

MEDEMA LABS SOFTWARE EVALUATION AGREEMENT

This MEDEMA LABS SOFTWARE EVALUATION AGREEMENT is entered into as of the last date of the parties' signatures below (the "**Effective Date**"), by and between Medema Labs Corp., a Delaware corporation ("**Medema**"), and the entity identified as the "Licensee" in the signature block below ("**you**" or "**your**").

RECITALS

- A. Medema has developed a certain mechanical design and manufacturing software product known as Part Analyzer (the "**Licensed Software**").
- B. Medema is willing to provide the Licensed Software to third parties for non-commercial, internal evaluation purposes.
- C. You desire to evaluate the Licensed Software.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and premises herein contained, the parties hereto agree as follows:

1. License Grant.

- a. License Grant. Subject to the terms of this Agreement, Medema hereby grants to you, during the Term, a limited, revocable, non-exclusive, non-transferrable, non-sublicensable, royalty-free license to use the Licensed Software solely for your non-commercial, internal testing and evaluation purposes.
- b. No Other Rights. Nothing in this Agreement shall be construed as a license to any intellectual property rights of Medema other than those rights in the Licensed Software expressly granted by Medema to you pursuant to **Section 1(a)** above. EXCEPT AS EXPRESSLY PROVIDED HEREIN, NO OTHER LICENSE OR OTHER RIGHTS ARE GRANTED BY MEDEMA TO YOU, WHETHER BY IMPLICATION, ESTOPPEL OR OTHERWISE.

2. Restrictions and Obligations. The license rights granted by Medema to you in **Section 1(a)** above are subject to the following restrictions, obligations and limitations:

- a. No Commercial Use. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, THIS AGREEMENT DOES NOT CONVEY ANY LICENSE TO USE THE LICENSED SOFTWARE IN A PRODUCTION ENVIRONMENT. YOU ARE REQUIRED TO EXECUTE A SEPARATE LICENSE AGREEMENT WITH MEDEMA BEFORE USING THE LICENSED SOFTWARE IN A PRODUCTION ENVIRONMENT. You hereby acknowledge and agree that: (i) any use by you of the Licensed Software in a production environment is a material breach of this Agreement; and (ii) any such unauthorized use will be at your sole risk. No such unauthorized use shall impose any liability on Medema, or any of its licensors, whether by implication, by estoppel, through course of dealing, or otherwise. You hereby agree to indemnify Medema, its affiliates and licensors against any and all claims, losses, and damages based on your use of the Licensed Software in breach of this Agreement.
- b. Prohibited Uses. You shall not: (i) use the Licensed Software for any benchmarking purposes other than your internal benchmarking use for purposes of evaluating competing products against Medema products used under normal conditions, provided that you do not publish or disclose any such benchmarking data to any person or entity other than Medema or your employees who have a bona fide need to know such data; (ii) use the Licensed Software for the purpose of analyzing or proving infringement of any of your patents or other intellectual property rights by either Medema or Medema's licensors; (iii) except as expressly provided in this Agreement, copy, publish, disclose, display, provide, transfer or make available the Licensed Software to any third party, or sublicense, transfer,

or assign the Licensed Software or your rights under this Agreement to any third party; or (iv) mortgage, pledge or encumber the Licensed Software in any way. Any breach by you of this **Section 2(b)** shall be deemed a material breach of this Agreement.

- c. **Third Party Materials.** The Licensed Software may include third party software and associated electronic documentation, if any, licensed under terms other than the terms of this Agreement (in whole or in part, "**Third Party Materials**"), including by way of example, Open Source Software. Your use of the Third Party Materials is subject to the applicable licensing terms, acknowledgements, and disclaimers as specified in the applicable software license under which such Third Party Materials are licensed. For clarification, this Agreement does not limit your rights under, or grant you rights that supersede, the terms of any applicable Third Party Materials license agreement. In the event you choose not to accept or agree with the terms in any applicable Third Party Materials license agreement, you must terminate this Agreement pursuant to **Section 4(b)** below. For purposes of this Agreement, "**Open Source Code**" means any software code that is distributed as "free software" or "open source software" or that is otherwise distributed publicly in source code form under terms that permit modification and redistribution of such software.
- d. **Delivery.** Medema will deliver the Licensed Software by email or other electronic means within fifteen (15) days following the Effective Date. You agree to promptly install the Licensed Software upon its delivery to you.

