evaluation extension keys or otherwise. During the Evaluation Use, IDV hereby grants to Customer, and the Evaluation Use shall consist solely of a limited, nonexclusive, nontransferable license solely to (i) install the Software only at the Authorized Location; (ii) create one or more Applications; (iii) allow use of the Software and Applications solely by Authorized Users; and (iv) use the Software and Applications solely for the purpose of serving the internal needs of Customer for testing and evaluating whether to purchase from IDV a license to the Software. For purposes of clarity, Customer agrees that its rights to use the Software and the Applications are limited to internal testing and evaluation purposes and covenants that it cannot, and will not, commercially exploit internally or externally, whether for profit or otherwise, the Software, or any Application (including any intellectual property rights or other confidential information of IDV). Licensee acknowledges that a license by Customer from IDV of any software products of IDV other than the Software delivered in connection with this Agreement does not entitle Customer to any rights to the Software beyond those granted by this Agreement (including any intellectual property rights or other confidential information of IDV).
2.2 Customer agrees (a) not to copy, transfer, assign, rent, resell, or distribute the Software or Application, and (b) not to attempt to create or discover, by de-compiling, disassembling, reverse engineering or otherwise,

the source code for the Software. Without IDV's prior written approval, Customer will not make or provide any public statement or disclosure concerning Customer's use of the Software.

2.3 To the extent that Customer desires to distribute or make available an Application or the results of an Application to a third party for demonstration purposes only, Customer must first provide the name of the third party to IDV and obtain IDV's written permission, to be granted or withheld by IDV in its sole discretion. Such permission by IDV shall under no circumstances authorize Customer to receive payment for or otherwise commercially exploit or profit from the Application nor to distribute or make available the Application or its results to anyone beside the third party whom Customer has named.

SECTION 3: OWNERSHIP AND CONFIDENTIALITY

- 3.1 IDV shall have sole and exclusive ownership of all rights, title, and interest in and to (i) the Software; and (ii) any work product, software, or materials provided by IDV; together with all intellectual property rights associated therewith (including, without limitation, rights to copyrights, patents, trademarks, trade secrets, mask works, or know-how).
3.2 Customer agrees to maintain at all times in strict confidence the Software, Applications and all media, documentation, intellectual property rights, and other information (whether disclosed orally, electronically, or in writing) disclosed by IDV that relate to the design, development, operation, testing or use of the Software or Applications or any additions or modifications thereto. Customer further agrees not to permit or authorize access to, or disclosure of, such information to any person or entity other than Authorized Users who have agreed in writing to protect the confidentiality of such items and who have a need to know such information in connection with the Evaluation Use.

SECTION 4: WARRANTY DISCLAIMERS; LIMITATIONS OF LIABILITY

4.1 TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AND EXCEPT AS EXPRESSLY SET FORTH HEREIN, THE SOFTWARE AND ANY ITEMS PROVIDED BY IDV HEREUNDER (TOGETHER THE "DISCLAIMED ITEMS") ARE PROVIDED "AS IS", AND IDV DOES NOT MAKE AND SPECIFICALLY DISCLAIMS, ALL EXPRESS AND IMPLIED WARRANTIES OF EVERY KIND RELATING TO THE DISCLAIMED ITEMS, USE OF THE DISCLAIMED ITEMS (INCLUDING, WITHOUT LIMITATION, ACTUAL AND IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT), AS WELL AS ANY WARRANTIES THAT THE DISCLAIMED ITEMS (OR ANY ELEMENTS THEREOF) WILL ACHIEVE A PARTICULAR RESULT, OR WILL BE UNINTERRUPTED OR ERROR-FREE. SPECIFICALLY, AND WITHOUT LIMITING THE FOREGOING, CUSTOMER ACKNOWLEDGES THAT IT HAS REQUESTED THE DISCLAIMED ITEMS AND THAT IDV MAKES NO

**REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE FITNESS OF THE DISCLAIMED ITEMS FOR ANY PURPOSE.**

**4.2 IN NO EVENT SHALL IDV BE LIABLE UNDER ANY THEORY OF LIABILITY (INCLUDING, WITHOUT LIMITATION, BREACH OF CONTRACT OR WARRANTY OR FROM NEGLIGENCE OR STRICT LIABILITY), FOR ANY DAMAGES OF ANY KIND, WHETHER, DIRECT, INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES AND INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS, REVENUE, DATA, OR USE, OR FOR INTERRUPTED COMMUNICATIONS OR NETWORK OUTAGES, OR FROM ANY DEFECT, ERROR, OR MALFUNCTION OF THE DISCLAIMED ITEMS, EVEN IF IDV OR ANY OTHER PERSON HAS BEEN ADVISED OR SHOULD KNOW OF THE POSSIBILITY OF SUCH DAMAGES.**

**SECTION 5: TERMINATION**

5.1 This Agreement shall terminate automatically at the end of the Evaluation Use period set forth in Section 2. IDV also shall have the right to terminate this Agreement immediately and without notice if Customer materially breaches any of the terms hereof.

5.2 Upon expiration or termination of the Evaluation Use for any reason, provided that Customer has not entered into a full license agreement with IDV on mutually agreeable terms for the ongoing use of the Software and any resulting Applications during the Evaluation Use, Customer shall immediately return all copies of the Software and any media and documentation that relate to the design, development, operation, testing or use of the Software or Applications, and Customer shall destroy the Applications, or modify the Applications so that the Applications do not use the Software. Customer agrees to provide written certification from an office of Customer regarding Customer’s compliance with the foregoing promptly upon IDV’s request.

**SECTION 6: MISCELLANEOUS**

The provisions of Sections 3, 4, and 5.2 shall survive termination of this Agreement. This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina, without regard for principles of choice of law. Each party to this Agreement irrevocably submits to the exclusive jurisdiction of any state or federal court located in

IN WITNESS WHEREOF, the parties have executed and delivered the Agreement for all purposes as of the Effective Date.

**INTERACTIVE DATA VISUALIZATION, INC.**

By: \_\_\_\_\_  
*(signature)*  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Phone : (803) 356-1999 \_\_\_\_\_  
Email: sales@idvinc.com \_\_\_\_\_

Richland County, South Carolina in litigating any action or proceeding arising out of or relating to this Agreement or the transactions contemplated hereby. It is understood and agreed that breach of the provisions of this Agreement by Customer will cause IDV irreparable damage for which recovery of money damages would be inadequate and that IDV shall therefore be entitled to obtain injunctive relief (without having to post a bond) to protect IDV’s rights under this Agreement in addition to any and all remedies available at law or contract. This Agreement together with any attached Schedules or Exhibits constitutes the complete and exclusive statement of the agreement of the parties with respect to the subject matter hereof and supersedes all prior oral and written proposals, representations, or other communications related to the subject matter hereof. Customer may not assign this Agreement without the written consent of IDV, to be granted or withheld in IDV’s sole discretion.

**SECTION 7: SUPPLEMENTAL CODE**

Customer indicates by placing an “X” in the appropriate box(es) below that Customer desires to evaluate the corresponding Supplemental Code, defined generally as object code that enables the use of the Software with a third party’s object code (“Partner Software”). Customer further represents and warrants that Customer is a current licensee of any Partner Software that corresponds to any Supplemental Code that customer has requested:

- |   |  |
|---|--|
| <input type="checkbox"/> SpeedTree<br>for Xbox® 360 | <input type="checkbox"/> SpeedTree<br>for PlayStation®3      |
| <input type="checkbox"/> SpeedTree<br>for PSVita    | <input type="checkbox"/> SpeedTree<br>for Mac OSX            |
| <input type="checkbox"/> SpeedTree<br>for Linux     | <input type="checkbox"/> Integration with<br>Unreal Engine 3 |

If Customer does not select any Supplemental Code, Customer shall receive the default version of SpeedTree, programmed for use only on the most recent generally-available version of Windows.

Inclusion of Supplemental Code in this Section is not a guarantee of its availability, nor is this necessarily a list of all available Supplemental Code. In addition, by checking any box in this Section 7, Customer agrees that IDV shall have the right to disclose to the owner of the relevant development environment or gaming platform that Customer is evaluating such Supplemental Code.

**CUSTOMER**

By: \_\_\_\_\_  
*(signature)*  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Email: \_\_\_\_\_