

MEMBERSHIP RULES AND POLICIES

OF

OPEN DESIGN ALLIANCE

As of September 9, 2020

Pursuant to the bylaws of Open Design Alliance (the “ODA”), the Board of Directors of the ODA has established and adopted these Membership Rules and Policies (which may be amended, revised and supplemented from time to time).

1. Definitions.

Whenever used in these Membership Rules and Policies or in any Membership Agreement with initial letters capitalized (in the singular or plural, and not otherwise defined herein), the following terms shall have the following specified meanings:

“**Anniversary Date**” means, with respect to each Member, the annual anniversary of the Effective Date specified in the Member’s Membership Agreement. If a Member upgrades its Membership prior to the Member’s Anniversary Date, the Anniversary Date shall remain the annual anniversary of the Effective Date of the Membership Agreement in effect at the time the Member upgraded.

“**CAD**” means computer aided design.

“**Commercial Member**” means a Member of the ODA that is designated as a Commercial Member and is a party to a Commercial Membership Agreement.

“**Corporate BIM Member**” means a Member of the ODA that is designated as a Corporate BIM Member and is a party to a Corporate BIM Membership Agreement.

“**Corporate Member**” means a Member of the ODA that is designated as a Corporate Member and is a party to a Corporate Membership Agreement.

“**Derivative Work**” means a work that is based upon one or more of the Development Tools including, but not limited to, (a) any revisions, Modifications, Enhancements, translations, abridgments, condensations, expansions, or any other forms in which any of the Development Tools may be recast, transformed, or adapted, and (b) any works that, if prepared without authorization from the ODA, would constitute an infringement with respect to any intellectual property rights covering the Development Tools.

“**Development Tools**” means the software, components, libraries, and routines (including all additions, Enhancements, Modifications, updates, upgrades, and successors to such software, components, libraries and routines) for developing CAD and technical graphics applications as developed, licensed and delivered by the ODA to a Member from time to time pursuant to the terms of a Membership Agreement and these Membership Rules and Policies. “Development Tools” includes Derivative Works, other than Member Applications, but does not include DRAWINGS EXTENSION SDK.

“**Distribution Entity**” means any person or entity, other than a Member, that distributes copies of a Member Application.

“Documentation” means all manuals, user documentation, and other related materials, if any, pertaining to the Development Tools that are furnished to a Member by the ODA in connection with the Development Tools.

“Education Member” means a Member of the ODA that is designated as an Education Member and is a party to an Education Membership Agreement.

“End User” means the person or entity that installs or uses the Development Tools or Documentation as part of a Member Application which it has received from a Member or Distribution Entity.

“Enhancement” means any software code developed by or for a Member which does not constitute a Modification, but which adds new functionality to the Development Tools.

“Founding Member” means a Member of the ODA that is designated as a Founding Member and is a party to a Founding Membership Agreement.

“Marks” means any trademarks, service marks, service or trade names, logos, and other designations of the ODA.

“Member” means a person or entity that is a party to a Membership Agreement, but does not include a parent, subsidiary or affiliate of the person or entity. Nor does “Member” include any division, business unit or location (other than the single location submitted as part of the application for Membership, as may be subsequently changed by notice to the ODA), except for those involved in the development of its Member Application.

“Member Application” means any software application developed by or distributed for a Member, which is combined with or derived from the Development Tools.

“Membership Agreement” means a written, signed agreement between the ODA and a person or entity which sets forth the terms and conditions upon which such entity or person may act as a member of the ODA and use or access the Development Tools and Documentation; all Membership Agreements adopt and incorporate by reference these Membership Rules and Policies.

“Membership Rules and Policies” means these Membership Rules and Policies, as they are amended, revised or supplemented from time to time by the ODA.

“Modification” means any change to the substance or structure of the Development Tools including, but not limited to:

- (a) any addition to, modification of, or deletion from the contents of a file containing any part of the Development Tools;
- (b) bug fixes to any part of the Development Tools; or
- (c) any updates to the Development Tools.

“Non-Commercial Member” means a Member of the ODA that is designated as a Non-Commercial Member and is a party to a Non-Commercial Membership Agreement.

“Source Code” means computer software in the form of source statements for the Development Tools (excluding all third-party software) including, but not limited to, all software in the form of electronic and printed human-readable, mnemonic or English-like program listings, including printed and on-line descriptions of the design of such software including, but not limited to, data definition models, indices, structure tables, global documentation (including variables) and program listings.

