

## **OPEN DESIGN ALLIANCE CORPORATE MEMBERSHIP AGREEMENT**

This Corporate Membership Agreement (this “Agreement”) is made and entered into by and between Open Design Alliance, an Arizona nonprofit corporation (the “ODA”), and the person or entity indicated on the signature page of this Agreement (the “Corporate Member”).

### **RECITALS**

**A.** The ODA provides its members with access to tools, software and technology for developing computer aided design and technical graphics applications (the “Membership Benefits”).

**B.** Corporate Member desires to become a member of the ODA and to obtain the Membership Benefits on the terms and conditions set forth in this Agreement.

**C.** The ODA is willing to admit Corporate Member as a member of the ODA and to provide Corporate Member with the Membership Benefits on the terms and conditions set forth in this Agreement.

### **AGREEMENT**

Accordingly, the ODA and Corporate Member agree as follows:

**1. Membership Rules and Policies.** Corporate Member has reviewed the current Membership Rules and Policies posted on [www.opendesign.com](http://www.opendesign.com), understands its duties and obligations associated with membership in the ODA, and agrees to comply with such Membership Rules and Policies. The ODA reserves the right, at its sole discretion, to change, modify or otherwise alter the Membership Rules and Policies at any time in accordance with Section 10. Corporate Member agrees to keep current its address and other contact information provided to the ODA so that Corporate Member can receive prompt notice of any such modification(s). Unless otherwise specified, the term “Agreement” includes this Agreement and the Membership Rules and Policies, which are incorporated into and made a part of this Agreement as fully as if they were set forth herein. Capitalized terms that are not defined herein shall have the meanings specified in Section 1 of the Membership Rules and Policies.

**2. Corporate Membership Benefits; Limited License Grant; Use of Development Tools, Documentation.**

#### **2.1 Limited License.**

**2.1.1 Grant.** Promptly after the Effective Date and after Corporate Member’s payment of any and all applicable fees, dues and assessments posted on [www.opendesign.com](http://www.opendesign.com) (as such fees, dues and assessments may be changed by the ODA from time to time), the ODA will furnish to Corporate Member a copy of the Development Tools and Documentation. Subject to the terms and conditions of this Agreement, the ODA hereby grants Corporate Member, and Corporate Member accepts,

for itself and all Business Segments (hereafter defined), a limited, nonexclusive, royalty-free Source Code license for the term of this Agreement:

(a) to use and modify the Development Tools and Documentation for Corporate Member's internal business operations;

(b) to use and modify the Development Tools and Documentation for creating, modifying or supporting Member Applications and other Derivative Works;

(c) as part of any Member Application, to use, manufacture, reproduce, have reproduced, sublicense, market and distribute (directly, indirectly or through online and subscription services) the Development Tools and Documentation in Object Code form only;

(d) to disclose the Development Tools (in either Source Code or Object Code form) and the Documentation to Corporate Member's contractors for the limited purpose of developing Member Applications under contract with Corporate Member, provided that such disclosure is made pursuant to a written agreement with terms and conditions substantially the same as, but no less restrictive than, those in this Agreement that protects the Development Tools and Documentation from further disclosure or use and that requires the contractor to destroy the Development Tools and Documentation, and remove them from contractor's systems, upon termination of that agreement or of Corporate Member's Membership in the ODA; and

(e) to use and reproduce the Marks in connection with Corporate Member's marketing, distribution and licensing of products containing or derived from the Development Tools, subject to those guidelines and restrictions on use which the ODA may adopt from time to time including, but not limited to, the Trademark Guidelines posted on [www.opendesign.com](http://www.opendesign.com). Corporate Member acknowledges that the ODA is the owner of all rights in and to the Marks and that use of the Marks by Corporate Member is on behalf of and inures to the benefit of the ODA.

**2.1.2 Business Segments.** For purposes of this Membership Agreement, "Business Segment" means each of Corporate Member's divisions, business units and locations that is not an "Affiliate," as defined in Section 2.1.4(a), for which Corporate Member has (i) executed and delivered a Business Segment Attachment, in the form of Appendix I; (ii) obtained the ODA's consent to be a Business Segment, which consent will not be unreasonably withheld; and (iii) paid to the ODA all fees and costs established for the Business Segment by the ODA, from time to time.

