

# 3D Bozeman Portal User Agreement

Last updated: January 12, 2015

This 3D Bozeman Portal User Agreement (the “Agreement”) sets forth the terms and conditions pursuant to which 3D Bozeman, LLC (“3D Bozeman”) will provide you or the entity that you represent (“You”) with the right to access and use 3D Bozeman website and links to the Matterport Portal.

BY ACCESSING OR USING 3D BOZEMAN’S WEBSITE OR THE PROVIDED LINKS TO THE MATTERPORT PORTAL, YOU SIGNIFY YOUR AGREEMENT TO ALL TERMS, CONDITIONS, AND NOTICES CONTAINED OR REFERENCED IN THIS AGREEMENT. IF YOU DO NOT AGREE TO SUCH TERMS, CONDITIONS AND/OR NOTICES, YOU MAY NOT ACCESS 3D BOZEMAN’S WEBSITE OR ITS LINKS TO THE MATTERPORT PORTAL.

3D Bozeman reserves the right to revise any portion of this Agreement in its sole discretion at any time and without prior notice to You by updating this posting, such changes to be effective prospectively. Thus, You should visit this page periodically for changes. If You disagree with any changes to this Agreement, Your sole remedy is to discontinue Your use of the Service. Your continued use of the Service after a change has been posted constitutes Your acceptance of the change thereafter.

**1. Access to the Matterport Portal.** You acknowledge that your access and use of the Matterport Portal is through a subscription service paid for by 3D Bozeman to Matterport, Inc. and is subject to those applicable terms and restrictions set forth within this Agreement. Your use of 3D Bozeman’s website or the Matterport Portal does not include a license to source code from 3D Bozeman’s website or the Matterport Portal of any kind.

**2. Restrictions.** You agree to not: (a) reverse engineer, decompile, or disassemble the Matterport Portal (or any component thereof); (b) modify or create any derivative work based on the Matterport Portal (or any component thereof) or any of the Documentation; (c) copy the Matterport Portal (or any component thereof); (d) remove any proprietary notice or label from any of the Documentation; or (e) take any action or omit to act in any way that would interfere with or disrupt the integrity or performance of the Matterport Portal, or adversely affect Matterport’s right, title or interest in or to the Matterport Portal. You also shall not use any deep-link, page-scrape, spider, robot, crawl, index, or other automatic device, program, algorithm or technology to use, access, copy, acquire information from, generate impressions on, input information to, store information on, search on, generate searches on or monitor any portion of the Matterport Portal.

**3. User Conduct.** You shall not cause to be uploaded to 3D Bozeman’s website or the Matterport Portal: (a) any content subject to copyright that is not Your original work, unless You have permission from the rightful owner; (b) any confidential or private information of any third party without the express consent of such third party; (c) any content that is harmful, threatening,

unlawful, defamatory, abusive, inflammatory, harassing, vulgar, obscene, fraudulent, hateful, or otherwise objectionable; or (d) any content that infringes or misappropriates any third-party intellectual property right, or is invasive of any privacy or publicity right. You also agree not to use 3D Bozeman's website or the Matterport Portal for any illegal or improper purpose, and not to conduct any activities that could damage, disable, overburden or impair 3D Bozeman's website or the Matterport Portal.

**4. Technical Support.** Any technical problems You experience when using 3D Bozeman's website or the Matterport Portal links provided should be reported to 3D Bozeman at the support address provided on the 3D Bozeman's website. 3D Bozeman will use commercially reasonable efforts to keep its website and the Matterport Portal links operational, exclusive of downtime necessary for scheduled and emergency maintenance.

## **5. Imagery.**

### **5.1 Ownership.**

**5.1.1 Raw Camera Imagery.** You acknowledge that 3D Bozeman owns the copyrights in all imagery that it captures and uploads to the Matterport Portal ("Raw Camera Imagery"). You also acknowledge that Matterport Inc. will have the right to use the Raw Camera Imagery as set forth in Section 5.3. Notwithstanding, the foregoing, Matterport Inc. will own all digital copies of Raw Camera Imagery. Neither 3D Bozeman nor Matterport Inc. have any obligation to provide any Raw Camera Imagery to You.

