

## License Agreement for the Use of Services Relating to the “FJA App”, “FJA Design Software” and “FJA-BIM Model Elements” owned by F. J. Aschwanden AG, Lyss,

(Version 01.02.2019 / 1 of 3)

### 1. General, Scope of Agreement

- F. J. Aschwanden AG (hereinafter referred to as Aschwanden) grants to the Client under the following conditions a non-transferable and non-exclusive right to use the Aschwanden services relating to the software App (hereinafter referred to as the FJA App), design software (hereinafter referred to as the FJA design software) and model elements (hereinafter referred to as FJA-BIM model elements) owned by Aschwanden AG.
- This license agreement is valid within Switzerland and the Principality of Liechtenstein. To the extent the designs permit or are expressly specified, this license agreement is also valid in the member states of the EU and the EEA.
- Licensed programmes in the context of this agreement are the FJA App, the FJA design software and FJA-BIM model elements, and associated Aschwanden programmes and/or data sets in machine readable format, including related documentation, hereafter jointly referred to as “Aschwanden License Material”.
- The Aschwanden License Material is developed and archived country-specific, and may only be used for that country for which the Aschwanden License Material is intended.

### 2. Content of the Aschwanden License Material

- The Aschwanden License Material is an aid for civil engineers and master builder (or persons holding an equivalent qualification).
- The FJA App is currently available for the following product ranges:
  - Design of shear load connectors (CRET)
  - Design of shear load connectors with sound insulation (CRET Silent)
  - Design of bolted tension and compression anchors with sound insulation (RIBA Silent)
  - Preliminary design of punching shear reinforcement (DURA stirrup cages)
  - Preliminary design of composite steel/concrete columns (ORSO-V)
  - Toolbox reinforced concrete areas
  - Installation instructions for Aschwanden products
  - Tutorial video
  - Client magazine Quality
- The FJA App can be complemented at any time with further programmes and services
- The FJA design software is a dedicated design tool, currently available for the following product ranges:
  - Punching shear reinforcements (DURA)
  - Shear load design in reinforced concrete slabs and reinforced concrete beams (DURA-S)
  - Shear load transmission in movement joints (CRET)
  - Preliminary design of reinforced concrete columns ORSO-V
  - Reinforced concrete columns (ORSO-B)
  - Thermally insulated reinforcement elements and shear load connectors (ARBO/CRET-FEM range)
- The FJA-BIM model elements for digital 3D/BIM planning are currently available for the following product ranges:
  - Punching shear reinforcements (DURA)
  - Shear load transmission in movement joints (CRET)
  - BIM model elements for further product ranges and CAD/BIM programs may be added at any time.
- It is a requirement that licensees using the License Material are familiar with their country-specific codes (e.g. for Switzerland SIA262 as well as SIA261 and SIA260), and has the necessary knowledge to correctly input the parameters and, if need be, to reconstruct a design result.
- The Client is exclusively responsible for the selection, installation and use of the Aschwanden License Material, including the results generated with it. The Client is also responsible for ensuring that the Aschwanden License Material is only used in the country for which the Aschwanden License Material is intended.
- The FJA design software can be complemented at any time with further programmes and services.
- Aschwanden expressly reserves the right to amend, supplement or to delete any sections of the pages or the entire offering without prior notice, or to temporarily or finally discontinue the publication.