**2.1.3 Limitations.** Corporate Member acknowledges that the Member Applications must have significant value add over the contents of the Development Tools, and that the Development Tools are not intended to be distributed on a stand-alone basis or as part of a software development kit or comparable product that is substantially

similar to the Development Tools. The Development Tools are owned by the ODA and its suppliers. The ODA reserves all rights in the Development Tools and Documentation other than those expressly granted in Section 2.1.1. Without limiting the generality of the foregoing, except as specifically permitted under Section 2.1.4, Corporate Member will not distribute, disclose or sublicense any copy of the Development Tools in Source Code form to any third party, including any parent, subsidiary or affiliate of Corporate Member or any division, business unit or location (other than the single location submitted as part of the Corporate Member's Membership Application, as may be subsequently changed by notice to the ODA), except for those involved in the development of Corporate Member's Teigha-based Application. In addition, Corporate Member will not export or reexport the Development 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 U.S.).

#### **2.1.4 Sublicense Agreements.**

(a) With the ODA's written consent, Corporate Member may sublicense its license rights hereunder to a subsidiary or affiliated legal entity, in which Corporate Member has, and only for so long as Corporate Member has, a majority or other controlling interest (each, an "Affiliate") by (i) delivering an Affiliate Agreement, in the form of Appendix II, that has been signed by Corporate Member and an authorized representative of the Affiliate; and (ii) payment of all applicable fees and costs for such Affiliate as may be established by the ODA from time to time. Upon execution and delivery of the Affiliate Agreement and payment of all applicable fees and costs, Affiliate will be entitled to all license rights of Corporate Member under this Agreement and be bound to all obligations applicable to Corporate Member under this Agreement as fully as if Affiliate were a Corporate Member. Corporate Member shall be and remain responsible to the ODA for the performance of, and any breach by, the Affiliate(s).

(b) Corporate Member may sublicense its Member Application(s) to Distribution Entities. Except as specifically provided in Section 2.1.4(a), Corporate Member may not sublicense the Development Tools or Documentation on a standalone basis, but only as part of a Member Application and pursuant to a written sublicense agreement. The terms and conditions of any such sublicense agreement shall (i) contain provisions that protect the ODA's rights under this Agreement (including, without limitation, the ODA's right, title, and interest in the Development Tools, Member Applications and Documentation), and (ii) be materially consistent with Corporate Member's obligations, responsibilities, and restrictions set forth in this Agreement. No other sublicense rights are granted.

## **2.2 Support.**

**2.2.1 Corporate Member Support.** The ODA will provide Corporate Member with support as set forth in the Membership Rules and Policies.

**2.2.2 Customer Support.** Corporate Member shall be solely responsible for providing customer support and follow-up service and advice to its Distribution Entities and any End Users with respect to the Development Tools, Derivative Works or any Member Application. The ODA shall have no obligation to provide customer or technical support to any Distribution Entity or End User under this Agreement or otherwise.

**2.3 Additional Benefits.** Corporate Member has the following additional Membership Benefits:

(a) Corporate Member may nominate a member of the ODA Board of Directors and vote in the election of the ODA Board of Directors; and

(b) In accordance with the Membership Rules and Policies, Corporate Member may include the Marks on Corporate Member's product packaging and marketing materials.

(c) Upon notice to the ODA ("Expansion Notice"), consent of the ODA, execution of a Business Segment Attachment or Affiliate Agreement, as applicable, and payment of applicable additional fees and costs established by the ODA from time to time, Corporate Member may extend the benefits of the limited license set forth in Section 2.1 to Business Segments and sublicense its license rights to its Affiliates, all as more fully described in Sections 2.1.1, 2.1.2 and 2.1.4. For avoidance of doubt, Corporate Member must provide an Expansion Notice and pay additional applicable fees and costs with respect to each Business Segment and each Affiliate to which Corporate Member desires to extend its license rights as set forth in the previous sentence.

**2.4 Term; Termination; Dissolution; Merger.** The term of this Agreement commences on the Effective Date (defined below) and shall remain in full force and effect until terminated in accordance with the following provisions:

**2.4.1 Termination by Corporate Member.** Corporate Member may terminate its Membership in the ODA and its obligations under this Agreement, effective ten (10) days following receipt by the President of the ODA of written notice from Corporate Member of its election to terminate; provided, however, that such termination will not relieve Corporate Member of any liabilities or obligations incurred prior to the effective date of termination.

**2.4.2 Termination by ODA.** In addition to any other rights and remedies that may be available to the ODA, whether at law, in equity, as set forth in the Membership Rules and Policies, or otherwise, the ODA may terminate this Agreement and Corporate Member's Membership in the ODA if Corporate Member fails to adhere to any

Membership Rules and Policies or any other rules approved by the ODA, breaches any material provision of this Agreement, or fails to pay any dues or other amounts payable to the ODA within thirty (30) days of the invoice date, and further fails to remedy such nonperformance, noncompliance or nonpayment within thirty (30) days following receipt of notice from the ODA.