**5.1.2 Showcase Imagery.** You acknowledge that 3D Bozeman owns the copyrights in all Showcase Imagery it collected and posted. You also acknowledge that Matterport Inc. will have the right to use the Showcase Imagery as set forth in Section 5.3. Notwithstanding, the foregoing, Matterport Inc. owns all digital copies of Showcase Imagery, and You shall only access, use and download the Showcase Imagery as expressly permitted under this Agreement. Without limiting the generality of the foregoing, except as expressly otherwise permitted under this Agreement, You may not: (a) host any digital copy of Showcase Imagery or take other measures to make Showcase Imagery available to users directly from Your servers or any third-party servers provided on Your behalf; or (b) download any digital copy of Showcase Imagery to a local computer and redistribute such digital copy (or any modified version of such digital copy or other derivative work) for any purpose. You acknowledge that, except as set forth in Section 5.7 below, You will not have the right to access any of the Showcase Imagery generated on the Matterport Portal following the expiration or termination of 3D Bozeman's Subscription Period.

**5.1.3 Derived Imagery.** You acknowledge that 3D Bozeman owns all derivative works, images and videos that are generated through functionalities on the Matterport Portal from Showcase Imagery, including all digital copies thereof and copyrights therein (collectively "Derived Imagery"), and may transfer ownership of, or sell access to, any of the Derived Imagery to any third party without Your or Matterport Inc.'s consent.

**5.2 Viewing 3D Models.** Subject to any conditions and restrictions set forth in this Agreement, You are allowed to view any of the Standard 3D Models or 3D Showcases: (a) directly on the

Matterport Portal; (b) in the form of a screen shot or fly-through video file that is captured through functionality provided on the Matterport Portal and/or through third-party screen capture software; (c) in an .OBJ file exported in accordance with Section 5.7; or (d) through a link to the Matterport Portal provided by Matterport; provided that Matterport may, but is not obligated to, provide support to any such third parties.

5.3 License to Matterport. You acknowledge and accept that 3D Bozeman has granted to Matterport, Inc. a non-exclusive, royalty-free, worldwide license to: (a) host, reproduce, modify and create derivative works from the Raw Camera Imagery to generate the Showcase Imagery; (b) host, reproduce, modify, distribute, publicly perform and publicly display the Showcase Imagery on the Matterport Portal on Your behalf; (c) create derivative works from the Showcase Imagery to create the Derived Imagery; and (d) host, reproduce, modify, create derivative works from, distribute, publicly perform and publicly display the Derived Imagery on the Matterport Portal on Your behalf.

5.4 No Conflicting Interests.

**YOU SHALL NOT CAUSE TO BE UPLOADED ON THE MATTERPORT PORTAL ANY CONTENT FOR WHICH YOU DO NOT HAVE ALL SUCH NECESSARY OWNERSHIP RIGHTS AND/OR LICENSES, CONSENTS OR PERMISSIONS.**

5.5 Responsibility. 3D Bozeman is responsible for all of all Raw Camera Imagery and Derived Imagery, including for the accuracy, legality and integrity of such content; provided, however, that Matterport, Inc. shall have the right (but not the obligation) in its sole discretion to remove from the Matterport Portal any such content that violates Matterport, Inc.'s policies and procedures, or is otherwise objectionable.

