

**Shawn M. Lindsay**  
Direct: 503.596.2928  
shawn@jurislawyer.com

April 30, 2024

**VIA REGULAR AND ELECTRONIC MAIL (aspdx@hotmail.com)**

Kevin A. Eike, Administrator/Attorney  
Arbitration Service of Portland, Inc.  
9830 SW McKenzie St.  
Portland, Oregon 97223

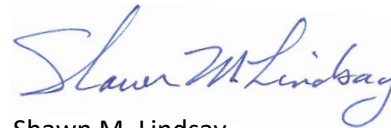
**Re: The IntelliCAD Technology Consortium v.  
Shanghai Erow Information Technology Co., Ltd  
\*STATEMENT OF CLAIM\***

Dear Administrator:

Please find enclosed the completed Arbitration Service of Portland, Inc. Statement of Claim form to initiate the claims of The IntelliCAD Technology Consortium v. Shanghai Erow Information Technology Co., Ltd. We have also enclosed a separate page describing the claims, a copy of the relevant commercial membership agreement, a copy of the membership rules, and a check for the \$700 filing fee. We look forward to hearing from you and moving this matter forward.

Very truly yours,

**JURISLAW LLP**



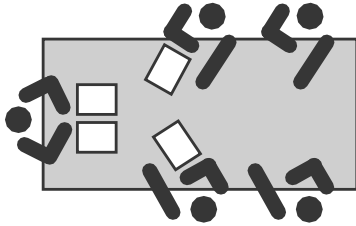
Shawn M. Lindsay

SML:

Enclosures

cc: Xiaoduo Juo (contact@erow.cn); Chunqiao Luo (luochunqiao@erow.cn), xdluo@erow.cn; wanghaiming@erow.cn of Shanghai Erow Information Technology Co., Ltd. (via regular and electronic mail)

The IntelliCAD Technology Consortium w/encls. (via electronic mail)



# Arbitration Service of Portland, Inc.

www.arbserve.com

9830 SW McKenzie St  
Portland, Oregon 97223

503-226-3109  
aspdx@hotmail.com

Kevin A. Eike,  
Administrator/Attorney

## STATEMENT OF CLAIM

(To initiate an arbitration pursuant to a contractual provision  
requiring or permitting an ASP arbitration)

**1. Commencement of Arbitration.** The Claimant identified below hereby initiates arbitration by paying to Arbitration Service of Portland, Inc. (ASP) the required filing fee, by filing with ASP this Statement of Claim, and by serving a copy thereof on the Opposing Party.

**2. Statement of Claim.** The following summarizes the basis of Claimant's claim, the relief sought, the dollar amount of any money demand, whether interest is claimed, whether attorney's fees are claimed (and, if so, whether based on contract or statute), and, to the extent known by claimant, the Opposing Party's denial or defense thereto:

See attached Statement of Claim, The IntelliCAD Technology Consortium ("ITC") Commercial Membership Agreement, and the ITC Membership Rules.

\*Note re Pre-Dispute Agreement: Sections 9.5 and 10.5 of the ITC Commercial Membership Agreement provides that disputes between the parties will be determined by arbitration before a single arbitrator and in accordance with the arbitration rules of the Arbitration Service of Portland, Inc.

(Attach separate sheet if necessary)

**3. Claimant.** The name, address, and telephone number of Claimant and Claimant's attorney (if any):

Claimant:

Claimant's Attorney:

Name: The IntelliCAD Technology Consortium

Shawn M. Lindsay, JurisLaw LLP

Address: 10260 SW Greenburg Road, Suite 400  
Portland, OR 97223

Three Centerpointe Drive, Suite 160  
Lake Oswego, OR 97035

Telephone: 503-293-7655

503-968-1475

Email: press@intellcad.org

shawn@jurislawyer.com

**4. Opposing Party.** The name, address, and telephone number of Opposing Party (or parties) and its/their attorney (if any):

	Opposing Party:	Attorney:
Name:	<u>Shanghai Erow Information Technology Co., Ltd</u>	_____
Address:	<u>Room 2906, Building 3, Building 166</u>	_____
	<u>Minhong Road, Minhong District</u>	_____
	<u>Shanghai</u>	_____
Telephone:	<u>+86 18621500266</u>	_____
Email:	<u>contact@erow.cn; xdluo@erow.cn;</u>	_____
	<u>luochunqiao@erow.cn</u>	_____

(attach separate sheet to name additional parties)

**5. Predispute Agreement.** Claimant encloses a copy of the written agreement (or the pertinent portions thereof) that contains the provision requiring arbitration of the above dispute (including the pages thereof that reveal the parties, their signatures, and the arbitration clause that designates ASP).

**6. Service on Opposing Party.** Claimant acknowledges that ASP arbitration rule 1 requires Claimant to serve on each Opposing Party and each such party's attorney, if known, a copy of this Statement of Claim and a copy of the Predispute Agreement (or the pertinent portions thereof), and that such service can be accomplished by mailing said copies to their last known address or by delivery (pursuant to ASP rule 3A).

**7. Filing Fee.** Claimant must pay the entire non-refundable filing fee, computed as follows: if the dollar amount of the dispute does not exceed \$100,000, the filing fee is \$700 for a two-party dispute, plus \$200 for each additional party. If the dispute exceeds \$100,000 but does not exceed \$1,000,000, the filing fee is \$1,000 for a two-party dispute, plus \$300 for each additional party. If the dispute exceeds \$1,000,000, the filing fee is \$2,000 for a two-party dispute, plus \$500 for each additional party. (See Rule 1D for examples.)

Date: April 30, 2024

Signature of Claimant or Claimant's Attorney: \_\_\_\_\_



Print signer's name: Shawn M. Lindsay, Esq.

Representative capacity: Attorney

(Attorney, President, Partner, Party, etc.)

#### INSTRUCTIONS

- Mail or deliver to ASP:
1. This signed Statement of Claim.
  2. A copy of the predispute agreement.
  3. Your filing fee check, payable to "Arbitration Service of Portland."

- Mail to each opposing party:  
(and to such party's attorney, if known)
1. A copy of this signed Statement of Claim.
  2. A copy of the predispute agreement.

## **CLAIMANT'S STATEMENT OF CLAIM**

Claimant The IntelliCAD Technology Consortium (the "ITC") is a Washington State nonprofit corporation which develops and maintains the IntelliCAD base software source code, toolkits, and APIs for its CAD interface. The ITC also develops several advanced integrations with third-party technologies. The ITC licenses its source code and technology exclusively to its members which pay fees in exchange for licenses. Each member of the ITC enters into a membership agreement to effectuate membership and licensing. The ITC entered into a commercial membership agreement with opposing party Shanghai Erow Information Technology Co., Ltd. ("Shanghai Erow") effective July 30, 2021 and it was superseded with a revised commercial membership agreement effective February 11, 2022 (collectively, the "CMA"). The CMAs are attached hereto, along with the Membership Rules, as that term is defined in the CMA.

Shanghai Erow breached the CMA by failing to pay membership fees and other assessed penalties (currently totaling \$32,000.00); refusing to comply with auditing requirements; and failing to comply with the Membership Rules.

The ITC seeks to conduct an audit of Shanghai Erow's current and former CAD software interface and reserves the right to amend this Statement of Claim to bring additional claims, including but not limited to, copyright infringement and trade secret misappropriation.

The ITC prays for the following:

1. Entry of judgment holding Shanghai Erow liable for breaching the CMA;
2. An order compelling Shanghai Erow to participate in an audit;
3. Damages in an amount greater than \$32,000.00, plus interest; and
4. Attorney fees, pursuant to the CMA.

**Subject:** Re: The IntelliCAD Technology Consortium | 2022 Amendments to Commercial Membership Agreement  
**Date:** Monday, May 9, 2022 at 3:02:26 PM Pacific Daylight Time  
**From:** Shawn Lindsay <shawn@hbclawyers.com>  
**To:** dave.lorenzo@intellicad.org <dave.lorenzo@intellicad.org>, xdluo@erow.cn <xdluo@erow.cn>, luochunqiao@erow.cn <luochunqiao@erow.cn>, contact@erow.cn <contact@erow.cn>  
**Priority:** High  
**Attachments:** image001.jpg, image002.png, image003.jpg, image004.jpg, image005.jpg, 20220215 ITC Commercial Membership Agreement - Shanghai Erow Information Technology Co., Ltd. (Deemed Accepted).pdf

Dear Luo Xiaduo:

As you will recall, this firm represents The IntelliCAD Technology Consortium (the "ITC"). On February 11, 2022, we sent you written notice of changes to your commercial membership agreement. We requested that you sign and return to us within the 60-day notice period, pursuant to Section 9.7 of your commercial membership agreement, the new commercial membership agreement that was transmitted to you with the notice communication. The 60-day notice period expired April 12, 2022. Because you failed to notify the ITC of any rejection of the new commercial membership agreement within the 60-day notice period, you are hereby deemed to have accepted the new agreement and are bound to comply with it. The new commercial membership agreement transmitted to you in our February 11, 2022 communication (attached) supersedes and replaces your previous commercial membership agreement. If you have any questions, please do not hesitate to contact us directly.

Regards,

Shawn M. Lindsay



HARRIS BERNE  
CHRISTENSEN LLP

Phone | Fax | Text: [503.596.2928](tel:503.596.2928) | [hbclawyers.com](http://hbclawyers.com) | [Bio](#) | [vCard](#)  
15350 SW Sequoia Parkway, Suite 250, Portland, OR 97224

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**From:** Dave Lorenzo <dave.lorenzo@intellicad.org>  
**Date:** Friday, April 29, 2022 at 3:33 PM  
**To:** "xdluo@erow.cn" <xdluo@erow.cn>  
**Cc:** "Shawn M. Lindsay" <shawn@hbclawyers.com>  
**Subject:** FW: The IntelliCAD Technology Consortium | 2022 Amendments to Commercial Membership Agreement

Hi Lou,

Just checking in to see you received Shaw's email below.

Please review and let us know if you have any questions.

Best regards,

Dave

*Dave Lorenzo*  
**President**



[dave.lorenzo@intellcad.org](mailto:dave.lorenzo@intellcad.org)  
[www.intellcad.org](http://www.intellcad.org)  
+1.503.293.7655

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**From:** Shawn Lindsay <shawn@hbclawyers.com>  
**Sent:** Thursday, April 28, 2022 5:12 PM  
**To:** xdluo@erow.cn  
**Cc:** Dave Lorenzo <dave.lorenzo@intellcad.org>  
**Subject:** Re: The IntelliCAD Technology Consortium | 2022 Amendments to Commercial Membership Agreement  
**Importance:** High

Luo Xiaduo,

This is a final attempt to contact you regarding the below and the attached. Please reply by May 2, 2022. Otherwise, we will need to take next steps.

Regards,

Shawn M. Lindsay



HARRIS BERNE  
CHRISTENSEN LLP

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**Please note: I will be out of the office 4/29/22 through 5/1/22 with limited access to email/voicemail.**

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**From:** "Shawn M. Lindsay" <[shawn@hbclawyers.com](mailto:shawn@hbclawyers.com)>  
**Date:** Tuesday, April 12, 2022 at 7:46 PM  
**To:** "[xdluo@erow.cn](mailto:xdluo@erow.cn)" <[xdluo@erow.cn](mailto:xdluo@erow.cn)>  
**Cc:** Dave Lorenzo <[dave.lorenzo@intellcad.org](mailto:dave.lorenzo@intellcad.org)>  
**Subject:** Re: The IntelliCAD Technology Consortium | 2022 Amendments to Commercial Membership Agreement

Luo Xiaduo,

This is another attempt to contact you regarding the below and attached. Will you please in the next 24-48 hours?

Regards,

Shawn M. Lindsay



HARRIS BERNE  
CHRISTENSEN LLP

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**From:** "Shawn M. Lindsay" <[shawn@hbclawyers.com](mailto:shawn@hbclawyers.com)>  
**Date:** Monday, February 21, 2022 at 2:52 PM  
**To:** "[xdluo@erow.cn](mailto:xdluo@erow.cn)" <[xdluo@erow.cn](mailto:xdluo@erow.cn)>  
**Cc:** Dave Lorenzo <[dave.lorenzo@intellcad.org](mailto:dave.lorenzo@intellcad.org)>  
**Subject:** Re: The IntelliCAD Technology Consortium | 2022 Amendments to Commercial Membership Agreement

Hello Luo Xiaoduo,

I'm following up on the below and attached. Will you please provide a status? It would be helpful to hear from you within the next few days.

