

**CAD DESIGN SOFTWARE**  
**SOFTWARE LICENSE AGREEMENT**

This Software License Agreement (this “Agreement”) is entered into by and between CAD Design Services, Inc. (dba CAD Design Software), a California corporation with its principal place of business at 1731 Technology Drive, Suite 340, San Jose, CA 95110, USA (hereinafter referred to as “Seller”), and any person, company, or entity which installs or has access to Seller’s software products (hereinafter referred to as “Customer”).

The parties hereby agree as follows:

**1. Definitions.**

As used herein, the following terms shall have the following meanings:

**Designated Equipment** means the specific equipment on which a locked version of the Software is licensed.

**Designated Site** means the specific location, facility, or campus specified as the designated site on the Purchase Order or a five (5) kilometer (three (3) mile) radius around the “Ship To” address on the Purchase Order if the Purchase Order does not specify a designated site. The license may only be used at the Designated Site (campus).

**Documentation** means the user manual, reference manuals and other materials, in electronic form, supplied by Seller for use with the Software.

**Effective Date** means the latest date of execution of this Agreement set forth in the signature blocks at the end of this Agreement.

**Number of Designated Users** means the number of simultaneous users specified in Customer’s Purchase Order(s) (applicable to network licenses only).

**Purchase Order(s)** means Customer’s purchase order accepted by Seller in writing which specifically references this Agreement or, in the absence of a Purchase Order, the Seller’s invoice.

**Quote** means the pricing quote for the Software attached hereto.

**Software** means the software (including OEM software) set forth in Customer’s Purchase Order(s), in machine-readable object code.

**2. License and Restrictions.**

**a. License.** Customer will receive a “network” license and/or “locked” license of either a perpetual or fixed term, as specified in Customer’s Purchase Order.

**i. Network License.** If a network license is specified in Customer’s Purchase Order, then, subject to the terms and conditions of this Agreement, Seller grants Customer a non-exclusive, non-sublicensable, non-transferable license to allow the Designated Number of Users to use the Software for Customer’s internal business purposes at the designated site. If a fixed-term networked license is specified in Customer’s Purchase Order, then Customer may use the Software pursuant to the foregoing license only during such fixed period of time, beginning on the Effective Date. The maximum number of simultaneous users of the Software may not exceed the Designated Number of Users. Employees whose permanent work location is within the Designated Site may use the Software at their personal residences via a virtual private network, provided that the maximum number of simultaneous users of the Software does not exceed the Designated Number of Users.

**ii. Locked License.** If a locked license is specified in Customer’s Purchase Order, then, subject to the terms and conditions of this Agreement, Seller grants Customer a non-exclusive, non-sublicensable, non-transferable license to use a single copy of the Software on the Designated Equipment for Customer’s internal business purposes. If a fixed-term locked license is specified in Customer’s Purchase Order, then Customer may use the Software pursuant to the foregoing license only during such fixed period of time, and such fixed term shall begin upon the Effective Date.

**b. Restrictions.** All users of the Software must be Customer’s employees whose permanent work location is within the Designated Site. The Software may only reside on hardware that is physically located within the Designated Site. Customer may move the Software that is covered by a maintenance contract to a different Designated Site within the United States (and cease all use of the Software at the previous Designated Site) only upon Seller’s written approval. Customer may not (i) permit any parent, subsidiary, affiliated entity or third party to use the Software, (ii) rent or lease the Software, (iii) use the Software for third-party training or commercial time-sharing.

**c. Copies.** Customer may make a reasonable number of archival copies of the Software. All copies shall include all copyright and other proprietary notices included in the Software. Customer may not copy the Software other than as set forth herein. All copies of the Documentation must include all copyright and other proprietary notices included in the Documentation.

**d. Reverse Engineering; Modifications.** Customer will not cause or permit (i) the disassembly, decompilation or reverse engineering of the Software or otherwise attempt to gain access to the source code to the Software or (ii) the modification, adaptation, translation or creation of derivative works based on the Software.

