

From: info@ord.uscourts.gov
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Subject: Activity in Case 3:16-mc-00061-MO IntelliCAD Technology Consortium v. Suzhou Gstarsoft Co. Ltd. Order on Motion - Miscellaneous
Date: Thursday, February 25, 2016 10:50:30 AM

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U.S. District Court

District of Oregon

Notice of Electronic Filing

The following transaction was entered on 2/25/2016 at 10:50 AM PST and filed on 2/25/2016

Case Name: IntelliCAD Technology Consortium v. Suzhou Gstarsoft Co. Ltd.

Case Number: [3:16-mc-00061-MO](#)

Filer:

Document Number: 5(No document attached)

Docket Text:

ORDER: GRANTING Motion for Confirmation of Arbitration Award and Supporting Memorandum of Points and Authorities [1]. Ordered by Chief Judge Michael W. Mosman. (dls)

3:16-mc-00061-MO Notice has been electronically mailed to:

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Technology Consortium

FILED 27 JAN '16 9 54 USDC-DRP

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

The IntelliCAD Technology Consortium,

Plaintiff,

v.

Suzhou Gstarsoft Co. Ltd.,

Defendant.

No. **'16-MC-61-17**

**PLAINTIFF'S MOTION FOR
CONFIRMATION OF ARBITRATION
AWARD AND SUPPORTING
MEMORANDUM OF POINTS AND
AUTHORITIES**

CONFERRAL CERTIFICATION

In compliance with LR 7-1, counsel for Plaintiff The IntelliCAD Technology Consortium (the "ITC") certifies that the parties made a good faith effort through personal conferences to resolve the dispute and have been unable to do so.

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HARRIS BERNE CHRISTENSEN LLP
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05728

MOTION

Pursuant to LR 7 and 9 U.S.C. § 9, the ITC hereby moves the Court for an order confirming the Arbitration Award attached hereto as **EXHIBIT A**, requiring defendant Suzhou Gstarsoft Co. Ltd. (“Gstar”) to undergo an audit of its CAD software platform by the ITC, as well as entry of a judgment in favor of the ITC and against Gstar in the amount of \$254,500.00 as of October 23, 2015, with post-judgment interest thereafter at the rate of nine percent (9%) per year (pursuant to ORS 82.010), which amounts to \$62.75 per day, plus attorney fees, costs, and disbursements in the amount of \$19,392.14. The specific grounds for this Motion are set forth in the following supporting Memorandum of Points and Authorities.

MEMORANDUM OF POINTS AND AUTHORITIES

I. Jurisdiction, Venue, Timeliness, Service.

This Court has original jurisdiction over this matter pursuant to 28 U.S.C. § 1332(a) (diversity jurisdiction), specifically because the amount in controversy exceeds \$75,000 and complete diversity exists between Plaintiff, the ITC (a Washington non-profit corporation with its principal place of business in Portland, Oregon), and Defendant, Gstar (a Chinese corporation).

This Court has personal jurisdiction over the parties, specifically because the ITC and Gstar entered into the commercial membership agreement (“CMA”), attached hereto as **EXHIBIT B**, wherein the parties agreed pursuant to paragraph 9.5.3 that, “[e]ach party consents to personal jurisdiction in Oregon...”

Venue in this Court is proper because pursuant to paragraph 9.5.3 of the CMA the parties agreed that, “[a]ll actions or suits by a party shall be brought and maintained in Portland, Oregon... [and] [e]ach party... waives any right to seek a change of venue.”

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Gstar did not serve the ITC with any notice pursuant to 9 U.S.C. § 12 of a motion to vacate, modify, or correct the award within three months after the award was delivered. Therefore, Gstar has waived its right to move to vacate, modify, or correct the award.

A copy of this Motion and Memorandum of Points and Authorities and the exhibits hereto will be served on the Defendant pursuant to FRCP 4.