3. Intellectual Property Rights.

- a. The Licensed Software is licensed, not sold to you, and can only be used in accordance with the terms of this Agreement. Subject to the license rights granted to you pursuant to this Agreement, Medema and Medema's licensors own and shall continue to own all right, title, and interest in and to the Licensed Software, including all copies thereof. You agree that all fixes, modifications and improvements (collectively, "**Improvements**") to the Licensed Software conceived of or made by Medema that are based, either in whole or in part, on your feedback, suggestions or recommendations are the exclusive property of Medema and all right, title and interest in and to such Improvements will vest solely in Medema.
- b. The Licensed Software contains copyrighted material, trade secrets and other proprietary information of Medema and its licensors and are protected by copyright laws, international copyright treaties, and trade secret laws, as well as other intellectual property laws. To protect Medema's and its licensors' rights in the Licensed Software, you agree, except as specifically permitted by a statutory provision that cannot be waived by contract, not to "unlock", decompile, reverse engineer, disassemble or otherwise translate to a human-perceivable form any portions of the Licensed Software provided to you in object code format, nor permit any person or entity to do so. You shall not remove, alter, cover, or obscure any confidentiality, trade secret, trademark, patent, copyright or other proprietary notice or other identifying marks or designs from any component of the Licensed Software and you shall reproduce and include in all copies of the Licensed Software the copyright notice(s) and proprietary legend(s) of Medema and its licensors as they appear in the Licensed Software. Medema reserves all rights not specifically granted under this Agreement.

4. Term and Termination.

- a. **Term.** The term of this Agreement shall commence as of the Effective Date and shall, unless earlier terminated as set forth in this **Section 4**, automatically terminate ninety (90) days after the Licensed Software is delivered to you pursuant to **Section 2(d)** above (the "**Term**").
- b. **Termination.** You may terminate this Agreement at any time by written notice to Medema. Without prejudice to any other rights or remedies, Medema may terminate this Agreement with no liability to you and upon written notice: (i) in the event you breach or otherwise fail to comply with the terms of this Agreement; (ii) in the event you are acquired through merger, a third party purchases a controlling interest in you, or substantially all of your assets are sold or transferred to another entity; or (iii) in the event of your insolvency, bankruptcy or the filing of any proceeding by or against you seeking relief from creditors.

- c. **Effect of Termination or Expiration.** Upon the termination or expiration of this Agreement, the license rights granted to you in **Section 1(a)** above shall immediately and automatically terminate and you will have no further right to use the Licensed Software. Upon the termination or expiration of this Agreement, you agree to destroy any and all copies of the Licensed Software in your possession, custody or control, and if requested by Medema, provide to Medema a written statement signed by your authorized representative certifying such destruction. **Sections 3, 4(c), 5, 6, 7 and 9 through 16** of this Agreement shall survive the termination or expiration hereof.

5. **Audit Right.** At Medema's request, and within thirty (30) calendar days after receiving written notice, you shall permit an internal or independent auditor selected by Medema to have access, no more than twice each calendar year (unless the immediately preceding audit revealed a discrepancy) and during your regular business hours, to all of your equipment, records, and documents as may contain information bearing upon the use of the Licensed Software. You agree to keep full, complete, clear and accurate records with respect to your use of the Licensed Software for a period beginning with the then current calendar year and going back three (3) years.