“Supporting Member” means a Member of the ODA that is designated as a Supporting Member and is a party to a Supporting Membership Agreement.

“Sustaining Member” means a Member of the ODA that is designated as a Sustaining Member and is a party to a Sustaining Membership Agreement.

2. Ownership of Development Tools and Documentation. The Development Tools and Documentation are owned by the ODA and its suppliers. The ODA reserves all right, title and interest in and to the Development Tools and Documentation except as expressly granted in Membership Agreements.

3. Membership Rules and Policies. Every Member must comply with all articles, bylaws, rules and policies adopted by the ODA from time to time. Use of the Development Tools, Documentation and Member Application(s) pursuant to the license granted to a Member in its Membership Agreement will be in accordance with these Membership Rules and Policies, as modified from time to time by the ODA, which are incorporated into every Membership Agreement as fully as if they were set forth therein. Members can find the most recent version of these Membership Rules and Policies at: www.opendesign.com. Members must review the Membership Rules and Policies on a regular basis to keep themselves apprised of any changes. The ODA reserves the right, at its sole discretion, to change, modify or otherwise alter these Membership Rules and Policies at any time. Once approved by the ODA Board of Directors, such modifications will become effective immediately upon (i) the posting thereof on www.opendesign.com; and (ii) ninety (90) days following the giving of written notice thereof to those Members affected by such modification(s) in accordance with Section 22.1. A Member’s continued use of any portion of the Development Tools or Documentation constitutes the Member’s agreement to be bound by the then current version of the Membership Rules and Policies as modified from time to time.

4. Support. ODA will provide Members with support in accordance with the class of membership and as set forth on Exhibit A to these Membership Rules and Policies.

5. Payment of Dues and Expenses. Members must pay, in accordance with these Membership Rules and Policies, all dues, fees and assessments imposed or levied by the ODA upon its Members. Without limiting the generality of the foregoing, the Board of Directors of the ODA is authorized to determine whether or not the ODA will require application fees, regular dues, or both, from its Members and the amount of any such application fees and dues. All fees, dues and assessments payable by Members under these Membership Rules and Policies are due

and payable, in United States dollars, within thirty (30) days from the date of the invoice from the ODA, and as provided in the Membership Application. Membership fees are due and payable annually by the Anniversary Date. Application fees and Membership fees that are imposed in connection with a new or upgraded Membership, are due and payable on or prior to the Effective Date of such Membership. Failure to remit payment of any fees, dues and assessments when due could result in the Member's being denied access to the Development Tools and Documentation and, unless remedied in accordance with the Membership Agreement, termination of Membership. All dues, fees and assessments imposed or levied by the ODA are nonrefundable and may not be prorated, but credit for such amounts may be transferred or assigned in accordance with Section 22.2.

6. No Ownership Interest. All amounts paid to the ODA by or on behalf of a Member will constitute dues, fees or assessments related to membership in the ODA and will not be deemed to be an investment or purchase of any ownership interest in the ODA. Any payment on behalf of a Member by a third party is not an assignment pursuant to Section 22.2. Any assignment must comply with Section 22.2.

7. No Fiduciary Capacity. In exercising its rights and authority under a Membership Agreement, including the Membership Rules and Policies, neither the ODA nor any Member or agent acting at the request or on behalf of the ODA, or their respective officers, directors, employees or agents, will, by virtue of a Membership Agreement or the arrangements described therein or in these Membership Rules and Policies, have any fiduciary obligation to any Member or any of its affiliates.

8. Software Development. From time to time, at the request of Members or third parties, ODA may undertake the development of software that does not constitute Development Tools and therefore is not licensed to Member. Such software development will be undertaken in ODA's discretion, with Board approval, and on such terms as ODA may reasonably determine, including terms on which ODA may determine to make such developed software available to Members.

9. Records and Audit. Members must maintain complete and accurate records relating to their use of the Development Tools and Documentation including, but not limited to, copies of all agreements relating to the disclosure of the Development Tools in Source Code form. Members must permit the ODA or its independent auditors to access, review and copy such records (including, but not limited to, any Development Tools in Source Code form as maintained by the Member) upon the ODA's reasonable request, to determine the Member's compliance with these Membership Rules and Policies. The ODA may request that a Member provide information regarding the Member's use of the Development Tools and DRAWINGS EXTENSION SDK, and Members shall respond to each request completely and accurately within thirty (30) days of the date of the request. Notwithstanding the foregoing, a Member is not obligated to disclose confidential information of any third party in connection with the audit and may redact any records solely to the extent required to satisfy its confidentiality obligations to third parties.