II. Statement of Facts.

Plaintiff, the ITC, is a consortium of approximately thirty-five companies that produce and market software and sell it to end users. Defendant, Gstar, is a Chinese company that had been a member of the ITC since the early 2000's. On January 1, 2013, Gstar entered into the CMA with the ITC. Pursuant to the CMA, Gstar provided, among other things, that (1) it would abide by the rules of the ITC as amended from time to time, particularly as they related to use of the proprietary IntelliCAD software and derivative materials, (2) it would not combine the proprietary software with any software competing with the ITC, (3) it would pay any dues, fees, and assessments levied by the ITC on its members, (4) it, or the ITC, could terminate its membership upon thirty days' notice without terminating any obligations incurred before termination, (5) the ITC could suspend or terminate Gstar's membership for a breach of the agreement, (6) the ITC had the right to audit Gstar to see if ITC's proprietary information was being sold in violation of the ITC's rules, and if there was a breach of the agreement, impose a reasonable fine in the minimum amount of \$100,000 for a breach, and (7) Gstar would pay attorney fees and costs in a judicial proceeding that concluded that Gstar breached the CMA.

In April 2014, the ITC rules were adopted, providing that a member of the ITC could not make or publish any statement that was derogatory to any other member, that a reasonable penalty

could be assessed to any member that breached the ITC rules or CMA, and failed to pay its fees that were due. The ITC offered its members additional software that enabled a 3-D application of its software (ACIS) and an opportunity to jointly develop software for building information modeling (BIM). These offers, which Gstar accepted, required payments to the ITC in the amounts of \$2,500 (ACIS) and \$2,000 (BIM) annually. Gstar's membership level also required it to pay the ITC \$50,000 annually.

In the Fall of 2014, the ITC became aware that Gstar was competing against it by offering a competing software platform which may use the ITC's proprietary software, had failed to pay its membership dues and assessments, was soliciting members of the ITC to leave the consortium and do business with Gstar, and failed to schedule an audit after being requested to do so by the ITC. All of these acts were violations of the CMA and the ITC rules.

On April 2, 2015, the ITC sent to Gstar a letter outlining the breaches and giving Gstar one last chance to cure its breaches. Gstar failed to cure its breaches and on May 18, 2015, the ITC sent Gstar a letter terminating its membership, demanding an audit, and notifying Gstar it owed past assessments of \$54,500 (annual membership dues of \$50,000, ACIS assessment of \$2,500, and BIM assessment of \$2,000). It also notified Gstar of penalties of \$200,000 being assessed by the leadership of the consortium pursuant to the terms of the CMA and the ITC rules. Pursuant to paragraph 9.5.1 of the CMA the parties agreed that, "any party may elect to have any Claim be determined by binding arbitration... 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... [t]he award of the arbitrator shall be final and binding [and] [j]udgment on any arbitration award may be entered in any court with jurisdiction."

III. Procedural Background.

On September 24, 2015 an arbitration was held before arbitrator Mark Gardner. The arbitration was conducted pursuant to the rules of the Arbitration Service of Portland. At the arbitration, the ITC presented its prima facie case for its claims against Gstar. The arbitrator heard the case on its merits and held that Gstar had no defenses to the ITC's claims, that the ITC prevailed on all disputed matters, and that the ITC was entitled to judgment in its favor. The arbitrator issued the Arbitration Award in favor of the ITC, ordering Gstar to undergo an audit and issuing a money judgment in favor of the ITC and against Gstar in the amount of \$254,500.00 with post-judgment interest at the rate of nine percent (9%) per year (pursuant to ORS 82.010), which amounts to \$62.75 per day, plus attorney fees, costs, and disbursements in the amount of \$19,392.14.

IV. Federal Arbitration Act, 9 U.S.C. § 9 Requirements.

The Federal Arbitration Act, 9 U.S.C. § 9, provides that “at any time within one year after the award is made any party to the arbitration may apply to the court... for an order confirming the award, and thereupon the court *must* grant such an order unless the award is vacated, modified, or corrected as prescribed in sections 10 and 11 of this title.” 9 U.S.C. § 9 (emphasis added). The standard of review of an arbitrator's decision by the court is very narrow. The “confirmation of an arbitration award is a summary proceeding that merely makes what is already a final arbitration award a judgment of the court.” *Florasynth, Inc. v. Pickholz*, 750 F.2d 171, 176 (2d Cir. 1984); *see also Hall Street Assocs., L.L.C. v. Mattel, Inc.*, 552 U.S. 576, 578 (2008) (“The Federal Arbitration Act..., 9 U.S.C. § 1 *et seq.*, provides for expedited judicial review to confirm, vacate, or modify arbitration awards.”); *Burchell v. Marsh*, 58 U.S. 344, 349 (1854) (stating the appropriate scope of judicial review is whether the award is the honest decision of the arbitrator,

made within the scope of the arbitrator's power, and that a court will not otherwise set aside an award for error.). Accordingly, the Court has the obligation to confirm the ITC's arbitration award into a judgment. *See Doctor's Assocs., Inc. v. Cassarotto*, 517 U.S. 681 (1996) (stating the purpose of the Federal Arbitration Act is to ensure that private agreements to arbitrate are enforced).