### **2.4.3 Effect of Termination.**

(a) Except as provided in the articles or bylaws of the ODA, upon termination of Corporate Member's Membership in the ODA for any reason, this Agreement and all rights granted to Corporate Member, its Business Segments and its Affiliates hereunder will immediately terminate and be of no further force or effect. Unless Corporate Member enters into a license agreement with the ODA as set forth in Section 2.4.3(b): (i) Corporate Member must, at its sole cost, and will cause its Affiliates to, immediately (x) destroy the Development Tools and Documentation; (y) remove them from their systems immediately upon termination; and (z) certify such destruction and removal to the ODA within ten (10) days of the effective date of termination; and (ii) within ninety (90) days from the effective date of termination (the "Transition Period"), Corporate Member, its Affiliates and its Distribution Entities (if any) must withdraw all inventories (if any) of Member Applications containing Development Tools and Documentation. Any inventory remaining after the Transition Period must be destroyed at Corporate Member's sole cost; and Corporate Member shall certify such withdrawal and destruction within ten (10) days of termination by the ODA or the end of the Transition Period, as applicable.

(b) If the Corporate Member desires to voluntarily terminate this Membership Agreement and the ODA has not notified Corporate Member that it considers Corporate Member to be in breach of the Membership Agreement, which breach has not been cured, then no later than thirty (30) days prior to the Anniversary Date, Corporate Member may notify the ODA of its election to terminate this Membership Agreement and to enter into a license agreement with the ODA, substantially in the form attached hereto as Exhibit A. Upon execution of the license agreement no later than the Anniversary Date and payment in full of any license fee established by the ODA, Corporate Member may, subject to the terms of the license agreement, continue to: (i) distribute the Member Application(s) in effect on the effective date of termination ("Existing Member Application(s)"); (ii) create and distribute new versions of the Existing Member Application(s), where such new versions consist of bug fixes and new features; and (iii) use the Development Tools solely to support and maintain the Existing Member Application(s) and to fix bugs in the Development Tools and in the Existing Member Application(s). In no event may the terminated Corporate Member develop any new Member Application on or after termination of this Agreement.

**2.4.4 Dissolution or Merger.** Corporate Member's Membership in the ODA automatically terminates, without notice, upon the merger or voluntary or involuntary

dissolution of the ODA. Notwithstanding the foregoing, no acquisition of the ODA, voluntary or involuntary dissolution of the ODA, or merger of the ODA with or into another entity shall terminate, interfere with or modify the license rights granted Corporate Member under Section 2.1 with respect to Development Tools, which shall automatically become paid-up, irrevocable, non-transferable and non-sublicensable; provided, however, that this Section 2.4.4 shall only apply if and so long as Corporate Member: (i) is not, at the time, in breach of this Agreement; and (ii) complies with the terms of this Agreement including, but not limited to, payment of all Membership fees and other assessments that were due and payable immediately prior to the dissolution or merger.

**2.5 License from Corporate Member to ODA.** Corporate Member acknowledges that the intent of the ODA is to promote open and industry-standard formats for the exchange of CAD data by obtaining and sharing information and knowledge regarding the same. Accordingly, Corporate Member will, and will cause each Affiliate to, disclose and deliver to the ODA, in Source Code form, all bug fixes in the Development Tools and Documentation, Enhancements and Modifications it obtains, discovers, or develops. Corporate Member hereby grants, and will cause each Affiliate to grant, the ODA a nonexclusive, fully paid, irrevocable, royalty-free, worldwide license to: (i) reproduce, distribute, perform, publicly display, and otherwise exploit all bug fixes, Enhancements and Modifications, and to sublicense the foregoing rights (including, without limitation, to other Members of the ODA or any successor thereto); and (ii) include Corporate Member's and each Affiliate's name and logo on the ODA website in such place and manner as the ODA shall determine in its reasonable discretion in accordance with any guidelines that Corporate Member provides to ODA, in writing; provided, however, that, without Corporate Member's prior written consent, the ODA may not use Corporate Member's name or logo anywhere other than the ODA website and for no other purpose.

**2.6 Survival.** The provisions of Sections 2.1.3, 2.1.4, 2.2.2, 2.4.3, 2.4.4, 2.5 (but not clause (ii)), 3, 4, 5, 6, 8, 9, 10, 11 and 12 and the Appendices shall survive the expiration or termination of this Agreement.

**3. Representations and Warranties of Corporate Member.** Corporate Member represents and warrants to the ODA as follows:

**3.1 Principal Office.** The principal office of the Corporate Member is at the address set forth on the signature page of this Agreement.

**3.2 Authority.** This Agreement constitutes the legal, valid, and binding obligation of Corporate Member, enforceable against Corporate Member in accordance with its terms. Corporate Member has the absolute and unrestricted right, power, authority, and capacity to execute and deliver this Agreement and to perform its obligations hereunder.