Warm regards,

Shawn M. Lindsay



HARRIS BERNE  
CHRISTENSEN LLP

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**From:** "Shawn M. Lindsay" <[shawn@hbclawyers.com](mailto:shawn@hbclawyers.com)>

**Date:** Friday, February 11, 2022 at 5:30 PM

**To:** "[xdluo@erow.cn](mailto:xdluo@erow.cn)" <[xdluo@erow.cn](mailto:xdluo@erow.cn)>

**Cc:** Dave Lorenzo <[dave.lorenzo@intellcad.org](mailto:dave.lorenzo@intellcad.org)>

**Subject:** The IntelliCAD Technology Consortium | 2022 Amendments to Commercial Membership Agreement

Dear Luo Xiaoduo:

This law firm represents The IntelliCAD Technology Consortium (the "ITC"). As you may already know, the ITC updates the standard Commercial Membership Agreement ("CMA") from time to time, so as to reflect current industry and professional best practices. Since the CMA has not been revised since 2013, the Board and Officers reviewed the CMA in 2021. On December 15, 2021, the ITC's Board of Directors adopted changes to the standard CMA. Most changes were to clarify provisions and to update the CMA to include current best practices. For your convenience, we attach a redline to help you easily identify the changes.

Pursuant to Section 9.7 of your current commercial membership agreement, this letter serves as 60 days' written notice of changes to the CMA. If you do not agree to the attached changes, you may reject them by notifying the ITC in writing within the 60-day notice period. Any such rejection will be deemed to be a notice of termination of your commercial membership agreement, pursuant to Section 5 of that agreement. Please note, if you fail to notify the ITC of your rejection within the 60-day notice period, you will be deemed to have accepted the amended CMA and will be bound to comply with the CMA upon the expiration of the 60-day notice period.

If you agree to the CMA changes, please kindly sign Page 15 of the attached CMA (FOR EXECUTION COPY) and return to me, preferably, by February 15, 2022. Once we received your counterpart signature, Dave Lorenzo will sign for the ITC and we'll send you a copy of the fully-executed CMA for your records.

Warm regards,

Shawn M. Lindsay



HARRIS BERNE  
CHRISTENSEN LLP

Phone | Fax | Text: [503.596.2928](tel:503.596.2928) | [hbclawyers.com](http://hbclawyers.com) | [Bio](#) | [vCard](#)  
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**THE INTELICAD TECHNOLOGY CONSORTIUM**  
**COMMERCIAL MEMBERSHIP AGREEMENT**

This Agreement, effective as of February 15, 2022, is made and entered into by and between The IntelliCAD Technology Consortium, a Washington State non-profit corporation (the “*Consortium*”), and the person or entity named at the end of this document (the “*Commercial Member*”).

**RECITALS**

A. The Consortium has been organized and established to promote the IntelliCAD computer aided design (“*CAD*”) software platform as an industry-standard platform for computer aided design. The Consortium also makes ArchT, an architectural add-on, available as a sample application to commercial members which facilitates the creation of architectural drawings with IntelliCAD.

B. Commercial Member desires to become a member of the Consortium to obtain the necessary rights to commercially exploit and distribute the IntelliCAD software, upon the terms and subject to the conditions set forth in this Agreement. The ArchT software is also made available to the Commercial Member as a sample application pursuant to the terms and conditions of this Agreement.

**AGREEMENT**

Accordingly, the Consortium and Commercial Member agree as follows:

**1. Definitions.**

Whenever used in this Agreement with initial letters capitalized, the following terms shall have the following specified meanings:

“*ArchT Software*” means the computer software program or routines known as ArchT as developed, licensed and delivered by the Consortium to Commercial Member, together with all additions, enhancements, modifications, updates, upgrades and successors thereto which the Consortium may, in its sole discretion, make available to members of the Consortium from time to time.

“*Bug Fix*” means any bug fix or patch that resolves an element of the IntelliCAD Base Software and/or ArchT Software that does not perform according to its specification.

“*Competing CAD Software*” means any CAD software application (whether in object or source code) of Commercial Member (other than a Member Application or Modification) or any third party that performs over fifteen percent (15%) of the features of the IntelliCAD Base Software.

**“Consortium Web Site”** means a point of presence maintained by or for the Consortium on the World Wide Web, under the URL specified in writing to Commercial Member by the Consortium from time to time.

**“Derivative Work”** means a work that is based upon one or more pre-existing works, such as a revision, compilation, modification, translation, abridgment, condensation, expansion, or any other form in which such a pre-existing work may be recast, transformed, or adapted, and that, if prepared without authorization by the owner of the pre-existing work, would constitute a copyright infringement.

**“Documentation”** means documentation for the IntelliCAD Base Software and/or ArchT Software, in electronic format only and only as contained in on-line help for the IntelliCAD Base Software and/or ArchT Software, together with such additions, enhancements, modifications, updates, upgrades or successors thereto as the Consortium may, in its sole discretion, make available to members of the Consortium from time to time.

**“End User”** means the person or entity that installs and uses the IntelliCAD Base Software and/or ArchT Software (whether alone or as part of a Member Application) which it has received from Commercial Member or Reseller.

**“Enhancement”** means any software code developed by or for Commercial Member which does not constitute a Modification, but which is designed to run in conjunction with or to add new functionality to the IntelliCAD Base Software, the ArchT Software or any Modification that is not identified in the software’s specification. Enhancements may include, by way of example and not limitation, localized resource files or user interfaces for use with the IntelliCAD Base Software and/or ArchT Software.

**“IntelliCAD Base Software”** means the CAD software program or routines known as IntelliCAD as developed, licensed and delivered by the Consortium to Commercial Member, together with all additions, enhancements, modifications, updates, upgrades and successors thereto which the Consortium may, in its sole discretion, make available to members of the Consortium from time to time.

**“IntelliCAD Licensed Materials”** means: (a) the IntelliCAD Base Software; (b) the Documentation, (c) sample applications (including the ArchT Software), installers, fonts, hatch files, drawings, templates, components, libraries, or routines (including all additions, enhancements, modifications, updates, upgrades and successors thereto) as developed, licensed and delivered by the Consortium to the Commercial Member from time to time; and (d) the Marks.

**“Marks”** means any trademarks, service marks, service or trade names, logos, and other designations of the ITC including but not limited to the trademarks set forth on Exhibit A.

**“Member Application”** means any software application developed or distributed by or for Commercial Member, which is combined with or derived from the IntelliCAD Base Software and/or ArchT Software, or any portion thereof, as defined in this Agreement (including, but not limited to, Derivative Works).

**“Member Web Site”** means a point of presence maintained by or for Commercial Member on the World Wide Web, under the URL specified in writing to the Consortium by Commercial Member from time to time including, but not limited, to those URLs specified in writing to the Consortium by Commercial Member from time to time.

**“Modification”** means any addition to or deletion from the substance or structure of the IntelliCAD Base Software, the ArchT Software, or any previous Modification. A Modification includes, without limitation:

(a) any addition to or deletion from the contents of a file (source or binary) contained within the IntelliCAD Base Software, the ArchT Software, or any previous Modification;

(b) any new file that contains any part of the IntelliCAD Base Software, the ArchT Software, or any previous Modification or that provides the same functionality as the IntelliCAD Base Software, the ArchT Software, or any previous Modification;

(c) any updates to the IntelliCAD Base Software, the ArchT Software, or any previous Modifications; or

(d) any translation (including compilation or recapitulation by Commercial Member) of the IntelliCAD Licensed Materials into a different spoken language.

**“OEM copy of IntelliCAD”** means any portion of IntelliCAD binaries included in any product under a brand name different from a brand owned and published by the IntelliCAD Commercial Member on The IntelliCAD Technology Consortium website, and sold to a third party who in turn develop additional functionality.

**“Potential Member”** means any individual or entity which has applied for membership in the Consortium prior to acceptance as a member in the Consortium. Until acceptance of this Agreement by the Consortium, Commercial Member shall be a Potential Member.

**“Qualified Modification”** means any Modification to the IntelliCAD Base Software that (a) improves the speed of any command, feature, function or other attribute of the IntelliCAD Base Software, or (b) is identified as a command, feature, function or other attribute described in the specification of the current release of AutoCAD dating two releases back from the current release of AutoCAD. This applies only to IntelliCAD Base Software based on IntelliCAD 7.0 and later versions.

**“Reseller”** means any Reseller of the Commercial Member that sells existing manufactured copies (in object code) of the IntelliCAD Base Software, the ArchT Software, any Modification and/or Member Application to End Users.

**“Rules”** means the bylaws, policies, procedures, plans, Membership Rules and determinations made by the Consortium, its Board of Directors or committees thereof (as such may be amended, revised or supplemented from time to time).

## 2. Commercial Member's Rights.

### 2.1 Commercial Membership.

**2.1.1 Classification.** Subject to the terms and conditions of this Agreement, Commercial Member will have, and will be entitled to exercise, all rights of a "Commercial Member" of the Consortium; as such rights are specified from time to time in the bylaws and Rules of the Consortium.

**2.1.2 Eligibility; Acceptance.** Signature and submittal of this Agreement by a Potential Member is considered application for membership in the Consortium. The Consortium will evaluate the Agreement in good faith and will notify the Potential Member of acceptance or rejection. The Consortium may reject the application in its sole discretion. If the Consortium rejects the application, Potential Member is welcome to reapply at any time. The terms of this Agreement shall become effective upon the date of this Agreement mentioned above.

### 2.2 Limited License Grant.

**2.2.1 General.** Promptly after the Commercial Member and the Consortium have both signed this Agreement, the Consortium will provide Commercial Member access to the IntelliCAD Licensed Materials. Subject to the terms and conditions of this Agreement and the Membership Rules, the Consortium hereby grants to Commercial Member a limited, nonexclusive license for the term of the Agreement to:

(a) use, reproduce, modify and create Derivative Works of the IntelliCAD Base Software and/or ArchT Software, in both source code and object code form, solely for the Commercial Member's purposes of developing, modifying or supporting Member Applications, for the term of the Commercial Membership;

(b) reproduce, distribute (directly or indirectly) and sublicense the IntelliCAD Base Software, the ArchT Software and Derivative Works thereof to End Users, in machine readable binary form or object code only, either alone or as part of any Member Application;

(c) disclose the IntelliCAD Base Software, the ArchT Software and Derivative Works thereof (in either source code or object code form) and the Documentation to Commercial Member's contractors for the limited purpose of developing Member Applications under contract with Commercial Member; provided, that such disclosure is made pursuant to a written nondisclosure agreement that protects the IntelliCAD Base Software, the ArchT Software, Derivative Works and Documentation from further disclosure or use;

(d) use and reproduce the Marks in connection with Commercial Member's marketing, distribution and licensing of products containing or derived from the IntelliCAD Base Software and/or ArchT Software, subject to those guidelines and restrictions on use which the Consortium may adopt from time to time; and

(e) use, reproduce, modify, create Derivative Works of, and distribute the Documentation in connection with the distribution of Member Applications.

## 2.3 Restrictions.

**2.3.1 Ownership.** The IntelliCAD Licensed Materials are owned by the Consortium and its suppliers. The Consortium reserves all rights in the IntelliCAD Licensed Materials. Commercial Member will be the sole owner of any contribution it has made to Enhancements, Modifications or Derivative Works but will not, by virtue of preparing Enhancements, Modifications or Derivative Works, gain any rights to the underlying IntelliCAD Licensed Materials.

### 2.3.2 Sublicenses.

**2.3.2.1 Source Code.** Without limiting the generality of the foregoing, except as specifically permitted under Section 2.2.1(c), Commercial Member will not distribute, disclose or sublicense any copy of the IntelliCAD Base Software, the ArchT Software or Derivative Works thereof in source code form to any third party, including any affiliate of the Commercial Member.

**2.3.2.2 Sublicense Agreements.** Pursuant to Section 2.2.1(b), any sublicenses of the IntelliCAD Base Software, the ArchT Software or Derivative Works thereof to an End User (whether alone or as part of the Member Application) must be pursuant to a written license agreement. Commercial Member shall ensure that the terms and conditions of any such agreements (a) contain provisions specifically enforcing the relevant terms of this Agreement with respect to End Users, (b) are at least as protective of the Consortium's rights in the IntelliCAD Licensed Materials as is this Agreement, and (c) are consistent with the obligations, responsibilities, and restrictions set forth in this Agreement, including the Rules.

**2.3.3 Resellers.** Unless otherwise authorized by the Consortium in writing, a Reseller may only distribute copies of the IntelliCAD Base Software, the ArchT Software or Derivative Works thereof (whether alone or as part of a Member Application) to End Users directly by sale to End Users. No Reseller shall have any right to sublicense the IntelliCAD Base Software, the ArchT Software, Derivative Works or Member Application to another Reseller. Commercial Member shall not permit any Reseller to rename or repackage the IntelliCAD Base Software, the ArchT Software, Derivative Works or Member Application. Resellers must be supplied with finite inventory and under no circumstances shall Commercial Member grant any license rights to the IntelliCAD Base Software, the ArchT Software or Derivative Works to any Reseller (whether alone or as part of a Member Application).

**2.3.3.1 Support.** Commercial Member shall be solely responsible for providing customer support and follow-up service and advice to its Resellers and any End Users with respect to the IntelliCAD Base Software, the ArchT Software, Derivative Works or any Member Application. The Consortium shall have no obligation to provide customer or technical support to any Reseller or End User under this Agreement.

