

## **Subscription Agreement for** **ITI Aras Innovator Connectors**

This Agreement represents the Aras Innovator Connector Subscription Agreement (“**Agreement**”), made by and between International TechneGroup Incorporated (ITI) (“**Licensor**”), located at 5303 DuPont Circle, Milford, Ohio 45150, and the end customer (“**Licensee**”), effective on the date that the terms of the agreement are accepted.

The Licensee’s use of the Aras Innovator Connectors, as provided by ITI to the Licensee, shall be governed by the terms and conditions of this Agreement.

### **1. Definitions**

- 1.1. **“Documentation”** means the user, installation, administration and reference manuals, or other written materials relating to the Programs and provided directly or indirectly from ITI to Licensee.
- 1.2. **“Maintenance”** means the set of services (including defect fixes, periodic new connector releases, installation & configuration support, and end-user usage support), which ITI shall provide to the licensee, as long as the licensee stays current with their subscription payments.
- 1.3. **“Platform”** means the combination of a specific operating system and its associated hardware on which the Programs may be used.
- 1.4. **“Product(s)”** means the combination of the Programs and Documentation that is provided to the Licensee.
- 1.5. **“Program(s)”** means (i) any proprietary software subscribed through ITI; (ii) software contained on the media, or electronically downloaded, accompanying this Agreement, or in any way obtained, directly, or indirectly, from ITI; and (iii) any updates, revisions, bug fix patches, localized translations, etc. The scope of this Agreement shall encompass:
  - Creo MCAD Connector
  - NX MCAD Connector
  - Oracle ERP Connector
  - QAD ERP Connector
  - Additional ITI ERP Connector
- 1.6. **“Site”** means the physical location/address where the Programs are first installed.
- 1.7. **“User”** means a specific individual who is an employee, contractor, or supplier of the Licensee, who is authorized hereunder to use the Programs.

## **2. Subscription License**

- 2.1. ITI grants and Licensee accepts a non-exclusive, non-transferrable subscription license to the Programs and the associated Documentation, without the right to sublicense, for the timeframe defined by the subscription term.
- 2.2. The Programs are licensed via an authorized number of users per the end-user subscription.
- 2.3. The Programs shall only be used for the Licensee's internal business purposes and may not be used for timesharing, consulting, service bureau, or other similar revenue generating purposes by the Licensee.
- 2.4. Licensee may make multiple copies of the Programs to support its internal integration, test, and back-up purposes.
- 2.5. No source code for the Programs shall be provided under this Agreement.
- 2.6. No title to or ownership of any Program or Documentation or copies thereof is or will be transferred to the Licensee. All Programs, Documentation, and copies thereof shall remain as the intellectual property of ITI or the applicable third party owner of any and all intellectual property included in or embodied by the Programs and Documentation.
- 2.7. Licensee shall preserve, protect, and not alter or remove any copyright, patent, or other legal notice contained on or in the Programs.
- 2.8. Licensee acknowledges that the Programs and Documentation comprise and contain valuable proprietary information and trade secrets of ITI and/or other third parties, and Licensee agrees to undertake the following steps: (i) to hold Programs and Documentation in confidence; (ii) to safeguard Programs and Documentation against unauthorized replication, copying, display, loan, publication, transfer of possession or other dissemination or distribution of any Program or Documentation, in whole or in part to any third party without the prior written consent of ITI; (iii) not to cause or permit decompilation, disassembly, or examination for the purpose of reverse engineering; (iv) not to use said proprietary information or trade secrets for any purpose not authorized by this Agreement; and (v) to report promptly to ITI any actual or suspected violation of this subsection and to take such further steps as requested to prevent or remedy any such violation. The provisions of this subsection shall survive any expiration or termination of this Agreement.

## **3. License Prerequisites**

- 3.1. The Programs require the respective application user license to run.
  - Creo MCAD Connector - PTC Creo MCAD Application
  - NX MCAD Connector - Siemens PLM NX MCAD Application
  - Oracle ERP Connector - Oracle E-Business ERP Application
  - QAD ERP Connector - QAD Manufacturing ERP Application
  - Additional ITI ERP Connector - Additional Oracle ERP or QAD Application
- 3.2. The Programs require the respective mechanical CAD open API toolkit as a prerequisite to install. A single corporate/enterprise license, accessible via the Program installation process.
  - NX MCAD Connector – NX Open Author or NX Open for .Net, NX Open for JAVA, NX Open for C/C++

## **4. Fees and Payment**

- 4.1. Licensee shall pay Aras or the Aras authorized sales agent for the Program subscription(s).
- 4.2. Prices, fees, and charges exclude federal, state, local, municipal or other excise, sales, use and transfer taxes, assessments duties, or charges imposed by any governmental authority in connection with this Agreement or use of the subscribed Programs. All such charges shall be promptly paid by Licensee.