10. Tracking. The ODA may use passive tracking information, such as a serial number, in the Development Tools and Documentation and Members shall preserve, maintain and assist the ODA with such tracking information in any Member Application. The ODA will use the tracking

information only to determine the origin of software applications that the ODA suspects have been developed in violation of the ODA's rights. Each Member must furnish an executable copy of any Member Application to the ODA upon request for the purpose of verifying Member's compliance with these Membership Rules and Policies.

11. Proprietary Rights Notices and Legends.

11.1 General Requirements. In addition to the specific requirements regarding proprietary rights notices and legends as more fully set forth in these Membership Rules and Policies, every Member and all of its Distribution Entities and End Users (as applicable) must:

11.1.1 respect all copyright, trademark, patent, confidentiality, and all other proprietary rights notices and legends (hereinafter collectively referred to as "Proprietary Rights Notices") of the ODA, its grantors, or any other party, appearing on or in any of the Development Tools and Documentation;

11.1.2 not alter, conceal from view, or remove any Proprietary Rights Notices of the ODA, its grantors, or any other party, appearing on or in any of the Development Tools, Derivative Works and Documentation; and

11.1.3 include and reproduce all Proprietary Rights Notices of the ODA, its grantors, and any other party that originally appeared in all Development Tools and Documentation (including all Proprietary Rights Notices in any Member Application) on:

11.1.3.1 all copies or modules of the Development Tools and Documentation, including as part of any Member Application, and

11.1.3.2 all copies of or excerpts therefrom.

11.2 Notice in Source Code. Without in any way limiting the generality of the foregoing, no Member may remove or modify the Proprietary Rights Notice including, without limitation, the ODA copyright notice, that the ODA has included in the Source Code versions of the Development Tools.

11.3 Language of Notices. All Proprietary Rights Notices required by this Section 11 may be provided in English or the language of the Member Application. No other language may be used without prior written consent of the ODA (which may be withheld for any reason).

11.4 Compliance. To assure compliance with all of these Membership Rules and Policies regarding Proprietary Rights Notices as set forth in this Section 11, at the ODA's reasonable request, Member shall promptly furnish to the ODA samples of all such Proprietary Rights Notices contained in any products or programs released by the Member that contain, in whole or in part, any Derivative Works and/or Member Applications distributed by the Member. In the event the ODA, in its sole opinion, determines that Member is not in compliance with the provisions of Section 11, 12 or 13, or with any other provisions of these Membership Rules and Policies, the ODA Trademark Guidelines or Membership Agreement, Member must, within a reasonable time to be determined by ODA, make all such changes as directed by the ODA.

12. Trademark Guidelines. The ODA’s trademark guidelines for use of the Marks are set forth in the ODA Trademark Guidelines, which document can be found on the ODA’s website at www.opendesign.com. The ODA Trademark Guidelines are incorporated herein by reference as fully as if they were set forth herein. The ODA has the right, in its sole discretion, to amend the ODA Trademark Guidelines at any time and from time to time upon sixty (60) days’ notice, in advance of any change. Any rights granted to a Member to use any Marks are, at all times, subject to the Member’s strict compliance with the ODA Trademark Guidelines. Failure to use the Marks in accordance with these Membership Rules and Policies and the ODA Trademark Guidelines will constitute a material breach by the Member of the Membership Agreement, including these Membership Rules and Policies.

13. Internet Domain. No Member may use or register a domain name or Universal Resource Locator (“URL”) that consists of or contains the ODA’s name or Marks, or anything confusingly similar thereto. Any such use or registration will constitute a breach of these Membership Rules and Policies and the Member’s Membership Agreement, but, by itself, is not grounds for termination of the Membership Agreement.

14. Survival. Sections 2, 6, 9, 11, 12, 13, 19, 21 and 22 of these Membership Rules and Policies will survive any termination of a Membership Agreement.

