

OPEN DESIGN ALLIANCE FOUNDING MEMBERSHIP AGREEMENT

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

AGREEMENT

Accordingly, the ODA and Founding Member agree as follows:

1. Membership Rules and Policies. Founding Member has reviewed the current Membership Rules and Policies posted on 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. Founding Member agrees to keep current its address and other contact information provided to the ODA so that Founding 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. Founding 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 Founding Member’s payment of any and all applicable fees, dues and assessments posted on www.opendesign.com (as such fees, dues and assessments may be changed by the ODA from time to time), the ODA will furnish to Founding Member a copy of the Development Tools and Documentation. Subject to the terms and conditions of this Agreement, the ODA hereby grants Founding Member, and Founding Member accepts, 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 Founding 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 Founding Member's contractors for the limited purpose of developing Member Applications under contract with Founding 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 Founding Member's Membership in the ODA; and

(e) to use and reproduce the Marks in connection with Founding 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. Founding Member acknowledges that the ODA is the owner of all rights in and to the Marks and that use of the Marks by Founding Member is on behalf of and inures to the benefit of the ODA.

2.1.2 Limitations. Founding 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 2.1.3, Founding 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 Founding Member or any division, business unit or location (other than the single location submitted as part of the Founding Member's Membership Application, as may be subsequently changed by notice to the ODA), except for those involved in the development of Founding Member's Teigha-based Application. In addition, Founding Member will not export or reexport the Development Tools or Documentation 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.).

2.1.3 Sublicense Agreements. Founding Member may sublicense its Member Application(s) to Distribution Entities. Founding 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 Application(s) and Documentation), and (ii) be materially consistent with Founding Member's obligations, responsibilities, and restrictions set forth in this Agreement. No other sublicense rights are granted.

2.2 Support.

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

2.2.2 Customer Support. Founding 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 and 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. Founding Member has the following additional Membership Benefits:

- (a) Founding 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, Founding Member may include the Marks on Founding Member's product packaging and marketing materials.

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 Founding Member. Founding 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 Founding Member of its election to terminate; provided, however, that such termination will not relieve Founding 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 Founding Member's Membership in the ODA if Founding 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 Founding Member's Membership in the ODA for any reason, this Agreement and all rights granted to Founding Member hereunder will immediately terminate and be of no further force or effect. Unless Founding Member enters into a license agreement with the ODA as set forth in Section 2.4.3(b): (i) Founding Member must, at its sole cost, immediately: (x) destroy the Development Tools and Documentation; (y) remove them from its system 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"), Founding Member 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 Founding Member's sole cost; and Founding 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 Founding Member desires to voluntarily terminate this Membership Agreement and the ODA has not notified Founding Member that it considers Founding 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, Founding 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, Founding 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 Founding Member develop any new Member Application on or after termination of this Agreement.

2.4.4 Dissolution or Merger. Founding 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 Founding 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 Founding 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 Founding Member to ODA. Founding 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, Founding 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. Founding 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 Founding 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 Member provides to ODA, in writing; provided, however, that, without Founding Member's prior written consent, the ODA may not use Founding Member's name or logo anywhere other than the ODA website and for no other purpose.

2.6 Survival. The provisions of Sections 2.1.2, 2.1.3, 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 shall survive the expiration or termination of this Agreement.

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

3.1 Principal Office. The principal office of the Founding 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 Founding Member, enforceable against Founding Member in accordance with its terms. Founding 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 Founding Member's knowledge, Modifications, Enhancements, and any Derivative Works developed by or for Founding 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. Founding 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) Founding Member'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 Founding 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 Founding Member of any claim or action for which ODA is seeking indemnification under this Section 4. If Founding 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 Founding Member for all costs reasonably incurred in such course of action. For avoidance of doubt, the failure of ODA to provide Founding Member with prompt notice of a claim or action as provided in this Section 4 will not excuse Founding Member from its indemnification obligation unless Founding Member can demonstrate that failure to provide prompt notice adversely affected Founding Member's ability to defend the action.

5. Warranty Disclaimer.

5.1 THE DEVELOPMENT TOOLS AND DOCUMENTATION ARE PROVIDED TO FOUNDING MEMBER "AS IS" AND WITH ALL BUGS, DEFECTS, ERRORS, DEFICIENCIES AND FAULTS. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, THE ODA HEREBY DISCLAIMS AND FOUNDING 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 FOUNDING 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, FOUNDING 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 FOUNDING 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 FOUNDING 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 Founding 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; and (ii) ninety (90) days following the provision of notice thereof to

Founding Member in accordance with the Membership Rules and Policies unless, within the ninety (90)-day period, Founding Member notifies the ODA of its rejection of the modification(s) or amendment(s). If Founding Member rejects the modification(s) or amendment(s) in the ninety (90)-day period, Founding 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 Founding Member. If Founding Member fails to notify the ODA of its rejection of the modification(s) or amendment(s) within the ninety (90)-day notice period, Founding 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 Founding 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 Founding 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”).

Founding 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: _____

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 Founding Member of the ODA pursuant to a Founding Membership Agreement, dated _____, between the ODA and Licensee (the “Founding Membership Agreement”). Licensee now wants to terminate the Founding Membership Agreement, but be able to continue to license the Development Tools and Documentation (as defined in the Founding 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 Founding Membership dues in effect on the effective date of Licensee's termination of its Founding 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 Founding 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 Founding Membership Agreement that the Founding 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: _____