

## **OPEN DESIGN ALLIANCE EDUCATION MEMBERSHIP AGREEMENT**

This Education 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 “Education 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.** Education 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 Education Member as a member of the ODA and to provide Education Member with the Membership Benefits on the terms and conditions set forth in this Agreement.

### **AGREEMENT**

Accordingly, the ODA and Education Member agree as follows:

**1. Membership Rules and Policies.** Education 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. Education Member agrees to keep current its address and other contact information provided to the ODA so that Education 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. Education 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 Education 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 charged by the ODA from time to time), the ODA will furnish to Education Member a copy of the Development Tools and Documentation. Subject to the terms and conditions of this Agreement, the ODA hereby grants Education Member and Education Member accepts a limited, nonexclusive, royalty-free Object Code license for a one-year term:

(a) to use the Development Tools and Documentation solely within Education Member's organization (but not including parent, subsidiaries, affiliates, business units, divisions or locations (other than the single location submitted as part of the Education Member's Membership Application, as may be subsequently changed by notice to the ODA), except for those involved in the development of the Education Member's Teigha-based Application) and not distributed, directly or indirectly, commercially or in conjunction with any other commercial software application ("Internal Use");

(b) to use the Development Tools and Documentation for creating, modifying or supporting Member Applications and other Derivative Works for Education Member's Internal Use only; and

(c) as part of any Member Application, and solely for Education Member's Internal Use, reproduce the Development Tools and Documentation in Object Code form only.

**2.1.2 Internet/SaaS/Web-Based Applications.** Education Member may develop, but may not make available to any third party, including any affiliate of Education Member, a SaaS/Web-Based Member Application using the Development Tools or Documentation. Nor may Education Member distribute, disclose or make available to any third party, including any affiliate of Education Member, any copy of the Development Tools or Documentation via the Internet as a web-based application or as software as a service.

**2.2 Term; Termination; Dissolution; Merger.** The term of this Agreement commences on the Effective Date (defined below) and shall terminate automatically and without notice after one (1) year unless earlier terminated in accordance with the following provisions:

**2.2.1 Termination by Education Member.** Education 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 Education Member of its election to terminate; provided, however, that such termination will not relieve Education Member of any liabilities or obligations incurred prior to the effective date of termination.

**2.2.2 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 Education Member's Membership in the ODA if Education 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.

**2.2.3 Dissolution or Merger.** Education Member's membership in the ODA, and the rights and licenses granted Education Member hereunder, automatically terminate, without notice, upon the merger or voluntary or involuntary dissolution of the ODA.

**2.2.4 Effect of Termination.** Except as provided in the articles or bylaws of the ODA, upon termination of Education Member's Membership in the ODA for any reason, this Agreement and all rights granted to Education Member hereunder will immediately terminate and be of no further force or effect. At its sole cost, Education Member must: (i) destroy the Development Tools and Documentation; (ii) remove them from its system immediately upon termination; and (iii) certify such destruction and removal to the ODA within ten (10) days of the effective date of termination.

**2.3 License from Education Member to ODA.** Education 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, Education Member will 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. Education Member hereby grants 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 Education Member'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 Education Member provides to ODA, in writing; provided, however, that, without Education Member's prior written consent, the ODA may not use Education Member's name or logo anywhere other than the ODA website and for no other purpose.

**2.4 Survival.** The provisions of Sections 2.1.2, 2.2.4, 3, 4, 5, 6, 8, 9, 10 and 11 shall survive the expiration or termination of this Agreement.

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

**3.1 Principal Office.** The principal office of the Education 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 Education Member, enforceable against Education Member in accordance with its terms. Education 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 Education Member's knowledge, Modifications, Enhancements, and any Derivative Works developed by or for Education 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.** Education 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) Education Member's use of the Development Tools and Documentation;

(b) Any unauthorized sale or distribution of any of the Development Tools, Documentation, Derivative Works or any Member Application by or through Education 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 Education Member of any claim or action for which ODA is seeking indemnification under this Section 4. If Education 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) 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 Education Member for all costs reasonably incurred in such course of action. For avoidance of doubt, the failure of ODA to provide Education Member with prompt notice of a claim or action as provided in this Section 4 will not excuse Education Member from its indemnification obligation unless Education Member can demonstrate that failure to provide prompt notice adversely affected Education Member's ability to defend the action.

## **5. Warranty Disclaimer.**

**5.1** THE DEVELOPMENT TOOLS AND DOCUMENTATION ARE PROVIDED TO EDUCATION MEMBER "AS IS" AND WITH ALL BUGS, DEFECTS, ERRORS, DEFICIENCIES AND FAULTS. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, THE ODA HEREBY DISCLAIMS, AND EDUCATION 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 EDUCATION 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, EDUCATION 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 EDUCATION 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 EDUCATION MEMBER 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 Education 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 Education Member in accordance with the Membership Rules and Policies unless, within the ninety (90)-day period, Education Member notifies the ODA of its rejection of the modification(s) or amendment(s). Any such rejection shall be deemed to be a notice of termination. Education Member's sole and exclusive remedy with respect to a modification or

amendment with which Education Member does not agree shall be to terminate this Agreement within the ninety (90)-day period. If Education Member fails to notify the ODA of its rejection of the modification(s) or amendment(s) within the ninety (90)-day notice period, Education Member shall be deemed to have accepted the amendment(s) or modification(s) and shall be bound to comply with it or them.

**11. Entire Agreement.** Subject to the ODA articles and bylaws, this Agreement, including the Membership Rules and Policies, sets forth the entire agreement between the Education 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 Education 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”).

Education 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: \_\_\_\_\_