

DESIGN TECHNOLOGY, INC.
END USER TERMS AND CONDITIONS of LICENSE

THIS IS A LEGAL AGREEMENT BETWEEN YOU AND DESIGN TECHNOLOGY, INC. ("DESIGN"). THESE END USER TERMS AND CONDITIONS TOGETHER WITH THE LICENSE AGREEMENT ARE COLLECTIVELY REFERRED TO HEREIN AS THE "AGREEMENT."

1. **Definitions.**

- (a) Unless defined below, all terms are as defined on the Design Technology, Inc. License Agreement.
- (b) "Software" means the Software identified on the License Agreement, in object code format, together with (i) any Software updates and/or upgrades provided by DESIGN to you during the Evaluation Term and Extended Term, if any, and (ii) any documentation related to the Software provided to you by DESIGN, including but not limited to hard copy and electronic manuals, release notes, installation procedures, and bug reports.

2. **Term.** For purposes of this Agreement, the "Evaluation Term" shall mean a period commencing upon delivery of the Software to you and continuing for thirty (30) days thereafter. You may extend the license granted in Paragraph 3 ("Software License") beyond the Evaluation Term for a period continuing for the life of the copyright in the Software (the "Extended Term") by paying the then-current end user license fees ("Fees") and completing, signing, and returning the Design Technology, Inc. License Agreement. The Software shall be deemed accepted by you upon execution of the Design Technology, Inc. License Agreement. This Agreement commences upon the Effective Date and continues for the Evaluation Term and Extended Term, if any, unless earlier terminated as set forth herein.

3. **Software License.** Subject to these End User Terms and Conditions, DESIGN hereby grants to you a non-exclusive, non-transferable, revocable license (without the right to sublicense) to use the Software in object code format, and its related documentation (i) during the Evaluation Term, solely for internal evaluation by your employees and contractors, or, subject to payment of the Fees (ii) during the Extended Term, for your internal business use for access solely by your employees and contractors at the Licensed Facilities, subject to the end user quantity limits imposed by the Software's license manager ("Quantity Limit"). You can increase the Quantity Limit by paying DESIGN the applicable then-current Fees for the desired increase in the Quantity Limit.

4. **Restrictions.** The Software may not be reverse compiled, reverse assembled, reverse engineered, used, executed, copied, or modified except as stated in this Agreement. You may make a reasonable number of archival copies of the Software for backup or archival purposes in accordance with applicable copyright law. You must retain, reproduce, and abide by all proprietary rights notices, serial numbers, and other notices of DESIGN and its licensors on the Software and its related documentation and any copies thereof. You will establish backup plans, restart and recovery procedures, and audit controls sufficient to maintain the security and integrity of the Software. You will implement and maintain reasonable and appropriate (in accordance with industry standards) security measures to protect any personal data or other confidential data managed, accessed, or controlled by you or on your behalf using the Software. You will notify DESIGN of any security breach incidents related to data managed, accessed, or controlled using the Software.

5. **Designated Equipment and Licensed Facilities.** You may, upon receiving DESIGN's prior written consent, change the Designated Equipment, transfer the use of the Software to another

piece of Designated Equipment and/or change the Licensed Facilities. You will provide DESIGN with prior written notice of the proposed new Designated Equipment or Licensed Facilities. The fee for any such transfer shall be in accordance with DESIGN's then-current published price list and shall be paid by you. You agree to notify DESIGN thirty (30) days in advance of any requested Software relocation(s), the cost of which shall be borne by you.

6. **Taxes and Payments.** You are responsible for all taxes, fees, duties, governmental charges, and similar assessments (other than taxes based on DESIGN's net income) attributable to your license of the Software and procurement of Maintenance. All payments are due not later than thirty (30) days following DESIGN's invoice date. You agree to pay interest on overdue payments at the rate of 1.5% per month or, if less, the highest rate permitted by law.
7. **Maintenance.** Maintenance is not included with the Software, but must be separately purchased. DESIGN will provide such maintenance and continuing support ("Maintenance") on an annual basis at the rates described in the DESIGN TECHNOLOGY, Inc. License Agreement. The following provisions shall apply to any procured Maintenance:
 - (a) General Support. DESIGN shall provide you with telephone assistance for inquiries related to the use of the Software and the reporting of errors or other problems with the Software during DESIGN normal business hours.
 - (b) Error Corrections. If DESIGN is notified in writing by you of an error or other problem in the Software, and such error or other problem can be verified, either by reproduction at DESIGN's facility or through remote access to your facility, DESIGN shall use reasonable efforts to correct the error or other problem within a reasonable time.
 - (c) Provision of Updates. DESIGN shall make updates to the Software and its related documentation available to you at no additional charge. Updates shall be provided in the same form and manner as the Software was provided unless the parties otherwise agree. You agree to promptly install new updates, patches, and fixes of Software as requested by DESIGN.
 - (d) Lapse. If you wish to purchase Maintenance after not having Maintenance for any period of time in which this Agreement was in effect ("Lapse Period"), you will be required to pay the standard Maintenance fees in effect for any such Lapse Period in addition to Maintenance fees for the period for which you wish to purchase Maintenance.