**3.3 No Infringement.** To Corporate Member's knowledge, Modifications, Enhancements, and any Derivative Works developed by or for Corporate Member, do not and will not infringe, misappropriate or otherwise violate any third party copyright, trademark, patent, trade secret or other intellectual property right of any kind.

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

(a) Corporate Member's use of the Development Tools and Documentation;

(b) Any sale or other distribution of any of the Development Tools, Documentation, Derivative Works or any Member Application by or through Corporate Member, directly or indirectly; and

(c) Any breach of the representations and warranties set forth in Section 3.

This Section 4 will apply to the fullest extent permitted by applicable law, regardless of the fault, negligence or strict liability of the ODA. ODA will promptly notify Corporate Member of any claim or action for which ODA is seeking indemnification under this Section 4. If Corporate Member fails to assume the defense of any actual or threatened action covered by this Section 4 within the earlier of either (i) any deadline established by a third party in a written demand or by a court, or (ii) thirty (30) days of notice of the claim, the ODA may follow such course of action as it reasonably deems necessary to protect its interests and shall be indemnified by Corporate Member for all costs reasonably incurred in such course of action. For avoidance of doubt, the failure of ODA to provide Corporate Member with prompt notice of a claim or action as provided in this Section 4 will not excuse Corporate Member from its indemnification obligation unless Corporate Member can demonstrate that failure to provide prompt notice adversely affected Corporate Member's ability to defend the action.

**5. Warranty Disclaimer.**

**5.1** THE DEVELOPMENT TOOLS AND DOCUMENTATION ARE PROVIDED TO CORPORATE MEMBER "AS IS" AND WITH ALL BUGS, DEFECTS, ERRORS, DEFICIENCIES AND FAULTS. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, THE ODA HEREBY DISCLAIMS AND CORPORATE MEMBER HEREBY WAIVES ANY AND ALL WARRANTIES OF ANY KIND, EXPRESS AND IMPLIED, INCLUDING, BUT NOT LIMITED TO, 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, ANY WARRANTY OF NONINFRINGEMENT AND THE IMPLIED WARRANTY OF QUIET ENJOYMENT.

**5.2** ANY BUG FIXES THAT CORPORATE MEMBER PROVIDES TO THE ODA ARE PROVIDED "AS IS" AND WITH ALL BUGS, DEFECTS, ERRORS, DEFICIENCIES AND FAULTS. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, CORPORATE MEMBER HEREBY DISCLAIMS AND THE ODA HEREBY WAIVES ANY AND ALL WARRANTIES OF ANY KIND, EXPRESS AND IMPLIED, INCLUDING, BUT NOT LIMITED TO, 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, ANY WARRANTY OF NONINFRINGEMENT AND THE IMPLIED WARRANTY OF QUIET ENJOYMENT SOLELY WITH RESPECT TO THE BUG FIXES THAT CORPORATE MEMBER PROVIDES TO THE ODA.

**6. Limitation of Liability.**

**6.1 Disclaimer Of Damages.** IN NO EVENT WILL THE ODA OR ITS OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS, BE LIABLE TO CORPORATE MEMBER OR ITS AFFILIATES FOR ANY DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, PUNITIVE OR OTHER SIMILAR DAMAGES, WHETHER ARISING IN CONTRACT, TORT (INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE), STRICT LIABILITY, EQUITY OR OTHERWISE, EVEN IF THE ODA WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING WILL NOT RELIEVE THE ODA OR ANY OF ITS MEMBERS FROM LIABILITY FOR ANY WILLFUL MISCONDUCT OR BREACH OF ANY OBLIGATION OF CONFIDENTIALITY.

**6.2 Third-party Beneficiaries.** The limitations set forth in this Section 6 will inure to the benefit of all past, present or future Members or agents of the ODA acting at the request or on behalf of the ODA, and their respective officers, directors, employees, attorneys and agents, each being an intended third-party beneficiary of the provisions of this Section 6.

**7. Nonwaiver.** No delay or omission by either 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 party 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.

**8. Uniform Laws.** This Agreement will not be governed by any codification of Article 2 or 2A of the Uniform Commercial Code, or any codification of the Uniform Computer Information Technology Act (UCITA), or any references to the United Nations Convention on Contracts for the International Sale of Goods. The application of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded.

**9. No Construction Against Drafter.** The parties agree that any principle of construction or rule of law that provides that an agreement shall be construed against the drafter of the agreement in the event of any inconsistency or ambiguity in such agreement shall not apply to the terms and conditions of this Agreement or the Membership Rules and Policies. This Agreement has been prepared and will be construed in the English language.