**3. Payment.**

**a. License Fees.** In consideration for the licenses granted by Seller under this Agreement, Customer will pay the license fees set forth in the Purchase Order.

**b. Maintenance and Support Fees; Renewal.** In consideration of the maintenance and support provisions set forth in Schedule A, Customer will pay the maintenance and support fees set forth in the Purchase Order. Seller will provide the maintenance and support set forth in Schedule A for the period set forth in the Purchase Order. Subject to the terms and conditions of this Agreement, including those set forth in Schedule A, Customer may elect to renew maintenance and support for additional 1-year terms by providing written notice to Seller prior to the expiration of Customer’s then-current annual maintenance term. The fee for each additional annual maintenance term shall be Seller’s then-current list price for annual maintenance for the software licensed to Customer hereunder. If Customer desires to reinstate maintenance and support after allowing maintenance and support to lapse, Customer will be required to pay Seller’s then-current fee for reinstating lapsed maintenance and support.

**c. Taxes.** Customer agrees to pay or reimburse Seller for all federal, state or local taxes, fees or duties (including without limitation all sales, use, excise, withholding or value-added taxes) arising out of this Agreement or the licenses granted or services provided under this Agreement (other than taxes on Seller’s net income).

**d. Late Payments.** Except as otherwise set forth herein, all amounts due under this Agreement must be paid within the period specified on the Purchase Order. Late payments will accrue interest at a rate of 1.5% per month, or the maximum legal rate if less. Customer will pay for all costs (including reasonable attorneys’ fees) incurred by

Seller in connection with the collection of late payments. If any fees are more than 30 days late, Seller may suspend performance until all fees are made current. All payments must be made in United States dollars.

#### **4. Protection of Licensed Materials.**

Seller, or its licensors, shall retain all proprietary rights, including all copyright, patent, trade secret, trademark and all other intellectual property rights, in and to the Software, Documentation and any corrections, enhancements, or other modifications to the Software. Customer acknowledges that the licenses granted under this Agreement provide Customer only a right of limited use under the terms and conditions of this Agreement.

#### **5. Confidential Information.**

Each party agrees to retain in confidence all written and oral information disclosed by the other party pursuant to this Agreement which is either designated as proprietary and/or confidential, or which would reasonably be understood to be confidential (the "Confidential Information"). Notwithstanding the foregoing, the Software and Documentation will constitute Seller's Confidential Information without need for any marking or designation. Each party agrees to: (a) preserve and protect the confidentiality of the other party's Confidential Information; (b) refrain from using the other party's Confidential Information except as contemplated herein; and (c) not disclose such Confidential Information to any third party except to employees as is reasonably required in connection with the exercise of its rights and obligations under this Agreement (and only subject to binding use and disclosure restrictions at least as protective as those set forth herein executed in writing by such employees). Notwithstanding the foregoing, either party may disclose Confidential Information of the other party which is: (i) already publicly known; (ii) discovered or created by the receiving party without reference to the Confidential Information of the disclosing party; (iii) otherwise known to the receiving party through no wrongful conduct of the receiving party; or (iv) required to be disclosed by law or court order. The confidentiality obligations of this Section 6 will survive the termination of this Agreement for a period of 5 years.

#### **6. Limited Warranty.**

**a. Limited Warranty and Sole Remedy.** Seller warrants that the media on which the Software is delivered will be free of manufacturing defects and damage for 90 days after shipment, provided that the media has not been subject to abuse, improper storage or neglect. As Customer's sole and exclusive remedy for breach of the foregoing warranty, Seller will provide a suitable replacement media containing the Software.

**b. Disclaimer of Any Other Warranty.** EXCEPT FOR THE EXPRESS LIMITED WARRANTY STATED ABOVE WITH RESPECT TO THE MEDIA ON WHICH THE SOFTWARE IS DELIVERED, THE SOFTWARE IS PROVIDED "AS-IS" AND SELLER PROVIDES NO OTHER WARRANTIES, EITHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, WITH RESPECT TO THE SOFTWARE, AND SELLER SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. Seller does not warrant that the Software will meet Customer's requirements or be error free.