Here, the arbitrator, having considered the pleadings and other evidence presented at the hearing, determined that Gstar was liable to the ITC. There are no grounds for vacating, modifying, or correcting an arbitration award enumerated in 9 U.S.C. §§ 10-11, and Gstar has not made any motion to vacate, modify, or correct the Arbitration Award.

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CONCLUSION

Based on the foregoing, the ITC respectfully requests that the Court enter an order confirming the Arbitration Award requiring Gstar to undergo an audit of its CAD software platform by the ITC, and a judgment in the amount of \$254,500.00 as of October 23, 2015, with post-judgment interest thereafter at the rate of nine percent (9%) per year, which amounts to \$62.75 per day, plus attorney fees, costs, and disbursements in the amount of \$19,392.14 for the ITC and against Gstar.

CERTIFICATE OF COMPLIANCE

This brief complies with the applicable word-count limitation under LR 7-2(b), 26-3(b), 54-1(c), or 54-3(3) because it contains 1,619 words, including headings, footnotes, and quotations, but excluding the caption, table of contents, table of authorities, signature block and any certificates of service.

DATED this 26TH day of JANUARY 2016.

HARRIS BERNE CHRISTENSEN LLP

By: 

Shawn M. Lindsay, OSB #020695
Aaron T. Berne, OSB #142780
Attorneys for The IntelliCAD Technology Consortium

CERTIFICATE OF SERVICE

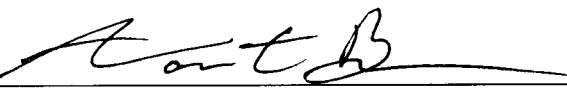
I certify that I served a true and complete copy of the foregoing **PLAINTIFF'S MOTION FOR CONFIRMATION OF ARBITRATION AWARD AND SUPPORTING MEMORANDUM OF POINTS AND AUTHORITIES**, by email and by providing two copies of same to the clerk of the Court on JANUARY 27, 2016, for mailing pursuant to FRCP 4(f)(2)(C)(ii) to each of the parties and at each party's regular address as shown below:

Suzhou Gstarsoft Co., Ltd.
Meiyu Huang
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Attorneys for Suzhou Gstarsoft Co., Ltd.

DATED this 26TH day of JANUARY, 2016.

HARRIS BERNE CHRISTENSEN LLP

By: 

Shawn M. Lindsay, OSB #020695
Aaron T. Berne, OSB #142780
Attorneys for The IntelliCAD
Technology Consortium

ARBITRATION SERVICE OF PORTLAND

The IntelliCAD Technology Consortium,

Claimant,

v.

Suzhou Gstarsoft Co. Ltd.,

Respondent.

ASP No. 150519

ARBITRATION DECISION AND AWARD

FACTS

Claimant, IntelliCAD Technology Consortium, is a consortium of approximately thirty-five companies that produce and market software and sell it to end users. Collectively, they license the source code for IntelliCAD which is an architectural software platform they use to modify for applications for their own companies and sell to other companies that are not members of the consortium (end users). This technology was developed at a cost of tens of millions of dollars. Respondent is a Chinese company that had been a member of the consortium since the early 2000's. On January 1, 2013, respondent signed a commercial membership agreement with claimant which provided among other things that (1) it would abide by the rules of the consortium as amended from time to time, particularly as they related to use of the proprietary IntelliCAD software and derivative materials, (2) it would not combine the proprietary software with any software competing with claimant, (3) it would pay any dues, fees, and assessments levied by claimant on its members, (4) it, or claimant, could terminate its membership upon thirty days' notice without terminating any obligations incurred before termination, (5) claimant could suspend or terminate respondents membership for a breach of the agreement, (6) claimant had the right to audit respondent to see if IntelliCAD's proprietary information was being sold in violation of the consortium's rules and if there was a breach of the agreement, impose a reasonable fine in the minimum amount of \$100,000 for a breach, (7) it would pay attorney fees and costs in a judicial proceeding if there was a breach proven. In April 2014, consortium rules were adopted that