**10. Modifications and Amendments.** This Agreement may not be amended by Corporate Member except by a written instrument duly executed by an authorized representative of the ODA. This Agreement, including the Membership Rules and Policies, may be modified or amended by the ODA at any time and, following approval by the ODA Board of Directors, such modification(s) or amendment(s) will become effective immediately upon (i) the posting thereof



on [www.opendesign.com](http://www.opendesign.com); and (ii) ninety (90) days following the provision of notice thereof to Corporate Member in accordance with the Membership Rules and Policies unless, within the ninety (90)-day period, Corporate Member notifies the ODA of its rejection of the modification(s) or amendment(s). If Corporate Member rejects the modification(s) or amendment(s) in the ninety (90)-day period, Corporate Member's sole and exclusive remedy shall be to terminate this Agreement no later than twelve (12) months following the renewal date of this Agreement that is the end of the term in which notice of the modification(s) or amendment(s) was given to Corporate Member. If Corporate Member fails to notify the ODA of its rejection of the modification(s) or amendment(s) within the ninety (90)-day notice period, Corporate Member shall be deemed to have accepted the amendment(s) or modification(s) and shall be bound to comply with it or them.

**11. Temporary License of Software.** This Agreement provides a temporary license of Software. No Government procurement regulation or contract clauses or provision will be considered a part of any transaction between the parties under this Agreement unless its inclusion is required by statute, or mutually agreed upon in writing by the parties in connection with a specific transaction. The technical data and computer software covered by this license is a "Commercial Item," as that term is defined by the FAR 2.101 (48 C.F.R. 2.101) and is "commercial computer software" and "commercial computer software documentation" as specified under FAR 12.212 (48 C.F.R. 12.212) or DFARS 227.7202 (48 C.F.R. 227.7202), as applicable. This commercial computer software and related documentation is provided to End Users for use by and on behalf of the U.S. Government, with only those rights as are granted to all other End Users under the terms and conditions in this Agreement. Use for or on behalf of the U.S. Government is permitted only if the party acquiring or using this software is properly authorized by an appropriate U.S. Government official. This use by or for the U.S. Government clause is in lieu of, and supersedes, any other FAR, DFARS, or other provision that addresses government rights in the computer software or documentation covered by this Agreement. All copyright licenses granted to the U.S. government are coextensive with the technical data and computer software licenses granted in this Agreement. The U.S. Government will only have the right to reproduce, distribute, perform, display, and prepare Derivative Works as needed to implement those rights.

**12. Entire Agreement.** Subject to the ODA articles and bylaws, this Agreement, including the Membership Rules and Policies, sets forth the entire agreement between the Corporate Member and the ODA, and revokes and supersedes any and all prior written and oral representations and agreements between the parties with respect to its subject matter. Any attempted or purported amendment, modification or waiver that does not comply with this Agreement will be null and void. 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 in effect relating to Corporate Member's membership in the ODA, the terms and conditions of this Agreement will govern and control. In the event of any conflict between the provisions of the Membership Rules and Policies and the body of this Agreement, the Membership Rules and Policies will control.

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 ODA (“Effective Date”).

Corporate 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: \_\_\_\_\_

**APPENDIX I**  
**BUSINESS SEGMENT**

Description/Name of Business Segment: \_\_\_\_\_

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

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

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

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

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

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

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

Authorized Representative: \_\_\_\_\_

By execution of this Appendix I, Corporate Member agrees and confirms that: (i) Corporate Member is fully responsible for all performance and breach by or at the Business Segment; (ii) the ODA need only look to Corporate Member for satisfaction and enforcement of all obligations and responsibilities of the Business Segment; and (iii) the ODA has no obligation to any Business Segment under this Agreement.

ACKNOWLEDGED AND AGREED:

**Open Design Alliance**

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

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

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

**Corporate Member**

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

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

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

**APPENDIX II**  
**AFFILIATE AGREEMENT**

Name of Affiliate: \_\_\_\_\_  
Street Address: \_\_\_\_\_  
City, State, Zip: \_\_\_\_\_  
Country: \_\_\_\_\_  
Website/URL: \_\_\_\_\_  
Email: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
Type of entity and jurisdiction of organization or incorporation: \_\_\_\_\_  
Authorized representative and title: \_\_\_\_\_

By execution of this Affiliate Agreement, the undersigned covenants and agrees to be bound by all of the terms and conditions of the Corporate Membership Agreement between Open Design Alliance and \_\_\_\_\_ (“Corporate Member”), dated \_\_\_\_\_. The undersigned further acknowledges and agrees that the ODA has no obligation to the undersigned including, but not limited to, any notice obligations and that the undersigned has no rights with respect to the Development Tools, Documentation or otherwise except as a sublicensee of Corporate Member.