#### **7. Infringement.**

Seller will defend or settle, at Seller's expense, any action brought against Customer to the extent based upon a claim that the Software

infringes any United States copyright, trademark or trade secret, and Seller will pay such damages and costs as are finally awarded against Customer attributable to such action, provided that Customer (i) notifies Seller promptly in writing of any such action, (ii) gives Seller sole control of the defense and/or settlement of such action and (iii) gives Seller all reasonable information and assistance (at Seller's expense, excluding time spent by Customer's employees or consultants) in connection with such action. Should the Software become, or in Seller's opinion be likely to become, the subject of such an infringement claim, Seller may, at Seller's option (i) procure for Customer the right to use the Software free of any liability; (ii) replace or modify, in whole or in part, the Software to make it non-infringing; or, if (i) and (ii) are not commercially practical, (iii) terminate this Agreement and refund a pro-rata portion of the license fees paid by Customer based on a three-year straight-line amortization of such license fees. Seller assumes no liability for any infringement arising from: (i) any method or process in which the Software may be used; (ii) any compliance with Customer's designs or specifications; (iii) use of other than the current unaltered release of the Software; or (iv) the combination, operation or use of the Software with any third-party programs, data or hardware. THE FOREGOING IS SELLER'S ENTIRE LIABILITY AND CUSTOMER'S SOLE REMEDY FOR ANY CLAIM THAT THE SOFTWARE INFRINGES ANY INTELLECTUAL PROPERTY RIGHTS.

#### **8. Limitation of Liability.**

Seller will not be liable for any lost profits, loss of data, cost of procurement of substitute goods or services, or for any consequential, incidental, special, indirect, or exemplary damages arising out of or relating to this Agreement, however caused and under any theory of liability (including negligence), even if Seller has been advised of the possibility of such damages. Customer acknowledges that the amounts payable hereunder are based in part on these limitations, and further agrees that these limitations shall apply notwithstanding the failure of the essential purpose of any remedy. Seller's total and cumulative liability arising out of or in connection with this Agreement shall not exceed the license fees paid by Customer hereunder. Without limiting the foregoing, Seller's total and cumulative liability arising out of or in connection with the maintenance and support obligations set forth in Schedule A will not exceed the maintenance and support fees paid in the previous 12 months.

#### **9. Term and Termination.**

**a. Term.** Each license granted in Section 2(a) hereunder shall be effective as of the Effective Date and shall continue in effect for the period set forth in Customer's Purchase Order, which may be either fixed or perpetual, unless earlier terminated as set forth herein. The terms and conditions of this Agreement shall remain in effect until the last remaining license under this Agreement expires or is terminated.

**b. Termination.** Either party may terminate this Agreement and each of the licenses granted herein upon written notice to the other party if: (i) the other party fails to comply with any of the terms or conditions of this Agreement, including without limitation the failure to make timely payment hereunder, and such default is not cured within 30 days after written notice thereof to the other party, or (ii) the other party becomes the subject of a voluntary or involuntary petition in bankruptcy or any voluntary or involuntary proceeding relating to insolvency, receivership, liquidation, or composition or assignment for the benefit of creditors.

**c. Effect of Termination.** Sections 1, 4-9, 10(c) and 11, and all payment obligations accruing prior to termination, shall survive

termination of this Agreement. Within 5 days after termination or expiration of this Agreement, Customer will return or destroy, at Customer's expense, the Software, Documentation, license codes and all copies thereof, and, if requested by Seller, deliver to Seller a written certification signed by an officer stating that the Software, Documentation, license codes and all copies thereof have been returned or destroyed. Nothing contained herein will limit any other remedies that either party may have for default under this Agreement nor relieve either party of any obligations incurred prior to such termination.