8. **Limited Warranties and Remedies.**

- (a) Software. During the Evaluation Term, the Software is provided "AS IS" and without any warranty. During the Extended Term, the only warranty provided by DESIGN to you with regard to the Software and related documentation is that the Software media is warranted against defects in material and workmanship under normal use for a period of ninety (90) days from the date of delivery to you. If a defect appears in this ninety (90) day period, DESIGN will either repair or replace defective Software media, at DESIGN's option.
- (b) Maintenance. The only warranty provided by DESIGN to you with regard to Maintenance is that such Maintenance will be of professional quality and will conform to generally accepted industry standards and practices for similar services.
- (c) Further Warranty Limitations. In addition to the other limitations set forth in this Agreement, DESIGN will have no warranty obligations if you do not promptly notify DESIGN in writing of each defect and adequately describe the defect. DESIGN is not obligated to correct a Software media defect that cannot be reproduced by DESIGN.

DESIGN's warranties in this Agreement do not apply to any Software media (i) improperly installed or operated, (ii) altered, except by DESIGN or in accordance with its instructions, or (iii) damaged by improper electrical power or environment, abuse, misuse, accident, or negligence. No written or oral representation regarding the capacity, suitability, or performance of Software or Maintenance, whether by a DESIGN employee or otherwise, is a warranty by DESIGN or gives rise to any liability of DESIGN. You acknowledge that no promise, representation, warranty, or undertaking has been made or given by DESIGN or by any other entity in relation to (i) the profitability of, or any other consequences or benefits to be obtained from, the delivery or use of the Software, (ii) merchantability or fitness for any purpose or purposes of the Software, or (iii) the Maintenance. You have relied upon your own skill and judgment in deciding to enter into this Agreement.

- (d) Except as expressly stated herein, THE SOFTWARE IS LICENSED HEREUNDER "AS IS." DESIGN DOES NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE. DESIGN SPECIFICALLY DISCLAIMS ALL EXPRESS, IMPLIED, OR STATUTORY WARRANTIES REGARDING THE SOFTWARE, DOCUMENTATION, AND MAINTENANCE, INCLUDING WITHOUT LIMITATION THE WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, AND NON-INFRINGEMENT.

9. **Limitations on Damages.** DESIGN IS NOT RESPONSIBLE FOR SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOSS OF USE, LOSS OF DATA, OR LOST PROFITS OR REVENUES), REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT PRODUCT LIABILITY, OR OTHERWISE, AND WHETHER OR NOT DESIGN HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. DESIGN'S TOTAL LIABILITY FOR ALL DAMAGES IN ANY ACTION BASED ON, ARISING OUT OF, OR IN CONNECTION WITH THE SOFTWARE, MAINTENANCE, OR THIS AGREEMENT SHALL NOT EXCEED THE PRICE YOU HAVE PAID DESIGN FOR THE SOFTWARE, IF ANY.
10. **Indemnification.** You will defend, indemnify, and hold DESIGN and its directors, officers, agents, employees, members, subsidiaries, and affiliates harmless from and against any claim, action, proceeding, liability, loss, damage, cost, or expense (including, without limitation, legal fees and expenses), arising out of or in connection with your use of the Software, or which DESIGN may suffer or incur by reason of the breach of any of the provisions of this Agreement by you or your employees, agents or subcontractors howsoever caused or the acts, omissions or negligence of you, your employees, agents and subcontractors.
11. **Termination.** DESIGN may terminate this Agreement at any time for a material breach of this Agreement by you. DESIGN will provide you with ten (10) days notice of termination for such breach, except that DESIGN may terminate immediately upon written notice to you in the event of a breach of Sections 4 or 13. Sections 4, 6, 8, 9, 10, 13, 14, 17, and 18 shall survive termination of this Agreement. Upon termination of this Agreement you must (i) either return to DESIGN, or destroy, all copies of the Software and its related documentation, and (ii) furnish to DESIGN a signed certificate of compliance with this provision. If you desire to terminate any Maintenance provided hereunder, you must provide DESIGN ninety (90) days advance written notice. Upon said termination of any Maintenance, DESIGN will be under no obligation to provide you with Maintenance of any type for the applicable Software.
12. **Export.** You acknowledge that the laws and regulations of the United States, and any other applicable foreign government, may restrict the export and re-export of certain commodities and technical data of such nation's origin, including the Software and its related documentation. You agree that you will not export or re-export the Software and its related documentation without the appropriate United States or foreign government licenses.

