

# 3DiVi Terms of Service

Last updated: March 21, 2017

3DiVi Inc. (“3DiVi”, “our” or “we”) provides 3D body tracking and related software (the “Software”), provided through or in connection with our website, accessible at 3divi.com (the “Site”). Except to the extent you and 3DiVi have executed a separate agreement, these terms and conditions exclusively govern your access to and use of the Software, and Site (collectively, the “Services”), and constitute a binding legal agreement between you and 3DiVi (the “Terms”). These Terms, including all Additional Terms referenced in Section 1.3 below, are, collectively, the “Agreement.”

If you accept or agree to the Agreement on behalf of a company, organization or other legal entity (a “Legal Entity”), you represent and warrant that you have the authority to bind that Legal Entity to the Agreement and, in such event, “you” and “your” will refer and apply to that company or other legal entity.

You acknowledge and agree that, by accessing, purchasing or using the services, you are indicating that you have read, understand and agree to be bound by the agreement whether or not you have created a 3DiVi account, subscribed to the 3DiVi newsletter or otherwise registered with the site. If you do not agree to these terms and all applicable additional terms, then you have no right to access or use any of the services.

## 1. Your Use Of The Services

### 1.1 Eligibility

Except as expressly provided otherwise on the Site, the Services are intended for persons 13 and older provided, however, you must be at least 18 to make purchases. If you are under the age of 18 or whatever is the age of legal majority where you access the Services, you may purchase access to the Services only with the involvement of your legal guardian, and you represent and warrant that your legal guardian has read, understood and agreed to this Agreement.

## 1.2 Privacy

Your privacy is important to us. 3DiVi's Privacy Policy discloses the information we collect and how we use it. By using any of the the Services, you agree to the terms of the Privacy Policy, so please review the Privacy Policy carefully. You affirm that you have read and accept the Privacy Policy and its terms.

## 1.3 Additional Terms

The Software and Site are subject to additional terms as shown below ("Additional Terms").

[Nuitrack Trial, and Nuitrack Pro Additional Terms](#)

If there is any conflict between these Terms and the Additional Terms, the Additional Terms govern in relation to the relevant Software or Site.

## 1.4 Modification

3DiVi reserves the right, at its sole discretion, to modify, discontinue or terminate the Services. 3DiVi may also modify the Agreement at any time and without prior notice. If we modify the Agreement, we will post the modification on the Site or otherwise provide you with notice of the modification. We will also update the "Last updated" date at the top of these Terms. By continuing to access or use the Services after we

have provided you with notice of a modification, you indicate that you agree to be bound by the modified Terms. If the modified Terms are not acceptable to you, your only recourse is to cease using the Services.

## **2. Your 3DiVi Account**

In order to use most Services, you must register for a “3DiVi Account”. To create a 3DiVi Account, you will be required to provide certain information and you will establish a username and a password. You agree to provide accurate, current and complete information during the registration process and to update such information to keep it accurate, current and complete. 3DiVi reserves the right to suspend or terminate your account if any information provided during the registration process or thereafter proves to be inaccurate, not current or incomplete. You are responsible for safeguarding your password. You agree not to disclose your password to any third party and to take sole responsibility for any activities or actions under your account, whether or not you have authorized such activities or actions. You will immediately notify 3DiVi of any unauthorized use of your account.

You may cancel your 3DiVi Account at any time by sending an email to [support@3DiVi.com](mailto:support@3DiVi.com). Canceling your 3DiVi Account does not relieve you of the obligation to pay any and all remaining amounts owing for your existing Software or Developer Service subscriptions.

## **3. Your Responsibilities**

You represent and warrant that: (a) you have the legal capacity to agree to the Agreement; (b) you are not located in a country embargoed by the United States

and that you are not on the U.S. Treasury Department's list of Specially Designated Nationals; and (c) you will comply with all applicable laws and regulations in connection with your use of the Services (including but not limited to applicable Federal Trade Commission rules and COPPA), and in accordance with the terms and conditions specified in the Agreement.

## **4. Intellectual Property Rights**

### **4.1 3DiVi's Ownership**

The Site, Software, and Website Content are protected by copyright, trademark, and other laws of the United States and foreign countries. Except as expressly provided in the Agreement, 3DiVi and its licensors exclusively own all right, title and interest in and to the Services, including all associated intellectual property rights. You will not remove, alter or obscure any copyright, trademark, service mark or other proprietary rights notices incorporated in or accompanying the Services.

### **4.2 Your Content**

As between you and 3DiVi, you own all right, title and interest (including, all intellectual property rights) in and to the content you create using the Software and/or any content you post to the Site (collectively, "Your Content") (other than any components of the Software contained therein or used in connection therewith).