5.6 Storage; Security; Transmission. You acknowledge that certain servers and databases are maintained by or on behalf of Matterport, Inc. to store Raw Camera Imagery, Showcase Imagery, Derived Imagery and other data processed by the Matterport Portal, and that Matterport, Inc. may keep such information indefinitely or delete it following expiration of the time period set forth in Section 5.7 below, in Matterport Inc.'s discretion. Matterport Inc. employs reasonable technological and operational security procedures intended to protect such data from loss, misuse, alteration, or destruction. However, You acknowledge that no security measure can guarantee against compromise, and neither 3D Bozeman nor Matterport Inc. guarantee that the servers and databases underlying 3D Bozeman's website or the Matterport Portal will not experience any such compromise. You acknowledge that neither 3D Bozeman nor Matterport Inc. have any responsibility or liability for the deletion of or failure to store any of the Raw Camera Imagery, Showcase Imagery or Derived Imagery. You also acknowledge that the Raw Camera Imagery, Showcase Imagery and Derived Imagery are transmitted by Matterport Inc. to and from You via the Internet and other technologies, and that such transmissions cannot be made to be 100% secure or free from risk of compromise.

5.7 Export. You acknowledges that, other than the access provided to 3D Showcases via the Matterport Portal during 3D Bozeman's Subscription Period, and except as provided in Section 5.2, neither 3D Bozeman nor Matterport Inc. have any obligation to provide You with an export

file or any other download of the Showcase Imagery (or any Digital Objects, Positional Technology or other content therein) at any time during or after 3D Bozeman's Subscription Period.

**6. Usage Data and Derived Data.** You acknowledge that Matterport Inc. will collect through the Matterport 3D Vision System, and process and store on servers operated by Matterport Inc. or on Matterport Inc.'s behalf, data regarding Your usage of the Matterport 3D Vision System and data derived from the Raw Camera Imagery, Showcase Imagery or Derived Imagery. You acknowledge that Matterport Inc. may aggregate some of this data with similar information collected from other Matterport 3D Vision System users, and may share that information with third parties (in aggregated and/or non-aggregated forms); provided, however, that any such shared information will not identify You individually and will not include or disclose any of 3D Bozeman's Raw Camera Imagery, Showcase Imagery or Derived Imagery itself.

**7. Privacy.** You acknowledge that Matterport Inc. may use certain information collected through the Matterport Portal as set forth in Matterport Inc.'s Privacy Policy, which is incorporated by reference to this Agreement. As further provided in Matterport Inc.'s Privacy Policy, Matterport, Inc. and its service providers may collect and use personal information and technical data and related information—including but not limited to technical information about Your device, system and application software, and peripherals—to facilitate the provision of the Matterport Portal and related services to You. Through Your use of the Matterport Portal, You consent to the collection and use (as set forth in the Privacy Policy) of information Matterport, Inc. and its service providers collect from You, including the transfer of this information within and between the United States and/or other countries for storage, processing, and use by Matterport, Inc., its affiliates and service providers, and third parties with which it has strategic relationships. By providing Your mobile phone number to Matterport Inc., You expressly consent to receive direct dial calls, autodialed and prerecorded message calls, and text messages from Matterport Inc. relating to their products and services at that number.

## **8. Intellectual Property Rights.**

**8.1 Reservation of Rights.** All rights not expressly granted herein are reserved by Matterport Inc., including, but not limited to, the unrestricted right to grant access to the Matterport Portal to any third party in any form anywhere. Nothing in this Agreement is intended by the parties to constitute a sale of the software underlying the Matterport Portal or the Documentation, or any derivations thereof. Matterport Inc. reserves the right to modify the Matterport 3D Vision System at any time in Matterport Inc.'s discretion.

**8.2 Title.** The Matterport Portal (including the underlying software) and the documentation created by Matterport Inc. and its licensors are the valuable proprietary information and property of Matterport, Inc. and its licensors. Title, ownership rights and intellectual property rights, including but not limited to, copyright and patent rights, in the Matterport Portal and the Documentation, and all derivatives thereof, shall remain with Matterport and its licensors. You acknowledge the ownership and intellectual property rights of Matterport Inc. and its licensors and agree that You will not take any action to jeopardize, limit or interfere in any manner with such ownership or other rights.