6. **Confidential Information.** You acknowledge and agree that the Licensed Software contains trade secrets and other confidential information of Medema and its licensors. You agree to use the Licensed Software solely within the scope of the license rights set forth herein, to maintain the Licensed Software in strict confidence, to use at least the same procedures and degree of care that you use to prevent disclosure of your own confidential information of like importance but in no event using less than reasonable care, to prevent unauthorized use or disclosure of the Licensed Software to any third party. You agree to obtain executed confidentiality agreements with your employees and contractors having access to the Licensed Software and to diligently take steps to enforce such agreements.

7. **Disclaimers; Limitations of Liability.**

- a. **Disclaimer.** THE LICENSED SOFTWARE IS PROVIDED "AS IS" AND WITH ALL FAULTS. FURTHERMORE, YOU ACKNOWLEDGE AND AGREE THAT THE LICENSED SOFTWARE HAS NOT BEEN TESTED OR CERTIFIED BY ANY GOVERNMENT AGENCY OR INDUSTRY REGULATORY ORGANIZATION OR ANY OTHER THIRD PARTY ORGANIZATION. YOU AGREE THAT PRIOR TO USING THE LICENSED SOFTWARE IN OR WITH ANY OTHER PRODUCTS OR TECHNOLOGY THAT YOU WILL THOROUGHLY TEST THE FUNCTIONALITY OF THE LICENSED SOFTWARE IN OR WITH THAT PRODUCT OR TECHNOLOGY AND BE SOLELY RESPONSIBLE FOR ANY PROBLEMS OR FAILURES. MEDEMA AND ITS LICENSORS DO NOT MAKE, AND HEREBY EXPRESSLY DISCLAIM, ANY AND ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND REGARDING THE LICENSED SOFTWARE, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT OF ANY THIRD PARTY PATENTS, COPYRIGHTS, TRADEMARKS, TRADE SECRETS, OR OTHER INTELLECTUAL PROPERTY RIGHTS. YOU AGREE TO USE YOUR INDEPENDENT JUDGMENT SKILL, JUDGMENT AND EXPERTISE IN USING THE LICENSED SOFTWARE.

YOU ACKNOWLEDGE AND AGREE THAT MEDEMA SHALL NOT BE LIABLE FOR AND SHALL HAVE NO OBLIGATION TO DEFEND OR INDEMNIFY YOU AGAINST ANY THIRD PARTY INFRINGEMENT CLAIM THAT RELATES TO OR IS BASED ON YOUR USE OF THE LICENSED SOFTWARE.

- b. **Limitations of Liability.** IN NO EVENT SHALL MEDEMA, OR ITS LICENSORS, BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY, IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT OR THE USE OF THE LICENSED SOFTWARE, REGARDLESS OF WHETHER MEDEMA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR OTHERWISE HAD REASON TO KNOW OF THE POSSIBILITY OF SUCH DAMAGES. EXCLUDED DAMAGES INCLUDE, BUT ARE NOT LIMITED TO, COST OF REMOVAL OR REINSTALLATION, OUTSIDE COMPUTER TIME, LABOR COSTS, LOSS OF DATA, LOSS OF GOODWILL, LOSS OF PROFITS, LOSS OF SAVINGS, OR LOSS OF USE OR INTERRUPTION OF BUSINESS. IN NO EVENT WILL MEDEMA'S OR ITS LICENSORS' TOTAL AGGREGATE LIABILITY TO YOU UNDER

THIS AGREEMENT OR ARISING OUT OF YOUR USE OF THE LICENSED SOFTWARE EXCEED FIVE HUNDRED U.S. DOLLARS (US \$500). Because some jurisdictions do not allow the exclusion or limitation of incidental or consequential damages or limitation on how long an implied warranty lasts, the above limitations or exclusions may not apply to you.

THE DISCLAIMERS AND LIMITATIONS OF LIABILITIES SET FORTH IN THIS AGREEMENT SHALL APPLY NOTWITHSTANDING THE FAILURE OR ALLEGED FAILURE OF ANY ESSENTIAL PURPOSE.