provided that a member of the consortium could not make or publish any statement that was derogatory to any other member, that a reasonable penalty could be assessed to any member who breached the rules or membership agreement and failed to pay fees due. Claimant offered its members additional software that enabled a 3-D application of its software (ACIS) and an opportunity to jointly develop software for building information modeling (BIM). These offers, which respondent accepted, required payments to claimant in the amounts of \$2500 (ACIS) and \$2000 (BIM) annually. Respondent's membership level also required it to pay claimant \$50,000 annually. In the Fall of 2014, claimant became aware that respondent was competing against it by offering a competing software platform which may use claimant's proprietary software, had failed to pay its membership dues and assessments, was soliciting members of the claimant to leave the consortium and do business with respondent, and failed to schedule an audit after being requested to do so by claimant. All of these acts were violations of the membership agreement and the rules. On April 2, 2015, claimant sent to respondent a letter outlining the breaches and giving respondent one last chance to cure its breaches. Respondent failed to cure its breaches and on May 18, 2015, claimant sent respondent a letter terminating its membership, demanding an audit, and notifying claimant it owed past assessments of \$54,500 (annual membership dues of \$50,000, ACIS assessment of \$2500, and BIM assessment of \$2000). It also notified respondent of penalties of \$200,000 being assessed by the leadership of the consortium pursuant to the terms of the membership agreement and the rules. Claimant initiated this arbitration and seeks a judgment that \$254,500 is due and owing, and that respondent is required to undergo an audit.

DISCUSSION

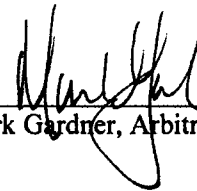
Claimant has proven the breaches of the membership agreement and the rules. Exhibit H establishes that respondent is competing with claimant and soliciting consortium members. Exhibit I proves that respondent is using IntelliCAD in marketing its competing software. Testimony of Lorenzo established that the annual membership fee and ACIS and BIM assessments remain unpaid in the amounts claimed. Based upon the cost to develop the proprietary technology, the fine levied by claimant of \$200,000 was "reasonable" under the rules. Considering the exhibits produced and the testimony presented, claimant is entitled to a judgment in the amount of \$254,500, an audit of respondent's CAD software platform, attorney fees, and costs.

AWARD

Respondent, Suzhou Gstarsoft Co. Ltd., is ordered to undergo an audit of its CAD software platform by Claimant.

Claimant, The IntelliCAD Technology Consortium, is issued an award against Respondent in the amount of \$254,500.00, plus \$ 19,392.14 for attorney fees, costs, and disbursements, for a total award of \$ 273,892.14.

Dated this 23rd day of October, 2015



Mark Gardner, Arbitrator

The IntelliCAD Technology Consortium

1/1/2013

**THE INTELICAD TECHNOLOGY CONSORTIUM
COMMERCIAL MEMBERSHIP AGREEMENT**

This Agreement, effective as of January 1, 2013, 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.

The IntelliCAD Technology Consortium

“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).

The IntelliCAD Technology Consortium

"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).

The IntelliCAD Technology Consortium

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.

The IntelliCAD Technology Consortium

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

The IntelliCAD Technology Consortium

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,

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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

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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

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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

The IntelliCAD Technology Consortium

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,

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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. 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

The IntelliCAD Technology Consortium

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.

The IntelliCAD Technology Consortium

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.

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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: SUZHOU GSTARSOFT CO, LTD

By: MEIYU HUANG

Title: VICE PRESIDENT

Print Name: MEIYU HUANG

Address: 5F UNIT C, BUILDING 201,
NO. A10, JIUXIANQIAO NORTH
ROAD, CHAOYANG DISTRICT, 100015, PR CHINA

Telephone: +86-10-57910609

Facsimile: +86-10-57910929

Website: WWW.GSTARCAD.COM

Executive Management Contact Email:
hmy@gstarcad.net



Agreed and Accepted on behalf of:

The IntelliCAD Technology Consortium

By: Shawn M. Lindsay attorney-in-fact

Officer: and at direction of Darcy Aotter, IR Secretary

Print Name: Shawn M. Lindsay

The IntelliCAD Technology Consortium

EXHIBIT A

Marks

IntelliCAD

IntelliCAD "i" logo

ArchT

ArchT logo

Commercial Membership Agreement-1/1/2013
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Exhibit A