**2.3.4 Rules; Changes.** Commercial Member agrees that all use of the IntelliCAD Licensed Materials and Derivative Works pursuant to the licenses granted in Section 2.2.1 shall be in accordance with the Rules as modified from time to time. The Consortium reserves the right to modify the Rules at any time upon thirty (30) days prior written notice to Commercial Member.

If Commercial Member does not agree to such modifications, it may reject them by notifying the Consortium in writing within the thirty-day notice period of such rejection. Any such rejection shall be deemed to be a notice of termination by Commercial Member pursuant to Section 5. If Commercial Member fails to notify the Consortium of its rejection within the thirty-day notice period, Commercial Member shall be deemed to have accepted the modifications and shall be bound to comply with them upon the expiration of the notice period. In the event that Commercial Member does not agree to any amendments to the Membership Rules and Policies by the Consortium, Commercial Member's sole remedy is to terminate this Agreement.

**2.3.5 No Combination with Competing CAD Software.** Neither Commercial Member nor any of its Resellers may combine, merge, integrate, compile or otherwise bundle the IntelliCAD Base Software, the ArchT Software, Derivative Works thereof or any Modification with any Competing CAD Software. Without limiting the foregoing, Commercial Member may not use the IntelliCAD Base Software, the ArchT Software, Derivative Works thereof or any Modification to create a hybrid version of the IntelliCAD Base Software by combining it with any Competing CAD Software.

### **3. Commercial Member's Covenants and Obligations.**

**3.1 License from Commercial Member to Consortium.** Commercial Member acknowledges that the intent of the Consortium is to promote the IntelliCAD Base Software platform as a shared-development, industry-standard CAD platform by obtaining and sharing information and knowledge regarding the same. Should Commercial Member have any actual or potential conflicts of interest with the Consortium, including but not limited to, competing products, or future products that may compete with the Consortium, the Commercial Member shall immediately disclose such conflict to the Consortium.

**3.1.1 License of Bug Fixes and Qualified Modifications.** Accordingly, Commercial Member will disclose and deliver to the Consortium all Bug Fixes and Qualified Modifications it obtains, discovers, or develops to the IntelliCAD and ArchT Licensed Materials, in source code form within thirty (30) days following receipt of written notice by the Consortium. Commercial Member hereby grants the Consortium a nonexclusive, fully-paid, irrevocable, royalty-free license to reproduce, distribute, perform, publicly display, and otherwise exploit all Bug Fixes and Qualified Modifications delivered or disclosed to the Consortium pursuant to this Section 3.1, and to sublicense the foregoing rights (including, without limitation, to other members of the Consortium or any successor thereto).

**3.1.2 License to Modifications and Enhancements.** The Consortium and Commercial Member may enter into negotiations for the Consortium to license from Commercial Member its Modifications and Enhancements of the IntelliCAD Base Software; however, regardless of negotiations, Commercial Member hereby grants to the Consortium a nonexclusive, fully-paid, irrevocable, royalty-free license to reverse engineer and, thereafter, reproduce, distribute, perform, publicly display, create derivative works of and otherwise exploit all such reverse engineered Modifications and Enhancements of the IntelliCAD Base Software, but only to the extent of such members' rights in the IntelliCAD Base Software under their respective member agreements. With respect to the ArchT Software, Commercial Member will disclose and deliver to the Consortium all Modifications and Enhancements of the ArchT Software, in source code

form. Commercial Member hereby grants the Consortium a nonexclusive, fully-paid, irrevocable, royalty-free license to reproduce, distribute, perform, publicly display, and otherwise exploit all Modifications and Enhancements of the ArchT Software delivered or disclosed to the Consortium pursuant to this Section 3.1, and to sublicense the foregoing rights (including, without limitation, to other members of the Consortium or any successor thereto). Nothing in this Section shall be construed to grant to the Consortium any right, title or interest in or to Member Applications (except to the extent the same constitute Modifications or Enhancements) developed by Commercial Member.

**3.2 Bylaws, Rules and Policies.** Commercial Member will perform its obligations as a member of the Consortium and comply with the Rules with respect to all matters concerning the responsibilities and authority delegated by the members to the Consortium, as set forth in the articles of incorporation, the bylaws, or the Rules of the Consortium (as such may be modified from time to time) or as otherwise disclosed to Commercial Member by the Consortium.

**3.3 Payment of Dues, Fees, and Assessments.** Commercial Member will pay, in accordance with this Agreement and the Rules, all dues, fees and assessments imposed or levied by the Consortium upon its members. Without limiting the generality of the foregoing, the Board of Directors of the Consortium is authorized to determine whether or not the Consortium will require regular dues or special assessments from its members and the amount of any such dues. The fees, dues and assessments payable by Commercial Member under this Agreement will be paid at such times as are determined by the Consortium. All amounts will be due and payable in United States dollar currency within thirty (30) days from the date set by the Consortium for payment. All dues, fees and assessments imposed or levied by the Consortium are nonrefundable and may not be prorated, but credit for such amounts may be transferred or assigned in accordance with Section 9.2.

**3.3.1 Transferable Dues.** A Commercial Member providing OEM ITC Intellectual Property based products to a terminated Commercial Member, shall be fully accountable for the terminated Commercial Member's unpaid dues. Upon notice, dues shall be transferred and paid by the Commercial Member within thirty (30) days from the date of notice.

**3.4 Use of Commercial Member's Name and Mark.** Commercial Member hereby grants the Consortium permission to use and reproduce Commercial Member's name and logo to identify Commercial Member as a member of the Consortium in connection with promotional and marketing activities of the Consortium. The Consortium will comply with all reasonable trademark guidelines of Commercial Member in connection with any such use of the logo as the same are provided to the Consortium in writing. Commercial Member releases and discharges the Consortium, and its agents and contractors, from any damages or liability to Commercial Member arising out of the Consortium's use of Commercial Member's name and/or logo including, but not limited to, placement of Commercial Member's name and/or logo on the Consortium Web Site (or the failure to do the same) and from any other liability arising out or related to the links between the Consortium Web Site and the Member Web Site.

**3.5 Records and Audit.** Commercial Member shall maintain complete and accurate records relating to Commercial Member's use of the IntelliCAD Licensed Materials, including without limitation, copies of all agreements relating to the disclosure of the IntelliCAD Base Software and/or ArchT Software including agreements with Resellers. Commercial Member shall

permit the Consortium or its independent auditors to access, inspect, review and copy such records (including, but not limited to, any IntelliCAD Base Software and/or ArchT Software in source code form as maintained by Commercial Member) upon the Consortium's request, to determine Commercial Member's compliance with this Agreement.

From time to time, the Consortium may audit Commercial Member's use of the IntelliCAD Licensed Materials to ensure that they are not used to create or improve a competitive CAD platform. Thus, before, during, and/or after termination of Commercial Member's membership, the following – though the Consortium may require additional procedures – shall be the procedure for accessing, inspecting, auditing, and reviewing Commercial Member's compliance with the terms of this Agreement and Rules.

**3.5.1** The Consortium shall set out the specific information sought, which may include whatever information the Consortium deems necessary in its sole and absolute discretion.

**3.5.2** The Commercial Member shall make available the specific information sought, including source code, for viewing by the Consortium at a location chosen by the Consortium, including, but not limited to, the software repository or repositories for Commercial Member's applicable software program. This viewing shall be done as directed by the Consortium and conducted in English and shall include metadata that shows dates when changes were made, what programs or files were changed, who made the changes, and any associated check-in comments. The Consortium may identify revisions of the software from the software repository for further analysis and the metadata mentioned above will be produced.

**3.5.3** As part of the viewing mentioned above, the Commercial Member will generate an authentication check value for the software revisions identified by the Consortium for further analysis. This generation will be performed by Commercial Member generating an MD5 hash value for each of the software revisions and for each file within each such revision identified by the Consortium for further analysis. The Commercial Member will immediately provide the MD5 hash values to the Consortium as part of the viewing mentioned above. For avoidance of doubt, the performance of this subsection will be performed within full view of the Consortium as part of the viewing mentioned above.

**3.5.4** The inspection and/or audit shall be conducted using source code analysis tools selected by the Consortium upon specified source code installed on a machine and at a location identified by the Consortium. To ensure the Consortium's ability to conduct an audit, Commercial Member shall provide to the Consortium the compiler version, build scripts, configuration options, build output, and all know how in order for the Consortium to create a successful build in English.

#### **4. Acknowledgments and Representations.**

**4.1 No Ownership Interest.** All amounts paid by or on behalf of Commercial Member to the Consortium will constitute dues, fees or assessments related to membership in the Consortium and will not be deemed to be an investment or purchase of any ownership interest in the Consortium.



**4.2 Representations.** Commercial Member represents and warrants to the Consortium that:

(a) the principal office of Commercial Member is at the address shown under the signature of Commercial Member's authorized representative at the bottom of this Agreement;

(b) Commercial Member has been duly authorized to enter into this Agreement;  
and

(c) Commercial Member has received and reviewed the Rules, articles of incorporation and bylaws of the Consortium and understands its duties and obligations associated with membership in the Consortium.

**4.3 Acknowledgments.** Commercial Member acknowledges that, prior to the execution of this Agreement, it has had the opportunity to ask questions of and receive answers or obtain additional information from a representative of the Consortium concerning the financial and other affairs of the Consortium and the duties and obligations associated with being a member of the Consortium, and, to the extent it believes necessary in light of its knowledge of the Consortium's affairs, it has asked such questions and received satisfactory answers. Commercial Member has carefully read this Agreement and, to the extent it believes necessary, it has discussed with its counsel and representatives of the Consortium the representations, warranties and agreements which it makes by signing this Agreement.

## **5. Termination and Suspension of Commercial Membership or Services; Dissolution; Merger.**

**5.1 Term.** This Agreement shall remain in full force and effect until terminated by either party.

**5.2 Termination by Commercial Member.** Commercial Member may terminate its membership in the Consortium and its obligations under this Agreement effective thirty (30) days following receipt of written notice by the Board of Directors of the Consortium; provided, however, that such termination will not relieve Commercial Member of any liabilities or obligations incurred prior to the effective date of termination. Commercial Member's membership automatically terminates upon the voluntary or involuntary dissolution of the Consortium.

**5.3 Termination or Suspension by Consortium.** The Consortium may terminate or suspend this Agreement and Commercial Member's membership in the Consortium if Commercial Member fails to adhere to any Rules approved by the Consortium, breaches any material provision of this Agreement (including, without limitation, Sections 2.2, 2.3 and 3.1) or fails to pay any dues, fees, assessments, or other amounts payable to the Consortium within thirty (30) days following the date due, and further fails to remedy such nonperformance, noncompliance or nonpayment within thirty (30) days following receipt of notice from the Consortium. The Consortium's right to terminate Commercial Member's membership in the Consortium is in addition to any other rights and remedies that may be available to the Consortium, whether at law, in equity, as set forth in the Rules, or otherwise, including, but not limited to, bringing suit and seeking declaratory relief.

## 5.4 Effect of Termination.

**5.4.1 Termination of License Rights.** Upon any termination of Commercial Member's membership in the Consortium for any reason, this Agreement and all rights granted to Commercial Member hereunder will immediately terminate. In the event that this Agreement is terminated, Commercial Member and its Resellers shall withdraw all inventories of the IntelliCAD Licensed Materials or any Member Application within ninety (90) days from the effective date of termination (the "*Transition Period*"). Any inventory remaining after the Transition Period must be destroyed at the Commercial Member's sole cost. All IntelliCAD Base Software and ArchT Software source files must be destroyed immediately upon termination at the Commercial Member's sole cost and Commercial Member shall certify such destruction to the Consortium within ten (10) days of the effective date of termination.

**5.4.2 Survival and Inspection.** Sections 2.3, 3.1, 5.4, 6, 7, 8 and 9 (together with such other provisions which reasonably can be construed as surviving termination) will survive any termination of this Agreement. Notwithstanding the foregoing or anything else to the contrary in this Agreement, the termination of Commercial Member's membership in the Consortium shall not operate to terminate any sublicenses of the IntelliCAD Licensed Materials granted by Commercial Member to End Users, if such sublicenses are otherwise in accordance with this Agreement. Upon termination of Commercial Member's membership, for a period of three years effective on the date of the termination, Commercial Member will make its premises and needed records available for inspection and audit by the Consortium, or its authorized agents, as specified in Section 3.5.

**5.4.3 Dissolution or Merger.** Commercial Member's membership in the Consortium automatically terminates, without notice, upon the merger or voluntary or involuntary dissolution of the Consortium. Notwithstanding the foregoing, no acquisition of the Consortium, voluntary or involuntary dissolution of the Consortium, or merger of the Consortium with or into another entity shall terminate, interfere with or modify the license rights granted Commercial Member under Section 2.2 with respect to IntelliCAD Licensed Materials, Enhancements, Modifications, and Derivative Works, which license rights shall automatically become paid-up, irrevocable, and non-sublicensable; provided, however, that this Section 5.4.3 shall only apply if and so long as Commercial 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.

