

## **OPEN DESIGN ALLIANCE EVALUATION LICENSE AGREEMENT**

This Evaluation License 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 “Licensee”).

### **BACKGROUND**

The ODA provides its members with access to tools, software, and technology for developing computer aided design and technical graphics applications. Licensee desires to evaluate whether to become a member of the ODA. The ODA is willing to allow Licensee limited access to certain software owned by the ODA for the sole purpose of Licensee’s making such evaluation (“Purpose”) on the terms and conditions set forth in this Agreement.

### **AGREEMENT**

Accordingly, the ODA and Licensee agree as follows:

#### **1. Limited License.**

**1.1 Grant.** The ODA will furnish to Licensee an evaluation version of ODA’s software known as “Teigha”, in binary form and may furnish an evaluation version, in binary form, of certain software developed for “special interest groups” of members, which software is not made generally available to members of the ODA (any or all software furnished to Licensee under this Agreement, the “Software”). Subject to the terms and conditions of this Agreement, the ODA hereby grants Licensee and Licensee accepts a limited, nonexclusive, revocable, royalty-free license, with no right to transfer or sublicense, to use the Software solely within Licensee’s organization (but not including parent, subsidiaries, affiliates, business units, divisions or locations other than the single location identified below the Licensee’s signature at the end of this Agreement), and solely for the Purpose, for a term of 60 days (“Evaluation Period”). Licensee may not copy the Software or distribute the Software, directly or indirectly, by itself or with or incorporated in any other software or product.

**1.2 Restrictions.** The ODA reserves all rights in and to the Software not expressly granted to Licensee in Section 1.1 above. No title to or ownership of the Software or any proprietary rights related to the Software are transferred to Licensee under this Agreement. Licensee shall not use the Software for any purpose or in any manner other than that expressly set forth in Section 1.1 above and otherwise in accordance with the terms and conditions contained in this Agreement.

**2. Support.** The ODA will provide Licensee with limited technical support during the Evaluation Period, consisting of access to the ODA technical support forum on the ODA website. Licensee is entitled to, and the ODA will provide, no other support.

**3. Term; Termination.** The Evaluation Period commences on the Effective Date (defined below) and shall terminate automatically and without notice 60 days later unless earlier terminated in accordance with the following provisions:

**3.1 Termination by Licensee.** Licensee may terminate this Agreement at any time by providing the ODA with written notice of its election to terminate; provided, however, that such termination will not relieve Licensee of any liabilities or obligations incurred prior to the effective date of termination.

**3.2 Termination by ODA.** In addition to any other rights and remedies that may be available to the ODA, whether at law, in equity, or otherwise, the ODA may terminate this Agreement if Licensee breaches any provision of this Agreement.

**3.3 Effect of Termination.** Upon termination of this Agreement, all rights granted to Licensee hereunder will immediately terminate and be of no further force or effect. At its sole cost, Licensee must: (i) immediately destroy the Software; (ii) immediately remove the Software from its system; (iii) certify such destruction and removal to the ODA within 10 days of the effective date of termination; and (iv) promptly deliver to the ODA all copies of Confidential Information along with a certification that there are no other copies of Confidential Information in Licensee's possession or control.

**4. Representations and Warranties of Licensee.** Licensee represents and warrants to the ODA as follows:

**4.1 Principal Office.** The principal office of the Licensee is at the address set forth on the signature page of this Agreement.

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

**5. Indemnification.** Licensee hereby releases and will defend, indemnify and hold harmless the ODA and all past, present or future members of the ODA 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 Software;
- (b) Any license, sale or other distribution of the Software, directly or indirectly;
- (c) Any breach of the representations and warranties set forth in Section 4; and
- (d) Any breach of Section 7.

This Section 5 will apply to the fullest extent permitted by applicable law, regardless of the fault 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 (a) any deadline established by a third party in a written demand or by a court, or (b) 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 Disclaimer.** THE SOFTWARE IS 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 NONINFRINGEMENT AND THE IMPLIED WARRANTY OF QUIET ENJOYMENT.

**7. Confidentiality.** Licensor will not use, for itself or for others, disclose to others, or copy, any Confidential Information, except as necessary for the Purpose. For purposes of this Agreement, “Confidential Information” means the Software 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.

**8. Limitation of Liability.**

**8.1 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 ARISING UNDER OR RELATING TO THIS AGREEMENT OR THE SOFTWARE, 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.

**8.2 Third-Party Beneficiaries.** The limitations set forth in this Section 8 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 the provisions of this Section 8.

**8.3 Restrictions and Limitations.** The Software is being provided to the Licensee free of charge. Licensee understands that the ODA would not have entered into this Agreement

and granted the license to Licensee other than with the restrictions and limitations imposed on and assumed by Licensee in this Agreement.

**9. 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.

**10. 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.

**11. 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. This Agreement has been prepared and will be construed in the English language.

**12. Modifications and Amendments.** This Agreement may not be amended by Licensee except by a written instrument duly executed by an authorized representative of both parties and the ODA.

**13. Entire Agreement.** This Agreement sets forth the entire agreement between the Licensee 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.

**14. Survival.** The provisions of Sections 3, 4, 5, 6, 7, 8, 9 and 14 shall survive the expiration or termination of this Agreement.

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”).

Licensee: \_\_\_\_\_

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: \_\_\_\_\_

## **EXHIBIT A**

Please mark below the software to be evaluated:

Teigha Core: Development platform for applications that work with .dwg/.dgn files.

Teigha PRC: Toolkit for working with PRC-based 3D PDF.

Teigha Civil: Components for working with Civil custom objects.