### 3. Using the Software, the App and the BIM Model Elements

- The FJA design software, the FJA App and FJA-BIM model elements are to be used in accordance with the conditions of our documentation that are published in the download section of the Aschwanden Internet site.
- This aforementioned documentation constitutes an integral element in the use of our products and services.
- The following fundamental ideas for use are the concept on which the application programmes FJA design software and FJA App are based. The FJA App is aimed primarily at the straightforward preliminary design of our products, plus rapid access to a diversity of data. The FJA design software helps civil engineers to dimension the products with detailed data on a proven practical level. The FJA-BIM model elements assist in digital 3D planning with informed, three-dimensional building models.
- The Client is only entitled to those rights to the Aschwanden License Material that are expressly granted to the Client within the scope of this Agreement for a specific country.
- All other rights, in particular relating to title and copyright, remain the property of Aschwanden.
- Use in the context of this Agreement is any complete or partial storage of machine-readable Aschwanden License Material for the purpose of processing by the Client of the instructions or data contained therein.
- The Client is permitted to install machine-readable Aschwanden License Material on the Client's IT platform (server/PC/iPad/tablet/iPhone/Smartphone, etc., provided this is necessary for the contractually agreed usage of the Aschwanden License Material.
- Following installation of physically provided Aschwanden License Material such as CDs and printed documentation on the Client's IT platform, the Client shall carefully store those hard formats.
- In all other cases, the Client is responsible for ensuring that the latest valid version of the Aschwanden License Material has been downloaded onto the Client's IT platform.
- The Aschwanden License Material may not be duplicated, copied, leased or loaned, or otherwise passed on to any third party. This does not apply for FJA-BIM model elements which are used within the scope of project planning and may be passed on for the purposes of project coordination.
- The Client is not authorised to modify the Aschwanden License Material for the Client's own purposes or to link it to any other programmes. This does not apply for FJA-BIM model elements which the user may adapt to office and project standards at their own risk.

- The technical framework conditions for using the Aschwanden License Material are compliant with the respective conditions stated in the download section. Registration is necessary to use certain functions of the Aschwanden License Material. Hence, users must be on-line clients of Aschwanden.

#### **4. Free and Clear of Third Party Rights**

- Aschwanden guarantees that the Aschwanden License Material is clear of third-party copyrights and, to the best of Aschwanden's knowledge, no other rights exist that would exclude or limit the usage of the Aschwanden License Material by the Client.
- The Client and Aschwanden shall inform each other immediately and in writing about any possible claims by third parties relating to proprietary rights.
- Should the Client be prohibited or impeded in its contractual use of the Aschwanden License Material through proprietary rights of third parties, Aschwanden shall not be obliged to modify the Aschwanden License Material. In such cases, Aschwanden is authorised to immediately recall the entire Aschwanden License Material from the Client to avoid any infringement of the third party's proprietary rights. Aschwanden is also entitled to reach as far as possible agreements with the owner of the proprietary rights that would allow unlimited, contractual use of the Aschwanden License Material at no extra cost.

#### **5. Updates/Patches**

- When using the Aschwanden License Material, the Client shall always deploy the current, and hence binding, version. Clients will find the appropriate information on the [www.aschwanden.com](http://www.aschwanden.com) homepage.
- The currently valid updates for the FJA App can be downloaded from the [www.aschwanden.com](http://www.aschwanden.com) homepage or via the FJA App Store.
- Currently valid updates for the FJA design software can be downloaded from the [www.aschwanden.com](http://www.aschwanden.com) homepage. If the Client requests that these updates be provided physically as CDs and printed documentation, then the Client shall return the Aschwanden License Material used hitherto (CDs and printed documentation) to Aschwanden without being specifically requested to do so.
- The Client accepts that patches, i.e. amendments and/or improvements to the programmes of the FJA design software or the FJA App, will be automatically installed on the Client's server at each restart.
- The currently valid updates for the FJA-BIM model elements can be downloaded from the [www.aschwanden.com](http://www.aschwanden.com) homepage.
- See also parag. 13 in the following.

#### **6. Client's Obligation to Cooperate**

- Aschwanden strives to consistently update the Aschwanden License Material and to adapt it to Clients' requirements.
- The Client is obliged to inform Aschwanden as early as possible about all circumstances that can affect the use of the Aschwanden License Material, peculiarities of the individual applications, any occurrence of anomalies, necessary special provisions, etc. and to document them.
- The Client shall generally support Aschwanden in all aspects that can lead to an improvement of the Aschwanden License Material.

#### **7. No-Fee License**

- Aschwanden places the Aschwanden License Material, the FJA App and the FJA design software, at the disposition of its Clients free of charge. The costs of using mobile Internet are in accordance with the tariffs of the respective service providers.

