



Engineering Excellence for 25 years

## Customer Agreement

**Important:** I agree to pay the amount agreed upon in this order. I will contact VidCAD support to resolve any problem with my order. I understand that VidCAD may initiate a collection and submit a negative report to Consumer Credit Reporting agencies if payment is not received as agreed upon. Credit Card Fraud is a criminal offense in any country. I UNDERSTAND THAT VidCAD'S PRODUCTS, SERVICES AND SUPPORT ARE NOT JUST A SOFTWARE PACKAGE AND THAT NOT INSTALLING OR NOT USING THE SOFTWARE DOES NOT VOID ANY PART OF THE AGREEMENTS OR ENTITLE YOU TO ANY TYPE OF SUPPORT EXTENSION OR COMPENSATION FOR ANY UNUSED PERIODS OR ISSUES.

Universal Terms for VidCAD Software, Products and Services (herein referred to as "Products") below...

This Agreement ("Agreement") is by and between VidCAD LLC and/or its subsidiaries and agents ("VidCAD") a New Mexico LLC and You, Your heirs, agents, successors and assigns ("You"), and is made effective as of the date of electronic execution. This Agreement sets forth the terms and conditions of your use of VidCAD software ("Software"), Products ("Products") and services ("Services") and explains VidCAD's obligations to you and your obligations to VidCAD in relation to the Software, Products and Services You purchase.

This Agreement as well as any additional VidCAD policies, together with all modifications thereto, constitute the complete and exclusive agreement between you and VidCAD concerning your use and purchase of VidCAD's Products, and supersede and govern all prior proposals, agreements, and/or other communications. All VidCAD policies and agreements specific to particular Products are incorporated herein and made part of this Agreement by reference. By purchasing VidCAD's Products, You acknowledge that You have read, understood, and agree to be bound by all terms and conditions of this Agreement and any other policies or agreements made part of this Agreement by reference, as well as any new, different or additional terms, conditions or policies which VidCAD may establish from time to time, and any agreements that VidCAD is currently bound by or will be bound by in the future. You may view the latest version of this Agreement online.

In addition to transactions entered into by you on your behalf, you also agree to be bound by the terms of this Agreement for transactions entered into on your behalf by anyone acting as Your Agent, and transactions entered into by anyone who uses the account you have established with VidCAD, whether or not the transactions were in your behalf.

The General Terms apply to all customers of VidCAD.

### GENERAL TERMS APPLICABLE TO ALL SOFTWARE PRODUCTS AND SERVICES

#### 1. TERM OF AGREEMENT; MODIFICATIONS.

You agree that VidCAD may modify this Agreement and the Services from time to time. You agree to be bound by any changes VidCAD may reasonably make to this Agreement when such changes are made. If you have purchased Products from VidCAD, the term of this Agreement shall continue in full force and effect as long as you take advantage of and use the Software and/or Products and Services. In the event you terminate your usage, VidCAD will not refund any amounts you have paid. You agree that VidCAD shall not be bound by any representations made by third parties who you may use to purchase Services from, and that any statement of a general nature, which may be posted on VidCAD's Web site or contained in VidCAD's promotional materials, will not bind VidCAD in any way. VidCAD may, at times, offer certain promotions with different charges and features. **You agree that you will be responsible for notifying VidCAD IN WRITING TO THE SUPPORT SUITE should you desire to terminate your use of VidCAD services.** Messages left in voice mail boxes or verbal conversations do not qualify as notifications to VidCAD. **Notification of Your intent to terminate must be provided in writing to VidCAD prior to your billing date but no later than three days prior to your billing date.** Any failure of participant to participate in any portion of the subscription and/or activities does not entitle participant to an extension of the subscription nor does it entitle the participant to any refunds of any subscription fees paid. Subscription

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contents and materials are subject to change without notice. VidCAD at its sole discretions may change, add, and/or remove materials, topics, media, or services. A change to any of the above does not entitle the participant to a refund of any sort. I UNDERSTAND THAT THE PROGRAM IS NOT JUST A SOFTWARE PACKAGE AND THAT PARTICIPANT NOT INSTALLING OR NOT USING THE SOFTWARE DOES NOT VOID ANY PART OF THE AGREEMENTS NOR AUTOMATICALLY QUALIFY FOR ANY REFUNDS.