#### **10. Miscellaneous.**

**a. Assignment.** Customer may not assign or transfer this Agreement or any rights or obligations under this Agreement, in whole or in part, whether voluntary, by way of merger, acquisition, sale, by operation of law or otherwise, without Seller's prior written consent which will not be unreasonably withheld provided the Software is covered by maintenance.

**b. Severability; Waiver.** If any of the provisions of this Agreement are held by a court to be invalid, they are, to that extent, deemed omitted. The waiver of one breach or default or any delay in exercising any rights shall not constitute a waiver of any subsequent breach or default.

**c. Export Control.** Customer acknowledges and agrees that the Software is subject to restrictions and controls imposed by the United States Export Administration Act and the regulations thereunder. Customer agrees that it will not export or re-export either the Software or any directly related materials to or into any country in violation of such controls or any other laws, rules or regulations of any country, state or jurisdiction, that neither the Product nor the underlying information or technology may be downloaded or otherwise exported or re-exported into any other country except those not subject to any US Trade sanctions and explicitly listed in this contract, nor to individuals or entities controlled by any US trade sanctions, or to nationals or residents of such countries other than nationals who are lawfully admitted permanent residents of the US, or to anyone on the U.S. Treasury Department's list of Specially Designated Nationals and Blocked Persons or the U.S. Commerce Department's Table of Denial Orders. By downloading or using the Product, Licensee represents and warrants that it complies with these conditions. Further, Licensee represents and warrants that the Software shall be used only for the listed stated purpose and Software shall not be used for any other purpose.

The Software may only be installed and used at the Designated Site (Campus) location(s).

Licensee represents and warrants that usage of the Software shall be limited to the specific usage as stated in Schedule B of this contract.

**d. Entire Agreement; Modification.** This Agreement and any Schedules, Quotes or Purchase Orders attached hereto represent the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings with respect to the subject matter hereof, whether written or oral. This Agreement may not be modified or amended except by the written agreement of the parties.

**e. Conflicting Documents.** No terms, provisions or conditions of any purchase order, invoice or other business form or written authorization used by either party will affect the rights, duties or obligations of the parties hereunder, regardless of any failure of either party to object to such terms, provisions or conditions. Without limiting the foregoing, any terms or conditions appearing on Customer's purchase orders or similar documents will not add to or modify the terms and conditions of this Agreement.

**f. Governing Law.** This Agreement shall be governed by the laws of the State of California without reference to its principles of conflicts of laws. All disputes arising out of this Agreement shall be subject to the exclusive jurisdiction of and venue in the federal and state courts within Santa Clara County, California. Each party hereby irrevocably consents to the personal and exclusive jurisdiction and venue of these courts.

**g. Notices.** All notices required or permitted by this Agreement shall be in writing and shall be deemed sufficient upon receipt, when delivered personally or by courier, overnight delivery service or confirmed facsimile, or forty-eight (48) hours after being deposited in the regular mail as certified or registered mail (airmail if sent internationally) with postage prepaid.

**h. U.S. Government Restricted Rights.** The Software is a commercial product, developed at private expense, and provided with RESTRICTED RIGHTS. Use, reproduction, release, modification or disclosure of the Software, or any part thereof, including technical data, by the Government is restricted in accordance with Federal Acquisition Regulation ("FAR") 12.212 for civilian agencies and Defense Federal Acquisition Regulation Supplement ("DFARS") 227.7202 for military agencies.

**i. Force Majeure.** Neither party shall be responsible for any delays or inability to perform any of its obligations under this Agreement due to any Act of God, fire, casualty, flood, earthquake, war, strike, lockout, epidemic, destruction of production facilities, riot, insurrection, or any other cause beyond the reasonable control of such party.

**j. Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.

**k. Authority.** BY INSTALLING AND OPERATING THIS SOFTWARE, YOU REPRESENT AND WARRANT THAT YOU AGREE TO ALL OF THE TERMS AND CONDITIONS OF THIS LICENSE AGREEMENT.

