

[PLEASE READ THESE FREE USER TERMS AND CONDITIONS CAREFULLY. BY CHECKING THE "I ACCEPT" BOX YOU AGREE TO BE BOUND BY THESE TERMS AND CONDITIONS. IF YOU ARE ACCEPTING THESE TERMS AND CONDITIONS ON BEHALF OF A USER THAT IS A CORPORATE ENTITY, PARTNERSHIP OR OTHER LEGAL ENTITY, YOU PERSONALLY WARRANT AND REPRESENT THAT YOU ARE, BY ACCEPTING THESE TERMS AND CONDITIONS, LEGALLY BINDING THAT ENTITY. ADDITIONALLY, BY ACCEPTING THESE TERMS AND CONDITIONS YOU ACKNOWLEDGE THAT YOU MAY BE CONTACTED BY MANUFACTURERS.]

Free User Terms and Conditions of Use

This is a binding agreement between QARC Systems Pty Ltd ACN 609 251 005 of 59 Chermiside Street, The Grange, QLD 4051 Australia (**QARC Systems**) and the user on behalf of whom you have checked the "I ACCEPT" box (**you or Licensee**).

1 Licence

- 1.1 Subject to clause 1.2, QARC Systems grants to the Licensee a non-exclusive, non-transferable limited licence to use QARC, on the terms and conditions set out in this document.
- 1.2 The Licensee acknowledges and agrees that free users will have only limited access to parts of QARC, as determined by QARC Systems in its discretion from time to time, and that in the event full access is desired, the Licensee must pay QARC Systems for a subscription.
- 1.3 Each user must have their own subscription. You are not authorised to allow other users to access QARC using your account.
- 1.4 Any of the Licensee's clients, subcontractors, collaborators or associated consultants who wish to use QARC must obtain a separate subscription from QARC Systems Pty Ltd.

- 1.5 The Licensee may not, and may not permit others to, do any of the following, anywhere in the world:
 - (a) use QARC for any purpose other than the business activities of the Licensee;
 - (b) permit authorised users to use QARC for private purposes or for any purpose other than the business activities of the Licensee;
 - (c) permit any of the Licensee's clients, subcontractors, collaborators or associated consultants to use QARC, for any purpose, unless the client, subcontractor, collaborator or associated consultant also has a current QARC licence, or is an authorised user of another current QARC licensee, or QARC Systems has provided its approval in accordance with clause 1.4;
 - (d) market, distribute, resell, rent or sublicense all or any part of QARC including any BIM Object;
 - (e) use QARC for the purpose of developing and/or maintaining for the Licensee or any other person, an alternative service provision which either directly or indirectly competes with QARC System's service for QARC, or in some other way serves the same or a similar purpose as QARC System's Archetype Template and/or BIM Library;
 - (f) share the Archetype Template, the BIM Library or any BIM Object or other Content with any person that is not currently a QARC Systems licensee, or an authorised user of a current QARC Systems licensee;
 - (g) decompile, adapt, merge, translate, reverse engineer, disassemble, modify or create derivative works based on, any part of QARC or any Content, except as permitted by law;
 - (h) attempt to remove or circumvent any technological protection measures contained in QARC;

- (i) vary, delete, remove or obscure any notices of proprietary rights or restrictions appearing on or in any part of QARC including without limitation on any third party BIM Object/s included in QARC System's BIM Library;
- (j) share or pass on any Revit project file created using QARC unless all sheets and views (except 3D views) have been deleted and the file has been fully purged of all Content; or
- (k) access or use QARC in any way that is fraudulent, malicious or contrary to law or in any way that may reduce or diminish the reputation or image of QARC Systems, the Archetype Template, the BIM Library and/or the Content.

2 Additional Restrictions

2.1 The Licensee must:

- (a) ensure that it accesses and uses QARC using hardware and software that meets the minimum specifications nominated by QARC Systems from time to time (if any);
- (b) not make QARC available for use on any hardware systems not owned or wholly controlled by the Licensee or any authorised user of the Licensee; and
- (c) comply with any additional restrictions in relation to the access or use of QARC (including any third party Content) that may be notified to the Licensee by QARC Systems from time to time.