**ACKNOWLEDGED AND AGREED:**

**Open Design Alliance**

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**Affiliate**

By (signature): \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**Corporate Member**

By (signature): \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

## EXHIBIT A - SOFTWARE LICENSE AGREEMENT

This SOFTWARE LICENSE AGREEMENT (the “Agreement”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ (“Effective Date”) by and between Open Design Alliance, an Arizona non-profit corporation having its principal place of business at 10115 East Bell Road, Suite 107 #447, Scottsdale, AZ 85260, USA (“ODA”) and \_\_\_\_\_, a \_\_\_\_\_ having its principal place of business at \_\_\_\_\_ (“Licensee”). ODA and Licensee are each sometimes referred to in this Agreement as a “party” or, together, the “parties”.

BACKGROUND: Licensee is a Corporate Member of the ODA pursuant to a Corporate Membership Agreement, dated \_\_\_\_\_, between the ODA and Licensee (the “Corporate Membership Agreement”). Licensee now wants to terminate the Corporate Membership Agreement, but be able to continue to license the Development Tools and Documentation (as defined in the Corporate Membership Agreement). The ODA is willing to grant Licensee a limited license on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, and intending to be legally bound, the parties agree as follows:

### 1. LICENSE GRANT

**1.1 Grant.** Subject to Licensee’s timely payment of the License Fees as set forth in Section 2 and subject to the limitations set forth in Section 1.2, ODA hereby grants Licensee, during the term of this Agreement, a non-transferable, non-exclusive, limited right and license, with no right to sublicense, to: (i) distribute, itself or through authorized resellers, the Member Application(s) in effect on the effective date of termination of Licensee’s membership in the ODA, but no later than [INSERT ANNIVERSARY DATE] (“Existing Member Application(s)”); (ii) create and distribute new versions of the Existing Member Application(s), where such new versions consist solely of bug fixes and new features; and (iii) use the Development Tools solely to support and maintain the Existing Member Application(s) and to fix bugs in the Development Tools and in the Existing Member Application(s).

### 1.2 Limitations.

(A) All right, title and interest in and to the Development Tools and Documentation are and will remain the exclusive property of ODA. Unless expressly permitted under Section 1.1, Licensee will not, and will not allow any third party to:

- (1) use, copy or distribute the Development Tools or Documentation;
- (2) modify, adapt, enhance, disassemble, decompile, reverse engineer, change or create Derivative Works from the Development Tools;
- (3) use the Development Tools to process the data of, or make the Development Tools available online for the use of, third parties; or

(4) allow the Development Tools or Documentation to be accessed or used by anyone other than Licensee's employees or independent contractors whose duties require access or use, provided such employees and independent contractors are bound to the same obligations of confidentiality as are imposed on Licensee under Section 4 of this Agreement.

**(B)** The License Fees under this Agreement are only for the licenses that ODA expressly grants to Licensee in Section 1.1. Licensee acknowledges that: (i) the ODA will not provide Licensee with any support during the term of this Agreement; and (ii) the ODA grants Licensee no licenses or other rights including, but not limited to, patent, copyright, trademark, trade name, service mark or other intellectual property licenses or rights with respect to the Development Tools and Documentation, by implication, estoppel or otherwise, except for the licenses expressly granted in Section 1.1. Specifically, except for the licenses that ODA expressly granted Licensee in Section 1.1, ODA grants no licenses or other rights, expressly or by implication, estoppel or otherwise, to:

(1) make, use, sell, offer for sale, or import modifications of the Development Tools;

(2) sell or offer to sell the Development Tools; or

(3) combine the Development Tools or modified versions of the Development Tools with other items or to use any such combination.

## **2. FEES; TAXES**

### **2.1 Fees; Payment.**

**(A)** Upon execution of this Agreement, Licensee will pay ODA License Fees, in full, in the amount of 80% of the Corporate Membership dues in effect on the effective date of Licensee's termination of its Corporate Membership multiplied by 4.

**(B)** Licensee's obligation to remit the License Fees to ODA is absolute, unconditional, noncancellable and nonrefundable for any reason, and will not be subject to any abatement, set-off, claim, counterclaim, adjustment, reduction, or defense for any reason including, but not limited to, termination of this Agreement.

**(C)** Past due amounts will bear interest at the rate of the lesser of 1-1/2% per month on the unpaid balance, or the maximum rate allowable by law. In addition to all other sums payable under this Agreement, Licensee will pay all out-of-pocket expenses that ODA incurs, including fees and disbursements of counsel, in connection with collection and other enforcement proceedings.

**2.2 Taxes.** All payments will be made without deduction for any present and future taxes or duties imposed by any taxing authority. If those taxes or duties are imposed initially on ODA or ODA is later assessed by any taxing authority, then Licensee will promptly reimburse ODA for those taxes or duties plus any interest and penalties that ODA incurs.

