SOFTWARE LICENSE AGREEMENT  
(NON-EXCLUSIVE; NON-COMMERCIAL RESEARCH ONLY CONDUCTED BY AN INSTITUTION OF HIGHER EDUCATION; COPYRIGHT AND PATENT)

THIS SOFTWARE LICENSE AGREEMENT ("AGREEMENT") is made and entered into this __________ day of __________, 201__ ("EFFECTIVE DATE"), by and between THE CURATORS OF THE UNIVERSITY OF MISSOURI, a public corporation of the State of Missouri having a principal office at the Office of Technology Management and Industry Relations, 706 Mizzou North, Columbia, Missouri 65211, ("UNIVERSITY") and ______________ having offices at ______________ ("LICENSEE"). UNIVERSITY and LICENSEE may sometimes be referred to herein as a “PARTY” or “PARTIES” as the case may be.

WHEREAS, LICENSEE is a university or other institution of higher education; and

WHEREAS, UNIVERSITY has an ownership interest in the computer software and/or related documentation, manuals, and guides created by or on behalf of UNIVERSITY and disclosed in UM Disclosure No. 18UMC-039 titled “Hessian Blob Algorithm” dated January 12, 2018, which is disclosed in a pending U.S. patent application; and

WHEREAS, the INTELLECTUAL PROPERTY RIGHTS in the SOFTWARE were developed under a research program sponsored by the National Science Foundation having an award number 1054832. Therefore, this AGREEMENT is subject to the terms and conditions of the Bayh-Dole Act, Public Law 96-517 and 98-620 as amended; and

WHEREAS, LICENSEE is desirous of obtaining a limited non-exclusive non-commercial research license to use the SOFTWARE for internal non-commercial research purposes and UNIVERSITY is desirous of granting such a license to LICENSEE in accordance with the terms of this AGREEMENT.

NOW, THEREFORE, in consideration of the foregoing premises and the covenants, representations and warranties contained herein, the PARTIES agree as follows:

Article I. DEFINITIONS

Section 1.01 “DERIVATIVE WORK” means all works that would be characterized as a derivative work of the SOFTWARE, in whole or in part, under the United States Copyright Act of 1976 as amended from time to time, specifically including, but not limited to, translations, abridgments, condensations, recastings, transformations, or adaptations of the SOFTWARE or works comprising editorial revisions, annotations, elaborations, or other modifications of the SOFTWARE. For clarity, new versions of the SOFTWARE shall be a DERIVATIVE WORK. A “LICENSEE DERIVATIVE WORK” is a DERIVATIVE WORK developed, authored, or created by LICENSEE or on LICENSEE’s behalf.

Section 1.02 “ENHANCEMENT” means any changes or upgrades made to the SOFTWARE or any software code or algorithm that is interoperable with the SOFTWARE and enhances or...

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improves the SOFTWARE. An ENHANCEMENT encompasses, but is not limited to, a
DERIVATIVE WORK. A “LICENSEE ENHANCEMENT” is an ENHANCEMENT
developed, authored, or created by LICENSEE or on LICENSEE’s behalf.

Section 1.03 “INTELLECTUAL PROPERTY RIGHTS” means the PATENT RIGHTS and the LICENSED COPYRIGHTS.

Section 1.04 “LICENSED COPYRIGHTS” means the UNIVERSITY’s copyrights in the LICENSED SOFTWARE under the United States Copyright Act of 1976 as amended from time to time, and International Treaty provisions, in effect from time to time, relating to the protection of copyrights worldwide, but excluding any third party rights therein.

Section 1.05 “LICENSED FIELD” means the field of internal non-commercial research performed by LICENSEE. For clarity, the LICENSED FIELD does not include any sponsored research conducted by LICENSEE with a third party.

Section 1.06 “LICENSED SOFTWARE” means the SOFTWARE delivered from UNIVERSITY to LICENSEE pursuant to Section 2.07.

Section 1.07 “LICENSED TERRITORY” means LICENSEE’s premises.

Section 1.08 “OBJECT CODE” shall mean code, substantially or entirely in binary form, which is intended to be directly executable by a computer after suitable processing but without the intervening steps of compilation or assembly.

