

## Highlighted Rights

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### 1. Products and Services

- 1.1. Access to the products and/or services of fusionBIM are exclusive to Members.

### 2. Confidentiality

- 2.1. The Member's data will be treated as with the utmost confidentiality, according to the terms and conditions of fusionBIM's Confidentiality Policy, which is a separate document.

## Highlighted Obligations

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### 3. Membership Fees

- 3.1. The membership will always remain free of charge.

### 4. Purchase of Products and Services

- 4.1. At **no** time will the Member be under any obligation to purchase any products and/or services whatsoever.

### 5. Membership Newsletter

- 5.1. The Membership Newsletter is the main channel of communication for Members, and all notifications will be communicated via this channel. Therefore all members may only unsubscribe from this newsletter upon termination of their membership. This newsletter will only be used for administrative purposes.

### 6. Site Login

- 6.1. The Member is responsible for the security of his password used for login to the Site. The Site being the website of fusionBIM at: [www.fusionbim.co.za](http://www.fusionbim.co.za)

## Parties

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### 7. Confirming Identity

- 7.1. This document is the membership agreement (hereafter called the Agreement) between the parties:  
7.1.1. MultiCad Design Solutions t/a fusionBIM (hereafter called fusionBIM) and  
7.1.2. the Member, who is the party identified in the Membership Application.

### 8. Confirming Details

- 8.1. fusionBIM hereby nominates the following as per the Confirmation of successful Membership Application:  
8.1.1. Domicilium Address (domicilium citandi et executandi)  
8.1.2. E-mail Address  
8.2. The Member hereby nominates the following as per the Membership Application:  
8.2.1. Domicilium Address  
8.2.2. E-mail Address – Upon activation of the membership login for fusionBIM's website, this address will be known as the Member E-mail.

## Agreement

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### 9. Confirming Agreement

- 9.1. Upon submission of the Membership Application, the Member confirms:  
9.1.1. his desire to enter the Agreement;  
9.1.2. that he has read, understands and accepts the terms and conditions of the Agreement;  
9.1.3. that he has specifically taken note of the terms and conditions (**highlighted in blue**) referring to the:  
9.1.3.1. Indemnity of fusionBIM  
9.1.3.2. Limited risk of fusionBIM  
9.1.3.3. Risks and liabilities of the Member  
9.1.4. that he gives fusionBIM authorization to do any kind of verification (e.g. CIPC, ITC, etc) deemed necessary in order to establish the Member's good standing, as applicable to possible future services requested by the Member.  
9.2. Upon submission of a COMPANY ACCOUNT Membership Application, the Authorised Representative confirms that he is duly authorised to act on behalf of the Member (company).  
9.3. Upon confirmation of the successful Membership Application, fusionBIM indicates his desire to enter the Agreement, and this thus constitutes the Agreement between the parties.  
9.4. Such confirmation of membership will be done at the sole discretion of fusionBIM.

### 10. Entire Agreement

- 10.1. This Agreement contains the sole entire agreement and understanding concerning the subject matter of the Agreement, unless stated otherwise in writing.  
10.2. Concerning the subject matter of the Agreement, this Agreement supersedes and terminates any and all prior agreements or contracts written or oral, concluded between the parties relating to the subject matter therein.

- 10.3. No representations, promises, conditions, amendment, modification or consensual cancellation of the Agreement, shall be of any force and effect unless made in writing, and agreed to by both parties (where applicable) in writing.
- 10.4. Any amendment or modification effected in accordance with this section shall be binding upon the parties and their respective successors and assigns.

## Communication

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### 11. Electronic Transmissions and Signatures

- 11.1. For purposes of any dealings between any of the parties, the use of facsimile, e-mail or other electronic media will be valid and electronic signature or acknowledgement shall have the same force and effect as an original signature, as per the Electronic Communications and Transactions Act, No. 25 of 2002.
- 11.2. For these purposes, the parties nominate their respective E-mail Address as elsewhere in this Agreement.
- 11.3. This E-mail Address will remain in force, until such time as any of the parties notifies the other of any such change of E-mail Address, via the then current E-mail Address.

### 12. Domicilium Address

- 12.1. The Domicilium Address will serve as the domicilium citandi et executandi address for any purposes whatsoever arising out of or in connection with any part of the Quote, including (but not limited to) all processes and notices of breach or termination of the Agreement that may validly be served upon or delivered to the parties.
- 12.2. Any party may change his Domicilium Address, provided the following:
  - 12.2.1. he must notify the other party in writing;
  - 12.2.2. it must be an address in the Republic of South Africa; and
  - 12.2.3. it may not be changed to a post office box or poste restante.
- 12.3. Unless the contrary is proved, any notice given in terms of the Agreement shall be in writing and shall:
  - 12.3.1. if delivered by hand be deemed to have been duly received by the addressee on the time of delivery;
  - 12.3.2. if posted by prepaid registered post be deemed to have been received by the addressee on the eighth calendar day following the date of such posting;
  - 12.3.3. if given by email be deemed to have been received within one hour of transmission where it is transmitted during normal business hours of the receiving instrument and within four hours of the commencement of the following business day if transmitted outside those business hours.
- 12.4. Notwithstanding anything to the contrary herein contained a written notice or communication actually received by a Party shall be an adequate written notice or communication to it notwithstanding that it was sent via email and/or not sent to or delivered at its chosen domicilium citandi et executandi.

