

CARBON, INC.
DESIGN SERVICES AGREEMENT

IMPORTANT! THIS DESIGN SERVICES AGREEMENT (“AGREEMENT”) GOVERNS THE CARBON DESIGN SERVICES AND ALL DELIVERABLES PROVIDED BY CARBON (AS DEFINED IN THIS AGREEMENT). THIS AGREEMENT WILL BE LEGALLY BINDING UPON YOU PERSONALLY, IF YOU ARE ENTERING INTO THIS AGREEMENT ON YOUR OWN BEHALF, OR UPON THE COMPANY OR OTHER LEGAL ENTITY ON BEHALF OF WHICH YOU ARE ACTING (HEREINAFTER “YOU” OR “YOUR”) WHEN YOU SUBMIT A DESIGN REQUEST. CAREFULLY READ THIS AGREEMENT BEFORE SENDING A DESIGN REQUEST TO CARBON.

YOU REPRESENT THAT YOU HAVE AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF YOUR COMPANY (OR OTHER LEGAL ENTITY). IF YOU DO NOT HAVE SUCH AUTHORITY, OR YOU DO NOT AGREE WITH THE TERMS AND CONDITIONS IN THIS AGREEMENT, DO NOT SEND A DESIGN REQUEST TO CARBON.

This Agreement will be effective as of the date You send a Design Request to Carbon.

In light of the current global need for innovative solutions, Carbon is offering You the opportunity to send an email request for Design Services to Carbon at covid19@carbon3d.com (“**Design Request**”) for 3-dimensional parts or components (“**Objects**”) to be printed using additive manufacturing solutions, such as the Carbon Products, to help provide critically needed items in the current global pandemic crisis (the “**Purpose**”). Each Design Request should include Design Data and any related information and specification requirements for the Object. Carbon reserves the right to agree to provide Design Services in its sole discretion and may not respond to Your Design Request promptly or not at all depending on the volume and priority of requests. All Design Services provided by Carbon shall be subject to the terms and conditions of this Agreement. Carbon may discontinue providing Design Services pursuant to this program or otherwise at any time without notice. Carbon reserves the right to make Design Services available on a for-fee basis with prior notice and on terms and for fees to be mutually agreed to by the parties in writing.

In consideration for Carbon’s offer and conditions set forth above and the mutual promises of the parties herein, the parties agree as follows:

1. DEFINITIONS.

1.1 “**Carbon Property**” means all methods, processes, manufacturing techniques, designs, specifications, and other information, technology, materials, inputs and work products inputs that Carbon develops or creates in connection with the Design Services or that Carbon otherwise makes available to You in connection with this Agreement (and any information, technology, materials, and work product based on or derived, in whole or in part, from any of the foregoing).

1.2 “**Design Data**” means the design files and models for Objects that You provide to Carbon in connection with a Design Request.

1.3 “**Deliverables**” means designs and Design Data modifications, including developed lattice structures, resulting from the application of Carbon Property to the design, optimization and printing of the Objects.

1.4 “**Design Services**” means the services described in this Agreement, such as assistance to You in the design, optimization and printing of Objects, and guidance on the manufacture and further production of such Objects using the Products and Carbon Property.

1.6 “**Products**” means Carbon’s three-dimensional printers and the associated hardware, software, user interfaces, inputs, resins and other instrumentation and componentry for the same.

2. LICENSE AND PROPRIETARY RIGHTS.

2.1 **Ownership.** As between the parties, Carbon owns and will retain all right, title, and interest (including all intellectual property rights) in and to the Products, Carbon Property, Developments and Deliverables. Subject to Carbon’s retained rights as set forth in the preceding sentence, You own and will retain all right, title, and interest (including all intellectual property rights) in and to the Objects, Design Data and any other information provided in the Design Request.

2.2 **License to You.** Subject to the terms and conditions of this Agreement, Carbon hereby grants to You a nonexclusive, no charge, revocable and limited copyright license to use, reproduce, prepare derivative works of and sublicense the Deliverables that Carbon makes available to You under this Agreement

to manufacture the Objects for the Purpose.

2.3 **License to Carbon.** You hereby grant to Carbon a nonexclusive, worldwide, royalty-free license to use the Design Data solely to the extent necessary or reasonably useful for Carbon to perform the Design Services pursuant to this Agreement.

2.4 **Feedback.** From time to time, You may provide Carbon with suggestions, comments, feedback, ideas or know-how related to the Products or Carbon Property (“**Feedback**”). You agree that Carbon is free to use and otherwise exploit Feedback for any purpose including in connection with Carbon’s products and services.

3. REPRESENTATIONS AND WARRANTIES.

3.1 **Representations.** You represent and warrant that: (i) you have full rights and authority to enter into this Agreement and provide the Design Request and Design Data to Carbon; (ii) the Design and Object does not, and will not, infringe any third party rights; and (iii) providing the Design Request and Design Data will not violate any agreement or obligation between You and any third party or any applicable laws or regulations, including but not limited to United States export laws.

3.2 **Disclaimer.** CARBON PROVIDES THE DELIVERABLES ON AN “AS IS” BASIS, WITHOUT WARRANTIES OR CONDITIONS, EITHER EXPRESS OR IMPLIED, AS TO ANY OTHER MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, WARRANTIES OR CONDITION OF THE DELIVERABLES, DESIGN DATA OR OBJECT AS TO TITLE, MERCHANTABILITY, PRODUCT LIABILITY FITNESS FOR ANY PARTICULAR PURPOSE OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS. You are solely responsible for determining the appropriateness of using, modifying or distributing the Deliverables, Design Data and Object and any other results of the Design Services provided by Carbon. You retain sole legal responsibility for the Design Request, Design Data and performance of the Object. You are solely responsible for ensuring the Design Data and any Objects produced therefrom meet all applicable regulatory requirements, including but not limited to any medical regulatory requirements for making the Objects available for use.

