

## PROCEDURAL INC. SUBSCRIPTION (“Subscription”)

### Worldwide

(Version 1.00 / last revised October 30, 2008)

Your purchase of Subscription will be subject to the terms and conditions set out below (the “Agreement”), and all Subscription purchased by you now or at any time hereafter will be subject to the terms and conditions set out below.

#### 1. Definitions.

The following Definition shall apply to the terms and conditions of your Subscription:

“**Ancillary Product**”: any product (other than an Extension or a Release) which Procedural Inc. may furnish to you from time to time as part of the Procedural Inc. Subscription.

“**Ancillary Services**”: any services or benefits (other than, where applicable, delivery of an Extension, Release or Ancillary Product or Support) which may be provided to you from time to time as part of the Subscription. Procedural Inc. reserves the right at its discretion to add or remove Ancillary Services to the Subscription from time to time, without prior notification to you, and to make them available only in English.

“**Business day**”: a day which is not a Saturday, a Sunday or a Procedural Inc. designated holiday.

“**Effective Date**”: the date described in Section 4.1

“**Named User**”: a User, designated by your contract manager or software coordinator, who may submit e-mail Support request.

“**Procedural Inc.**”: the company Procedural Inc. from whom, or doing business in the country of the Reseller from whom (as the case may be), you purchased the Subscription.

“**Procedural Inc. Software License**”: Procedural Inc.’s standard end-user license agreement included with each copy of the Software granting you a license to use the program.

“**Procedural Inc. Subscription**”: the terms and rules under which you can purchase Subscription.

**"Release"**: a license to use a full commercial version of Procedural Inc.'s Software Program incorporating all Extensions relating to that Software Program offered by Procedural Inc. since the preceding version of that Software Program or which enhances or improves the functionality of the preceding version of that Software Program, and for which Procedural Inc. normally charges a fee. A Release includes the documentation customarily provided by Procedural Inc. with a Software Program and the designation of a "Release" is in Procedural Inc's sole discretion. A "Release" does not include: (a) an Extension; or (b) a future Procedural Inc. computer program that is a separate product and not a direct successor, as may be designated by Procedural Inc. in its sole discretion, to the Software Program.

**"Reseller"**: a person or company that is authorized by Procedural Inc. to sell Subscription (either directly to end users or to other Resellers) for a particular Software Program.

**"Software Program"**: a copy of a Procedural Inc. computer program which you are licensed by Procedural Inc. to use and for which you have purchased Subscription.

**"Subscription"**: the entitlement to receive Extensions, Releases, Ancillary Products, Ancillary Services and Support, if any, made available by Procedural Inc. under the Procedural Inc. Subscription during the Term.

**"Subscription Fee"**: the fee paid by you for a Subscription.

**"Support"**: means the support services more particularly described in Section 2.2.

**"Term"**: the terms (initial and renewal) defined in Sections 3.2 and 4.1.

**"User"**: means any of the following: (i) the contract manager or software coordinator designated by you as your primary authorized representative for Subscription and who is responsible for, among other things, managing your Subscription, managing access to your Subscription account, submitting Support requests; or (ii) Named Callers. Procedural Inc. has the right to restrict the number of Users who submit Support requests, have access to Ancillary Services and other benefits. You agree and acknowledge that all Users shall be bound by the applicable terms and conditions of this Agreement. Procedural Inc. reserves the right, but shall have no obligation, to verify that Users have been authorized by you and to restrict access to the Procedural Inc. Subscription entitlements if, in its reasonable judgment, a User cannot be so verified.

**"You"**: the individual or entity who purchases Subscription.

## 2. GRANT

### 2.1 Subscription Grant

Procedural Inc. grants you a Subscription for the Term for the Software Program for which you have purchased Subscription. Your use of Extensions, Releases and Ancillary Products shall be governed by the terms of the Procedural Inc. Software License. You may not distribute, rent, loan, sell, sublicense or otherwise transfer or market any Software Program, Extension, Release, Ancillary Product or Ancillary Services to any other person without Procedural Inc's prior written consent. If you wish to purchase a Subscription for any Software Program licensed to you, then you must purchase a Subscription for each license. To purchase a Subscription, you must be registered with Procedural Inc. as the holder of a copy of the most current version of the Software Program which you wish to place under Subscription.