## Site Login

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### 13. Security

- 13.1. The Member is entirely responsible for
  - 13.1.1. maintaining the confidentiality of his password; and
  - 13.1.2. all activity that may occur concerning his accounts as a result of his failing to keep this information secure and confidential.
- 13.2. fusionBIM will assist the Member in any security breach directly at the Site. In case of breaches of security occurring in connection with Memberr Facebook or Google+ profile, the relevant policies of these service providers are applicable and GRAPHISOFT is unable to support Member.
- 13.3. Member agree to notify GRAPHISOFT at graphisoftid@graphisoft.com and Memberr Local Representative immediately of any unauthorized use of Memberr GRAPHISOFT ID account or password, or any other breach of security. GRAPHISOFT handles misuses on the basis of its relevant commercial and business policies. Member must contact Memberr Local Representative for the relevant rules.
- 13.4. Member may be held liable for losses incurred by GRAPHISOFT or any other user of or visitor to the Site due to someone else using Memberr GRAPHISOFT ID account as a result of Memberr failing to keep Memberr account information secure and confidential.
- 13.5. Member are responsible for maintaining the confidentiality of Memberr account and password and for restricting access to Memberr computer, and for ensuring that Member "log off"/exit from Memberr Site account (if applicable) at the end of each session.
- 13.6. Member hereby agree to accept responsibility for all activities that occur under Memberr account or password.
- 13.7.

## Indemnity and Liability

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### 14. Indemnity

- 14.1. All possible care is taken to ensure that all the digital files and data distributed by fusionBIM is virus free and that the media is damage free at time of distribution. However, fusionBIM does not accept any responsibility for any claims to damage of any Hardware or any Software at any time that may or may not be caused by digital files delivered to the Member by fusionBIM.
- 14.2. The Member hereby indemnifies fusionBIM against any loss or damage suffered, arising out of or in connection with the Member's use of the digital files and data, from whatever cause and against any claims of whatever nature that may be instituted against fusionBIM, arising from the use of said files and data and any consequential loss or damage arising from the foregoing.

- 14.3. fusionBIM makes no warranties as to the Member's capability, nor Service Result compatibility with the Member's Hardware and/or Software. This includes any future updates and/or upgrades of the Service Result.
- 14.4. fusionBIM will not be held responsible for any economic loss caused by the failure of the Member to follow the correct operating procedures as provided with the products, services and/or service results.

#### **15. Limited Warranty and Disclaimers**

- 15.1. fusionBIM and/or GSSA warrants that it will render services under the Agreement in a professional manner. As fusionBIM's and/or GSSA's responsibility and the Member's remedy in the event of any material failure to meet such standard, fusionBIM and/or GSSA will make a reasonable effort to remedy any resulting discrepancies. Any claim based on the foregoing warranty must be submitted to fusionBIM and/or GSSA via both party's E-mail Address, within seven calendar days after delivery or the date of required delivery of the service.
- 15.2. [Concerning Limited Warranty and Disclaimers in connection with Program\(s\): The User License Agreement originally shipped with the Program\(s\) is valid.](#)

#### **16. Limitation of Liability**

- 16.1. Neither party hereto shall be liable for any delays in the performance of any of its obligations hereunder due to causes beyond its reasonable control, including, but not limited to, fire, strike, war, riots, acts of any civil or military authority, acts of God, judicial action, unavailability or shortages of labour, materials or equipment, failure or delay in delivery by suppliers or delays in transportation.
- 16.2. [The aggregate liability of fusionBIM \(including its subcontractors and suppliers\) for all claims, whether in contract, delict \(including negligence and product liability\), or otherwise, arising out of, connected with or resulting from any performance or non-performance herein shall not exceed the fees allocable to the products and/or services that give rise to the claim.](#)

### **Copyright and Intellectual Property**

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#### **17. Intellectual Property**

- 17.1. Ownership of Product(s) and/or Service(s)
  - 17.1.1. fusionBIM shall retain all right, title and interest in fusionBIM Products (being the The products and/or services developed by fusionBIM) throughout the world, including without limitation, patent, copyright, trademark and trade secret rights.
  - 17.1.2. Except as expressly set forth in writing, no license of the Product shall be construed as granting to the Member any license or other right in or to any patent, copyright, trademark, trade secret or other proprietary right of fusionBIM.
  - 17.1.3. The Member shall take all reasonable measures to protect fusionBIM's proprietary rights in the Product and/or Service and shall not copy, use or distribute the Product and/or Service or any part of it, or any derivative thereof, in any manner or for any purpose, except as expressly in writing.
  - 17.1.4. The Member shall not disassemble, decompile, or reverse-engineer the Product and/or Service, including its source code, or otherwise attempt to discover any fusionBIM trade secret or other proprietary information.
- 17.2. Notification of Infringement
  - 17.2.1. The Member shall notify fusionBIM immediately of any infringement or suspected infringement of the Product and/or Service and the intellectual property rights of any third party.
  - 17.2.2. The Member shall also notify fusionBIM immediately if it becomes aware of any infringement or suspected infringement of the Product and/or Service by any party.