## 2. ACCURATE INFORMATION.

You agree to maintain accurate information by providing updates to VidCAD, as needed, while you are using VidCAD's Services. You agree you will notify VidCAD within five (5) business days when any change of the information you provided as part of the application and/or registration process changes. Failure by You, for whatever reason, to respond within five (5) business days to any inquiries made by VidCAD to determine the validity of information provided by you will constitute a material breach of this Agreement. You agree that VidCAD may use and rely on any such information provided by you for all purposes in connection with Your Services, subject to VidCAD's Privacy Policy. If you provide any information that is inaccurate, not current, false, misleading or incomplete, or if VidCAD has reasonable grounds to suspect that your information is inaccurate, not current, false, misleading or incomplete, VidCAD has the absolute right, in its sole discretion, to terminate its Services and close your account.

## 3. PRIVACY.

You can view VidCAD's Privacy Policy at <http://vidcad.net/privacy.pdf>, as it is applicable to all Company Products.

## 4. ACCOUNT SECURITY.

You agree you are entirely responsible for maintaining the confidentiality of your customer number/login, credit card number, and security key (collectively, the "Account Access Information"). You agree you are entirely responsible for any and all activities that occur under your account. You agree to notify VidCAD immediately of any unauthorized use of your account or any other breach of security. You agree VidCAD will not be liable for any loss that you may incur as a result of someone else using your Account Access Information, either with or without your knowledge. You further agree you could be held liable for losses incurred by VidCAD or another party due to someone else using Your Account Access Information. For security purposes, you should keep Account Access Information in a secure location and take precautions to prevent others from gaining access to Your Account Access Information. You agree that you will be responsible for all activity in your account, whether initiated by you, or by others on your behalf, or by any other means. VidCAD specifically disclaims liability for any activity in your account, whether authorized by you or not.

## 5. NO UNLAWFUL CONDUCT OR IMPROPER USE.

As a condition of your use of VidCAD's products, You agree not to use them for any purpose that is unlawful or prohibited by these terms and conditions, and you agree to comply with any applicable local, state, federal and international laws, government rules or requirements. You agree you will not be entitled to a refund of any fees paid to VidCAD if, for any reason, VidCAD takes corrective action with respect to your improper or illegal use of its Services.

VidCAD reserves the right at all times to disclose any information as VidCAD deems necessary to satisfy any applicable law, regulation, legal process or governmental request, or to edit, refuse to post or to remove any information or materials, in whole or in part, in VidCAD's sole discretion.

If you have purchased Products, VidCAD has no obligation to monitor your use of the Services. VidCAD reserves the right to review your use of the Services and to cancel the Services in its sole discretion. VidCAD reserves the right to terminate your access to the Services at any time, without notice, for any reason whatsoever. VidCAD reserves the right to terminate Services if Your usage of the Services results in, or is the subject of, legal action or threatened legal action, against VidCAD or any of its affiliates or partners, without consideration for whether such legal action or threatened legal action is eventually determined to be with or without merit. You agree You will not be entitled to a refund of any fees paid to VidCAD if, for any reason, VidCAD takes corrective action with respect to Your improper or illegal use of its Services.

## 6. INTELLECTUAL PROPERTY.

You agree that VidCAD or its licensor holds all rights, title and interest in all Products and all intellectual property, including other rights related to intangible property, unless otherwise indicated. You acknowledge that no title or interest in such Intellectual Property Rights is being transferred to you and you agree to make no claim of interest in any such Product. You understand and

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agree that all content and materials contained in this Agreement, other policies, the VidCAD Web site, and any affiliated Web sites, materials, are protected by the various copyright, patent, trademark, service mark and trade secret laws of the United States, as well as, any other applicable proprietary rights and laws, and that VidCAD or its licensor expressly reserves its rights in and to all such content and materials. You further understand and agree that you are prohibited from using, in any manner whatsoever, any of the content or materials described above without the express written permission of VidCAD or its licensor. No license or right under any copyright, patent, trademark, service mark or other proprietary right or license is granted to you or conferred upon you by this Agreement or otherwise.

Unless otherwise specified in a purchase agreement for any VidCAD Software products, you may not copy, distribute, sell, decompile, disassemble, modify, reverse engineer, create derivative works from or otherwise reduce any VidCAD Software.

#### 7. USE OF VIDCAD SOFTWARE.

If you have licensed software and services from VidCAD, VidCAD grants You a limited, non-exclusive, nontransferable and non-assignable, non-sharing license to use the software and materials for such purposes as are ordinary and customary. You are free to use the software on any computer, but not on two or more computers at one time. You agree to not alter or modify the Software. You agree you are not authorized to create derivative works based upon the Software, nor are you authorized to integrate any plug-in or enhancement which uses or relies upon the Software. You further agree not to reverse engineer, decompile or otherwise attempt to uncover the source code. VidCAD reserves all rights to the Software and materials. The Software, materials and any copies you are authorized to make are the intellectual property of VidCAD. The source code and its organization are the exclusive property of VidCAD and the Software is protected by copyright, including United States Copyright Law. Except as expressly provided for in this section, this Agreement does not grant you any rights in the Software and all rights are reserved by VidCAD. VidCAD provides this Software, services, and materials “as is” without warranty of any kind either express or implied, including but not limited to the implied warranties or conditions of merchantability or fitness for a particular purpose.