Section 1.09 “PATENT RIGHTS” means UNIVERSITY’S rights in any of the following: (a) the United States provisional patent application Serial No. 62/618,118, titled “Hessian Blob Algorithm” (“PATENT APPLICATION”); and (b) any provisional, non-provisional, divisional, continuation (but not continuations-in-part), extension, renewal, re-examination, reissue, substitute, supplementary protection certificate, utility model, or similar legal protection claiming priority to or from the PATENT APPLICATION; and (c) any corresponding foreign applications or patents thereof. All of the foregoing will be automatically incorporated in and added to this AGREEMENT.

Section 1.10 “SOFTWARE” means the software commonly known as the “Hessian Blob Algorithm” software, which is generally disclosed in UM Invention Disclosure Number 18UMC039 and dated January 12, 2018, including all modules, components, code (including SOURCE CODE and OBJECT CODE), supporting documentation, manuals, guides, and similar materials.

Section 1.11 “SOURCE CODE” shall mean code, other than OBJECT CODE, and related source code level system documentation, comments and procedural code, such as job control language, which may be printed out or displayed in human readable form.

Article II. GRANT

Section 2.01 Grant of Patent Rights. Subject to the terms and conditions of this AGREEMENT, UNIVERSITY hereby grants to LICENSEE and LICENSEE accepts a royalty-

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18UMC039_UM Research License Agreement_Non-Exclusive [FINAL]
Academic Research Institution

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free, non-transferrable, non-exclusive license (without the right to sublicense) under the PATENT RIGHTS to make and use the LICENSED SOFTWARE within the LICENSED TERRITORY for use within LICENSED FIELD for a term as set forth in Section 6.01 unless this AGREEMENT shall be sooner terminated according to the terms hereof.

Section 2.02 Grant of Licensed Copyrights. Subject to the terms and conditions of this AGREEMENT, except for portions of the LICENSED SOFTWARE that include OPEN SOFTWARE, UNIVERSITY hereby grants to LICENSEE, and LICENSEE accepts, a royalty-free, non-transferrable, non-exclusive license (without the right to sublicense) under the LICENSED COPYRIGHTS in the LICENSED SOFTWARE (a) to create LICENSEE DERIVATIVE WORKS and LICENSEE ENHANCEMENTS thereto, and (b) to use and reproduce the LICENSED SOFTWARE, solely in the LICENSED TERRITORY in the LICENSED FIELD for a term as set forth in Section 6.01 unless this AGREEMENT shall be sooner terminated according to the terms hereof.

Section 2.03 Commercialization of Derivative Works. LICENSEE acknowledges that LICENSEE will require a separate license from the UNIVERSITY to obtain the rights to commercialize any LICENSEE DERIVATIVE WORKS or LICENSEE ENHANCEMENTS. For clarity, this AGREEMENT does not provide LICENSEE with any rights to commercialize the LICENSEE DERIVATIVE WORKS or LICENSEE ENHANCEMENTS.

Section 2.04 Grant Forward of Licensee Enhancements. LICENSEE hereby grants to UNIVERSITY a perpetual, irrevocable, royalty free, non-exclusive, license under the copyrights to any and all LICENSEE DERIVATIVE WORKS and LICENSEE ENHANCEMENTS, (a) to create DERIVATIVE WORKS and ENHANCEMENTS thereto, and (b) to make, use, sell, reproduce, market, distribute, publicly display, and publicly perform LICENSEE DERIVATIVE WORKS and LICENSEE ENHANCEMENTS.

Section 2.05 License Scope. The license granted herein shall not be construed to confer any rights upon LICENSEE by implication, estoppel or otherwise as to any patent, copyright, technology or software not specifically set forth in the INTELLLECTUAL PROPERTY RIGHTS. LICENSEE shall have no right to grant sublicenses, sell, or otherwise commercialize the LICENSED SOFTWARE. For the avoidance of doubt, this grant is subject to the rights of the GOVERNMENT as set forth in Section 2.06.

Section 2.06 Governmental Rights. LICENSEE understands that the INTELLLECTUAL PROPERTY RIGHTS were developed under a funding agreement with the Government of the United States of America ("GOVERNMENT") and that the GOVERNMENT may have certain rights relative thereto. Thus, notwithstanding anything hereunder, any and all licenses and other rights granted hereunder are limited by and subject to the rights and requirements of the GOVERNMENT which may arise out of its sponsorship of the research which led to the conception or reduction to practice of the INTELLLECTUAL PROPERTY RIGHTS. The GOVERNMENT is entitled, as a right, under the provisions of 35 U.S.C. §§ 200-212 and applicable regulations of Title 37 of the Code of Federal Regulations: (i) to a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on the behalf of the GOVERNMENT any of the INTELLLECTUAL PROPERTY RIGHTS throughout the world and (ii) to exercise march in rights on PATENT RIGHTS within the INTELLLECTUAL CONFIDENTIAL.
PROPERTY RIGHTS. If there is a conflict between the GOVERNMENT funding agreement, applicable law or regulation and this AGREEMENT, the terms of the GOVERNMENT funding agreement, applicable law or regulation shall prevail. LICENSEE agrees to take any actions necessary to enable UNIVERSITY to satisfy its obligations with the GOVERNMENT relating to the INTELLECTUAL PROPERTY RIGHTS. LICENSEE agrees, during the period of exclusivity of this license in the United States, that any LICENSED SOFTWARE will be manufactured substantially in the United States as required by 35 U.S.C. § 204.