### **4.3 Data License**

You grant 3DiVi a perpetual, irrevocable, fully-paid and royalty-free license to collect, access, process, transmit, store, copy, share, display, and use any data and information collected by 3DiVi or provided by you in connection with your use of the Services in order to provide, operate, develop, improve, and/or optimize any of our Services, and otherwise as permitted by our Privacy Policy.

## **4.4 Proprietary Rights Notices**

All trademarks, service marks, logos, trade names and any other proprietary designations of 3DiVi used herein are trademarks or registered trademarks of 3DiVi. Any other trademarks, service marks, logos, trade names and any other proprietary designations are the trademarks or registered trademarks of their respective parties.

# **5. Payments**

## **5.1 Fees**

Fees for certain Services are set forth on the Site or via the service panel in the Software (the “Service Panel”). 3DiVi may increase, modify or add new fees and charges for any of the Services from time to time by posting such changes to the Site or within the Services Panel. 3DiVi will provide you with at least 30 days’ notice of any changes affecting existing Software you have already started using, and your continued use of such Software after the effective date of any such change means that you accept and agree to such changes, as applicable.

You agree to pay all amounts due for the Services as set forth in the online cart, quote or invoice and in accordance with 3DiVi's payment terms and, if applicable,

those of any payment processor. If any payment is not made on time, 3DiVi may deactivate your access to the Services.

All fees payable under the Agreement are net amounts and payable in full, without deduction for taxes or duties of any kind. You will be responsible for, and agree to promptly pay, all taxes or duties of any kind (including but not limited to sales, use and withholding taxes) associated with any purchase or your receipt or use of the Services, except for taxes based on 3DiVi's net income. In the event that 3DiVi is required to collect any tax for which you are responsible, you will pay such tax directly to 3DiVi or its payment processor. If you pay any withholding taxes that are required to be paid under applicable law, you will promptly furnish 3DiVi with written documentation of all such tax payments, including receipts. 3DiVi reserves the right to collect any applicable sales, use or value added tax.

All sales are final and there shall be no refunds except as required by law. Further, 3DiVi will not allow changes to your purchase after you complete it. 3DiVi may disable all copies of the Software and/or your access to any Services you have licensed or subscribed to in the event you fail to make all payments when due.

You acknowledge and agree that, in the case of certain Services, any estimates of fees and charges provided to you by 3DiVi (whether based on assumed data consumption or otherwise) are solely estimates based on assumptions and that you are fully responsible for the actual fees and charges that accrue.

## **5.2 Billing**

If you purchase Services, you will be asked to provide customary billing information such as name, company name, billing address, credit card information and VAT number (for EU residents) either to 3DiVi or its third party payment processor. VAT numbers cannot be added or changed after the purchase is completed. When you

provide billing information to 3DiVi or its third party payment processor, you: (i) represent and warrant that you are the authorized user of the card, PIN, key or account associated with such billing information; (ii) agree to pay 3DiVi for all purchases (including all applicable taxes) made via the Site or Services Panel; and (iii) thereby authorize 3DiVi or its third party payment processor to charge your credit card or otherwise process your payment for any purchase, subscription or other fees incurred by you. If you are directed to 3DiVi's third party payment processor, you may be subject to terms and conditions governing use of that third party's service and that third party's privacy policy. Please review such third party's terms and conditions and privacy policy before using such services.

## **5.3 Subscription Terms**

Any subscriptions you purchase will remain in effect for the initial subscription period, and thereafter will automatically renew on a month-to-month basis at the then-current list price, unless you renew the subscription for a new subscription term or terminate and cancel it as described on the Site.

# **6. Compliance**

To ensure compliance with the Agreement, you agree that within ten (10) days from the date of 3DiVi or its authorized representative's request, you shall provide all pertinent records and information requested in order to verify that your installation and use of any and all Services is in compliance with the Agreement along with a signed verification that all such information is complete and correct. Furthermore, if you are a Legal Entity, 3DiVi or its authorized representatives may upon reasonable prior notice access and inspect your facilities and computer systems to review and verify your compliance with the Agreement. Any such inspection shall be conducted

during regular business hours at your facilities or electronically via remote access. In the event you have impermissibly used 3DiVi Trial (or other products) or have not paid the applicable fees for all Services you have deployed or used, you agree to immediately pay for such Services, as well as the reasonable inspection costs, upon 3DiVi's demand.

## **7. Termination And Account Cancellation**

3DiVi will have the right in its sole discretion, and without prior notice to you, to suspend or disable your 3DiVi Account or terminate the Agreement and/or your right or ability to access or use any of the Services if: (a) you breach this Agreement; (b) your use of the Services poses a security risk to, or otherwise adversely impacts, the Services or any third party; (c) your use of the Services subjects 3DiVi, our affiliates or any third party to liability; (d) your use of the Services may be fraudulent; (e) you have ceased to operate in the ordinary course, made an assignment for the benefit of creditors or similar disposition of your assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution or similar proceeding.

