

## OPEN DESIGN ALLIANCE

### EDUCATIONAL MEMBERSHIP AGREEMENT

This Agreement, dated as of the date following the last signature below, is made and entered by and between the Open Design Alliance, a Washington nonprofit corporation (the “Alliance”), and the person or entity named at the end of this document (the “Educational Member”).

#### RECITALS

A. The Alliance has been organized and established to promote open, industry-standard formats for the exchange of CAD data.

B. Educational Member desires to become a member of the Alliance, upon the terms and subject to the conditions set forth in this Agreement.

#### AGREEMENT

Accordingly, the Alliance and Educational Member agree as follows:

##### 1. Definitions.

Whenever used in this Agreement with initial letters capitalized, the following terms shall have the following specified meanings:

“**Internal Use**” means use of applications solely within the Educational Member’s organization (not subsidiaries or affiliates). Said applications cannot be distributed in any commercial fashion, or in conjunction with any other commercial software applications.

“**Libraries**” means the Alliance libraries in object code (binary) form only as delivered by the Alliance to Educational Member.

“**Member Application**” means any software application developed by or for Educational Member.

“**Rules**” means the bylaws, policies, procedures, plans, rules and determinations made by the Alliance, its Board of Directors or committees thereof (as such may be amended , revised or supplemented from time to time).

“**Tools**” means the Libraries together with the Specifications as defined herein and as delivered by the Alliance to Educational Member.

“**Specifications**” means the file format specifications used by the Alliance libraries and as delivered by the Alliance to Educational Member.

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## **2. Educational Member's Rights.**

### **2.1 Educational Membership.**

**2.1.1 Classification.** Subject to the terms and conditions of this Agreement, Educational Member will have, and will be entitled to exercise, all rights of an "Educational Member" of the Alliance, as such rights are specified from time to time in the bylaws and Rules of the Alliance.

**2.1.2 Eligibility; Acceptance.** Signature and submittal of this Agreement by a potential member is considered application for membership in the Alliance. The Alliance will evaluate the agreement in good faith and will notify the potential member of acceptance or rejection. The Alliance may reject the application in its sole discretion. If the Alliance rejects the application, a potential member is welcome to reapply at any time. The terms of this Agreement shall become effective upon the date following the last signature below. Educational Member will furnish to the Alliance such documents and other assurances as the Alliance may reasonably request from time to time to ensure that Educational Member has and continues to meet the qualifications for membership in the educational member class as specified in the articles of incorporation and bylaws of the Alliance.

### **2.2 Limited License Grant.**

**2.2.1 Internal Use License.** Promptly after Educational Member and the Alliance have both signed this Agreement, the Alliance will furnish to Educational Member the Alliance Tools, consisting of (a) the Specifications and (b) the Libraries. Subject to the terms and conditions of this Agreement, the Alliance hereby grants to Educational Member a nonexclusive, royalty-free license for the term of the Agreement to:

- (i) use the Specifications for the purposes of developing, modifying or supporting Member Applications for Educational Member's Internal Use;
- (ii) use the Libraries for the purposes of developing, modifying or supporting the Member Applications for Educational Member's Internal Use;
- (iii) reproduce the Libraries, in binary form only, as a part of the Member Applications and solely for Educational Member's Internal Use;
- (iv) disclose the Specifications and the Libraries to Educational Member's contractors for the limited purpose of developing Member Applications under contract with Educational Member, as set forth in subsections (i), (ii) and (iii) above; provided, that such disclosure is made pursuant to a written nondisclosure agreement that protects the Specifications and Libraries from further disclosure or use.

**2.2.2 Limitations.** Educational Member acknowledges that the Tools may not be distributed or sublicensed, except as specifically set forth in Section 2.2.1(iv). The Tools are owned by the Alliance and its suppliers. The Alliance reserves all rights in the Tools other than those expressly granted in Section 2.2.1. In addition, Educational Member will not export or reexport the

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Tools in violation of any law, regulation, order or other governmental requirement (including, without limitation, the U.S. Export Administration Act, regulations of the Department of Commerce and other export controls of the USA).

**2.2.3 Updates.** From time to time, the Alliance may furnish updates or enhancements to the Tools. All such updates or enhancements will be treated as part of the Specifications and the Libraries (as the case may be) and will be subject to the terms of this Agreement upon delivery to Educational Member.

**2.3 Notices.** Educational Member will include in any Member Applications all notices as contained or specified in the Tools.

### **3. Educational Member's Covenants and Obligations.**

**3.1 Bylaws, Rules and Policies.** Educational Member will perform its obligations as a member of the Alliance and comply with the bylaws, policies, procedures, plans, rules and determinations made by the Alliance, its Board of Directors or committees thereof (collectively, the "Rules"), with respect to all matters concerning the responsibilities and authority delegated by the members to the Alliance, as set forth in the articles of incorporation and bylaws of the Alliance.