### **3. TERM; TERMINATION**

**3.1 Term.** The “term” of this Agreement will commence on the Effective Date and will continue for a period of 4 years, unless terminated earlier pursuant to this Section 3.

#### **3.2 Termination.**

**(A)** If Licensee commits a material breach under this Agreement, ODA will give Licensee notice and ODA may terminate this Agreement as follows:

- (1) If Licensee fails to pay when due all or any portion of any amounts payable under this Agreement and Licensee does not cure that failure within 10 business days after notice of the failure, then this Agreement will terminate automatically and without the need for further notice;
- (2) If Licensee materially breaches any other provision of this Agreement, and Licensee fails to correct the breach within 30 days after notice of that breach or, if the breach is incapable of cure within 30 days, Licensee fails to take substantial steps toward a cure within that period, then this Agreement will terminate automatically and without the need for further notice; or
- (3) With respect to a breach of any provision of Sections 1 or 4, this Agreement will terminate on the notice date (or a later date, if specified in the notice).

**(B)** This Agreement will terminate automatically and without any notice if Licensee voluntarily commences, or accedes to or becomes the subject of any involuntary, insolvency, bankruptcy, reorganization, assignment for the benefit of creditors or similar proceedings under applicable law including, without limitation, the U.S. Bankruptcy Code or any foreign equivalent.

**(C)** Licensee may terminate this Agreement at any time for its sole convenience by giving notice of termination to ODA at least 5 days prior to the effective date of termination.

#### **3.3 Effect of Termination.**

**(A)** Expiration or termination of this Agreement will automatically terminate Licensee’s license rights under this Agreement.

**(B)** Within 10 days after expiration or termination of this Agreement, Licensee will:

- (1) furnish ODA a written certification that Licensee has either returned to ODA or destroyed the original and all copies, including partial copies, of the Development Tools and Documentation that ODA furnished under this Agreement or that Licensee made as permitted by this Agreement, and that no copies or portions of the Development Tools and Documentation remain in Licensee’s possession or in the possession of Licensee’s employees or agents; and

(2) make prompt payment in full to ODA of all amounts then due plus the unpaid balance of any License Fees, together with any applicable taxes.

(C) Sections 2, 3.3, 4, 5, 6, 7 and 8 will survive expiration or termination of this Agreement.

#### **4. CONFIDENTIAL INFORMATION**

**4.1 Confidentiality.** Licensee will not use, for itself or for others, disclose to others, or copy, any Confidential Information, except as necessary to exercise its license rights under Section 1.1. “Confidential Information” means the Development Tools, Documentation and information, in oral, written, visual, electronic or other tangible form, of a confidential and/or proprietary nature and which in any way concerns or relates to the operations of the ODA or its members, and information and knowledge pertaining to members, research, processes, proprietary methods, improvements, ideas, discoveries, inventions, information, computer programs, tapes and related information and all other trade secrets, of the ODA that the Licensee may learn or acquire. “Confidential Information” does not include any materials that Licensee can demonstrate are in the public domain, were independently developed by Licensee without use of or access to Confidential Information, or were disclosed to Licensee by a third party without violating any obligation of confidentiality.

**4.2 Remedy.** Licensee acknowledges and agrees that if Licensee breaches this Section 4, the ODA will suffer irreparable harm for which money damages will not be an adequate remedy. Licensee therefore agrees that the ODA will be entitled to an injunction restraining any breach or threatened breach of this Section 4, without the necessity of proving irreparable harm or posting a bond, in addition to all other rights and remedies at law, in equity and under this Agreement.

#### **5. INDEMNITY**

**5.1** Licensee hereby releases and will defend, indemnify and hold harmless the ODA and all other past, present or future Members for, from and against any and all claims, losses, damages, liens, liabilities, costs and expenses (including, but not limited to, reasonable attorneys’ fees) related to, arising out of or in connection with:

(a) Licensee’s use of the Development Tools and Documentation;

(b) any sale or other distribution of any of the Development Tools, Documentation or any Member Application by or through Licensee, directly or indirectly; and

(c) any breach of this Agreement.

**5.2** This Section 5 will apply to the fullest extent permitted by applicable law, regardless of the fault, negligence or strict liability of the ODA. If Licensee fails to assume the defense of any actual or threatened action covered by this Section 5 within the earlier of either (i) any deadline established by a third party in a written demand or by a court of



which Licensee has notice, or (ii) 30 days of notice of the claim, the ODA may follow such course of action as it reasonably deems necessary to protect its interests and shall be indemnified by Licensee for all costs reasonably incurred in such course of action.