4. LIMITATION OF LIABILITY.

4.1 **Damages Exclusion.** IN NO EVENT AND

UNDER NO LEGAL THEORY, WHETHER IN TORT (INCLUDING NEGLIGENCE), CONTRACT OR OTHERWISE, SHALL CARBON BE LIABLE FOR ANY DAMAGES, INCLUDING ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY KIND IN CONNECTION WITH THIS AGREEMENT, THE DESIGN SERVICES OR ANY DELIVERABLES PROVIDED HEREUNDER, OR OUT OF THE USE OR INABILITY TO USE THE DELIVERABLES (INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOSS OF GOODWILL OR ANY AND ALL OTHER COMMERCIAL DAMAGES OR LOSSES) EVEN IF CARBON HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

4.2 Accepting Warranty or Additional Liability. While sublicensing or distributing the Design Data or Object or any derivative works thereof, You may choose to offer, and charge a fee for, acceptance of support, warranty, indemnity, or other liability obligations and/or rights consistent with this Agreement. However, in accepting such obligations, You may act only on Your own behalf and on Your sole responsibility, not on behalf of Carbon, and only if You agree to indemnify, defend, and hold Carbon harmless for any liability incurred by, or claims asserted against, Carbon by reason of Your accepting any such warranty or additional liability.

5. **TERM AND TERMINATION.**

5.1 Term. This Agreement shall commence on the Effective Date and shall terminate on the earlier to occur of (1) completion of the Design Services; or (2) immediately upon notice by Carbon that You have breached any of Your representations in this Agreement; or (3) mutual agreement of the parties.

5.2 Survival. The provisions of Sections 3, 4, 5, 6, 7, 8, and 9 shall survive any expiration or termination of this Agreement.

6. **GENERAL.**

6.1 Amendment; Waiver. This Agreement may not be amended except by a written notice signed by an authorized representative of Carbon and You. The waiver by either party of any of its rights hereunder shall not be construed as a waiver of any subsequent breach.

6.2 Notice. Unless otherwise specifically provided, all notices required or permitted under this Agreement shall be in writing and in English and may be delivered personally, or sent by facsimile or air mail, return receipt requested, addressed as follows and shall be deemed delivered upon receipt:

If to Carbon: Sent to the email address in the introductory paragraph.

If to You: Sent to the email address used to submit the Design Request.

6.3 Successors and Assigns. All terms and conditions of this Agreement shall be binding upon and inure to the benefit of the parties hereto, and to their successors and assigns. You may not assign this Agreement, except to a successor of all or substantially all of its assets or stock (whether by sale, acquisition, merger, change of control, operation of law or otherwise), provided that such successor is not a competitor of Carbon. Carbon may freely assign this Agreement and subcontract its obligations hereunder.

6.4 Governing Law and Jurisdiction. This Agreement will be governed by the laws of the State of California without reference to conflict of law principles. All disputes arising out

of or related to it, will be subject to the exclusive jurisdiction of the state courts located in Santa Clara County, California, and the federal courts located in the Northern District of California, and the parties agree and submit to the personal and exclusive jurisdiction and venue of these courts.

6.5 Entire Agreement; Counterparts. This Agreement, as each may be amended from time to time, contains the entire understanding of the parties as to the subject matter hereof and supersedes all prior understandings of the parties, whether oral or written. This Agreement and SOWs may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

6.6 Severability. If a court finds any provision of this Agreement invalid or unenforceable as applied to any circumstance, that provision shall be enforced to the maximum extent permitted by law, and the other provisions, and that provision as applied to other circumstances, will remain in full force and effect.

6.7 Force Majeure. Both parties shall be excused from performance under this Agreement for any period to the extent that a party is prevented from performing any obligation (except for payment obligations), in whole or in part, as a result of causes beyond its reasonable control, including without limitation, acts of God, natural disasters, war or other hostilities, labor disputes, disease (including COVID-19), civil disturbances, governmental acts, orders or regulations, third party nonperformance, or failures or fluctuations in electrical power, heat, light, air conditioning or telecommunications equipment.

6.8 Relationship of Parties and Non-Exclusivity. The parties are independent contractors and are not employees, agent or legal representatives of the other party. Neither party is authorized to bind the other party, act as an agent for the other party or otherwise act in the name of or on behalf of the other party. Carbon's services under this Agreement are made available to Subscriber on a non-exclusive basis. This Agreement shall not preclude or limit in any way (i) Carbon's right to provide design, engineering, consulting or other services of any kind or nature whatsoever to any individual or entity as Carbon in its sole discretion deems appropriate, or (ii) the right of Carbon to develop for itself or for others materials that are competitive with those produced as a result of the Design Services provided hereunder, irrespective of their similarity to the Deliverables.

6.9 U.S. Government End Users. The Deliverables, if any, and any other software covered under this Agreement are "commercial items" as that term is defined at 48 C.F.R. 2.101; consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, all U.S. Government end users acquire rights to the Deliverables and any other software and documentation covered under this Agreement with only those rights set forth herein.

6.10 Publicity. Neither Party shall use the name of the other party in publicity, advertising or similar activity, without the prior written consent of the other, except that Carbon may publicize and promote its Design Services related to the design and manufacture of the Object for the Purpose on its website and the parties shall work together in good faith to come up with additional co-marketing opportunities, including without limitation by creating a case study regarding the development of the Object for the Purpose and its unique capabilities as made possible through the Carbon Property and manufacturing process and by issuing a mutually agreed press release.