**3.2 No Dues.** As an educational member of the Alliance, Educational Member will not be required to pay, in accordance with this Agreement and the Rules, any dues, fees or assessments to the Alliance. Without limiting the generality of the foregoing, the Board of Directors of the Alliance is authorized to determine whether or not the Alliance will require regular dues from its members and the amount of any such dues. Any fees, dues or assessments payable by Educational Member under this Agreement will be paid at such times as are determined by the Alliance. All amounts will be due and payable in United States dollar currency within thirty (30) days from the date set by the Alliance for payment. All dues, fees and assessments imposed or levied by the Alliance are nonrefundable and may not be prorated, but credit for such amounts may be transferred or assigned in accordance with Section 7.2.

**3.3 Obligation to Furnish Information.** Educational Member acknowledges that the intent of the Alliance is to promote open, industry-standard formats for the exchange of CAD data by obtaining and sharing information and knowledge regarding the same. Accordingly, Educational Member will disclose and deliver to the Alliance:

- (a) all modifications, clarifications and corrections to the Specifications;
- (b) all bug fixes, modifications and enhancements to the Tools; and
- (c) any other information and knowledge regarding the format of files read and written by the Libraries, whether obtained by Educational Member's own efforts or from a third party, except to the extent that doing so would violate any applicable statute or contractual requirement entered into in good faith.

Educational Member hereby grants the Alliance a nonexclusive, fully-paid, irrevocable, royalty free license to reproduce, edit, modify, publish, distribute, sublicense (including, without limitation, to

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other members pursuant to their Membership Agreements) and otherwise exploit all information and materials delivered or disclosed to Alliance pursuant to this Section.

**3.4 Records and Audit.** Educational Member shall maintain complete and accurate records relating to Educational Member's use of the Tools. Educational Member shall permit the Alliance or its independent auditors to access, review and copy such records upon the Alliance's reasonable request, to determine Educational Member's compliance with this Agreement.

#### **4. Acknowledgments and Representations.**

**4.1 No Ownership Interest.** Educational Member understands and acknowledges that the Alliance has been organized as a nonprofit corporation and that any amounts paid by or on behalf of Educational Member to the Alliance will constitute dues, fees or assessments related to membership in the Alliance and will not be deemed as an investment or purchase of any ownership interest in the Alliance.

**4.2 Representations.** Educational Member represents and warrants to the Alliance that:

(a) the principal office of Educational Member is at the address shown under the signature of Educational Member's authorized representative at the bottom of this Agreement;

(b) Educational Member has been duly authorized to enter into this Agreement;  
and

(c) Educational Member has received and reviewed the articles of incorporation and bylaws of the Alliance and understands its duties and obligations associated with membership in the Alliance.

**4.3 Acknowledgments.** Educational Member acknowledges that, prior to the execution of this Agreement, it has had the opportunity to ask questions of and receive answers or obtain additional information from a representative of the Alliance concerning the financial and other affairs of the Alliance and the duties and obligations associated with being a member of the Alliance, and, to the extent it believes necessary in light of its knowledge of the Alliance's affairs, it has asked such questions and received satisfactory answers. Educational Member has carefully read this Agreement and, to the extent it believes necessary, it has discussed the representations, warranties and agreements which it makes by signing this Agreement with its counsel and representatives of the Alliance.

#### **5. Termination and Suspension of Membership or Services.**

**5.1 Term.** This Agreement shall remain in full force and effect for an initial period of twelve months unless terminated sooner as provided hereinbelow.

**5.2 Termination by Educational Member.** Educational Member may terminate its membership in the Alliance and its obligations under this Agreement effective upon thirty (30) days' advance written notice to the President of the Alliance; provided, however, that such termination will not relieve Educational Member of any liabilities or obligations incurred prior to

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the effective date of termination. Educational Member's membership automatically terminates upon the voluntary or involuntary dissolution of the Alliance.

**5.3 Termination by Alliance.** The Alliance may terminate Educational Member's membership in the Alliance effective upon thirty (30) days' advance written notice or if Educational Member fails to adhere to any Rules approved by the Alliance, breaches any material provision of this Agreement (including, without limitation, Section 3.3), and further fails to remedy such nonperformance, noncompliance within thirty (30) days following receipt of notice from the Alliance. The Alliance's right to terminate Educational Member's membership in the Alliance is in addition to any other rights and remedies that may be available to the Alliance, whether at law, in equity or otherwise.