## 6. Warranty Disclaimer; Indemnification.

**6.1 Commercial Member Warranty.** Commercial Member warrants that Member Applications, the Member Web Site, Modifications, and any Derivative Works developed by or for Commercial Member, do not and will not infringe, misappropriate or otherwise violate any third party copyright, patent or other intellectual property right of any kind.

**6.2 IntelliCAD Disclaimer.** THE INTELICAD LICENSED MATERIALS ARE PROVIDED TO COMMERCIAL MEMBER "AS IS" AND WITH ALL BUGS, DEFECTS, ERRORS, DEFICIENCIES AND FAULTS. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, THE CONSORTIUM HEREBY DISCLAIMS AND COMMERCIAL MEMBER HEREBY WAIVES

ANY AND ALL WARRANTIES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, 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 OR IMPLIED WARRANTY OF QUIET ENJOYMENT.

## **7. Limitations of Liability.**

**7.1 No Fiduciary Capacity.** COMMERCIAL MEMBER AGREES THAT IN EXERCISING ITS RIGHTS AND AUTHORITY UNDER THIS AGREEMENT OR THE RULES, NEITHER THE CONSORTIUM OR ANY MEMBER OR AGENT ACTING AT THE REQUEST OR ON BEHALF OF THE CONSORTIUM, OR THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS, WILL, BY VIRTUE OF THIS AGREEMENT OR THE ARRANGEMENTS DESCRIBED HEREIN, HAVE ANY FIDUCIARY OBLIGATION TO COMMERCIAL MEMBER OR ANY OF ITS AFFILIATES.

**7.2 No Consequential.** IN NO EVENT WILL THE CONSORTIUM OR ANY MEMBER OR AGENT ACTING AT THE REQUEST OR ON BEHALF OF THE CONSORTIUM, OR THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS, BE LIABLE TO COMMERCIAL MEMBER FOR ANY DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, PUNITIVE OR OTHER SIMILAR DAMAGES, ARISING FROM BREACH OF THIS AGREEMENT, THE ACTIVITIES UNDERTAKEN BY THE CONSORTIUM, ANY ITEMS OR MATERIALS FURNISHED PURSUANT TO THIS AGREEMENT, ANY USE OF OR INABILITY TO USE THE INTELICAD LICENSED MATERIALS, OR THE PROVISION OF OR FAILURE TO PROVIDE SUPPORT SERVICES, WHETHER ARISING IN CONTRACT, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE), STRICT LIABILITY, EQUITY OR OTHERWISE, EVEN IF THE CONSORTIUM WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING WILL NOT RELIEVE THE CONSORTIUM OR ANY OF ITS MEMBERS FROM LIABILITY FOR ANY WILLFUL MISCONDUCT OR ANY BREACH OF AN OBLIGATION OF CONFIDENTIALITY.

**7.3 Third-Party Beneficiaries.** The limitations set forth in this Section 7 will inure to the benefit of all past, present or future members or agents of the Consortium acting at the request or on behalf of the Consortium, and their respective officers, directors, employees, attorneys and agents, each being an intended third-party beneficiary of the provisions of Section 7 of this Agreement.

## **8. Indemnification.**

Commercial Member releases and will defend, indemnify and hold harmless the Consortium and all other past, present or future members from and against any and all claims, losses, damages, liens, liabilities, costs and expenses (including, but not limited to, reasonable attorneys' fees) arising out of or in connection with:

(a) Commercial Member's use or modification of the IntelliCAD Licensed Materials, and

(b) any sale or other distribution of any of the IntelliCAD Licensed Materials, Derivative Work, or any Member Application by, through or under Commercial Member, or (c)

any breach of the warranty set forth in Section 6.1. This Section 8 will apply to the fullest extent permitted by applicable law, regardless of the fault, negligence or strict liability of the Consortium.

## 9. Remedies.

Commercial Member acknowledges and agrees that the following legal remedies, among others, are available to the Consortium for breach of this Agreement, Rules, and/or Bylaws by Commercial Member:

**9.1** If after completion of an audit pursuant to Section 3.5, upon finding any IntelliCAD Licensed Materials, the Consortium will immediately provide notice to Commercial Member. Upon receipt of such notice, Commercial Member will acknowledge the receipt, cease selling or using the IntelliCAD Licensed Materials and indicate the number of days needed to remedy the noncompliance and use its best efforts to remedy the noncompliance. If Commercial Member disputes the Consortium's audit finding, it will immediately provide notice to the Consortium of its dispute and shall propose to engage an independent third party, at Commercial Member's expense, to audit the disputed material and to verify Commercial Member's compliance with the terms of this Agreement. The independent third party shall be chosen and appointed by the Consortium. If IntelliCAD Licensed Materials are identified during said audit, a reasonable monetary penalty, as determined by the Consortium, shall be assessed to Commercial Member.

## 10. General Provisions.

**10.1 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 earliest of (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 Consortium:	The IntelliCAD Technology Consortium 10260 SW Greenburg Road, Suite 400 Portland, OR 97223
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If to Commercial Member:	at the address, email address, telephone and facsimile numbers set forth below.
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Either Commercial Member or the Consortium 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. Commercial Member agrees that the Consortium may effectuate legal service of process upon Commercial Member via electronic mail or facsimile, and Commercial Member waives any objection it could raise to service by such means.

**10.2 Assignment.** Subject to any limitations set forth in the bylaws of the Consortium, Commercial Member will be entitled to assign its rights and obligations under this Agreement to any affiliated corporation or other business entity and to any successor, by sale, merger or other

business combination, to all or substantially all of its business and assets, provided the successor assumes all obligations of Commercial Member under this Agreement and agrees in writing to be bound hereby.

**10.3 Nonwaiver.** No delay or omission by any 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 of the parties hereto of any of the covenants to be performed by the other or any breach thereof will not be construed as a waiver of any succeeding breach thereof or of any other covenant herein contained.

**10.4 Severability.** If any provision of this Agreement 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 Agreement will in no way be affected or impaired thereby.

**10.5 Dispute Resolution.** All disputes between the parties of any kind, including, but not limited to, those arising out of or related to this Agreement, whether involving theories of tort, contract, or violation of statutory laws (“Claims”) are subject to the following provisions:

**10.5.1 Arbitration.** Except as to actions, suits, or proceedings commenced or maintained by persons not parties hereto, any party may elect to have any Claim be determined by binding arbitration. The election shall be made by written notice. Unless the parties otherwise agree in writing, the arbitration shall be conducted in Portland, Oregon before a single arbitrator and in accordance with the commercial arbitration rules of the Arbitration Service of Portland, Inc. If the parties are unable to agree on an arbitrator within 14 days of an election to arbitrate, the arbitrator shall be appointed in accordance with the procedures set forth in ORS Chapter 36. The arbitrator shall issue an award within 30 days of conclusion of the hearing. The award of the arbitrator shall be final and binding. Judgment on any arbitration award may be entered in any court with jurisdiction.

**10.5.2 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 and has assumed to determine the Claim. Thereafter the arbitrator may issue, continue, or terminate provisional relief or may permit a party to pursue provisional relief in court.

**10.5.3 Applicable Law; Jurisdiction and Venue.** All disputes between the parties, including, but not limited to, those interpreting, construing, or enforcing this Agreement will be decided in accordance with the laws of the State of Oregon without reference to its choice of law rules. All disputes between the parties shall be brought and maintained in Portland, Oregon. Each party consents to personal jurisdiction in Oregon and waives any right to seek a change of venue or dismissal for lack of personal jurisdiction.

**10.5.4 Costs and Attorney Fees.** The prevailing party in any disputes between the parties, 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.

**10.6 UCC.** The rights and obligations of the parties under this Agreement shall not be governed by the provisions of the 1980 U.N. Convention on Contract for the International Sale of Goods; rather, these rights and obligations shall be governed by the laws of the State of Oregon, U.S.A., including its applicable provisions of the Uniform Commercial Code.

**10.7 Amendments.** This Agreement may not be modified or amended by Commercial Member except by written instrument duly executed by an authorized representative of each party. This Agreement may be amended by the Consortium at any time upon sixty (60) days prior written notice to Commercial Member. If Commercial Member does not agree to the amendment, it may reject the amendment by notifying the Consortium in writing within the sixty-day notice period. Any such rejection shall be deemed to be a notice of termination by Commercial Member pursuant to Section 5.2. If Commercial Member fails to notify the Consortium of its rejection with the sixty-day notice period, Commercial Member shall be deemed to have accepted the amendment and shall be bound to comply with it upon the expiration of the notice period. In the event that Commercial Member does not agree to any amendment of the Consortium, Commercial Member's sole remedy is to terminate this Agreement pursuant to Section 5.2.

**10.8 Entire Agreement.** Subject to the Rules, this Agreement sets forth the entire agreement, and supersedes any and all prior written and oral representations and agreements between the parties with respect to the subject matter hereof. Any attempted or purported amendment, modification or waiver that does not comply with this requirement 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 or hereafter in effect, the terms and conditions of this Agreement will govern and control.

*[REST OF PAGE INTENTIONALLY LEFT BLANK]*

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorized representatives as of the date indicated above as being accepted on behalf of the Consortium.

**Commercial Member:** \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Print Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Telephone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

Website: \_\_\_\_\_

Executive Management Contact Email:

\_\_\_\_\_

**Agreed and Accepted on behalf of:**

**The IntelliCAD Technology Consortium**

By: \_\_\_\_\_

Officer: President

Print Name: David Lorenzo

**EXHIBIT A**

**Marks**

IntelliCAD

IntelliCAD “i” logo

ArchT

ArchT logo



1/1/2013

**THE INTELICAD TECHNOLOGY CONSORTIUM  
COMMERCIAL MEMBERSHIP AGREEMENT**

This Agreement, effective as of July 30, 2011, is made and entered into by and between The IntelliCAD Technology Consortium, a Washington State non-profit corporation (the "*Consortium*"), and the person or entity named at the end of this document (the "*Commercial Member*").

**RECITALS**

A. The Consortium has been organized and established to promote the IntelliCAD computer aided design ("*CAD*") software platform as an industry-standard platform for computer aided design. The Consortium also makes ArchT, an architectural add-on, available as a sample application to commercial members which facilitates the creation of architectural drawings with IntelliCAD.

B. Commercial Member desires to become a member of the Consortium to obtain the necessary rights to commercially exploit and distribute the IntelliCAD software, upon the terms and subject to the conditions set forth in this Agreement. The ArchT software is also made available to the Commercial Member as a sample application pursuant to the terms and conditions of this Agreement.

**AGREEMENT**

Accordingly, the Consortium and Commercial Member agree as follows:

**1. Definitions.**

Whenever used in this Agreement with initial letters capitalized, the following terms shall have the following specified meanings:

**"ArchT Software"** means the computer software program or routines known as ArchT as developed, licensed and delivered by the Consortium to Commercial Member, together with all additions, enhancements, modifications, updates, upgrades and successors thereto which the Consortium may, in its sole discretion, make available to members of the Consortium from time to time.

**"Bug Fix"** means any bug fix or patch that resolves an element of the IntelliCAD Base Software and/or ArchT Software that does not perform according to its specification.

**"Competing CAD Software"** means any CAD software application (whether in object or source code) of Commercial Member (other than a Member Application or Modification) or any third party that performs over fifteen percent (15%) of the features of the IntelliCAD Base Software.

**“Consortium Web Site”** means a point of presence maintained by or for the Consortium on the World Wide Web, under the URL specified in writing to Commercial Member by the Consortium from time to time.

**“Derivative Work”** means a work that is based upon one or more pre-existing works, such as a revision, compilation, modification, translation, abridgment, condensation, expansion, or any other form in which such a pre-existing work may be recast, transformed, or adapted, and that, if prepared without authorization by the owner of the pre-existing work, would constitute a copyright infringement.

**“Documentation”** means documentation for the IntelliCAD Base Software and/or ArchT Software, in electronic format only and only as contained in on-line help for the IntelliCAD Base Software and/or ArchT Software, together with such additions, enhancements, modifications, updates, upgrades or successors thereto as the Consortium may, in its sole discretion, make available to members of the Consortium from time to time.

**“End User”** means the person or entity that installs and uses the IntelliCAD Base Software and/or ArchT Software (whether alone or as part of a Member Application) which it has received from Commercial Member or Reseller.

**“Enhancement”** means any software code developed by or for Commercial Member which does not constitute a Modification, but which is designed to run in conjunction with or to add new functionality to the IntelliCAD Base Software, the ArchT Software or any Modification that is not identified in the software’s specification. Enhancements may include, by way of example and not limitation, localized resource files or user interfaces for use with the IntelliCAD Base Software and/or ArchT Software.

**“IntelliCAD Base Software”** means the CAD software program or routines known as IntelliCAD as developed, licensed and delivered by the Consortium to Commercial Member, together with all additions, enhancements, modifications, updates, upgrades and successors thereto which the Consortium may, in its sole discretion, make available to members of the Consortium from time to time.