3 Acknowledgements

3.1 The Licensee acknowledges and agrees that:

- (a) the Licensee must separately pay for and maintain a valid licence for a current version of the Revit platform specified by QARC Systems from time to time;

- (b) QARC Systems is not affiliated or associated with Autodesk, and makes no representation that it is approved or sponsored by Autodesk;
- (c) QARC Systems has no responsibility with respect to the Revit platform or any Licensee's or authorised user's hardware or other equipment;
- (d) QARC is provided on an "as is" basis;
- (e) the BIM Library does not necessarily contain every BIM Object required by every customer, and free users will have only limited access to the BIM Library as determined by QARC Systems in its sole discretion;
- (f) the range of BIM Objects and other Content made accessible by QARC Systems from time to time may vary at the discretion of QARC Systems;
- (g) online access to QARC may not always be available;
- (h) there is no guarantee or representation that QARC (including the Archetype Template, the BIM Objects and any data or files accessible using QARC) do not contain viruses, worms or other files or programs that are designed to interrupt, destroy or limit the functionality of any computer software, hardware or telecommunications equipment;
- (i) data, files or other information you download or otherwise access using QARC may be corrupted or lost;
- (j) QARC Systems is not responsible for saving or backing up any data; and
- (k) it is the Licensee's responsibility to save and backup all data utilised by the Licensee or any authorised user of the Licensee when using QARC, and to ensure that such data is accurate, current, adequate,

complete and suitable for its intended purpose.

4 Security

4.1 The Licensee is solely responsible for procedures and controls for logins and passwords relevant to accessing QARC.

4.2 The Licensee must immediately notify QARC Systems of any known or suspected unauthorised access to, or misuse of, QARC or unauthorised sharing of the Archetype Template, any BIM Objects or other QARC files.

5 Intellectual Property Rights

5.1 All Intellectual Property Rights subsisting with respect to QARC are owned either by QARC Systems or relevant third parties. The rights granted by QARC Systems to the Licensee are a licence in the terms described in clause 1. Nothing in this agreement or otherwise grants to the Licensee any rights of ownership in all or any part of QARC (including any third party Content). All rights not expressly granted to the Licensee are reserved.

5.2 QARC Systems does not warrant or represent that the use of QARC (including without limitation any third party BIM Object in the BIM Library) will not infringe the Intellectual Property Rights of any third party.

5.3 All Intellectual Property Rights in any new Content created by QARC Systems from time to time will vest solely in QARC Systems upon creation, irrespective of whether the new Content incorporates, uses or is based upon any suggestions, requests, recommendations or other feedback provided by the Licensee or any of the Licensee's authorised users. Upon request by QARC Systems, the Licensee will sign all documents and do all other things reasonably requested by QARC Systems to give effect to this clause 5.3.

5.4 You must not use, or apply to register, as part of any trade mark, domain name, company name or business name, anywhere in the world:

- (a) QARC (word);
- (b) QARC Systems (words); or

(c) any other trade mark, logo or domain name used in connection with QARC (including any third party BIM Objects), or any services provided by QARC Systems.

6 Limitation of Liability

6.1 Checklists are used at the sole risk of the Licensee. QARC Systems does not represent or warrant that the Checklists are accurate or complete, or suitable for any particular purpose.

6.2 The Licensee must exercise professional skill and judgement with respect to its use of QARC and is solely responsible for ensuring any and all notations, details, information, instructions, specifications, suggestions and references provided as part of the Content are accurate, complete and fit for purpose. Without limitation to the foregoing, QARC Systems is not responsible for any BIM Objects or related Content provided by third parties such as Manufacturers.

6.3 QARC Systems excludes all guarantees, conditions, warranties and representations granted by statute or general law in relation to QARC, the Content and any services provided by QARC Systems including in relation to:

- (a) availability of access to QARC including the BIM Library;
- (b) suitability of QARC for any purpose;
- (c) integrity, value and quality of QARC;
- (d) maintenance of the BIM Library; and
- (e) security.

6.4 Subject to clause 6.6, QARC Systems does not accept liability for any loss or damage however caused (including due to negligence, and even if that liability for any loss or damage was reasonably foreseeable and we had been notified of the possibility of that loss or damage arising) in connection with any services provided by QARC Systems, the Contents, or the use of or access to QARC by you or any of your authorised users, including without limitation as a result of:

- (a) QARC not being accessible;
- (b) free users being provided with only limited access to QARC;
- (c) access to QARC not being continuous, uninterrupted or fault free;
- (d) any Content being corrupted;
- (e) viruses, worms or other software agents or files or programs that are designed to interrupt, destroy or limit the functionality of any computer software, hardware or telecommunications equipment being obtained due to access to QARC;
- (f) the Content lacking integrity;
- (g) the Content breaching any laws or regulatory requirements; and
- (h) the Content infringing any third party rights (including Intellectual Property Rights and moral rights).

6.5 Subject to clause 6.6 **Error! Reference source not found.**, QARC Systems is not liable to you in connection with QARC, this agreement or any QARC Systems services for any loss or damage however caused (including due to negligence) that constitutes consequential loss, indirect, special or direct loss, punitive or incidental damages, loss of profits, loss of revenue, loss of savings, deletion or corruption of electronically stored information, loss of reputation, loss of bargain, loss of data or loss of opportunity.