#### **8. Contractual Penalty**

- Should the Client act against the terms and conditions of this License Agreement, a penalty for breach of contract amounting to CHF 5'000.00 shall be payable.
- Aschwanden reserves the right to claim for actual and further damages.
- Payment of a contractual penalty does not discharge the Client from continued compliance with the terms and conditions of the License Agreement.

#### **9. Liability exclusion**

- Where use is made of the possibility to send emails, this is done at the Client's risk as no encryption is implemented.
- Aschwanden does not assume any liability for the functional integrity and security of data transfer operations.
- Aschwanden does not assume any liability, either expressly or implicitly, either legally or in any other form, for direct or indirect damages, or any consequential damages that can arise from the use of the Aschwanden License Material, or through inability to use the Aschwanden License Material, or from possible errors it may contain.
- Aschwanden does not assume any responsibility if unauthorised designing with the country-specific Aschwanden License Material is undertaken for any country other than that for which it is intended.
- Aschwanden is not liable for direct personal or material damages, or any consequential damages that the Client and/or third parties may incur through using the Aschwanden License Material.
- Aschwanden does not accept any liability relating to possible revocations or limitations of the use of the Aschwanden License Material stemming from third party rights (see Clause 4 above of the License Agreement).

#### **10. Acceptance by the Client**

- With the use or installation of the Aschwanden License Material on the Client's computer(s)/tablets/Smartphones, the licensee Client implicitly accepts all the terms and conditions of this License Agreement.
- Within the framework of installation preparation for this purpose, the Client shall submit an appropriate statement of confirmation.

#### **11. Fax/Email**

- As with other means of communication, transmissions by fax, email or other means of communication carry the risk that confidential material can inadvertently be sent to wrong addresses, or not reach the addressee at all.
- The Client accepts that the Internet is not safe and that risks are involved when confidential data are transmitted by email. Should Aschwanden receive fax numbers or email addresses to which data should be sent, then Aschwanden assumes (if the Client does not **explicitly** state otherwise) that the Client agrees to the use of fax and email, that the system used by the Client is sufficiently secure and confidential to protect the Client's interests, and that the Client has taken precautions to ensure the integrity of the data, in particular protection against viruses.

#### **12. Website [www.aschwanden.com](http://www.aschwanden.com)**

- For the use of our website [www.aschwanden.com](http://www.aschwanden.com), we expressly refer to the terms and conditions of the IMPRINT (<http://aschwanden.com/en/impressum.html>).

#### **13. Content and Amendments to the License Agreement**

- The currently binding version of the License Agreement can be seen and printed out from, inter alia, the Aschwanden website ([www.aschwanden.com](http://www.aschwanden.com) under the heading "DOWNLOADS").
- Aschwanden reserves the right to amend the License Agreement at any time.
- Such amendments will be announced to Clients in an appropriate manner (e.g. online via our website [www.aschwanden.com](http://www.aschwanden.com) under the heading "DOWNLOADS").

#### **14. Termination**

- Clients can relinquish their rights under this License Agreement to use the Aschwanden License Material at any time in writing.
- Conditional upon an immediate revocation in the event of infringement of third party rights (see Clause 4 above of the License Agreement) Aschwanden can revoke the Client's rights under this Agreement by observing a 30-day notice period.
- Upon termination of the License Agreement - irrespective of the grounds for termination, or which party initiated the termination - the Client is obliged to return the Aschwanden License Material in its entirety to Aschwanden within 30 days of termination without being specifically requested to do so.

**15. Partial Nullity**

- Should any individual provisions or parts of a provision of the License Agreement be declared invalid, this shall not affect the validity of the other provisions or the remaining partial provisions.
- This License Agreement, together with all our other legal documents, are translations of the German-language originals. In the event of discrepancies, the German versions are binding.

**16. Governing Swiss Law, Place of Jurisdiction**

- All legal relations between the Client and Aschwanden are exclusively governed by and construed in accordance with **Swiss law** to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (Vienna Convention).
- **Exclusive place of jurisdiction is the legal domicile of F. J. Aschwanden AG.** Aschwanden reserves the right to also take legal action against the Client at the Client's legal domicile.

Location / Date: \_\_\_\_\_ The Client: \_\_\_\_\_  
(Company stamp with legally valid signature)