**“IntelliCAD Licensed Materials”** means: (a) the IntelliCAD Base Software; (b) the Documentation, (c) sample applications (including the ArchT Software), installers, fonts, hatch files, drawings, templates, components, libraries, or routines (including all additions, enhancements, modifications, updates, upgrades and successors thereto) as developed, licensed and delivered by the Consortium to the Commercial Member from time to time; and (d) the Marks.

**“Marks”** means any trademarks, service marks, service or trade names, logos, and other designations of the ITC including but not limited to the trademarks set forth on Exhibit A.

**“Member Application”** means any software application developed or distributed by or for Commercial Member, which is combined with or derived from the IntelliCAD Base Software and/or ArchT Software, or any portion thereof, as defined in this Agreement (including, but not limited to, Derivative Works).

**“Member Web Site”** means a point of presence maintained by or for Commercial Member on the World Wide Web, under the URL specified in writing to the Consortium by Commercial Member from time to time including, but not limited, to those URLs specified in writing to the Consortium by Commercial Member from time to time.

**“Modification”** means any addition to or deletion from the substance or structure of the IntelliCAD Base Software, the ArchT Software, or any previous Modification. A Modification includes, without limitation:

(a) any addition to or deletion from the contents of a file (source or binary) contained within the IntelliCAD Base Software, the ArchT Software, or any previous Modification;

(b) any new file that contains any part of the IntelliCAD Base Software, the ArchT Software, or any previous Modification or that provides the same functionality as the IntelliCAD Base Software, the ArchT Software, or any previous Modification;

(c) any updates to the IntelliCAD Base Software, the ArchT Software, or any previous Modifications; or

(d) any translation (including compilation or recapitulation by Commercial Member) of the IntelliCAD Licensed Materials into a different spoken language.

**“OEM copy of IntelliCAD”** means any portion of IntelliCAD binaries included in any product under a brand name different from a brand owned and published by the IntelliCAD Commercial Member on The IntelliCAD Technology Consortium website, and sold to a third party who in turn develop additional functionality.

**“Potential Member”** means any individual or entity which has applied for membership in the Consortium prior to acceptance as a member in the Consortium. Until acceptance of this Agreement by the Consortium, Commercial Member shall be a Potential Member.

**“Qualified Modification”** means any Modification to the IntelliCAD Base Software that (a) improves the speed of any command, feature, function or other attribute of the IntelliCAD Base Software, or (b) is identified as a command, feature, function or other attribute described in the specification of the current release of AutoCAD dating two releases back from the current release of AutoCAD. This applies only to IntelliCAD Base Software based on IntelliCAD 7.0 and later versions.

**“Reseller”** means any Reseller of the Commercial Member that sells existing manufactured copies (in object code) of the IntelliCAD Base Software, the ArchT Software, any Modification and/or Member Application to End Users.

**“Rules”** means the bylaws, policies, procedures, plans, Membership Rules and determinations made by the Consortium, its Board of Directors or committees thereof (as such may be amended, revised or supplemented from time to time).

**2. Commercial Member's Rights.**

**2.1 Commercial Membership.**

**2.1.1 Classification.** Subject to the terms and conditions of this Agreement, Commercial Member will have, and will be entitled to exercise, all rights of a "Commercial Member" of the Consortium; as such rights are specified from time to time in the bylaws and Rules of the Consortium.

**2.1.2 Eligibility; Acceptance.** Signature and submittal of this Agreement by a Potential Member is considered application for membership in the Consortium. The Consortium will evaluate the Agreement in good faith and will notify the Potential Member of acceptance or rejection. The Consortium may reject the application in its sole discretion. If the Consortium rejects the application, Potential Member is welcome to reapply at any time. The terms of this Agreement shall become effective upon the date of this Agreement mentioned above.

**2.2 Limited License Grant.**

**2.2.1 General.** Promptly after the Commercial Member and the Consortium have both signed this Agreement, the Consortium will provide Commercial Member access to the IntelliCAD Licensed Materials. Subject to the terms and conditions of this Agreement and the Membership Rules, the Consortium hereby grants to Commercial Member a limited, nonexclusive license for the term of the Agreement to:

(a) use, reproduce, modify and create Derivative Works of the IntelliCAD Base Software and/or ArchT Software, in both source code and object code form, solely for the Commercial Member's purposes of developing, modifying or supporting Member Applications, for the term of the Commercial Membership;

(b) reproduce, distribute (directly or indirectly) and sublicense the IntelliCAD Base Software, the ArchT Software and Derivative Works thereof to End Users, in machine readable binary form or object code only, either alone or as part of any Member Application;

(c) disclose the IntelliCAD Base Software, the ArchT Software and Derivative Works thereof (in either source code or object code form) and the Documentation to Commercial Member's contractors for the limited purpose of developing Member Applications under contract with Commercial Member; provided, that such disclosure is made pursuant to a written nondisclosure agreement that protects the IntelliCAD Base Software, the ArchT Software, Derivative Works and Documentation from further disclosure or use;

(d) use and reproduce the Marks in connection with Commercial Member's marketing, distribution and licensing of products containing or derived from the IntelliCAD Base Software and/or ArchT Software, subject to those guidelines and restrictions on use which the Consortium may adopt from time to time; and

(e) use, reproduce, modify, create Derivative Works of, and distribute the Documentation in connection with the distribution of Member Applications.

## **2.3 Restrictions.**

**2.3.1 Ownership.** The IntelliCAD Licensed Materials are owned by the Consortium and its suppliers. The Consortium reserves all rights in the IntelliCAD Licensed Materials. Commercial Member will be the sole owner of any contribution it has made to Enhancements, Modifications or Derivative Works but will not, by virtue of preparing Enhancements, Modifications or Derivative Works, gain any rights to the underlying IntelliCAD Licensed Materials.

### **2.3.2 Sublicenses.**

**2.3.2.1 Source Code.** Without limiting the generality of the foregoing, except as specifically permitted under Section 2.2.1(c), Commercial Member will not distribute, disclose or sublicense any copy of the IntelliCAD Base Software, the ArchT Software or Derivative Works thereof in source code form to any third party, including any affiliate of the Commercial Member.

**2.3.2.2 Sublicense Agreements.** Pursuant to Section 2.2.1(b), any sublicenses of the IntelliCAD Base Software, the ArchT Software or Derivative Works thereof to an End User (whether alone or as part of the Member Application) must be pursuant to a written license agreement. Commercial Member shall ensure that the terms and conditions of any such agreements (a) contain provisions specifically enforcing the relevant terms of this Agreement with respect to End Users, (b) are at least as protective of the Consortium's rights in the IntelliCAD Licensed Materials as is this Agreement, and (c) are consistent with the obligations, responsibilities, and restrictions set forth in this Agreement, including the Rules.

**2.3.3 Resellers.** Unless otherwise authorized by the Consortium in writing, a Reseller may only distribute copies of the IntelliCAD Base Software, the ArchT Software or Derivative Works thereof (whether alone or as part of a Member Application) to End Users directly by sale to End Users. No Reseller shall have any right to sublicense the IntelliCAD Base Software, the ArchT Software, Derivative Works or Member Application to another Reseller. Commercial Member shall not permit any Reseller to rename or repackage the IntelliCAD Base Software, the ArchT Software, Derivative Works or Member Application. Resellers must be supplied with finite inventory and under no circumstances shall Commercial Member grant any license rights to the IntelliCAD Base Software, the ArchT Software or Derivative Works to any Reseller (whether alone or as part of a Member Application).

**2.3.3.1 Support.** Commercial Member shall be solely responsible for providing customer support and follow-up service and advice to its Resellers and any End Users with respect to the IntelliCAD Base Software, the ArchT Software, Derivative Works or any Member Application. The Consortium shall have no obligation to provide customer or technical support to any Reseller or End User under this Agreement.

**2.3.4 Rules; Changes.** Commercial Member agrees that all use of the IntelliCAD Licensed Materials and Derivative Works pursuant to the licenses granted in Section 2.2.1 shall be in accordance with the Rules as modified from time to time. The Consortium reserves the right to modify the Rules at any time upon thirty (30) days prior written notice to

Commercial Member. If Commercial Member does not agree to such modifications, it may reject them by notifying the Consortium in writing within the thirty-day notice period of such rejection. Any such rejection shall be deemed to be a notice of termination by Commercial Member pursuant to Section 5. If Commercial Member fails to notify the Consortium of its rejection within the thirty-day notice period, Commercial Member shall be deemed to have accepted the modifications and shall be bound to comply with them upon the expiration of the notice period. In the event that Commercial Member does not agree to any amendments to the Membership Rules and Policies by the Consortium, Commercial Member's sole remedy is to terminate this Agreement.

**2.3.5 No Combination with Competing CAD Software.** Neither Commercial Member nor any of its Resellers may combine, merge, integrate, compile or otherwise bundle the IntelliCAD Base Software, the ArchT Software, Derivative Works thereof or any Modification with any Competing CAD Software. Without limiting the foregoing, Commercial Member may not use the IntelliCAD Base Software, the ArchT Software, Derivative Works thereof or any Modification to create a hybrid version of the IntelliCAD Base Software by combining it with any Competing CAD Software.

### **3. Commercial Member's Covenants and Obligations.**

**3.1 License from Commercial Member to Consortium.** Commercial Member acknowledges that the intent of the Consortium is to promote the IntelliCAD Base Software platform as an open, industry-standard CAD platform by obtaining and sharing information and knowledge regarding the same.

**3.1.1 License of Bug Fixes and Qualified Modifications.** Accordingly, Commercial Member will disclose and deliver to the Consortium all Bug Fixes and Qualified Modifications it obtains, discovers, or develops to the IntelliCAD and ArchT Licensed Materials, in source code form within thirty (30) days following receipt of written notice by the Consortium. Commercial Member hereby grants the Consortium a nonexclusive, fully-paid, irrevocable, royalty-free license to reproduce, distribute, perform, publicly display, and otherwise exploit all Bug Fixes and Qualified Modifications delivered or disclosed to the Consortium pursuant to this Section 3.1, and to sublicense the foregoing rights (including, without limitation, to other members of the Consortium or any successor thereto).

**3.1.2 License to Modifications and Enhancements.** The Consortium and Commercial Member may enter into negotiations for the Consortium to license from Commercial Member its Modifications and Enhancements of the IntelliCAD Base Software; however, regardless of negotiations, Commercial Member hereby grants to the Consortium a nonexclusive, fully-paid, irrevocable, royalty-free license to reverse engineer and, thereafter, reproduce, distribute, perform, publicly display, create derivative works of and otherwise exploit all such reverse engineered Modifications and Enhancements of the IntelliCAD Base Software, but only to the extent of such members' rights in the IntelliCAD Base Software under their respective member agreements. With respect to the ArchT Software, Commercial Member will disclose and deliver to the Consortium all Modifications and Enhancements of the ArchT Software, in source code form. Commercial Member hereby grants the Consortium a nonexclusive, fully-paid, irrevocable, royalty-free license to reproduce, distribute, perform,

publicly display, and otherwise exploit all Modifications and Enhancements of the ArchT Software delivered or disclosed to the Consortium pursuant to this Section 3.1, and to sublicense the foregoing rights (including, without limitation, to other members of the Consortium or any successor thereto). Nothing in this Section shall be construed to grant to the Consortium any right, title or interest in or to Member Applications (except to the extent the same constitute Modifications or Enhancements) developed by Commercial Member.

**3.2 Bylaws, Rules and Policies.** Commercial Member will perform its obligations as a member of the Consortium and comply with the Rules with respect to all matters concerning the responsibilities and authority delegated by the members to the Consortium, as set forth in the articles of incorporation, the bylaws, or the Rules of the Consortium (as such may be modified from time to time) or as otherwise disclosed to Commercial Member by the Consortium.

**3.3 Payment of Dues, Fees, and Assessments.** Commercial Member will pay, in accordance with this Agreement and the Rules, all dues, fees and assessments imposed or levied by the Consortium upon its members. Without limiting the generality of the foregoing, the Board of Directors of the Consortium is authorized to determine whether or not the Consortium will require regular dues or special assessments from its members and the amount of any such dues. The fees, dues and assessments payable by Commercial Member under this Agreement will be paid at such times as are determined by the Consortium. All amounts will be due and payable in United States dollar currency within thirty (30) days from the date set by the Consortium for payment. All dues, fees and assessments imposed or levied by the Consortium are nonrefundable and may not be prorated, but credit for such amounts may be transferred or assigned in accordance with Section 9.2.

**3.3.1 Transferable Dues.** A Commercial Member providing OEM ITC Intellectual Property based products to a terminated Commercial Member, shall be fully accountable for the terminated Commercial Member's unpaid dues. Upon notice, dues shall be transferred and paid by the Commercial Member within thirty (30) days from the date of notice.