6.6 If any applicable law prohibits the exclusion of liability by QARC Systems in the manner contemplated by this

clause 6 with respect to particular loss or damage, then:

- (a) the exclusion does not apply to that loss or damage; and
- (b) QARC Systems' liability is only limited or excluded with respect to that loss or damage in the manner permitted by that law (if any).

6.7 Subject to clause 6.6, QARC System's maximum cumulative liability to you in connection with this agreement, QARC Systems' services and QARC is AUD\$1,000.

6.8 You must indemnify QARC Systems and its officers and employees in respect of all loss, damages and expenses (including legal expenses on a solicitor and own client basis), and all claims and demands made by any third party, arising out of any of the following:

- (a) breach of the requirements in this agreement by you or any of your authorised users;
- (b) any negligent, wilful or fraudulent conduct by you or your employees, authorised users, representatives or agents; and
- (c) any use of QARC by you or your employees, authorised users, representatives or agents.

7 Access

7.1 If requested by QARC Systems in order to check compliance with these terms and conditions by the Licensee or any of the Licensee's authorised users, the Licensee must, subject to reasonable advance notice, provide QARC Systems (and its authorised representatives) with such access as QARC Systems requires from time to time to the Licensee's premises, facilities, records, equipment and information technology systems.

8 Suspension and Termination

8.1 The Licensee acknowledges and agrees that QARC Systems may immediately terminate the Licence, and/or suspend the Licensee's access to QARC, if the Licensee or any authorised user is in breach of any of these terms and conditions.

8.2 QARC Systems reserves the right to suspend the Licensee's access to QARC at any time, without prior notice and without providing any reasons, including without limitation in the following circumstances:

- (a) without cause;
- (b) for maintenance purposes;
- (c) to prevent an actual or suspected security attack on QARC;
- (d) upon the occurrence of a Force Majeure Event; and
- (e) to protect any Intellectual Property Rights subsisting with respect to QARC.

8.3 Upon termination of the Licence for any reason:

- (a) the Licence will immediately terminate;
- (b) the Licensee must immediately cease to use, and immediately procure its authorised users to cease to use, any part of QARC including the Archetype Template and the BIM Objects; and
- (c) the Licensee will continue to be bound by the provisions of clauses 4.2, 5, 6, 8.3, 10, 11 and 12 of this agreement.

9 Subcontracting

QARC Systems may subcontract all or any part of any of its services, or the performance of any of its obligations under this agreement, without your consent.

10 Privacy

(a) QARC Systems may use and disclose any Licensee information (including any personal information) you provide when subscribing for the purpose of providing its goods and services, related purposes, research and development, service planning, reporting, quality assurance, direct marketing and providing you with information about third party products and services that may be of interest to you. Licensee information (including personal information) may also be disclosed to Manufacturers or other third parties who promote or advertise goods or services via QARC. Personal information may be transmitted, processed, disclosed and stored outside of Australia, and may otherwise be used and disclosed as authorised or required by law.

(b) Without limitation to clause 10(a), the Licensee agrees that QARC Systems may disclose the following information about Licensees to Manufacturers:

- (i) name;
- (ii) email address;
- (iii) postcode;
- (iv) items downloaded and number of times downloaded;
- (v) type of project;
- (vi) scope of works; and
- (vii) location of project.

(c) The Licensee is required to obtain any informed consents required from its authorised users, and any other relevant individuals, for the use and disclosure of their personal

information in accordance with these terms and conditions.

- (d) You consent to our collection of the following information for use in the connection with the provision our services to you:

- (i) A360 account identification details

11 Publicity

QARC Systems will have a world-wide, non-exclusive, free, irrevocable licence to use the Licensee's name and corporate logo in connection with any promotional materials or websites used by QARC Systems to promote or supply QARC, in order to identify the Licensee as a current or former QARC licensee.

12 General

12.1 Notices

- (a) You agree that for the purposes of these terms and conditions we may contact you, and provide notices, directions and information to you, by e-mail sent to the e-mail address you provided when registering. You agree that any communications provided to you by e-mail will comply with any legal requirement that such communication be in writing. E-mail will be deemed to have been delivered upon sending from QARC Systems' computer network.

- (b) All notices by you to QARC Systems under this agreement must be delivered or posted by pre-paid post (airmail if outside of Australia) to:

QARC Systems Pty Ltd
59 Chermside Street
The Grange QLD 4051
Australia

Any notice to QARC Systems is effective upon physical delivery. In the case of notice delivered by pre-paid mail, the notice will be deemed delivered three (3) Business Days after the date of posting within Australia, or ten

(10) Business Days after the date of posting if sent via pre-paid airmail from outside of Australia.