8. **No Technical Support.** Medema and its licensors are under no obligation to install, maintain or support the Licensed Software.
9. **Communications and Notices.** Communications by means of e-mail shall fulfil the requirement of being in writing, except that such methods shall not apply with respect to any alterations, amendments and supplements of this Agreement. The requirement of written form can only be waived in writing. Any official notice to Medema from you shall be addressed as follows:

To Medema:

Any official notice to you from Medema may be addressed to you at the address set forth in the signature block below. A party may provide a substitute address for notices by providing written notice to the other.

10. **Governing Law and Severability; Waiver.** This Agreement and all matters arising out of or relating to this Agreement will be governed by the laws of the State of Oregon, USA, without giving effect to any choice of law rule. In the event of any controversy, claim, or dispute between the parties arising out of or relating to this Agreement or the Licensed Software, such controversy, claim, or dispute shall litigated exclusively in a state or federal court located Multnomah County, Oregon. You hereby consent to and agree not to contest arbitration in the foregoing venue.

ANY AND ALL DISPUTES, CLAIMS, AND CAUSES OF ACTION ARISING OUT OF OR CONNECTED WITH THIS AGREEMENT AND/OR THE LICENSED SOFTWARE SHALL BE RESOLVED INDIVIDUALLY, WITHOUT RESORT TO ANY FORM OF CLASS ACTION. EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

11. U.S. Government Restricted Rights; Export Restrictions.

- a. U.S. Government Restricted Rights. The Licensed Software is a "commercial item," as that term is defined at 48 CFR 2.101, consisting of "commercial computer software" and "commercial computer software documentation," as such terms are used in 48 CFR 12.212. Consistent with 48 CFR 12.212 and 48 CFR 227.7202-1 through 227.7202-4, all U.S. Government users acquire the Licensed Software with only those rights set forth herein.
- b. Export Restrictions. You may not download, export or re-export the Licensed Software: (i) into, or to a national or resident of, any country to which the United States has embargoed goods; or (ii) to anyone on the United States Treasury Department's list of Specially Designated Nationals or the U.S. Commerce Department's Table of Deny Orders. Accordingly, you hereby represent and warrant that you are not located in, under the control of, or a national or resident of any such country or on any such list. You acknowledge that it is your sole responsibility to comply with any and all government export and other applicable laws and that Medema has no responsibility with respect thereto.

12. **Contingencies.** Medema shall not be in breach of this Agreement and shall not be liable for any non-performance or delay in performance if such non-performance or delay is due to a force majeure event or other circumstances beyond Medema's reasonable control.

13. **Entire Agreement.** This is the entire agreement between you and Medema and this Agreement supersedes any prior agreement between the parties related to the subject matter of this Agreement.

Notwithstanding the foregoing, any signed and effective software license agreement relating to the subject matter hereof and stating expressly that such agreement shall control regardless of any subsequent click-wrap, shrink-wrap or web-wrap, shall supersede the terms of this Agreement. You hereby represent and warrant that either: (i) you will use the Licensed Software for your own benefit and personally accept, agree to and intend to be bound by these terms; or (ii) you are authorized to and intend to be bound by these terms on behalf of your company or entity.

14. **Injunctive Relief.** You acknowledge and agree that, in the event you breach **Sections 1, 3 or 6** above or any other provision affecting Medema's intellectual property rights in the Licensed Software, Medema will suffer irreparable injury for which there can be no adequate remedy at law; therefore, Medema shall be entitled to seek equitable relief, including injunctive relief and/or specific performance, in addition to whatever remedies it might have under this Agreement or otherwise at law or at equity.
15. **Headings.** The headings set forth in this Agreement are for convenience only, and are not intended as an interpretive aid or as comprising a term or condition of this Agreement.

[signature page to follow]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

MEDEMA:

MEDEMA LABS CORP.

Title: _____
By: _____
Date: _____

LICENSEE:

Title: _____
By: _____
Date: _____
Address for Notices:
Title: _____
Address: _____
Email: _____