**3.4 Use of Commercial Member's Name and Mark.** Commercial Member hereby grants the Consortium permission to use and reproduce Commercial Member's name and logo to identify Commercial Member as a member of the Consortium in connection with promotional and marketing activities of the Consortium. The Consortium will comply with all reasonable trademark guidelines of Commercial Member in connection with any such use of the logo as the same are provided to the Consortium in writing. Commercial Member releases and discharges the Consortium, and its agents and contractors, from any damages or liability to Commercial Member arising out of the Consortium's use of Commercial Member's name and/or logo including, but not limited to, placement of Commercial Member's name and/or logo on the Consortium Web Site (or the failure to do the same) and from any other liability arising out or related to the links between the Consortium Web Site and the Member Web Site.

**3.5 Records and Audit.** Commercial Member shall maintain complete and accurate records relating to Commercial Member's use of the IntelliCAD Licensed Materials, including without limitation, copies of all agreements relating to the disclosure of the IntelliCAD Base Software and/or ArchT Software including agreements with Resellers. Commercial Member

shall permit the Consortium or its independent auditors to access, review and copy such records (including, but not limited to, any IntelliCAD Base Software and/or ArchT Software in source code form as maintained by Commercial Member) upon the Consortium's reasonable request, to determine Commercial Member's compliance with this Agreement.

#### **4. Acknowledgments and Representations.**

**4.1 No Ownership Interest.** All amounts paid by or on behalf of Commercial Member to the Consortium will constitute dues, fees or assessments related to membership in the Consortium and will not be deemed to be an investment or purchase of any ownership interest in the Consortium.

**4.2 Representations.** Commercial Member represents and warrants to the Consortium that:

(a) the principal office of Commercial Member is at the address shown under the signature of Commercial Member's authorized representative at the bottom of this Agreement;

(b) Commercial Member has been duly authorized to enter into this Agreement; and

(c) Commercial Member has received and reviewed the Rules, articles of incorporation and bylaws of the Consortium and understands its duties and obligations associated with membership in the Consortium.

**4.3 Acknowledgments.** Commercial Member acknowledges that, prior to the execution of this Agreement, it has had the opportunity to ask questions of and receive answers or obtain additional information from a representative of the Consortium concerning the financial and other affairs of the Consortium and the duties and obligations associated with being a member of the Consortium, and, to the extent it believes necessary in light of its knowledge of the Consortium's affairs, it has asked such questions and received satisfactory answers. Commercial Member has carefully read this Agreement and, to the extent it believes necessary, it has discussed with its counsel and representatives of the Consortium the representations, warranties and agreements which it makes by signing this Agreement.

#### **5. Termination and Suspension of Commercial Membership or Services; Dissolution; Merger.**

**5.1 Term.** This Agreement shall remain in full force and effect until terminated by either party.

**5.2 Termination by Commercial Member.** Commercial Member may terminate its membership in the Consortium and its obligations under this Agreement effective thirty (30) days following receipt of written notice by the Board of Directors of the Consortium; provided, however, that such termination will not relieve Commercial Member of any liabilities or obligations incurred prior to the effective date of termination. Commercial Member's



membership automatically terminates upon the voluntary or involuntary dissolution of the Consortium.

**5.3 Termination or Suspension by Consortium.** The Consortium may terminate or suspend this Agreement and Commercial Member's membership in the Consortium if Commercial Member fails to adhere to any Rules approved by the Consortium, breaches any material provision of this Agreement (including, without limitation, Sections 2.2, 2.3 and 3.1) or fails to pay any dues or other amounts payable to the Consortium within thirty (30) days following the date due, and further fails to remedy such nonperformance, noncompliance or nonpayment within thirty (30) days following receipt of notice from the Consortium. The Consortium's right to terminate Commercial Member's membership in the Consortium is in addition to any other rights and remedies that may be available to the Consortium, whether at law, in equity, as set forth in the Rules, or otherwise.

**5.4 Effect of Termination.**

**5.4.1 Termination of License Rights.** Upon any termination of Commercial Member's membership in the Consortium for any reason, this Agreement and all rights granted to Commercial Member hereunder will immediately terminate. In the event that this Agreement is terminated, Commercial Member and its Resellers shall withdraw all inventories of the IntelliCAD Licensed Materials or any Member Application within ninety (90) days from the effective date of termination (the "*Transition Period*"). Any inventory remaining after the Transition Period must be destroyed at the Commercial Member's sole cost. All IntelliCAD Base Software and ArchT Software source files must be destroyed immediately upon termination at the Commercial Member's sole cost and Commercial Member shall certify such destruction to the Consortium within ten (10) days of the effective date of termination.

**5.4.2 Survival and Inspection.** Sections 2.3, 3.1, 5.4, 6, 7, 8 and 9 (together with such other provisions which reasonably can be construed as surviving termination) will survive any termination of this Agreement. Notwithstanding the foregoing or anything else to the contrary in this Agreement, the termination of Commercial Member's membership in the Consortium shall not operate to terminate any sublicenses of the IntelliCAD Licensed Materials granted by Commercial Member to End Users, if such sublicenses are otherwise in accordance with this Agreement.

(a) **Inspection.** Upon the termination of Commercial Member's membership, for a period of three years effective on the date of the termination, Commercial Member will make its premises and needed records available for inspection by the Consortium, or its authorized agents for purposes of verifying and auditing Commercial Member's compliance with the terms of this Agreement and the Rules.

(b) **Audit.** The Consortium shall set out the specific information sought and, upon finding any IntelliCAD Licensed Materials, will immediately provide notice to Commercial Member. Upon receipt of such notice, Commercial Member will acknowledge the receipt, cease selling or using the IntelliCAD Licensed Materials and indicate the number of days needed to remedy the noncompliance and use its best efforts to remedy the noncompliance. If Commercial Member disputes the Consortium's audit finding, it will immediately provide notice to the Consortium of its dispute and shall retain an independent third party, at Commercial

Member's expense, to audit the disputed material and to verify Commercial Member's compliance with the terms of this Agreement. The independent third party shall be chosen and appointed by the Consortium. If IntelliCAD Licensed Materials are identified during the audit, a minimum penalty of \$100,000 per year shall be assessed to Commercial Member.

**5.4.3 Dissolution or Merger.** Commercial Member's membership in the Consortium automatically terminates, without notice, upon the merger or voluntary or involuntary dissolution of the Consortium. Notwithstanding the foregoing, no acquisition of the Consortium, voluntary or involuntary dissolution of the Consortium, or merger of the Consortium with or into another entity shall terminate, interfere with or modify the license rights granted Commercial Member under Section 2.2 with respect to IntelliCAD Licensed Materials, Enhancements, Modifications, and Derivative Works, which shall automatically become paid-up, irrevocable, and non-sublicensable; provided, however, that this Section 5.4.3 shall only apply if and so long as Commercial 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.

## **6. Warranty Disclaimer; Indemnification.**

**6.1 Commercial Member Warranty.** Commercial Member warrants that Member Applications, the Member Web Site, Modifications, and any Derivative Works developed by or for Commercial Member, do not and will not infringe, misappropriate or otherwise violate any third party copyright, patent or other intellectual property right of any kind.

**6.2 IntelliCAD Disclaimer.** THE INTELICAD LICENSED MATERIALS ARE PROVIDED TO COMMERCIAL MEMBER "AS IS" AND WITH ALL BUGS, DEFECTS, ERRORS, DEFICIENCIES AND FAULTS. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, THE CONSORTIUM HEREBY DISCLAIMS AND COMMERCIAL MEMBER HEREBY WAIVES ANY AND ALL WARRANTIES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, 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 OR IMPLIED WARRANTY OF QUIET ENJOYMENT.

## **7. Limitations of Liability.**

**7.1 No Fiduciary Capacity.** COMMERCIAL MEMBER AGREES THAT IN EXERCISING ITS RIGHTS AND AUTHORITY UNDER THIS AGREEMENT OR THE RULES, NEITHER THE CONSORTIUM OR ANY MEMBER OR AGENT ACTING AT THE REQUEST OR ON BEHALF OF THE CONSORTIUM, OR THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS, WILL, BY VIRTUE OF THIS AGREEMENT OR THE ARRANGEMENTS DESCRIBED HEREIN, HAVE ANY FIDUCIARY OBLIGATION TO COMMERCIAL MEMBER OR ANY OF ITS AFFILIATES.

**7.2 No Consequential.** IN NO EVENT WILL THE CONSORTIUM OR ANY MEMBER OR AGENT ACTING AT THE REQUEST OR ON BEHALF OF THE CONSORTIUM, OR THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS, BE LIABLE TO COMMERCIAL MEMBER FOR ANY DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL,

SPECIAL, EXEMPLARY, PUNITIVE OR OTHER SIMILAR DAMAGES, ARISING FROM BREACH OF THIS AGREEMENT, THE ACTIVITIES UNDERTAKEN BY THE CONSORTIUM, ANY ITEMS OR MATERIALS FURNISHED PURSUANT TO THIS AGREEMENT, ANY USE OF OR INABILITY TO USE THE INTELLICAD LICENSED MATERIALS, OR THE PROVISION OF OR FAILURE TO PROVIDE SUPPORT SERVICES, WHETHER ARISING IN CONTRACT, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE), STRICT LIABILITY, EQUITY OR OTHERWISE, EVEN IF THE CONSORTIUM WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING WILL NOT RELIEVE THE CONSORTIUM OR ANY OF ITS MEMBERS FROM LIABILITY FOR ANY WILLFUL MISCONDUCT OR ANY BREACH OF AN OBLIGATION OF CONFIDENTIALITY.

**7.3 Third-Party Beneficiaries.** The limitations set forth in this Section 7 will inure to the benefit of all past, present or future members or agents of the Consortium acting at the request or on behalf of the Consortium, and their respective officers, directors, employees, attorneys and agents, each being an intended third-party beneficiary of the provisions of Section 7 of this Agreement.

## **8. Indemnification.**

Commercial Member releases and will defend, indemnify and hold harmless the Consortium and all other past, present or future members from and against any and all claims, losses, damages, liens, liabilities, costs and expenses (including, but not limited to, reasonable attorneys' fees) arising out of or in connection with:

(a) Commercial Member's use or modification of the IntelliCAD Licensed Materials, and

(b) any sale or other distribution of any of the IntelliCAD Licensed Materials, Derivative Work, or any Member Application by, through or under Commercial Member, or (c) any breach of the warranty set forth in Section 6.1. This Section 8 will apply to the fullest extent permitted by applicable law, regardless of the fault, negligence or strict liability of the Consortium.

## **9. General Provisions.**

**9.1 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 earliest of (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 Consortium:

The IntelliCAD Technology Consortium  
10260 SW Greenburg Road, Suite 400  
Portland, OR 97223

If to Commercial Member: at the address, telephone and facsimile numbers set forth below.

Either Commercial Member or the Consortium 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.

**9.2 Assignment.** Subject to any limitations set forth in the bylaws of the Consortium, Commercial Member will be entitled to assign its rights and obligations under this Agreement to any affiliated corporation or other business entity and to any successor, by sale, merger or other business combination, to all or substantially all of its business and assets, provided the successor assumes all obligations of Commercial Member under this Agreement and agrees in writing to be bound hereby.

**9.3 Nonwaiver.** No delay or omission by any 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 of the parties 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.

**9.4 Severability.** If any provision of this Agreement 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 Agreement will in no way be affected or impaired thereby.

**9.5 Dispute Resolution.** All disputes, controversies, claims, and defenses arising out of, relating to, or involving this Agreement, whether involving theories of tort, contract, or violation of statutory laws ("Claims") are subject to the following provisions:

**9.5.1 Arbitration.** Except as to actions, suits, or proceedings commenced or maintained by persons not parties hereto, any party may elect to have any Claim be determined by binding arbitration. The election shall be made by written notice. Unless the parties otherwise agree in writing, the arbitration shall be conducted in Portland, Oregon before a single arbitrator and in accordance with the commercial arbitration rules of the Arbitration Service of Portland, Inc. If the parties are unable to agree on an arbitrator within 14 days of an election to arbitrate, the arbitrator shall be appointed in accordance with the procedures set forth in ORS Chapter 36. The arbitrator shall issue an award within 30 days of conclusion of the hearing. The award of the arbitrator shall be final and binding. Judgment on any arbitration award may be entered in any court with jurisdiction.

**9.5.2 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 and has assumed to determine the Claim. Thereafter the arbitrator may issue, continue, or terminate provisional relief or may permit a party to pursue provisional relief in court.

**9.5.3 Applicable Law; Jurisdiction and Venue.** This Agreement will be interpreted, construed and enforced in all respects in accordance with the laws of the State of Oregon without reference to its choice of law rules. All actions or suits by a party shall be brought and maintained in Portland, Oregon. Each party consents to personal jurisdiction in Oregon and waives any right to seek a change of venue.

**9.5.4 Costs and Attorney 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.

**9.6 UCC.** The rights and obligations of the parties under this Agreement shall not be governed by the provisions of the 1980 U.N. Convention on Contract for the International Sale of Goods; rather, these rights and obligations shall be governed by the laws of the State of Oregon, U.S.A., including its applicable provisions of the Uniform Commercial Code.