#### 8. FEES AND PAYMENT.

As consideration for the Products purchased by you and provided to you by VidCAD, You agree to pay VidCAD at the time you order. All fees are due immediately and are non-refundable unless otherwise expressly noted, even if Your Services are suspended, terminated, or transferred prior to the end of the Services term. VidCAD expressly reserves the right to modify pricing through email notification and/or notice on its Web site. Payment may be made by you by providing either a valid credit card, or using VidCAD’s prepaid services such as “paid on site at events” or checks.

If You signed up for a monthly payment plan, Your monthly billing date will be determined based on the day of the month You purchase the Services unless that date falls after the 28th of the month in which case Your billing date will be the 28th of each month.

If for any reason VidCAD is unable to charge Your Payment Method for the full amount owed VidCAD for the Services provided, or if VidCAD is charged a penalty for any fee it previously charged to Your Payment Method, you agree that VidCAD may pursue all available remedies in order to obtain payment. If You pay by credit card and if for any reason VidCAD is unable to charge Your credit card with the full amount of the Services provided, or if VidCAD is charged back for any fee it previously charged to the credit card You provided, You agree that VidCAD may pursue all available remedies in order to obtain payment. You agree that among the remedies VidCAD may pursue in order to effect payment, shall include but will not be limited to, immediate cancellation without notice to you of any Services registered, bought or renewed on your behalf. VidCAD reserves the right to charge a reasonable administrative fee for administrative tasks outside the scope of its regular Services, including additional costs that it may incur in providing the Services and pass along to You. These include, but are not limited to, customer service issues that cannot be handled over email but require personal service, fees incurred by third parties you have elected to use as payment methods, and disputes that require legal services. These charges will be billed to the Payment Method we have on file for you. You may change Your Payment Method at any time by notifying VidCAD.

You agree that you are solely liable for arranging that Your Services are renewed, and that VidCAD shall not be liable to you or any third party if it is unable to charge Your Payment Method in order to renew Your Services. All purchases are processed in US dollars.

#### 9. REPRESENTATIONS AND WARRANTIES.

You, or the individuals who electronically execute this Agreement on behalf of You hereby represent and warrant that they have the right, power, legal capacity and appropriate authority to enter into this Agreement, and that they own and have not transferred to any other person or entity any of the rights, claims or interests that are the subject of this Agreement. You represent and warrant that you are 18 years of age or older, or that you have an agent authorized by law to represent you who is 18 years of age or older who is entering into this Agreement on Your behalf. You warrant that each action you make is being done so in good faith and that you have no knowledge of it infringing upon or conflicting with the legal rights of a third party or a third party's trademark or trade name.

#### 10. LIMITATION OF LIABILITY.

IN NO EVENT SHALL VidCAD BE LIABLE TO YOU OR ANY OTHER PERSON FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES, INCLUDING LOSS OF PROFIT OR GOODWILL, FOR ANY MATTER, WHETHER SUCH LIABILITY IS ASSERTED ON THE BASIS OF CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF WARRANTIES, EITHER EXPRESS OR IMPLIED, ANY BREACH OF THIS AGREEMENT OR ITS INCORPORATED AGREEMENTS AND POLICIES YOUR INABILITY TO USE THE SOFTWARE PRODUCTS OR SERVICES, YOUR LOSS OF DATA OR FILES OR OTHERWISE, EVEN IF VIDCAD HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. Some states may not allow such a broad exclusion or limitation on liability for damages as contained herein. In such states, VidCAD's liability is limited to the full extent permitted by law. You agree that in no event shall VidCAD's maximum aggregate liability exceed the total amount paid by you for the particular Products in dispute purchased from VidCAD.

#### 11. DISCLAIMER OF WARRANTIES.

VidCAD expressly disclaims all warranties of any kind, whether express or implied, including, but not limited to, the implied warranties of merchantability, fitness for a particular purpose and non-infringement. Services are provided on an "As Is" and "As Available" basis. VidCAD makes no warranty that its services will meet your requirements, or that the services will be uninterrupted, timely, secure, or error free, or that defects will be corrected. VidCAD does not warrant, nor make any representations regarding the use, or results of, any of the services it provides, in terms of their correctness, accuracy, reliability, or otherwise. Some jurisdictions do not allow the disclaimer of implied warranties, in which event that foregoing disclaimer may not apply to you.