12.2 Assignment

- (a) You may not transfer or assign any of your rights under the Licence or otherwise under this agreement without the consent of QARC Systems.
- (b) QARC Systems may assign the benefit of this agreement without your consent. If requested, you will enter into a deed of novation of this agreement with a third party nominated by QARC Systems.

12.3 Further assurances

You must do all things necessary or desirable to give effect to the provisions of these terms and conditions including by signing all documents and performing all acts.

12.4 Entire agreement

- (a) Subject to clause 12.4(b), these terms and conditions contain the entire agreement between you and QARC Systems, and supersedes all prior representations, conduct and agreements.
- (b) In the event that the Licensee subscribes to QARC Systems for full access to QARC, the Subscriber Terms and Conditions will apply to the user's use of QARC.

12.5 Severability

To the extent that any portion of these terms and conditions is void or is otherwise unenforceable in any jurisdiction then that portion will be severed in that jurisdiction and in that jurisdiction these terms and conditions will be construed as if the severable portion had never existed.

12.6 No agency

This agreement does not create a relationship of employment, trust, joint venture, agency or partnership between you and QARC Systems. Neither this

agreement, nor the supply of any goods or services by QARC Systems, creates any fiduciary obligations on the part of QARC Systems.

12.7 Discretion

Unless otherwise expressly contemplated, where a provision of this agreement contemplates that QARC Systems may exercise a discretion, then QARC Systems is entitled to exercise that discretion absolutely, with or without conditions and without being required to give reasons.

12.8 Waiver

- (a) Any right provided to QARC Systems under these terms and conditions may only be waived in writing, and any waiver is effective only to the extent specifically set out in the waiver.
- (b) A waiver by QARC Systems of any default will not constitute a waiver of any subsequent default.

12.9 Variation

You acknowledge and agree that we may amend these terms and conditions in our discretion by notifying you of new terms and conditions from time to time, and that those amended terms apply from the date that are notified to you by email in accordance with clause 12.1(a).

12.10 Governing law and jurisdiction

The laws of Queensland, Australia apply to these terms and conditions. You irrevocably submit to the jurisdiction of the courts of Queensland, Australia and the courts competent to hear appeals from those courts.

13 Definitions and Interpretation

13.1 Definitions

In this document:

Archetype Template means the template, generic 'project file' known as "ARChetype" that is provided by QARC Systems to enable a user to begin modelling and documenting a built project using Revit;

BIM means building information modelling;

BIM Library means the online database of BIM Objects and related Content maintained and managed by QARC Systems;

BIM Object means a digital file that is compatible with the Archetype Template and which contains information about a real-world physical building component (e.g. wall, window, door) or building material (e.g. concrete block, glazing pane, fixture) that is used in the construction process;

Business Day means a day that is not a Saturday, Sunday or public holiday in Brisbane, Queensland, Australia.

Check Lists means the series of check lists and instructional notes provided as part of QARC;

Companion means the "Help" document provided as part of QARC;

Content includes all data, graphics, text and software forming part of, or retained, maintained or displayed, in any part of QARC;

Delivery System means QARC Systems' plug-in for Revit called QARC4Revit that delivers the Content to the user;

Force Majeure Event means any occurrence or omission outside of QARC System's reasonable control and includes without limitation natural disasters, civil unrest, war, strikes, industrial disputes, labour disputes and shortages, inability to obtain or access equipment, facilities, services, power or other utilities, accidents, and any change in law or regulatory requirement;

Intellectual Property Rights means all industrial and intellectual property rights throughout the world, whether registered or unregistered, including without limitation copyright, future copyright, patents, designs, trade marks, domain names, business names, company names, service marks, circuit layout rights, data and database rights, know how, trade secrets and all applications and rights in relation to registration of such rights, whether created before, on or after the date of this agreement;

Licence means the licence granted by QARC Systems in clause 1.1 of these terms and conditions;

Manufacturer means a third party manufacturer and/or supplier of real-world products (e.g. appliances, building materials) who enters into an agreement with QARC Systems to make a branded BIM Object version of their product available for download in QARC;

QARC means the Delivery System, the Archetype Template and its associated files, the BIM Library, the Companion, support articles, the Check Lists and any other "help" items made available to the Licensee by QARC Systems from time to time.

13.2 **Interpretation**

In these terms and conditions:

- (a) no rule of construction applies to the disadvantage of QARC Systems on the basis that it prepared these terms and conditions; and
- (b) words such as "includes" and "including" do not impose any limitation on the construction of general language that is followed by specific examples.