**9.7 Amendments.** This Agreement may not be modified or amended by Commercial Member except by written instrument duly executed by an authorized representative of each party. This Agreement may be amended by the Consortium at any time upon sixty (60) days prior written notice to Commercial Member. If Commercial Member does not agree to the amendment, it may reject the amendment by notifying the Consortium in writing within the sixty-day notice period. Any such rejection shall be deemed to be a notice of termination by Commercial Member pursuant to Section 5.2. If Commercial Member fails to notify the Consortium of its rejection with the sixty-day notice period, Commercial Member shall be deemed to have accepted the amendment and shall be bound to comply with it upon the expiration of the notice period. In the event that Commercial Member does not agree to any amendment of the Consortium, Commercial Member's sole remedy is to terminate this Agreement pursuant to Section 5.2.

**9.8 Entire Agreement.** Subject to the Rules, this Agreement sets forth the entire agreement, and supersedes any and all prior written and oral representations and agreements between the parties with respect to the subject matter hereof. Any attempted or purported amendment, modification or waiver that does not comply with this requirement 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 or hereafter in effect, the terms and conditions of this Agreement will govern and control.

*[REST OF PAGE INTENTIONALLY LEFT BLANK]*

The IntelliCAD Technology Consortium

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorized representatives as of the date indicated above as being accepted on behalf of the Consortium.

Commercial Member: Shanghai Erow Information Technology Co., Ltd

By: Xiaoduo Luo

Title: manager

Print Name: Xiaoduo Luo

Address: Room 2906, Building 3, Building 166,  
Minhang Road, Minhang District,  
Shanghai

Telephone: +86 - 186 21500266

Facsimile: 021 - 33321297

Website: erow.cn // http://www.erowsoft.com

Executive Management Contact Email:

contact@erow.cn

Agreed and Accepted on behalf of:

The IntelliCAD Technology Consortium

By:  \_\_\_\_\_

Officer: President

Print Name: David Lorenzo

**EXHIBIT A**  
**Marks**

IntelliCAD

IntelliCAD “i” logo

ArchT

ArchT logo

**MEMBERSHIP RULES**  
**OF**  
**THE INTELICAD TECHNOLOGY CONSORTIUM**  
**AS AMENDED AND RESTATED**

**July 26, 2017**



## MEMBERSHIP RULES

Pursuant to the bylaws of The IntelliCAD Technology Consortium (the “Consortium”), the Board of Directors of the Consortium has established and adopted these Membership Rules (which may be amended, revised and supplemented from time to time).

**1. Definitions.** Whenever used in these Membership Rules, terms with initial letters capitalized shall have the meaning as defined in that certain Consortium Membership Agreement to which the member is a party (hereinafter, the “Membership Agreement”). As used in these Membership Rules, “Member” or “Members” shall mean any member of the Consortium including, but not limited to, Commercial Members or Government Members.

**2. Export Compliance.** Member will not export or re-export the IntelliCAD Licensed Materials 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 the Department of Treasury and other export controls of the U.S.) (As such may be amended from time to time)

**3. No Unauthorized Disclosure.** Member shall preserve and protect the IntelliCAD Licensed Materials from unauthorized disclosure or misuse with the same standard of care that Member uses to protect its own proprietary information of a similar nature, but in no event less than reasonable care.

**4. No Unauthorized Use or Copies.** Member shall not copy, relocate, move, sublicense, rent, timeshare, act as a service bureau, loan and lease or otherwise distribute the IntelliCAD Licensed Materials, except as expressly provided in the Member’s individual Membership Agreement. Member acknowledges that any unauthorized copying or unauthorized use of the IntelliCAD Licensed Materials is a breach of its Membership Agreement and these Membership Rules.

**5. No Unauthorized Warranties.** Member shall not extend on behalf of the Consortium any written or oral warranty or guarantee, or make any representation or claim, with respect to the IntelliCAD Licensed Materials without the Consortium’s express written consent.

**6. No Domain Names.** Nothing in these Membership Rules or in the Membership Agreement shall be deemed to grant Member the right to use the Consortium’s name or Marks as a domain name or Universal Resource Locator. Any such use without the prior written consent of the Consortium shall constitute a breach of these Membership Rules and the Member’s Membership Agreement.

**7. Membership Rules; Changes.** Member agrees that all use of the IntelliCAD Licensed Materials pursuant to the licenses granted in its Membership Agreement shall be in accordance with these Membership Rules as modified from time to time. The Consortium reserves the right to modify these Membership Rules at any time.

## **8. Web.**

**8.1 General.** The Consortium will link the Consortium Web Site to one page of the Member Web Site. Member will provide to the Consortium color artwork of Member's name and/or logo in the form and on the media specified by the Consortium to be included in the Consortium Web Site to denote the link to the Member Web Site. The placement and prominence of any such link will be in the Consortium's sole discretion. Member shall prominently display the Consortium's name and/or logo on its Member Web Site. Member shall link its Member Web Site to the Consortium Web Site.

**8.2 Release.** By signing the Membership Agreement, Member releases and discharges the Consortium, and its agents and contractors, from any damages or liability to Member arising out of the placement of Member's name and/or logo in the Consortium Web Site or the failure to do the same, and from any other liability arising out or related to the link between the Consortium Web Site and the Member Web Site.

**9. Payment of Dues and Expenses.** The fees, dues and assessments payable by Member(s) will be set periodically by the Board of Directors of the Consortium by resolution. All amounts will be due and payable in United States dollar currency within thirty (30) days from the date of invoice. All dues, fees and assessments imposed or levied by the Consortium are nonrefundable and may not be prorated, but credit for such amounts may be transferred or assigned in accordance with the Member's Membership Agreement.

## **10. Termination and Suspension of Membership or Services.**

**10.1 General.** Member may terminate its membership in the Consortium and its obligations under its Membership Agreement effective thirty (30) days following receipt of written notice by the Board of Directors of the Consortium; provided, however, that such termination will not relieve Member of any liabilities or obligations incurred prior to the effective date of termination. Member's membership automatically terminates upon the voluntary or involuntary dissolution of the Consortium.

**10.2 Suspension by Consortium.** If Member fails to adhere to any of these Membership Rules, breaches any material provision of its Membership Agreement or fails to pay any dues or other amounts payable to the Consortium, and further fails to remedy such nonperformance, noncompliance or nonpayment within thirty (30) days following receipt of notice from the Consortium, the Consortium may suspend the Membership Agreement with such Member.

**10.3 Termination/Fees by Consortium.** If Member fails to adhere to any of these Membership Rules, breaches any material provision of its Membership Agreement or fails to pay any dues or other amounts payable to the Consortium, and further fails to remedy such nonperformance, noncompliance or nonpayment within thirty (30) days following receipt of notice from the Consortium, the Consortium may terminate the Membership Agreement with such Member or assess the Member a reasonable penalty or fee.

**11. Suggested Retail Price.** The suggested retail price (the “SRP”) for the IntelliCAD Licensed Materials, Modifications, or Enhancements may be set periodically by the Board of Directors of the Consortium by resolution. The Consortium reserves the right to modify the SRP at any time. The SRP is for the standard version of IntelliCAD Licensed Materials. Independent of the SRP, Member is allowed to establish pricing for its sale of IntelliCAD Licensed Materials to End Users. Upon request, Member shall notify the Consortium of its IntelliCAD Licensed Materials pricing or any Derivative Works, Modifications and Enhancements thereto.

**12. Code of Conduct.** Member is prohibited and agrees, by virtue of its Membership Agreement, that it shall not 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, disparage (whether or not such disparagement legally constitutes libel or slander), or cast in a negative light (a) the IntelliCAD Base Software, the ArchT Software, IntelliCAD Licensed Materials or the Consortium, (b) any of the Consortium’s products, services, affairs or operations, or (c) the reputations of any of their past, present or future directors, officers, or employees, or (d) any Consortium member or member’s IntelliCAD based products.

**12.1 No Member Solicitation.** Member is prohibited from contacting other Consortium members with the express purpose of soliciting them to leave the Consortium or to use or distribute the member’s IntelliCAD based product as a replacement platform in direct competition with the Consortium. Penalty for violation is equal to the current annual commercial membership fee.

**12.1.1 API Libraries.** Member shall not release, distribute, or market a version of the ITC’s API libraries that contains modifications to the supplied APIs. Member further acknowledges that it may release, distribute, or make new APIs in addition to those supplied by the ITC.

**13. Release Dates.** The Consortium will set and announce release dates for new versions of IntelliCAD Base Software and/or ArchT Software along with specific lists of new features. Member shall not announce release dates or distribute any Modifications containing new version features without prior written permission from the Consortium. Release of periodic bug updates or patches by Member is allowed.

**14. Version Assignations, Member Identification and Software Naming.**

**14.1 Version Assignations.** The Consortium will determine the version assignation(s) for versions of IntelliCAD Base Software and ArchT Software.

**14.2 Member Identification.** All releases of any programs by Member containing all or any portion of the IntelliCAD Base Software or any other IntelliCAD Licensed Materials shall use the version assignation determined by the Consortium in its discretion. Member shall modify the “\_VENDORNAME system variable” in the IntelliCAD source code to reflect its entity names as registered with the Consortium. By way of example: “CADcompany IntelliCAD” or “CADcompany Plumbing”. Member may register one (1) company abbreviation with the Consortium which may be used in place of the complete company name (for example, “CADCo. IntelliCAD” or “CADCo Plumbing”).

**14.3 Naming of IntelliCAD Base Software and Derivative Works.** IntelliCAD Base Software and Derivative Works thereof may be named in three different manners:

**14.3.1** If Member uses, distributes, or sublicenses the IntelliCAD Base Software alone, it must combine the identifier “IntelliCAD” with the version assignment, as determined by the Consortium, which must be preceded with the name of the Member or the Member Application (for example: “[Member or Member Application] IntelliCAD Version [X.X]”).

**14.3.2** If Member uses, distributes, or sublicenses the IntelliCAD Base Software as part of any Member Application, it must use the term “Powered by IntelliCAD [Version] Technology” combined with the version assignment determined by the Consortium which must be preceded with the name of the Member Application (for example, “[Member Application] Powered by IntelliCAD [X.X] Technology”).

**14.3.3** If Member uses, distributes, or sublicenses a Derivative Work of the IntelliCAD Base Software, it must use the term “Based on IntelliCAD Technology” preceded with the name of the Member or the name of the Derivative Work (for example, “[Member or Derivative Work] Based on IntelliCAD Technology”).

## **15. Proprietary Rights Notices and Legends.**

**15.1 General Requirements.** In addition to the specific requirements regarding proprietary rights notices and legends as more fully set forth in these Membership Rules, Member and all of its Resellers and End Users (as applicable) shall:

**15.1.1** respect all copyright, trademark, patent, confidentiality, and all other proprietary rights notices and legends (hereinafter collectively referred to as “**Proprietary Rights Notices**”) of Consortium, its grantors, or any other party, appearing on or in any of the IntelliCAD Licensed Materials;

**15.1.2** not alter, conceal from view, or remove any Proprietary Rights Notices of Consortium, its grantors, or any other party, appearing on or in any of the IntelliCAD Licensed Materials; and

**15.1.3** include and reproduce all Proprietary Rights Notices of the Consortium, its grantors, and any other party that originally appeared in all IntelliCAD Licensed Materials (including all Proprietary Rights Notices in any Member Application) on

**15.1.3.1** all copies or modules of the IntelliCAD Licensed Materials, including as part of any Member Application, and

**15.1.3.2** all copies of or excerpts therefrom.

**15.2 Notice in Source Code.** Without in any way limiting the generality of the foregoing, Member shall assure that all source code versions of IntelliCAD Base Software, and all derivatives of the same created by or on behalf of Member, shall have the following specific Proprietary Rights Notices affixed in a prominent location in the media/code (including, but not

limited to, in the header and footer of all source code and at the beginning of each file in such code):

*“© 1999-[year of most recent version] The IntelliCAD Technology Consortium. All Rights Reserved. This program contains confidential and proprietary information of The IntelliCAD Technology Consortium, which is protected by copyright, trade secret, trademark, and other intellectual property rights under the laws of the United States, other nations, and international treaties.”*

**15.3 Notice on Packaging, Documentation, Marketing and Promotional Literature.** Without in any way limiting the generality of the foregoing, Member, shall assure that all packaging containing any IntelliCAD Licensed Materials, all Documentation and all marketing and promotional material of any kind associated with any IntelliCAD Licensed Materials shall contain the following statement:

*“IntelliCAD” and the IntelliCAD logo are registered trademarks of The IntelliCAD Technology Consortium in the United States and other countries.”*

Member must obtain the prior written consent of the Consortium (which may be withheld for any reason) for any abbreviated versions of the above statement.