13. **Intellectual Property Rights, Confidentiality Obligations.**

- (a) The Software and its related documentation (and all copies of the Software and its related documentation), and all patents, copyrights, trade secrets, trademarks, service marks, applications for any of the foregoing, know-how, any such rights and rights of the same or similar effect or nature in any part of the world, embodied in or associated with the Software and its related documentation are proprietary to DESIGN and/or its licensors, and DESIGN and/or its licensors retain ownership of all such rights. No title to or ownership in these items is conveyed to you or to any third party.
- (b) The Software, including without limitation, the structure, organization and code, contains information and valuable trade secrets that are not generally known to the public. You will treat as confidential and preserve the confidentiality of the Software and will not disclose any portion of the Software to any third party. The foregoing obligation does not apply to any information that: (a) is already in your possession as shown by documentation; (b) is or becomes publicly available through no fault of you; or (c) is obtained by you from a third person without breach by such third person of an obligation of confidence. Information will not be deemed to be within the foregoing exceptions merely because it is: (i) embraced by more general information in the public domain or in the possession of the party receiving such information, or (ii) a combination of individual items of information that could be pieced together to reconstruct such combination from non-confidential information.
- (c) You agree to secure and protect the proprietary rights of DESIGN in the Software and all copies thereof (in whatever form), and to take appropriate action to secure and protect same by instruction to, or agreement with your employees, agents and subcontractors who are permitted access to the Software. You will not take any action which adversely affect DESIGN's intellectual property rights in the Software.

14. **Injunctive Relief.** You acknowledge and agree that DESIGN will be irreparably injured if the provisions of Section 4 (Restrictions) or Section 13 (Intellectual Property Rights) of these End User Terms and Conditions are not capable of being specifically enforced, and agree that DESIGN shall be entitled to equitable remedies for any breach of Section 4 or Section 13, in addition to, and cumulative with, any other legal rights or remedies it may have, including the right to damages.

15. **Assignment.** You may not assign this Agreement or any license, or transfer any Software to a different Licensed Facility or to a third party, without DESIGN's prior written consent. Design may assign this Agreement or any rights or obligations hereunder.

16. **Restricted Governmental Rights.** If this product is acquired under the terms of a DoD contract; use, duplication, or disclosure by the Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of 252.277-7013 and restrictions set forth in these End User Terms and Conditions. If this product is acquired under the terms of a civilian agency contract; use, reproduction, or disclosure is subject to 52.227-19 and restrictions set forth in these End User Terms and Conditions. Unpublished-rights reserved by Design Technology, Inc. under the copyright laws of the United States. DESIGN's address: 4433 Christensen Circle, Littleton, CO 80123.

17. **Miscellaneous.** If any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions remain in effect. This Agreement is governed by and construed under the laws of the United States of America and the State of Colorado as applied to transactions entered into and to be performed entirely in Colorado between residents of Colorado. Unless otherwise

agreed by the parties, all disputes arising out of this Agreement will be resolved solely in the state and federal courts of Denver, Colorado.

- 18. **Waiver.** The failure of either party to require performance by the other party of any provision hereof shall not affect the full right to require such performance at any time thereafter; nor shall the waiver by either party of a breach of any provision hereof be taken or held to be a waiver of the provision itself.

- 19. **Force Majeure.** DESIGN will not be responsible for any failure in the performance of its obligations under this Agreement to the extent that such failure is due to causes beyond DESIGN's control including, but not limited to, acts of God, war, acts of any government or agency thereof, fire, explosions, epidemics, quarantine restrictions, strikes, delivery services, telecommunication providers, strikes, labor difficulties, lockouts, embargoes, severe weather conditions, delay in transportation, or delay of suppliers or subcontractors.

These End User Terms and Conditions have been read,
understood and agreed to this ____ day of _____, 2010.

Name Date

Title

Company