Section 2.07 Delivery. Within thirty (30) days after the EFFECTIVE DATE, UNIVERSITY shall deliver to LICENSEE's premises, a copy of the OBJECT CODE for the SOFTWARE, together with a copy of the SOURCE CODE. If LICENSEE timely rejects the SOFTWARE within the fourteen (14) day period, then LICENSEE’s sole remedy is to terminate this AGREEMENT, and UNIVERSITY shall have no further obligation to LICENSEE. UNIVERSITY has no obligation to provide LICENSEE with any updates or DERIVATIVE WORKS of the SOFTWARE owned or controlled by UNIVERSITY. Should UNIVERSITY voluntarily elect to provide such updates or DERIVATIVE WORKS to LICENSEE, the same shall be treated as LICENSED SOFTWARE.

Article III. INDEMNITY, LIMITATIONS ON LIABILITY, DISCLAIMER OF WARRANTIES AND DAMAGES

Section 3.01 Indemnity. To the extent permitted by the law applicable to LICENSEE, if applicable, LICENSEE shall at all times during the term of this AGREEMENT and thereafter, indemnify, defend and hold UNIVERSITY, its current or former Curators, employees, agents, and affiliates, harmless from any claim, proceeding, suit, demand, expense, loss, penalty, judgment, or liability of any kind whatsoever, including costs, expenses and reasonable attorneys’ fees, resulting from, related to, arising out of, or in connection with (1) the reproduction or use of the LICENSED SOFTWARE by LICENSEE, including but not limited to (i) any infringement or misappropriation of a patent, copyright, trade secret or other intellectual property or proprietary right of any third party or (ii) any product liability claims, such as those involving the death of or injury to any person or persons or damage to property; or (2) any breach of any obligation, covenant, representation, or warranty by LICENSEE hereunder; or (3) a breach or violation of applicable law by LICENSEE; (4) the exercise of LICENSEE’s rights under this AGREEMENT; (5) LICENSEE's violation of the terms of any open software license (if any) in the LICENSED SOFTWARE. If any such claims or causes of action are made, UNIVERSITY shall be defended by counsel selected by LICENSEE, subject to UNIVERSITY's approval, which shall not be unreasonably withheld. UNIVERSITY reserves the right to be represented by its own counsel at its own expense.

Section 3.02 Licensee Representations/Warranties. LICENSEE represents and warrants to UNIVERSITY at all times that:

(a) Organization & Power. LICENSEE is a university or other institution of higher education duly organized, validly existing, and in good standing under the laws of its state of incorporation or formation and has all requisite power and authority to enter into this AGREEMENT;
(b) **Authorization.** The execution, delivery and performance by LICENSEE of this AGREEMENT and the consummation of the transactions contemplated hereby and thereby have been duly authorized by all requisite action on the part of the LICENSEE and do not conflict with or cause a default with respect to LICENSEE's obligations under any other agreement;

(c) **Other Duties.** LICENSEE represents and warrants that LICENSEE:

1) shall be solely responsible for ensuring that its access and/or use of the LICENSED SOFTWARE by its employees does not violate any laws to which LICENSEE is subject or violate or infringe the rights of any third party, including without limitation those involving spamming, privacy, obscenity, or defamation, copyright, trademark, patent, child protective email address registry, FERPA, and export control;

2) shall not remove any proprietary notices or labels of UNIVERSITY or third parties with respect to any third party content;

3) shall not use the LICENSED SOFTWARE to store or transmit any unlawful, hateful, infringing, harmful, threatening, abusive, harassing, offensive, libelous, defamatory, slanderous, immoral, pornographic, indecent, obscene, fraudulent, discriminatory, or objectionable or unacceptable material;

4) shall not use the LICENSED SOFTWARE to store or transmit viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs;

5) shall not advertise or solicit funds for goods or services using the LICENSED SOFTWARE; and

6) shall not (except for LICENSEE’s own non-commercial research use) copy, frame, or mirror any part or content of the LICENSED SOFTWARE;

7) shall not use, incorporate or link to any reciprocal or copyleft open software license in any LICENSEE DERIVATIVE WORKS OR LICENSEE ENHANCEMENTS.