8.3.1 Matterport Marks. The trademarks, logos and service marks (each, a “Mark”) displayed on the Matterport Portal or on Matterport’s other offerings are the property of Matterport Inc. or third parties. You shall not use or allow the use of any Mark without the prior written consent of Matterport Inc. or applicable third-party owner of the Mark. In the event You display any trademark, logo, service mark, tradename or other branding on any page on which you display any 3D Showcase, You shall not do so in a manner that implies, or reasonably could imply, that any portion of the Matterport Portal or other Matterport Inc. technology used to generate or provide any 3D Showcase is owned by you or any third party. Furthermore, prior to displaying any trademark, logo, service mark or tradename to directly brand or label Your display of any 3D Showcase, You shall obtain the prior written consent of Matterport Inc. and enter into a trademark license agreement with Matterport obligating you to display such trademark, logo, service mark or tradename in conjunction with the “Powered by Matterport” logo.

8.3.1 Other Marks. 3D Bozeman’s trademarks, logos and service marks (each, a “Mark”) displayed on its website are the property of 3D Bozeman or third parties. You shall not use or allow the use of any Mark without the prior written consent of 3D Bozeman, or applicable third-party owner of the Mark.

8.4 Feedback. Although You will remain the owner of any feedback, ideas or other suggestions that You communicate to 3D Bozeman or Matterport, Inc. regarding the Matterport 3D Vision System, You hereby grant Matterport Inc. a non-exclusive, royalty-free, fully paid up, perpetual, irrevocable, transferable, sublicensable, unlimited, worldwide right to use and otherwise commercially exploit any such feedback, ideas or other suggestions so provided to Matterport, Inc. or 3D Bozeman.

**9. No Warranty.** THE MATTERPORT PORTAL IS PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS, WITHOUT WARRANTY OF ANY KIND, WHETHER WRITTEN OR ORAL, EXPRESS OR IMPLIED. MATTERPORT DISCLAIMS, ON BEHALF OF ITSELF AND ITS AFFILIATES AND LICENSORS, ALL IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO ALL WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. 3D BOZEMAN AND MATTERPORT DO NOT REPRESENT OR WARRANT THAT THE MATTERPORT PORTAL WILL MEET YOUR NEEDS OR REQUIREMENTS, THAT ANY CONTENT GENERATED BY THE MATTERPORT PORTAL WILL BE ACCURATE OR RELIABLE, THAT USE OF THE MATTERPORT PORTAL WILL BE UNINTERRUPTED, TIMELY, SECURE OR FREE FROM ERROR, OR THAT ANY DEFECTS IN THE MATTERPORT PORTAL WILL BE CORRECTED.

**10. Limitations of Liability.** IN NO EVENT WILL 3D BOZEMAN OR MATTERPORT, INC. OR ITS AFFILIATES OR LICENSORS BE LIABLE TO YOU FOR ANY LOST PROFITS, LOST DATA, LOSS OF BUSINESS; GOODWILL OR REPUTATION, OR FOR ANY OTHER CONSEQUENTIAL, INDIRECT, INCIDENTAL OR SPECIAL DAMAGES OF ANY KIND, EVEN IF 3D BOZEMAN AND/OR MATTERPORT INC. HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL THE TOTAL CUMULATIVE LIABILITY OF 3D BOZEMAN OR MATTERPORT AND ITS AFFILIATES AND LICENSORS UNDER THIS AGREEMENT FROM ALL CAUSES OF ACTION OF

ANY KIND, INCLUDING TORT, CONTRACT, NEGLIGENCE AND STRICT LIABILITY, EXCEED THE AMOUNTS PAID TO 3D BOZEMAN OR MATTERPORT INC. BY YOU UNDER THIS AGREEMENT.

You acknowledge and agree that the foregoing limitations of liability are essential elements of the bargain and that in the absence of such limitations, the financial and other terms of this Agreement would be substantially different. Some jurisdictions do not allow the exclusion or limitation of incidental or consequential damages, so these limitations may not apply to You.