### **Termination of Agreement**

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#### **18. Termination**

- 18.1. The parties may at any time terminate this Agreement by mutual agreement, in writing.
- 18.2. The last date on which the Agreement is still in place, will be termed the Termination Date.

#### **19. Termination for Insolvency**

- 19.1. fusionBIM may terminate this Agreement upon written notice to the Member if the Member is liquidated or dissolved, or becomes insolvent, or a receiver, administrator or trustee is appointed for it or any of its undertakings or assets, or is deemed to be unable to pay its debts or shall cease to carry on business, or makes a general assignment for the benefit of its creditors or institutes or has instituted against it any proceeding under any law relating to bankruptcy or insolvency or the reorganisation or relief of debtors.

#### **20. Termination for Breach**

- 20.1. In the event of any of the parties:
  - 20.1.1. breaching any material term or condition of any agreements under the Agreement; or
  - 20.1.2. ceasing business operations, is the subject of any bankruptcy, insolvency, or similar proceeding, becomes insolvent, or makes an assignment for the benefit of creditors or a receiver is appointed for a substantial part of the party's assets or becomes unable to pay its debts when due;

- 20.2. the other party shall have the right and opportunity:
  - 20.2.1. to address his concern and/or dissatisfaction to the party in reasonable detail and fact per written notice;
  - 20.2.2. requiring the party to respond, within seven calendar days from date and time of written notice;
  - 20.2.3. and in the event of failure by the party to remedy such breach to reasonable satisfaction, to:
    - 20.2.3.1. extend a further opportunity to the party to rectify the breach or issue; or
    - 20.2.3.2. terminate any agreements without granting the party any further opportunity to rectify such breach or issue and request a final accounting and distribution of monies and/or products and/or services due; and without any prejudice to any of his rights.
- 20.3. The aforementioned termination of agreement shall be without any prejudice to any of the party's rights.

## **Disputes**

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### **21. Enforceability**

- 21.1. This Agreement shall be governed, construed and controlled in accordance with the laws of the Republic of South Africa, in English.
- 21.2. The invalidity or unenforceability of any provision of the Agreement shall not affect the validity or enforceability of any other provision, the remaining provisions being deemed to continue in full force and effect.
- 21.3. Any indulgence or failure by either party to enforce any right under the Agreement shall not at any time constitute a waiver of such right or any other right, and shall not modify the rights or obligations of either party under the Agreement.
- 21.4. The waiver of any breach or default will not constitute a waiver of any other right in this Agreement or any subsequent breach or default. No waiver shall be effective unless in writing and signed by an authorized representative of the party to be bound. Failure to pursue, or delay in pursuing, any remedy for a breach shall not constitute a waiver of such breach.
- 21.5. The Agreement shall obligate and benefit the parties, their personal and legal representatives, heirs, successors, and permitted assigns. fusionBIM may assign all or any part of the Agreement, but no assignment or transfer of any obligations or interests in the Agreement (including sub-licenses, pledge, security interests, and the like) may be made by the Member without the prior written consent of fusionBIM.

### **22. Dispute Resolution**

- 22.1. Both parties agree to refer any unresolved disputes to the The Arbitration Foundation of Southern Africa for final arbitration and agree to be bound to such arbitration award.
- 22.2. The venue of such an arbitration will be chosen by the The Arbitration Foundation of Southern Africa.
- 22.3. In the event of fusionBIM instructing an attorney to take any steps against the Member pursuant to a breach by the Member of any of the provisions of this agreement, fusionBIM shall be entitled, without prejudice to any other rights which it may have at common law or otherwise, to recover from the Member all legal costs and charges incurred by it in doing so, including attorney and own customer costs, tracing fees and attorney's collection commission.

### **23. General**

- 23.1. Any indulgence or failure by either party to enforce any right under the Agreement shall not at any time constitute a waiver of such right or any other right, and shall not modify the rights or obligations of either party under the Agreement.
- 23.2. The Agreement shall obligate and benefit the parties, their personal representatives, heirs, successors, and assigns. fusionBIM may assign all or any part of the Agreement, but no assignment or transfer of any interest in the Agreement (including sub-licenses, pledge, security interests, and the like) may be made by the Member without the prior written consent of fusionBIM.

## **Definitions**

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Definitions under any section of the Agreement, or any other documentation of fusionBIM, will be applicable to all of the Agreement and all other documentation of fusionBIM.

Any reference to:

- any party shall include any and all of its representatives;
- the singular will also be applicable to the plural and vice versa;
- the masculine will also be applicable to the feminine and vice versa;
- a document shall mean its latest revision as supplied;
- a product will also be applicable to a service and vice versa.