In the event of any suspension, disablement or termination, you acknowledge that: (i) 3DiVi will have no further obligation to provide the Services to you; (ii) all rights granted to you under the Agreement will immediately cease; (iii) you may no longer access any of Your Content that was previously submitted via any of the Services or that was related to your 3DiVi Account, and 3DiVi will have no obligation to maintain or forward you Your Content; and (iv) you will remain liable for all fees and charges for all Services ordered. If 3DiVi suspends, disables or terminates due to your breach, you will also remain liable for any remaining amounts owing for the entire



term of your subscriptions. Any suspension, disablement or termination will not affect your obligations to 3DiVi (including, without limitation, proprietary rights and ownership, indemnification and limitation of liability), which by their sense and context are intended to survive such suspension, disablement or termination.

## 8. Disclaimer

THE SERVICES ARE ALL PROVIDED BY 3DiVi ON AN “AS IS” AND “AS AVAILABLE” BASIS, WITHOUT ANY REPRESENTATIONS, WARRANTIES, COVENANTS OR CONDITIONS OF ANY KIND. 3DiVi AND ITS LICENSORS DO NOT WARRANT OR REPRESENT THAT THE SERVICES, OR ANY PART THEREOF, WILL OPERATE UNINTERRUPTED OR ERROR-FREE. 3DiVi AND ITS LICENSORS DISCLAIM ALL WARRANTIES AND REPRESENTATIONS (EXPRESS OR IMPLIED, ORAL OR WRITTEN), WHETHER ALLEGED TO ARISE BY OPERATION OF LAW, BY REASON OF CUSTOM OR USAGE IN THE TRADE, BY COURSE OF DEALING OR OTHERWISE, INCLUDING ANY AND ALL: (I) WARRANTIES OF MERCHANTABILITY; (II) WARRANTIES OF FITNESS OR SUITABILITY FOR ANY PURPOSE (WHETHER OR NOT 3DiVi KNOWS, HAS REASON TO KNOW, HAS BEEN ADVISED OR IS OTHERWISE AWARE OF ANY SUCH PURPOSE); AND (III) WARRANTIES OF NONINFRINGEMENT OR CONDITION OF TITLE. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED FROM 3DiVi OR ELSEWHERE WILL CREATE ANY WARRANTY OR CONDITION NOT EXPRESSLY STATED IN THE AGREEMENT.

YOU SHALL BE SOLELY RESPONSIBLE FOR THE ACCURACY AND QUALITY OF YOUR CONTENT, AND YOU UNDERSTAND THAT YOU MUST EVALUATE AND BEAR ALL RISKS ASSOCIATED WITH YOUR USE OF THE SERVICES, OR

YOUR RELIANCE ON THE ACCURACY, COMPLETENESS, OR USEFULNESS OF THE SERVICES.

## **9. Indemnity**

To the maximum extent permitted by law, you agree to defend, indemnify, and hold 3DiVi, its officers, directors, employees and agents, harmless from and against any and all claims, actions, suits or proceedings, as well as any and all losses, liabilities, damages, costs and expenses, including, without limitation, reasonable legal and accounting fees, arising out of or in any way connected with: (i) your access to or use of any of the Services; (ii) Your Content; or (iii) your violation of the Agreement.

## **10. Limitation Of Liability**

3DiVi AND ITS LICENSORS' TOTAL AGGREGATE LIABILITY TO YOU FROM ALL CAUSES OF ACTION AND UNDER ALL THEORIES OF LIABILITY RELATED TO THE SERVICES WILL BE LIMITED TO THE GREATER OF: (A) THE AMOUNTS PAID BY YOU IN THE MOST RECENT THREE (3) MONTHS FOR USE OF THE SERVICES; OR (B) ONE HUNDRED U.S. DOLLARS (US\$100). IN NO EVENT WILL 3DiVi, ITS LICENSORS OR ANY OTHER PARTY INVOLVED IN CREATING, PRODUCING OR DELIVERING THE SERVICES BE LIABLE TO YOU FOR ANY SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF DATA, BUSINESS, PROFITS, GOODWILL, SERVICE INTERRUPTION, COMPUTER DAMAGE, SYSTEM FAILURE OR ABILITY TO EXECUTE) OR FOR THE COST OF PROCURING SUBSTITUTE PRODUCTS OR SERVICES ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT OR THE EXECUTION OR PERFORMANCE OF THE SERVICES,

OR FROM THE USE OR INABILITY TO USE THE SITE OR WEBSITE CONTENT, OR FROM ANY COMMUNICATIONS, INTERACTIONS OR MEETINGS WITH OTHERS AS A RESULT OF YOUR USE OF THE SITE, SERVICES, WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED UPON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, AND WHETHER OR NOT 3DiVi OR ITS LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE. THE FOREGOING LIMITATIONS WILL SURVIVE AND APPLY EVEN IF ANY LIMITED REMEDY SPECIFIED IN THE AGREEMENT IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU.