15. Export/Government Contracts. Enhancements, Modifications, and any Derivative Works developed by or for a Member may be subject to export controls and (are or may be) licensable under U.S. Government export regulations. Members must comply strictly with all legal requirements established under these controls and may not export, re-export, divert, transfer or disclose, directly or indirectly, anything applicable to the above without the prior approval of the U.S. Department of Commerce. If the Enhancements, Modifications, or any Derivative Works developed by or for a Member are to be used in the performance of a government contract or subcontract, the software must be provided on a “restricted rights” basis only and the Member must place a legend, in addition to applicable copyright notices, in the form provided under the governmental regulation. The ODA will not be subject to any flow-down provisions required by the governmental customer unless the ODA has agreed to the provisions in writing.

16. No Unauthorized Disclosure. Every Member must preserve and protect the Development Tools and Documentation from unauthorized disclosure or misuse with the same standard of care that the Member uses to protect its own proprietary information of a similar nature, but in no event less than reasonable care.

17. No Unauthorized Use or Copies. No Member may copy, relocate, move, sublicense, rent, timeshare, use in acting as a service bureau, loan, lease or otherwise distribute the Development Tools or Documentation, except as expressly provided in its Membership Agreement. Any unauthorized copying, unauthorized use or unauthorized transfer or distribution of the Development Tools and Documentation by a Member is a breach of its Membership Agreement.

18. No Unauthorized Warranties. No Member may extend on behalf of the ODA any written or oral warranty or guarantee, or make any representation or claim, with respect to the Development Tools and Documentation, without the ODA’s express written consent.

19. Code of Conduct. No Member may make or publish any statement (orally or in writing) or instigate, assist or participate in the making or publication of any statement that would or could adversely affect, libel, slander, or disparage (whether or not such disparagement legally constitutes libel or slander) or expose to hatred, contempt or ridicule, or cast in a negative light (a) the Development Tools, Documentation or the ODA, (b) any of the ODA's products, services, affairs or operations, or (c) the reputations of any of its past, present or future directors, officers or employees.

20. DRAWINGS EXTENSION SDK. No Member may release, distribute, or market a Member-modified version of the ODA's DRAWINGS EXTENSION SDK as a standalone SDK if such Modification is referred to as "DRAWINGS EXTENSION SDK". Nor shall a Member make any statement that such a Modification is compatible with the ODA's DRAWINGS EXTENSION SDK. A Member may release its Member-modified DRAWINGS EXTENSION SDK as a standalone SDK only under a name other than DRAWINGS EXTENSION SDK".

21. DISCLAIMER OF DAMAGES. IN NO EVENT WILL A PAST, PRESENT OR FUTURE MEMBER, OR ITS OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS, BE LIABLE TO ANY OTHER MEMBER FOR ANY DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, PUNITIVE OR OTHER SIMILAR DAMAGES ARISING FROM OR RELATED TO MEMBERSHIP IN THE ODA, WHETHER ARISING IN CONTRACT, TORT (INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE), STRICT LIABILITY, EQUITY OR OTHERWISE, EVEN IF THE MEMBER WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING WILL NOT RELIEVE THE MEMBER FROM LIABILITY (i) FOR ANY WILLFUL MISCONDUCT OR ANY BREACH OF AN OBLIGATION OF CONFIDENTIALITY, (ii) FOR ITS INDEMNIFICATION OBLIGATION, AS SET FORTH IN ITS MEMBERSHIP AGREEMENT OR (iii) TO THE ODA.

22. General Provisions.

22.1 Notices. Any notices required or permitted to be given or made under these Membership Rules and Policies 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 telephonic facsimile, telegraph, teletype, electronic mail or other form of wire or wireless communication, or by mail or private carrier or other method in which the writing is to be read by the recipient, or (b) on the fifth day after mailing by registered or certified mail, return receipt requested, postage prepaid and addressed as follows:

If to the ODA:	Open Design Alliance 10115 East Bell Road Suite 107 #447 Scottsdale, AZ 85260 Tel. (602) 263-7666 Fax (602) 263-7666
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If to Member:	at the address, telephone and facsimile numbers submitted by Member upon application for membership.
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Either Member 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. Members must keep current all address and other contact information that it provides to the ODA.

22.2 Assignment. Subject to limitations set forth in these Membership Rules and Policies, a Member may assign its rights and obligations under its Membership Agreement to any affiliated corporation or other affiliated business entity and to any successor of Member, by sale, merger or other business combination, to all or substantially all of its business and assets, provided the successor assumes all obligations of the Member under its Membership Agreement and these Membership Rules and Policies and agrees in writing to be bound thereby.