## **5. Maintenance & Support**

- 5.1. Maintenance shall be included as part of this Agreement and is not separately priced. ITI shall provide the following maintenance & support during the subscription period. In addition, for the avoidance of doubt, certain maintenance & support for the Programs may be provided by Aras Corporation. ITI and Aras Corporation shall coordinate in order to provide maintenance & support services as necessary with respect to the respective technologies in the Programs.
- 5.2. Product defects and initial response times are categorized into the following severity levels:
  - a) Severity 1. Critical end user issue; high business impact issue in which the production system Programs are down, inoperable, inaccessible, or unavailable to the end user and the nonperformance of the software prevents all useful work from being done; initial response time of two (2) hours.
  - b) Severity 2. Urgent end user issue; any production system problem where the Programs are severely limited or degraded, major functions are not performing properly, the situation is causing a significant impact to certain portions of the end user's operations or productivity; or the Programs have been interrupted but recovered and is at high risk for reoccurrence of the same failure; initial response time of six (6) hours.
  - c) Severity 3. Normal issue; any non-production system issue; any production system issue that is a minor or cosmetic problem with the Programs in which any of the following occur: the problem is an irritant, affects nonessential functions, or has isolated impact; the problem is an operational nuisance; the problem results in documentation errors or the problem is any other problem that is not a Severity 1 or Severity 2, but is otherwise a failure of the software to conform to the Documentation; initial response time of one (1) business day.

Product defects shall be resolved either by software patch or new maintenance release.

- 5.3. The Licensee is not obligated to install the newest available release or any patches that are made available. However, ITI shall render the services, referred to above, only for the latest release, and one release prior to that.
- 5.4. ITI shall only resolve defects that are reported with adequate description of the defect as well as any other information, data, and documentation required in order to replicate, analyze and resolve the defect are provided. Defects must be reproducible in the standard Program release.
- 5.5. Maintenance shall also include support for new releases of any applicable required third party application. This, however, does not apply for new releases issued by the third party application providers, if these present one or several of the following characteristics:
  - a) Significant change in the third party application architecture.
  - b) Significant change in the third party application API set.
- 5.6. Maintenance shall begin when the Program is delivered or made available for download.

- 5.7. ITI shall provide technical support, via phone and/or e-mail, for Licensee questions regarding installation, configuration, administration and end user usage.

## **6. Intellectual Property Indemnification**

- 6.1. ITI shall defend at its expense any action brought against Licensee based on a claim that the Programs infringe upon any United States patent, copyright, trade secret, or trademark, and ITI shall pay all costs and damages finally awarded against Licensee in any such claim, provided however; that: (i) Licensee notifies ITI promptly in writing of such claim; (ii) ITI shall have sole control of the defense of any such action and all negotiations for its settlement or compromise; however Licensee reserves the right to participate in any legal action at Licensee's own expense. (iii) Licensee fully cooperates with ITI in such defense, settlement or compromise. If any Program becomes, or in ITI's opinion is likely to become, the subject of a claim as such infringement: (a) ITI, at its option and expense, shall procure for Licensee the right to continue using the Programs, or replace or modify the Programs so that they become non-infringing, provided its functionality remains essentially unchanged; or, (b) ITI, at its option will accept return of the Programs and grant Licensee a refund equal to the license fees paid for the Programs.
- 6.2. ITI shall have no liability under the preceding subsection to the extent that any such claim of infringement is based upon: (i) use of any Program in combination with equipment or software not supplied or approved in writing by ITI where such Program would not itself be infringing; or (ii) modifications of any Program by anyone other than ITI.
- 6.3. The foregoing paragraphs state the entire liability of ITI with respect to infringement of patents, copyrights, trade secrets, trademarks or other intellectual or proprietary rights.

## **7. Warranty and Limitation of Liability**

- 7.1. ITI warrants solely to Licensee that for thirty (30) days after the installation, the warranted Programs shall perform substantially in accordance with their then-current published specifications. ITI does not warrant that use of Programs will be uninterrupted or error free.
- 7.2. Problems with Programs must be reproduced on the Platform for which they are licensed to be eligible for warranty service.
- 7.3. If ITI receives written notice within the warranty period that warranted Programs do not perform substantially in accordance with their then-current Documentation, ITI shall, at its option, either repair or replace such Programs, or accept their return and refund any payments received therefore, which shall be Licensee's sole remedy for any such non-compliance. Repair services and maintenance which are not covered by warranty shall be paid for at ITI's then current fees.
- 7.4. This warranty is a limited warranty. Certain third party programs which shall be identified as such, may be warranted directly and exclusively to Licensee by the third party.
- 7.5. This warranty does not apply to any Programs designated as alpha, beta or pre-release. Programs designated as such are considered as-is.
- 7.6. This warranty does not apply, and Maintenance shall not be provided with respect to any condition resulting, in whole or in part from: (i) negligence of Licensee, abuse, accident, or natural disaster; (ii) any attempt to alter, modify, merge, or repair Programs by any party other than ITI; (iii) improper or unauthorized use, including use outside of specified environmental conditions, or in combination with equipment or software not supplied or authorized in writing by ITI as part of this Agreement; and (iv) external causes, including fluctuation of electrical power, inadequate cooling, or other unusual electrical power or physical stress.