### 2.2 Support Grant

Support is a part of your Subscription. Support may be offered either directly to you by Procedural Inc. or indirectly by a Reseller. Support may be provided to you as set forth below:

(i) Support to Named Users during Procedural Inc. local business hours on Business Days. Local business hours are generally from 9AM – 5PM (CET).

(ii) Commercially reasonable efforts to respond to a request properly submitted by a Named User within twenty-four (24) hours on a Business Day from the date and time that request was submitted. Named Users may also be contacted by email or telephone to facilitate resolution of specific issues. This response will consist either of: (a) a suggested problem resolution; (b) a request for more detailed information or clarification which will enable Procedural Inc. to determine the appropriate course of action; or (c) in the case of a request which in Procedural Inc's sole discretion requires extensive research or escalation, a notification of the estimated time to provide the User with either further information or a resolution or a workaround, as appropriate.

2.2.1 Procedural Inc. is not obliged to provide Support requested as a result of: (a) operation of the computer on which Software is installed in environmental conditions outside those prescribed by the computer manufacturer; (b) operation of the Software with a version of the operating system software other than that specified by Procedural Inc.; (c) failure to maintain the computer on which Software is installed or used in accordance with standards prescribed by the computer manufacturer; (d) failure to ensure that your personnel and staff are fully trained in the use and operation of Software; (e) Software serviced, maintained or modified by anyone other than Procedural Inc.; or (f) your computer hardware failing to meet the minimum specification prescribed by Procedural Inc. for use with the Software (<http://www.procedural.com/cityengine/requirements.html>).

2.2.2 You must: (a) Ensure that your User submits Support requests in accordance with these Terms and Conditions; (b) at all times maintain Subscription for the licenses for the Software Program; (c) ensure that you or your Users provide Procedural Inc. with such information, specifications, or other information as may reasonably be required by Procedural Inc. to provide Support; (d) utilize the

instructions and troubleshooting procedures provided by Procedural Inc., where applicable, prior to initiating a request for Support; (e) Follow the problem determination, problem analysis, and service request procedures that Procedural Inc. provides; (f) promptly install all maintenance releases or upgrades supplied by Procedural Inc.; (g) promptly install all product patches, fixes, update releases or upgrades supplied by Procedural Inc.; (h) If judged necessary by Procedural Inc., allow reasonable access to your Software Program by Procedural Inc.; (i) agree to back up all data on or prior to the provision of Support and to provide adequate security for your system; (j) use best efforts to allow Procedural Inc. access to your systems via the Internet when requested; and (k) provide Software Program Users with ready access to the latest available documentation on the use and operation of Software Program provided by Procedural Inc..

2.2.3 You acknowledge and agree that Support is provided solely for your internal use to support your use of the Software Program licenses covered under Subscription. Any information which is individually addressed, requires a password to access, or is otherwise restricted is made available in strict confidence and on the condition that it will not be communicated to third parties in any manner without the express written consent of Procedural Inc. and that no use will be made of this information except in connection with your use of the Software Program licenses covered under Subscription. You further acknowledge and agree that the Software Programs form part of your total unique hardware and software environment to deliver specific functionality, and the Support may not achieve the results you desire within your design constraints.

2.2.4 If your Support is provided by a Reseller, for that Support that is provided by such Reseller, you acknowledge and agree that: (i) your Support was purchased from and will be delivered by the Reseller; (ii) your Support requests will be submitted to and answered by the Reseller; (iii) Procedural Inc. is under no obligation to provide you with Support nor is it responsible for the Support that you may receive from a Reseller; (iv) you authorize Reseller (and any subsequent Reseller to whom your Support may be subsequently transferred or provided) to view, access and receive information on any Support requests that any User submits, including, without limitation, via the web, and any Support requests that are otherwise accessible; (v) you authorize Procedural Inc. to provide Reseller with that information deemed necessary to maintain and fulfil your Support requests; and (vi) delivery of your Support may be transferred to another Reseller if the Reseller from whom you had been receiving Support is no longer eligible, authorized or capable of delivering such Support.

## **2.3 Ancillary Services**

Procedural Inc. may provide Ancillary Services to you subject to and in accordance with these terms and conditions and any supplementary terms and conditions and customer obligations applicable to each type of Ancillary Service, which applicable supplementary terms and conditions and customer obligations must be accepted by you prior to accessing and using those Ancillary Services. Unless and until you accept the supplemental terms and conditions applicable to a particular Ancillary Service, you agree that Procedural Inc. is under no obligation to provide such Ancillary Service to you.