**5.4 Effect of Termination.** Upon any termination of Educational Member's membership in the Alliance for any reason, this Agreement and all rights granted to Educational Member hereunder (including, but not limited to, the rights granted under Section 2) will immediately terminate. Notwithstanding the foregoing, Educational Member may continue to use Member Applications employed prior to such termination. Upon termination of this Agreement, Educational Member shall destroy all copies of the Libraries of the Alliance in Educational Member's possession or control, together with any and all copies thereof (including any modified, partial or merged versions), and will deliver to the Alliance a certificate executed by an officer of Educational Member certifying that it no longer has any copies of the same in its possession or control. Sections 2.2.2, 5.3, 5 and 6, (together with such other provisions which reasonably can be construed as surviving termination) will survive termination of this Agreement (but in no event shall Section 2.2.3). Notwithstanding the foregoing, upon termination of Educational Member's membership in the Alliance, any Alliance obligation to support the contents of the Tools or to furnish Educational Member with upgrades thereto shall cease to exist.

## **6. Warranty Disclaimer; Limitation of Liability and Indemnification.**

**6.1 Educational Member Warranty.** Educational Member warrants that Member Applications developed by or for Educational Member, do not and will not infringe, misappropriate or otherwise violate any third party copyright, patent or other intellectual property right of any kind.

**6.2 Alliance Disclaimer.** THE TOOLS ARE PROVIDED TO EDUCATIONAL MEMBER "AS IS" AND WITH ALL BUGS, DEFECTS AND ERRORS. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, THE ALLIANCE HEREBY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, IMPLIED WARRANTY ARISING FROM ANY COURSE OF PERFORMANCE OR DEALING OR USAGE OF TRADE, IMPLIED WARRANTY OF NONINFRINGEMENT OR IMPLIED WARRANTY OF QUIET ENJOYMENT.

### **6.3 Limitations of Liability.**

**6.3.1 No Fiduciary Capacity.** EDUCATIONAL MEMBER AGREES THAT IN EXERCISING ITS RIGHTS AND AUTHORITY UNDER THIS AGREEMENT OR THE RULES, NEITHER THE ALLIANCE OR ANY MEMBER OR AGENT ACTING AT THE REQUEST OR

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ON BEHALF OF THE ALLIANCE, OR THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS, WILL, BY VIRTUE OF THIS AGREEMENT OR THE ARRANGEMENTS DESCRIBED HEREIN, HAVE ANY FIDUCIARY OBLIGATION TO EDUCATIONAL MEMBER OR ANY OF ITS AFFILIATES.

**6.3.2 No Consequentials.** IN NO EVENT WILL THE ALLIANCE OR ANY MEMBER OR AGENT ACTING AT THE REQUEST OR ON BEHALF OF THE ALLIANCE, OR THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS, BE LIABLE TO MEMBER FOR ANY DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL EXEMPLARY, OR PUNITIVE DAMAGES, WHETHER BASED UPON BREACH OF CONTRACT, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE), STRICT LIABILITY OR OTHER LEGAL THEORY, ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT OR THE ACTIVITIES UNDERTAKEN BY THE ALLIANCE, EXCEPT THAT THE FOREGOING WILL NOT RELIEVE THE ALLIANCE OR ANY OF ITS MEMBERS FROM LIABILITY FOR ANY WILLFUL MISCONDUCT OR ANY BREACH OF AN OBLIGATION OF CONFIDENTIALITY.

**6.3.2 Third-Party Beneficiaries.** The limitations set forth in this Section 6 will inure to the benefit of all members or agents of the Alliance acting at the request or on behalf of the Alliance, and their respective officers, directors, employees and agents, each being an intended third-party beneficiary of the provisions of Section 6 of this Agreement.

**6.4 Indemnification.** Educational Member releases and will defend, indemnify and hold harmless the Alliance and all other past, present or future members from and against any and all claims, losses, damages, liens, liabilities, costs and expenses (including, but not limited to, reasonable attorneys' fees) arising out of or in connection with:

- (a) Educational Member's use or modification of the Tools, and
- (b) any sale or other distribution of any of the Tools or any Member Application by, through or under Educational Member, or
- (c) any breach of the warranty set forth in Section 6.1. This Section 6.4 will apply to the fullest extent permitted by applicable law, regardless of the fault, negligence or strict liability of the Alliance.

## 7. Miscellaneous.

**7.1 Notices.** Any notices required or permitted to be given or made under this Agreement will be in writing. Such notices will be deemed to be duly given on the earliest of (a) actual receipt, irrespective of whether communicated in person, by telephonic facsimile, telegraph, teletype, electronic mail or other form of wire or wireless communication, or by mail or private carrier or other method in which the writing is to be read by the recipient, or (b) on the fifth day after mailing by registered or certified mail, return receipt requested, postage prepaid and addressed as follows:

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If to the Alliance:

Open Design Alliance  
10645 N. Tatum Blvd., Ste. 200-644  
Phoenix, AZ 85028  
Tel. 602.263.7666  
Fax 602.263.5578  
Attention: President

If to Educational Member:

at the address, telephone and facsimile numbers set forth below.