#### 12. INDEMNIFICATION.

You agree to defend, indemnify and hold harmless VidCAD and its contractors, agents, employees, officers, directors, shareholders, and affiliates from any loss, liability, damages or expense, including reasonable attorneys' fees, resulting from any third party claim, action, proceeding or demand related to Your (including Your agents affiliates, or anyone using Your account, software or services with VidCAD whether or not on Your behalf, and whether or not with Your permission) use of the Software or Services You purchased from VidCAD or Your breach of this Agreement or incorporated agreements and policies. In addition, You agree to indemnify and hold VidCAD harmless from any loss, liability, damages or expense, including reasonable attorneys' fees, arising out of any breach of any representation or warranty provided herein, any negligence or willful misconduct by You, or any allegation that Your account infringes a third person's copyright, trademark or proprietary or intellectual property right, or misappropriates a third person's trade secrets. This indemnification is in addition to any indemnification required of you elsewhere. Should VidCAD be notified of a pending law suit, or receive notice of the filing of a law suit, VidCAD may seek a written confirmation from you concerning your obligation to indemnify VidCAD. Your failure to provide such a confirmation may be considered a breach of this agreement. You agree that VidCAD shall have the right to participate in the defense of any such claim through counsel of its own choosing. You agree to notify VidCAD of any such claim promptly in writing and to allow VidCAD to control the proceedings. You agree to cooperate fully with VidCAD during such proceedings. You agree You will not be entitled to a refund of any fees paid to VidCAD if, for any reason, VidCAD takes corrective action with respect to Your improper or illegal use of its services. You also agree that if VidCAD is notified that a complaint has been filed with a governmental, administrative or judicial body, regarding a Traffic Facts account of Yours with VidCAD, that VidCAD, in its sole discretion, may take whatever action VidCAD deems necessary regarding further modification, assignment of and/or control of your account to comply with the actions or requirements of the governmental, administrative or judicial body until such time as the dispute is settled.

#### 13. GOVERNING LAW, VENUE; WAIVER OF TRIAL BY JURY.

This agreement shall be deemed entered into in the State of New Mexico. You agree that the laws and judicial decisions of Dona Ana County, New Mexico, shall be used to determine the validity, construction, interpretation and legal effect of this Agreement. You agree that any action relating to or arising out of this Agreement shall be brought in the courts of New Mexico. You agree to waive the right to trial by jury in any proceeding that takes place relating to or arising out of this Agreement.

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#### 14. NOTICES.

You agree that all notices (except for notices concerning breach of this Agreement) from VidCAD to you may be posted on our Web site. Notices concerning breach will be sent either to the email or postal address you have on file with VidCAD. In either case, delivery shall be deemed to have been made five (5) days after the date sent.

Notices from You to VidCAD shall be made either by email, sent to the address provided on the VidCAD Web site, or first class mail to VidCAD's address at:

VidCAD, 2010 E Lohman Ave Ste 2, Las Cruces, NM 88001

#### 15. HEADINGS.

The headings in the Agreement are descriptive only and in the event of a conflict between a heading and the underlying terms of this Agreement, the terms of this Agreement shall control.

#### 16. ENTIRE AGREEMENT.

You agree that this Agreement including the policies and agreements it refers constitute the complete and only Agreement between You and VidCAD regarding the Services contemplated herein.

#### 17. SEVERABILITY.

You agree that the terms of this Agreement are severable. If any part of this Agreement is determined to be unenforceable or invalid, that part of the agreement will be interpreted in accordance with applicable law as closely as possible, in line with the original intention of both parties to the Agreement. The remaining terms and conditions of the Agreement will remain in full force and effect.

#### 18. WAIVER.

The failure of VidCAD to enforce any of the provisions within this Agreement or its incorporated agreements and policies against you or others shall not be construed to be a waiver of the right of VidCAD thereafter to enforce such provisions.

#### 19. FORCE MAJEURE.

VidCAD will make every effort to keep its Web site and Services operational. However, certain technical difficulties and other factors outside of its control may, from time to time, result in temporary service interruptions. You agree not to hold VidCAD liable for any of the consequences of such interruptions and no refunds shall be warranted.

#### 20. NO THIRD PARTY BENEFICIARIES.

Nothing in this Agreement, express or implied, is intended to confer upon any third party any rights, remedies, obligations, or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.

EDITION 041224