**PROCEDURAL INC. DOES NOT GUARANTEE THAT IT WILL MAKE AVAILABLE, AND YOU ACKNOWLEDGE THAT YOU MAY NOT RECEIVE, ANY EXTENSION, RELEASE, ANCILLARY PRODUCT, ANCILLARY SERVICE OR SUPPORT DURING THE TERM OF YOUR SUBSCRIPTION.**

### **3. PURCHASES; RENEWALS**

#### **3.1 Purchases**

When you purchase Subscription, Procedural Inc. will provide you with instructions on how to access Procedural Inc. Subscription information.

#### **3.2 Renewals**

Prior to expiration of your Subscription, you may purchase a renewal of Subscription for an additional term (“Renewal Term”) from Procedural Inc.. Unless otherwise agreed by Procedural Inc., if you do not purchase renewal for your Subscription prior to expiration of the Term, your Subscription will automatically expire. If you do not renew prior to expiration of your Subscription, this Agreement shall no longer apply and if you wish to reinstate your expired Subscription, then you will be required to agree to the then-current Procedural Inc. Subscription terms and conditions, and you will be required to purchase at least both the then-current Release and a Subscription for that Release and/or you may be subject to the payment of additional or other fees and expenses.

### **4. TERM AND TERMINATION**

#### **4.1 Effective Date; Term.**

The effective date (“Effective Date”) of the initial term (“Initial Term”) of your Subscription will be the date as determined by Procedural Inc. in accordance with its Procedural Inc. Subscription policies. Renewal Terms of Subscription shall commence on an anniversary of the Effective Date. The Initial Term of your Subscription will continue for one (1), two (2) or three (3) years from the Effective Date, depending on the length of term for which you qualify, select and purchase. Renewal Terms of your

Subscription will continue for one (1), two (2) or three (3) years from the anniversary of the Effective Date immediately following the end of the Initial Term or the immediately preceding Renewal Term (as the case may be), depending on the length of Renewal Term which you select and purchase. Procedural Inc. will endeavour to confirm your purchase within 48 hours after the Effective Date or relevant anniversary of the Effective Date (as the case may be).

**4.2** Each of Procedural Inc. and you may immediately terminate your Subscription if either party fails to perform its obligations under these terms and conditions and such failure continues for thirty (30) days after written notice by the non-defaulting party.

**4.3** Procedural Inc. may suspend or terminate your Subscription if you fail to pay Procedural Inc. or your Reseller (as the case may be) for a Subscription or renewal in accordance with their terms. Procedural Inc. may terminate your Subscription at any time for convenience, in which case Procedural Inc. shall refund that proportion of the

Subscription Fee you paid which equals the unexpired portion of the then current term.

## **5. EXCLUSION OF WARRANTY**

YOU EXPRESSLY UNDERSTAND AND AGREE THAT THE SUBSCRIPTION IS PROVIDED ON AN "AS IS" BASIS WITHOUT WARRANTY OF ANY KIND.

TO THE MAXIMUM EXTENT PERMITTED BY LAW, PROCEDURAL INC. EXPRESSLY DISCLAIMS ALL WARRANTIES AND CONDITIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

THE SUBSCRIPTION IS NOT INTENDED FOR USE IN THE OPERATION OF SYSTEMS OR ACTIVITIES WHERE THE FAILURE OF THE SUBSCRIPTION COULD LEAD TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE.

## **6. LIMITATION OF LIABILITY**

TO THE MAXIMUM EXTENT PERMITTED BY LAW, YOU EXPRESSLY UNDERSTAND AND AGREE THAT PROCEDURAL SHALL NOT BE LIABLE TO YOU FOR ANY DAMAGES, INCLUDING CONSEQUENTIAL DAMAGES, LOSS OF PROFIT, SPECIAL, INDIRECT OR INCIDENTAL DAMAGES.

## **7. Entire Agreement**

These Terms and Conditions constitute the entire agreement between you and Procedural relating to the Subscription.

## **8. Applicable Law**

To the extent permitted by applicable law, the laws of Switzerland shall govern the interpretation of these Terms and Conditions, regardless of conflict of laws principles.