

**1/1/2013**

## **THE INTELLICAD TECHNOLOGY CONSORTIUM**

### **COMMERCIAL MEMBERSHIP AGREEMENT**

This Agreement, effective as of \_\_\_\_\_, 20\_\_\_\_, 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 INTELLICAD 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 within 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.

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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: \_\_\_\_\_

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

**EXHIBIT A**

**Marks**

IntelliCAD

IntelliCAD “i” logo

ArchT

ArchT logo