# **11. Controlling Law and Jurisdiction**

## **11.1 Choice Of Law**

The Agreement is governed by and construed in accordance with the laws of Denmark, without regard to or application of conflict of laws rules or principles. The United Nations Convention on Contracts for the International Sale of Goods will not apply.

## **11.2 Arbitration**

Except as set forth below in Section 9.3, any dispute arising out of or in connection with the Agreement, including any disputes regarding the existence, validity or termination thereof, shall be settled by arbitration. The parties agree to arbitrate all disputes by simplified arbitration arranged by The Danish Institute of Arbitration in accordance with the rules of simplified arbitration procedure adopted by The Danish Institute of Arbitration and in force at the time when such proceedings are commenced. The parties further agree that any arbitration shall be conducted in their individual capacities only and not as a class action or other representative action, and the parties expressly waive their right to file a class action or seek relief on a class basis. You and 3DiVi agree that each may bring claims against the other only in your or its individual capacity, and not as a plaintiff or class member in any purported class or representative proceeding. If any court or arbitrator determines that the class action waiver set forth in this paragraph is void or unenforceable for any reason or that an arbitration can proceed on a class basis, then the arbitration provision set forth above shall be deemed null and void in its entirety and the parties shall be deemed to have not agreed to arbitrate disputes.

## **11.3 Arbitration Exceptions**

Notwithstanding the parties' agreement to resolve all disputes through arbitration, either party may bring an action in court: (a) to enforce its intellectual property rights ("intellectual property rights" means patents, copyrights, moral rights, trademarks, and trade secrets, but not privacy or publicity rights), including without limitation to seek injunctive relief; (b) in cases that do not involve intellectual property rights, to seek temporary, preliminary or other expedited or provisional injunctive relief (but not money damages); or (c) collect fees due pursuant to the Agreement. If you reside (or your principal place of business is) within the United States and the parties have an

intellectual property rights dispute, you and 3DiVi agree to submit to the personal and exclusive jurisdiction of and venue in the state and federal courts located in San Francisco County, California. If you reside (or your principal place of business is) outside of the United States and the parties have an intellectual property rights dispute, you and 3DiVi agree to submit to the personal and exclusive jurisdiction of and venue in the courts located in Copenhagen, Denmark. The parties agree to accept service of process by mail, and hereby waive any and all jurisdictional and venue defenses otherwise available.

## 12. General

The Agreement is the complete and exclusive understanding and agreement between the parties regarding its subject matter, and supersedes all proposals, understandings or communications between the parties, oral or written, regarding its subject matter, unless you and 3DiVi have executed a separate agreement governing your use of the Services, in which case such separate agreement(s) will control in relation to the relevant Services. The English language version of the Agreement is legally binding in case of any inconsistencies between the English version and any translations. Any terms or conditions contained in your purchase order or other ordering document that are inconsistent with or in addition to the terms and conditions of the Agreement are hereby rejected by 3DiVi and will be deemed null. You may not assign or transfer the Agreement or any rights granted hereunder, by operation of law or otherwise, without 3DiVi's prior written consent. Any attempt by you to do so, without such consent, will be void. 3DiVi may assign or transfer the Agreement, at its sole discretion, without restriction. 3DiVi may assign your User account for collection, and the collection agency may pursue claims limited to the collection of past due and owing amount and any interest or cost of collection permitted by law or the Agreement in any court of competent jurisdiction.

Subject to the foregoing, the Agreement will bind and inure to the benefit of the parties, their successors and permitted assigns. Except as expressly set forth in the Agreement, the exercise by either party of any of its remedies under the Agreement will be without prejudice to its other remedies under the Agreement or otherwise. 3DiVi will deliver all notices, approvals or other communications required or permitted under the Agreement, including those regarding modifications to the Agreement: (a) via e-mail (in each case to the address that you provide); or (ii) by posting to the Site, the Service Panel or your 3DiVi Account. For notices made by e-mail, the date of receipt will be deemed the date on which such notice is transmitted. The failure by either party to enforce any provision of the Agreement will not constitute a waiver of future enforcement of that or any other provision. Any waiver, modification or amendment of any provision of the Agreement will be effective only if in writing and signed by authorized representatives of both parties. If any provision of the Agreement is held to be unenforceable or invalid that provision will be enforced to the maximum extent possible and the other provisions will remain in full force and effect.

## **Contacting 3DiVi**

You may contact [info@3DiVi.com](mailto:info@3DiVi.com) with questions.