## SCHEDULE A

### MAINTENANCE AND SUPPORT

**1. Additional Definitions.** As used herein, the following terms shall have the following meanings:

**Designated Persons** means the operators who are trained on the Software and designated by Customer as primary contacts to interface with Seller's technical support personnel regarding maintenance and support of the Software. Seller reserves the right to place reasonable limits on the number of Designated Persons who may contact Seller regarding maintenance and support.

**Error** means an error in the Software or Documentation that causes the Software to fail to operate materially in accordance with the Documentation. A non-conformity will not be considered an Error if it is caused by: (a) Customer's misuse of the Software; (b) any third-party software or hardware; (c) any modifications or alterations of or additions to the Software performed by a party other than Seller; or (d) Customer's failure to implement all Workarounds, Upgrade, Updates and Releases which are provided under this Agreement.

**Release** means a major new version of the Software that, in Seller's discretion, is represented by a change to the left of the decimal point in the version number of the Software (*e.g.*, v1.0 to v2.0).

**Update** means any modification that, in Seller's opinion, corrects Errors or provides minor functionality enhancements, but does not change the overall utility or functional capability of the Software. Updates occur within an upgrade level (*e.g.*, within v1.0).

**Upgrade** means any modification that, in Seller's opinion, changes the overall utility or functional capability of the Software. Upgrades are represented by a change to the right of the decimal point in the version number of the Software (*e.g.*, v1.0 to v1.1).

**Workaround** means a either a specific instruction set or a modification or "patch" for the Software, which may be of a temporary or interim nature, to help avoid an Error.

**2. Scope of Support.** The Software support set forth herein is provided only with respect to (i) the operation of the Software on production releases on authorized operating systems and (ii) unmodified versions of the Software. Notwithstanding anything herein to the contrary, the Software support set forth herein will be provided only for the most current Release version of the Software currently shipping to new customers, provided that Seller will continue to support the Release version immediately preceding the most current Release version for a period of 6 months after the date on which the most current Release becomes commercially available. All communications with Seller regarding use and/or support of the Software must be through the Designated Persons.

**3. Maintenance Releases.** Seller will provide Customer with 1 copy of any Release, Update or Upgrade to the Software, in object code format, which Seller generally makes available to Seller's customers receiving maintenance and support. All Releases, Updates, Upgrades and Workarounds provided hereunder shall be deemed included in the definition of Software as defined in Paragraph 1, "Definitions" herein. Seller may determine which products are considered new products in Seller's sole discretion. New products, as designated by Seller at Seller's sole discretion, are not included in maintenance and support.

**4. Direct On-line and E-mail Support.** Seller will provide a technical support department staffed by support personnel who shall be available Monday through Friday (9:00 a.m. to 5:00 p.m. local time at Seller's support facility), excluding holidays Seller

recognizes, to answer questions from Designated Persons concerning the use of the Software and Errors.

**5. Correction of Software Errors.** Seller will use all commercially reasonable efforts to correct all Errors in the Software reported by Designated Persons using Seller's standard reporting procedures. In some cases the Error may be caused by a documentation error, rather than a software error, in which case Seller will provide corrected Documentation. Customer acknowledges that implementation of Updates and Workarounds may require recompilation of files, and/or making other changes necessitated thereby.

**6. Additional Services.** All Software maintenance or support which Customer requests, and which Seller, in Seller's discretion, agrees to provide, and which is not specifically provided pursuant to this Schedule A shall be provided at Seller's then-standard charges therefore. This shall also include all services provided by Seller, at Customer's request, other than during Seller's normal working hours, local time at Seller's support facility. The foregoing services shall be invoiced monthly and shall be payable within 30 days of invoice.

**7. Customer Responsibilities.** Customer agrees to provide all reasonable cooperation and full information to Seller with respect to furnishing maintenance and support hereunder when seeking Seller's technical assistance. Customer shall also promptly pay all maintenance fees and other amounts payable hereunder.