- 7.7. Disclaimer of warranty; the above warranties are exclusive warranties, and no other warranty, whether express or implied, written or oral, shall apply to the subject of this Agreement. ITI specifically disclaims any implied warranty of merchantability or fitness for a particular purpose.
- 7.8. ITI's maximum liability arising out of the subscription, use, or performance of Products, whether based upon warranty, contract, tort or other legal theory, shall not in any event exceed the actual payments received by ITI. In no event shall ITI be liable hereunder for special, incidental, or consequential damages, including, but not limited to, loss of profits, data or use.
- 7.9. Licensee is solely responsible for safeguarding by all appropriate means its data used in connection with the Programs.

## 8. Term and Termination

- 8.1. The subscription granted under this Agreement shall commence upon the installation of the Program and or Documentation on the Platform by the Licensee and shall remain in effect as long as the Licensee complies with its obligations hereunder and the applicable subscription or sublicense for the Program(s) remains in effect, but shall terminate immediately in the event of the Licensee's breach or non-observance of any obligation hereunder. Section 2.1, 2.8, 5, and 6, hereof shall survive any expiration or termination of this agreement.
- 8.2. Upon expiration or termination of any subscription or sublicense granted hereunder to Licensee, Licensee shall return all copies of the Programs and Documentation in its possession or under its control to ITI, or destroy all such copies and certify their destruction in writing to ITI.

## 9. Government Contracts

- 9.1. To the extent any Product or technical data is subscribed or acquired on behalf of the United States Government, the parties understand that each such Product or technical data: (i) was developed at private expense, and no part was developed with government funds; (ii) is a trade secret for all purposes of the Freedom of Information Act and 18 U.S.C. 1905; (iii) if a Product is "commercial computer software" subject to limited utilization as provided in the Agreement; and (iv) in all respects is proprietary data belonging solely to ITI and/or its licensors. Technical data is provided only for the specific purposes described in this Agreement, and with Limited Rights as provided in FAR 52.227.404 and DFARS 252.227.471.

## 10. General

- 10.1. **Compliance with Laws.** Licensee shall carry out the transactions contemplated by this Agreement and will otherwise deal with the Products in conformity with all applicable laws, rules, and regulations of all governmental authorities, and will obtain all applicable permits and licenses, including any necessary under the export laws of the United States, required in connection with the use of any Program. The export of any Product, including its use by remote access in any foreign country, may be subject to regulation or restriction under the Export Administration Act and, therefore, prior to exportation, Licensee shall obtain any licenses which may be necessary, supplying ITI with copies thereof, under such Act and the regulations there under.
- 10.2. **Assignment.** Licensee may not delegate any duties nor assign any rights or claims under this Agreement without ITI's prior written consent, which shall not be unreasonably withheld.
- 10.3. **Governing Law.** This Agreement shall be governed by the laws of the State of Ohio, United States of America, without reference to its conflict of Laws provisions, or the United Nations Convention of Contracts for the international Sales of Goods. Any legal

action instituted in connection with this Agreement shall be under the exclusive jurisdiction of the state or federal courts of Ohio.

- 10.4. **Force Majeure.** In the event that either party is prevented from performing, or is unable to perform any of its obligations under this Agreement due to any cause beyond the reasonable control of the party invoking this provision, and if such party shall have used its best efforts to avoid such occurrence and minimize its duration and has given prompt written notice to the other party, then the affected party's performance shall be excused and the time for performance shall be extended for the period of delay or inability to perform due to such occurrence.
- 10.5. **Severability.** In the event that any provision of this Agreement is held by a court of competent jurisdiction to be unenforceable, validity of the remaining provisions shall not be affected.
- 10.6. **Notices.** Any written notice or communication required or permitted under this agreement shall be effective upon personal delivery or three (3) days after being sent via a method which is likely to result in delivery within such time to the party to whom the notice is sent.
- 10.7. **Entire Agreement.** This Agreement, any mutually agreed terms of Licensee's applicable Aras Innovator subscription agreement, quote, or purchase order, and any other incorporated documents of the License Agreement and applicable Aras Innovator subscription agreement, quote, or purchase order, constitute the entire agreement between the parties. The terms of the ITI's Subscription Agreement shall supersede any terms of the Licensee's standard form purchase order that are not expressly agreed by both parties to the extent of any inconsistencies; provided, however, that the minimum Government rights in Federal Acquisition Regulation (FAR) clause 52.227-14, Right in Data-General, shall apply to the extent of any inconsistency. Modification or amendment of any provision of this agreement shall be effective only if in writing and signed by the parties hereto. No waiver, consent, modification, amendment or change of the terms of this Agreement shall be binding unless in writing and signed by ITI and Licensee.