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

22.4 Dispute Resolution. All disputes, controversies, claims, and defenses arising out of, relating to, or involving a Membership Agreement or these Membership Rules and Policies, whether involving theories of tort, contract, or violation of statutory laws (“Claims”) are subject to the following provisions:

22.4.1 Arbitration. Except as to actions, suits, or proceedings commenced or maintained by persons not parties hereto, any party may elect to have its Claim be determined by arbitration. The election shall be made by written notice. Unless the parties otherwise agree in writing, the arbitration shall be conducted in Phoenix, Arizona, before a single arbitrator and in accordance with the commercial arbitration rules of the American Arbitration Association (“AAA”). If the parties are unable to agree on an arbitrator within fourteen (14) days of an election to arbitrate, the AAA shall appoint the arbitrator, who shall be unaffiliated with either party. The arbitrator shall issue an award within thirty (30) days of conclusion of the hearing. The arbitrator’s decision shall be in writing, shall specify the factual and legal bases of such decision, shall be final and binding on the parties and their respective successors and assigns, and a judgment consistent therewith may be entered by any court of competent jurisdiction; provided, however, that the arbitrator’s decision shall be subject to judicial review, and the reviewing court may vacate, modify or correct the arbitrator’s decision as appropriate (i) where the arbitrator’s conclusions of law are clearly erroneous or (ii) as otherwise provided by applicable law.

22.4.2 Provisional Remedies. If a party elects to have any Claims determined by arbitration, any provisional remedy issued prior thereto may remain in effect until such time as an arbitrator is selected or appointed. Thereafter, the arbitrator may issue, continue, or terminate provisional relief or may permit a party to pursue provisional relief in court.

22.4.3 Governing Law; Jurisdiction and Venue. Membership Agreements and these Membership Rules and Policies will be interpreted, construed and enforced in all respects in accordance with the laws of the State of Arizona without reference to its choice of law rules. All actions or suits by a party shall be brought and maintained in the state or federal courts located in

Phoenix, Arizona. Each party consents to exclusive jurisdiction of such courts and waives any right to seek a change of venue.

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

23. Signatures. Any notice, agreement or other writing may be executed on behalf of the ODA by the electronic or manual signature of any authorized signatory of the ODA. Authorized signatories of Members may execute the Membership Agreements and Membership Applications manually or electronically by use of the service established by the ODA on its website.

EXHIBIT A

SUPPORT

Founding/Corporate Membership: Founding/Corporate Members will have access to the ODA website www.opendesign.com, for:

- Documentation, code examples, binaries and source code of the SDKs provided by ODA from time to time (“the ODA Platform”);
- The Support forum, monitored by the ODA development staff;
- Access to Support page on the website;
- Premium support, which includes direct contact with the ODA development staff;
- The ability to report and track bugs; and

Sustaining Membership: Sustaining Members will have access to the ODA website, www.opendesign.com, for:

- Documentation, code examples and binaries of the ODA Platform;
- The Support Forum, monitored by the ODA development staff;
- Access to Support page on the website;
- The ability to report and track bugs; and

Commercial Membership: Commercial Members will have access to the ODA website, www.opendesign.com, for:

- Documentation, code examples and binaries of the ODA Platform;
- Access to Support page on the website;
- The Support Forum, monitored by the ODA development staff; and
- The ability to report and track bugs.

Non-Commercial Membership: Non-Commercial Members will have access to the ODA Member Area for:

- Documentation, code examples and binaries of the ODA Platform;
- The Support Forum, monitored by the ODA development staff; and
- The ability to report and track bugs.

Education Membership: Education Members will have access to the ODA Member Area for:

- Documentation, code examples and binaries of the ODA Platform;
- The Support Forum, monitored by the ODA development staff; and
- The ability to report and track bugs.

Corporate BIM Membership: Corporate BIM Members will have access to the ODA Member Area for:

- Documentation, code examples, binaries and source code of the Development Tools as identified and defined in the Corporate BIM Membership Agreement;
- Access to Support page on the website;
- Premium support, which includes direct contact with the ODA development staff;
- The Support Forum, monitored by the ODA development staff;
- The ability to report and track bugs;