Either Educational Member or the Alliance may from time to time change its address for notification purposes by giving the other party written notice of the new address and the date upon which it will become effective.

**7.2 Assignment.** Neither this Agreement nor any of the rights, interests, or obligations under this Agreement may be assigned by the Educational Member without the prior written consent of the Alliance.

**7.3 Nonwaiver.** No delay or omission by any party hereto to exercise any right or power under this Agreement will impair such right or power or be construed to be a waiver thereof. A waiver by either of the parties hereto of any of the covenants to be performed by the other or any breach thereof will not be construed as a waiver of any succeeding breach thereof or of any other covenant herein contained.

**7.4 Severability.** If any provision of this Agreement or the application thereof to any person or circumstance is, to any extent, held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions or applications of the Agreement will in no way be affected or impaired thereby.

**7.5 Dispute Resolution.** All disputes, controversies, claims, and defenses arising out of, relating to, or involving this Agreement, whether involving theories of tort, contract, or violation of statutory laws ("Claims") are subject to the following provisions:

**7.5.1 Arbitration.** Except as to actions, suits, or proceedings commenced or maintained by persons not parties hereto, any party may elect to have any Claim be determined by binding arbitration. The election shall be made by written notice. Unless the parties otherwise agree in writing, the arbitration shall be conducted in Seattle, Washington before a single arbitrator and in accordance with the commercial arbitration rules of the Arbitration Service of Portland, Inc. If the parties are unable to agree on an arbitrator within 14 days of an election to arbitrate, the arbitrator shall be appointed in accordance with the procedures set forth in ORS Chapter 36. The arbitrator shall issue an award within 30 days of conclusion of the hearing. The award of the arbitrator shall be final and binding. Judgment on any arbitration award may be entered in any court with jurisdiction.

**7.5.2 Provisional Remedies.** If a party elects to have any Claims determined by arbitration, any provisional remedy issued prior thereto may remain in effect until such time as an arbitrator is selected or appointed and has assumed to determine the Claim. Thereafter the arbitrator

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may issue, continue, or terminate provisional relief or may permit a party to pursue provisional relief in court.

**7.5.3 Applicable Law; Jurisdiction and Venue.** This Agreement will be interpreted, construed and enforced in all respects in accordance with the laws of the State of Washington without reference to its choice of law rules. All actions or suits by a party shall be brought and maintained in Seattle, Washington. Each party consents to personal jurisdiction in Washington and waives any right to seek a change of venue.

**7.5.4 Costs and Attorney Fees.** The prevailing party in a judicial action, suit or arbitration proceeding shall be awarded all reasonable costs, attorneys' fees and expenses incurred in connection with the proceeding and on any appeal except that the costs and fees of the arbitrator shall be shared equally.

**7.6 UCC.** The rights and obligations of the parties under this Agreement shall not be governed by the provisions of the 1980 U.N. Convention on Contract for the International Sale of Goods; rather, these rights and obligations shall be governed by the laws of the State of Washington, U.S.A., including its applicable provisions of the Uniform Commercial Code.

**7.7 Amendments.** This Agreement may not be modified or amended by Educational Member except by written instrument duly executed by an authorized representative of each party. This Agreement may be amended by the Alliance at any time upon thirty (30) days prior written notice to Educational Member. If Educational Member does not agree to the amendment, it may reject the amendment by notifying the Alliance in writing within the thirty-day notice period. Any such rejection shall be deemed to be a notice of termination by Educational Member pursuant to Section 5.2. If Educational Member fails to notify the Alliance of its rejection with the sixty-day notice period, Educational Member shall be deemed to have accepted the amendment and shall be bound to comply with it upon the expiration of the notice period. In the event that Educational Member does not agree to any amendment of the Alliance, Educational Member's sole remedy is to terminate this Agreement pursuant to Section 5.

**7.8 Entire Agreement.** This Agreement sets forth the entire agreement, and supersedes any and all prior written and oral representations, and agreements, between the parties with respect to the subject matter hereof. In the event of any conflict between the terms and conditions of this Agreement, and the terms and conditions of any other agreement between the parties now or hereafter in effect, the terms and conditions of this Agreement will govern and control.

**7.9 Counterparts.** This Agreement may be executed in separate counterparts, each of which shall be deemed an original, but which shall become effective only when such executed counterparts have been exchanged between all parties hereto. Facsimile transmission may be used to execute this Agreement.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorized representatives as of the date indicated below as being accepted on behalf of the Alliance.

Educational Member: \_\_\_\_\_

Street Address: \_\_\_\_\_

City, State Zip \_\_\_\_\_

Country: \_\_\_\_\_

Website/URL \_\_\_\_\_

Email: \_\_\_\_\_

Telephone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

By (signature): \_\_\_\_\_

Title: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

Agreed and Accepted on behalf of:

**Open Design Alliance**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

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