**6. WARRANTY.** THE DEVELOPMENT TOOLS AND DOCUMENTATION ARE PROVIDED TO LICENSEE “AS IS” AND WITH ALL BUGS, DEFECTS, ERRORS, DEFICIENCIES AND FAULTS. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, THE ODA HEREBY DISCLAIMS AND LICENSEE HEREBY WAIVES ANY AND ALL WARRANTIES OF ANY KIND, EXPRESS AND IMPLIED, INCLUDING, BUT NOT LIMITED TO, 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, ANY WARRANTY OF NON-INFRINGEMENT AND THE IMPLIED WARRANTY OF QUIET ENJOYMENT.

## **7. LIMITATION OF LIABILITY**

**7.1 Disclaimer Of Damages.** IN NO EVENT WILL THE ODA OR ITS OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS, BE LIABLE TO LICENSEE FOR ANY DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, PUNITIVE OR OTHER SIMILAR DAMAGES, WHETHER ARISING IN CONTRACT, TORT (INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE), STRICT LIABILITY, EQUITY OR OTHERWISE, THAT ARISE FROM OR ARE RELATED TO THIS AGREEMENT OR THE DEVELOPMENT TOOLS OR DOCUMENTATION, EVEN IF THE ODA WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING WILL NOT RELIEVE THE ODA OR ANY OF ITS MEMBERS FROM LIABILITY FOR ANY WILLFUL MISCONDUCT.

**7.2 Third-party Beneficiaries.** The limitations set forth in this Section 7 will inure to the benefit of all past, present or future members and agents of the ODA acting at the request or on behalf of the ODA, and their respective officers, directors, employees, attorneys and agents, each being an intended third-party beneficiary of this Section 7.

## **8. GENERAL PROVISIONS**

**8.1 Definitions.** Unless otherwise defined in this Agreement, capitalized terms in this Agreement will have the meanings given them in the Corporate Membership Agreement (including the Membership Rules and Policies).

**8.2 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 earlier of either (a) actual receipt, irrespective of whether communicated in person, by facsimile, 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) the third day after mailing by registered or certified mail, return receipt requested, postage prepaid and addressed as follows:

If to the ODA:

Open Design Alliance  
10115 East Bell Road  
Suite 107 #447  
Scottsdale, AZ 85260  
Attention: President

If to Licensee:

[TO BE SUPPLIED]

Either Licensee or the ODA 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.

**8.3 Assignment.** Licensee may not delegate, assign or transfer this Agreement, or any of Licensee's rights and obligations under this Agreement, whether by contract, operation of law or otherwise, and any attempt to do so will be a material breach of this Agreement and will be null and void. In addition, Licensee may not sublicense, assign or transfer the Development Tools, Documentation or Confidential Information, or any part of the Development Tools, Documentation or Confidential Information, or any right in this Agreement, whether by contract, operation of law or otherwise without the prior written consent of ODA in each instance, which consent ODA may withhold in its sole discretion. Any attempted sublicense, assignment or transfer that is without ODA's consent will be a material breach of this Agreement and will be null and void. Subject to the other provisions of this Section 8.3, this Agreement will bind and insure to the benefit of the parties and their permitted successors and assigns.

**8.4 Severability.** If any provision of this Agreement or its application 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 this Agreement will not be affected, but will continue in full force and effect.

**8.5 Waiver.** A party's failure or delay in enforcing any provision of this Agreement will not operate as a waiver of the right to enforce that provision or any other provision of this Agreement at any time. No waiver of any provision of this Agreement will be valid unless in writing, specifying the provision to be waived, and signed by the party agreeing to the waiver.

**8.6 Governing Law; Jurisdiction.** All disputes arising out of or related to this Agreement, whether based on contract, tort, or any other legal or equitable theory, will in all respects be governed by, and construed and interpreted under, the laws of the United States of America and the State of Arizona, without reference to conflict of laws principles, and will be subject to the exclusive jurisdiction of the courts of the State of Arizona or of the Federal courts sitting in that State. Each party submits to the personal jurisdiction of those courts and waives all objections to that jurisdiction and venue for those disputes.

**8.7 Entire Agreement and Amendments.** This Agreement contains the complete and exclusive agreement and understanding between the parties concerning the subject matter of this Agreement, and supersedes all prior and contemporaneous proposals, agreements, understandings, negotiations, representations, warranties, conditions, and communications, oral or written, between the parties relating to the same subject matter. This Agreement, including without limitation its termination, has no effect on the survival of any provisions of the Corporate Membership Agreement that the Corporate Membership Agreement specifies as surviving, all of which remain in full force and effect according to their terms. No modification or amendment to this Agreement will be effective unless in writing and signed by authorized representatives of each party.

The parties have executed this Agreement as of the Effective Date.

OPEN DESIGN ALLIANCE \_\_\_\_\_

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

Its: \_\_\_\_\_

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

Its: \_\_\_\_\_