**11. Indemnification.** You acknowledge that by providing You access to the Matterport Portal, 3D Bozeman does not assume any responsibility or liability for any risks associated with Your or Your business. Accordingly, You shall defend, indemnify and hold harmless 3D Bozeman, Matterport Inc. and its affiliates, and their respective officers, directors, employees and representatives from and against all claims by any third party arising out of or relating in any way to the conduct of Your or Your business or the use of or inability to use the Matterport 3D Vision System, and all associated losses, costs, damages, and settlements, including reasonable legal fees and expenses.

## **12. Term and Termination.**

12.1 Term. The term of this Agreement will commence upon Your acceptance of this Agreement as set forth in the preamble above and, unless earlier terminated as set forth herein.

12.2 Termination by You. You may terminate this Agreement at any time upon 30 days prior written notice to 3D Bozeman.

12.3 Termination by 3D Bozeman. 3D Bozeman may terminate this Agreement at any time if You have committed any material breach of this Agreement and failed to cure such material breach within 10 days after receiving written notice of the breach from 3D Bozeman.

12.4 Effect of Expiration or Termination. Upon any expiration of 3D Bozeman's subscription or termination of this Agreement, Your access to the Matterport Portal from 3D Bozeman's website will be blocked or deactivated.

12.5 Survival. Upon the expiration or termination of this Agreement, the rights and obligations of the parties will cease, except for the rights and obligations in all provisions of this Agreement which by their nature contemplate performance after the expiration or earlier termination hereof.

**13. Notice to United States Government End Users.** If You are the U.S. Government or if You are a contractor or subcontractor (at any tier) of the U.S. Government and are accessing the Matterport Portal for use by the U.S. Government or in connection with any contract or other transaction with the U.S. Government, You acknowledge that by using the Matterport Portal, the Matterport Portal qualifies as commercial computer software and that any associated documentation qualifies as commercial computer software documentation within the meaning of the applicable acquisition regulations. The terms and conditions of this Agreement are fully applicable to the Government's use of the Matterport Portal and associated documentation, and

shall supersede any conflicting terms or conditions, unless otherwise prohibited by federal law or regulation.

**14. Compliance with Law.** You represent and warrant that (a) You are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a “terrorist supporting” country; and (b) You are not listed on any U.S. Government list of prohibited or restricted parties. You may not export, re-export, import, or transfer the Your right to access the Matterport Portal in violation of any applicable export laws or regulations, and You may not assist or facilitate others in doing any of the foregoing. You acknowledge that it is Your responsibility to comply with any and all applicable export and import laws.

**15. Governing Law; Venue.** This Agreement shall be interpreted in accordance with the laws of the state of Montana without reference to its conflict of law provisions. Any litigation, suit or other proceeding regarding the rights or obligations of the parties hereunder shall be conducted exclusively before the state and federal courts in and for Bozeman, Montana, and the parties specifically consent to Bozeman, Montana as the exclusive venue for any such proceeding. This Agreement shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded.

**16. Notices.** Any notice required or permitted to be given by You under this Agreement must be sent to 3D Bozeman via registered mail return receipt requested or an internationally recognized courier to 121 Virginia Way, Bozeman, MT 59715. Any such notice will be deemed to have been given when sent.

**19. Matterport App.** To use the Matterport Portal, You may also need to download to an Apple device the App made available through Apple’s App Store. Use of the App is subject to Matterport’s End User License Agreement for the App.

**20. Miscellaneous.** If any provision of this Agreement is held to be unenforceable, such provision shall be reformed to the extent necessary to make it enforceable so as to affect the intent of the parties, and the remainder of this Agreement shall continue in full force and effect. The parties acknowledge and agree that a material breach of this Agreement adversely affecting Matterport, Inc.’s proprietary rights would cause irreparable harm to Matterport, Inc. for which a remedy at law would be inadequate and that Matterport, Inc. shall be entitled to injunctive relief in addition to any remedies it may have hereunder or at law. This Agreement and any policies incorporated herein by reference constitute the complete agreement between 3D Bozeman and You concerning the use of 3D Bozeman’s website and the Matterport Portal, and supersede any and all prior agreements and representations between 3D Bozeman and You related to the same subject matter.