**15.4 Notices in About Box.** Without in any way limiting the generality of the foregoing, Member shall include the following statement, marks, or information as part of product documentation (whether hard copy or electric) in its “about” box:

**15.4.1** *“© 1999-[year of most recent version] The IntelliCAD Technology Consortium. All Rights Reserved. “IntelliCAD” and the IntelliCAD logo are registered trademarks of The IntelliCAD Technology Consortium in the United States and other countries.”*

*“This software is based in part on the work of the Independent JPEG Group. DWG is the native file format for Autodesk® AutoCAD® software and is a trademark of Autodesk, Inc. IntelliCAD Technology Consortium is not affiliated with Autodesk, Inc.”*

**15.4.2** The IntelliCAD “i” logo mark, if Member uses the software identifier “IntelliCAD”;

**15.4.3** The legal and/or business name of the Member; and

**15.4.4** The Member’s contact email address, phone number, and/or website

**15.4.5** Member must obtain the prior written consent of the Consortium (which may be withheld for any reason) for any abbreviated versions of the above statement.

**15.5 Notices in Splash Screen.** Without in any way limiting the generality of the foregoing, Member shall include the following statements, marks, or information as part of product documentation (whether hard copy or electric) in its “Splash Screen”:

**15.5.1** “Copyright © 1999-[year of most recent version] The IntelliCAD Technology Consortium. All Rights Reserved.”;

**15.5.2** The version(s) assignment as determined by the Consortium; and

**15.5.3** The legal and/or business name of the Member sized to at least eight percent (8%) of the height of the splash screen.

**15.6 Language of Notices.** All Proprietary Rights Notices required by this Section 15 may be provided in another language, other than English, with prior written consent of the Consortium (which may be withheld for any reason).

**15.7 Compliance.** To assure compliance with all of the Membership Rules regarding Proprietary Rights Notices as set forth in this Section 15, at Consortium’s reasonable request, Member shall promptly furnish to the Consortium with 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 IntelliCAD Licensed Materials and/or Member Application distributed by Member. In the event Consortium, in its sole opinion, determines that Member is not in compliance with the provisions of this Section 15, or Sections 16 or 17 below, or with any other provisions of these Membership Rules or the Membership Agreement, Member shall, within a reasonable time to be determined by Consortium, make all such changes as directed by the Consortium.

## **16. Trademark Policy.**

**16.1 Limited License to Use Trademarks.** Subject to the terms and conditions of their Membership Agreement and these Membership Rules as they are amended from time to time, Member is granted a nonexclusive, royalty-free license for the term of their Membership Agreement to use and reproduce the following marks in connection with Member’s marketing, distribution and licensing of products containing or derived from the IntelliCAD Base Software and/or ArchT Software: (1) the Powered by IntelliCAD logo; (2) the Based on IntelliCAD log; (3) the Designed for IntelliCAD logo; and (4) the Solutions Development System (SDS).

**16.2 Consortium Trademark Guidelines.** For purposes of these Membership Rules, the terms “IntelliCAD Trademarks” shall mean all trademarks, service marks, and other trade names owned or controlled by the Consortium, including, but not limited “IntelliCAD,” the IntelliCAD “i” logo mark, “Powered by IntelliCAD,” “Based on IntelliCAD,” “Designed for IntelliCAD,” Solutions Development System (SDS), and “ArchT.” The Consortium’s current Trademark Guidelines are set forth in **Appendix “A”** attached hereto and by this reference incorporated herein (the “IntelliCAD Trademark Guidelines”). The Consortium has the rights, in its sole discretion, to amend the IntelliCAD Trademark Guidelines at any time and from time to time.

**16.3 Use of IntelliCAD Trademarks by Members.** Any rights granted to a Member to use any IntelliCAD Trademarks are, at all times, subject to Member’s strict compliance with the IntelliCAD Trademark Guidelines. Without limiting the generality of the foregoing, any use by a Member of any IntelliCAD Trademarks must maintain the quality and performance of such IntelliCAD Trademarks in accordance with the IntelliCAD Trademark Guidelines. Member must supply Consortium with suitable specimens of any and all uses of IntelliCAD Trademarks

by Member. Member shall fully correct and remedy any deficiencies in its use of IntelliCAD Trademarks and/or the quality of any IntelliCAD Licensed Materials used in conjunction with the IntelliCAD Trademarks, upon notice from Consortium. Failure to use the IntelliCAD Trademarks in accordance with the IntelliCAD Trademark Guidelines shall constitute a material breach of the Membership Agreement by Member.

**17. Internet Domains.** Member shall assign to the Consortium any rights its may have in any domain name or Universal Resource Locator (“URL”) containing “IntelliCAD” and/or “ArchT,” or any words, or combination of words, that may be confusingly similar to the same. Any refusal to assign such rights to the Consortium shall constitute a material breach of these Membership Rules and the Member’s Membership Agreement. The Consortium, at the Consortium’s sole discretion, may compensate Members (such compensation to be determined in the sole discretion by Consortium) who have registered such domain names or URLs. Some states and countries may not allow the assignment of domain names or URLs. In such cases, and with written authorization from the Consortium, Members may obtain ownership of such domain names and URLs to hold in favor of the Consortium. Member may not transfer or assign such domain names and URLs to third parties. The Consortium may, in its sole discretion, reimburse Member for registration fees.

**18. Product Submittal.** Member shall register its software releases at the Consortium web site.

**19. Modification/Bug Fixes.** As defined in the Membership Agreement, “Modification” includes corrections, bug fixes, or updates. The Consortium may, upon resolution of its Board of Directors, compensate Members and/or other parties for his/her/its Modifications. Further, the Consortium may, upon resolution of its Board of Directors, enter into modification agreements (compensated or otherwise) with Members and/or other parties.

## **20. Royalties**

**20.1 Membership Levels.** Two levels of Membership are available to all Members: royalty-free and royalty-based, subject to conditions outlined below.

**20.1.1 Royalty-free Membership level.** ITC Commercial Members subscribed to this Membership level are not subject to royalty payments on copies they sell, subject to the exclusions in 20.1.1.1. Additionally, the sales of these copies are not subject to any auditing provisions as described in 20.1.2. No further privileges or distinctions are associated with this Membership level. The amount of annual Membership fee is to be reviewed annually by the ITC Board of Directors.

**20.1.1.1 Exclusions to royalty-free Membership level.** ITC Commercial Members who sell IntelliCAD based software to other entities as OEM copy of IntelliCAD are not covered by royalty-free provision on these OEM sales, and such sales are subject to the same royalty payments and terms as expressed in 20.2.

**20.1.2 Royalty-based Membership level.** ITC Commercial Members, not eligible for the royalty-free level or otherwise finding this Membership level as better fitting their

business model, are subject to royalty payments as outlined below. The amount of annual Membership fee is to be set at 50% of the royalty-free Membership level fee.

**20.2 Royalty Payments.** ITC Commercial Members subscribed to royalty-based Membership level pay a royalty on all new copies of software licensed to end users. Royalties are not payable on updates or upgrades of existing IntelliCAD licenses. The royalty amount per copy will be determined for the following year by the Board of Directors prior to the end of the current fiscal year. If the Board makes no decision on the royalties for the following year, then the royalty amount will remain unchanged. Licenses sold or provided free to registered educational institutions will not incur a royalty. Royalty reports will be collected from the Members into a secure account by the Finance Manager, and accrued funds submitted on a quarterly basis as a single total to the ITC main bank account. Royalties are due 30 days after the end of each quarter. Failure to pay royalties will result in portal access restrictions and eventually a vote for Membership termination by the board of directors. Members will provide royalty reports in a form supplied to the Members similar to the example shown in Appendix "A". Royalty sales tracking starts January 1, 2012 and the first royalty payment report will be due May 1, 2012. Royalties for 2012 are set at ten (\$10) dollars per copy.

**20.3 Sales Records.** ITC Commercial Members are required to maintain sales records to confirm the number of licenses sold during the year for the calculation of royalties. These records must be available in the event that the Member is chosen for a sales audit. Sales records must be maintained for 3 years.

**20.4 Auditing Provisions.** The ITC will audit a minimum of 2 Members per year. One of the two Members will be randomly chosen from the top 10 selling Members each year. Other Members being audited will be chosen randomly from the Members. Audit results will be provided to the officers and the board. The audit results will only include the following information: Pass or Fail. A Member will be reported as fail if the audit finds a difference of more than 5% between the amount submitted by the Member and the audited results. If the Member fails the audit, then the officers and board will be advised as to the amount owing. Members who are audited and are found to be in arrears are required to make payments owing within 30 days of the audit report.

**20.5 Year End Totals.** Within 60 days after the end of each year, Members must provide a total to the ITC auditors so they can verify the amounts deposited by the Finance Manager on the Member's behalf. Failure to supply royalty report will result in portal access restrictions and eventually a recommendation for Membership termination by the board of directors.

**20.6 Royalty Security Provisions.** It is imperative that royalty numbers are not provided to the ITC officers or board of directors. The royalty numbers will only be seen by neutral parties, typically the ITC Finance Manager, President, and the ITC auditors. The royalty funds collected by the Finance Manager will be accrued in a separate, secure account that will be deposited in batch on a quarterly basis into the main ITC bank account. The Finance Manager will only report the seat total for all Members and the total amount of royalty funds deposited. The ITC auditors will compare these amounts with the royalty reports sent directly by the Members at the end of each year.



**21. Updating Legacy Distributions.** Members are encouraged to update legacy distributions to IntelliCAD 7.

**21.1** Eighteen months after the official release of IntelliCAD 7, all previous versions of the IntelliCAD source code will be declared "Legacy Code" and the IntelliCAD 7 source code declared "Current Code".

**21.2** Members will be allowed to create new products only based on Current Code.

**21.3** Products based on Legacy Code will be sold only to existing customers who already use products based on Legacy Code.

**21.4** Only products based on Current Code will be advertised on websites, in magazines, in marketing materials, and at trade shows.

**21.5** Only products based on Current Code will be offered in trial versions available as electronic downloads and transfers, and physical media.

**21.6** Members infringing these rules will be fined by the ITC \$10,000 USD for the first penalty, \$30,000 USD for the second penalty, and terminated from the ITC for the third penalty.

**22. Membership Warranty Provision**

**22.1 Warranty Provision.** Upon membership subscription, a Commercial Member shall deposit \$2,500 into an ITC bank account as a warranty provision if they have not done so already. This amount shall be refunded upon Commercial Member termination only if the Commercial member is in compliance with all ITC Commercial Membership Agreement Terms and Membership Rules. In this case, a refund shall occur ninety (90) days after the membership termination date.

**22.2 Warranty Provisions Scope.** ITC shall use the warranty provision deposits with the sole and exclusive intent to support legal expenses on ITC Commercial Membership Agreement Terms and Membership Rules enforcement.

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## Appendix “A”

### The IntelliCAD Trademark Guidelines

Guidelines for use of the IntelliCAD Trademarks (as defined in Section 16.2 above):

- Member may use the IntelliCAD Trademarks solely on advertising, marketing, and collateral materials for the promotion of the IntelliCAD Licensed Materials, and in no other manner or for no other purpose.
- Member’s name and his/her/its mark must appear on any materials where the IntelliCAD Licensed Materials are used.
- The IntelliCAD Trademarks may not be used in any manner that expresses or might imply the Consortium’s affiliation, sponsorship, endorsement, certification, or approval, other than as expressly contemplated by the Membership Agreement or the Membership Rules.
- Member shall not use the IntelliCAD Trademarks in association with any third party trademarks in a manner that might suggest co-branding or otherwise create potential confusion as to source or sponsorship of the IntelliCAD Licensed Materials or ownership of IntelliCAD Trademarks.
- Member may use the IntelliCAD Trademarks only as provided by the Consortium electronically or in hard copy form. Except for size subject to the restrictions herein, the IntelliCAD Trademarks may not be altered in any manner, including proportions, colors, elements, etc., or animated, morphed, or otherwise distorted in perspective or dimensional appearance.
- The IntelliCAD Trademarks may not be combined with any other symbols, including words, logos, icons, graphics, photos, slogans, numbers, other design elements, trade names, business names, domain names, service names, logos, trade dress, or other trademarks.
- The IntelliCAD Trademarks may not be imitated in any of Member’s other materials.
- The IntelliCAD Trademarks may not be used as a design feature in any materials.
- The IntelliCAD Trademarks must stand alone. A minimum amount of empty space must surround the IntelliCAD Trademarks separating it from any other object, such as type, photography, borders, edges, and so on. The required area of empty space around the IntelliCAD Trademarks must be  $1/2x$ , where  $x$  equals the height of the IntelliCAD Trademark.
- The IntelliCAD Trademarks must include the appropriate ® symbol at least at the first and most prominent mention on each visually-distinguishable page of material.
- Each use of the IntelliCAD Trademarks must include the following notice: ***“IntelliCAD” and the IntelliCAD logo are registered trademarks of The IntelliCAD Technology Consortium in the United States and other countries.”***
- When involving the ArchT Software, each use of the IntelliCAD Trademarks must include the following notice: ***“IntelliCAD”, IntelliCAD logo and “ArchT” are registered trademarks of The IntelliCAD Technology Consortium in the United States and other countries.”***

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