Section 3.03 **Disclaimer of Warranties.** THE LICENSED SOFTWARE IS DELIVERED "AS IS" IN EVERY RESPECT. UNIVERSITY, ITS CURRENT OR FORMER CURATORS, EMPLOYEES, AGENTS, AND AFFILIATES MAKE NO REPRESENTATIONS AND EXTEND NO WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF COMMERCIAL UTILITY, MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, THE ABSENCE OF LATENT OR OTHER DEFECTS, WHETHER OR NOT DISCOVERABLE, THE SCOPE, VALIDITY OR ENFORCEABILITY OF THE INTELLECTUAL PROPERTY RIGHTS, OR THAT THE DESIGN, DEVELOPMENT, REPRODUCTION, MODIFICATION, USE, SALE, OFFER FOR SALE, RENTING, LEASE, LENDING, LICENSE, IMPORTATION, PERFORMANCE, DISPLAY, PERFORMANCE, PRODUCTION, MANUFACTURE, MARKETING, SHIPPING, ADVERTISEMENT, LABELING, PROMOTION, OR OTHER DISTRIBUTION OF THE LICENSED SOFTWARE BY LICENSEE OR ANY OTHER CONFIDENTIAL
PERSON OR ENTITY WILL BE FREE FROM INFRINGEMENT OR MISAPPROPRIATION OF ANY PATENT, COPYRIGHT, TRADEMARK, OR OTHER RIGHTS OF ANY THIRD PARTY.

Section 3.04 Damages Exclusion / Limitation of Remedies. LICENSEE ASSUMES THE ENTIRE RISK AS TO PERFORMANCE OF THE LICENSED SOFTWARE. IN NO EVENT SHALL UNIVERSITY ITS CURRENT OR FORMER CURATORS, EMPLOYEES, AGENTS, AND AFFILIATES BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES OF ANY KIND, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT OR IN TORT, INCLUDING NEGLIGENCE OR OTHERWISE, AND INCLUDING ECONOMIC DAMAGE OR INJURY TO PROPERTY AND LOST PROFITS, ATTORNEYS' AND EXPERTS' FEES, REGARDLESS OF WHETHER UNIVERSITY MAY BE ADVISED, MAY HAVE OTHER REASON TO KNOW, OR IN FACT SHALL KNOW OF THE POSSIBILITY, INCLUDING BUT NOT LIMITED TO ALL CLAIMS ARISING OUT OF THIS AGREEMENT, ALL USE OF THE LICENSED SOFTWARE, OR WITH RESPECT TO THE INSTALLATION, IMPLEMENTATION, USE, INABILITY TO USE, OR OPERATION OF THE LICENSED SOFTWARE. WITHOUT LIMITING THE FOREGOING, UNIVERSITY SHALL HAVE NO LIABILITY WITH RESPECT TO ANY OPEN SOFTWARE (IF ANY) INCLUDED IN THE LICENSED SOFTWARE.

Section 3.05 For the avoidance of doubt, nothing in this AGREEMENT shall be construed as:

a. a warranty or representation by UNIVERSITY as to the validity or scope of any INTELLECTUAL PROPERTY RIGHTS;

b. a warranty or representation by UNIVERSITY that the reproduction, marketing, distribution, public display, public performance, production, manufacture, shipping, modification, use, importation, sale, rental, lease, lending, license, advertisement, labeling, promotion, publication or sublicensing of the LICENSED SOFTWARE will be free from infringement of intellectual property rights of third parties;

c. a representation or warranty that the LICENSED SOFTWARE does not contain any open software;

d. an obligation by UNIVERSITY to bring or prosecute actions or suits against third parties for copyright infringement; or

e. an obligation to furnish any training, technical information, documentation, or know-how, or to furnish any services.

Article IV. INFRINGEMENT AND ENFORCEMENT OF INTELLECTUAL PROPERTY

Section 4.01 University Ownership and University Control of Copyrights and Patents. UNIVERSITY shall have full, complete, and sole ownership of any pending copyright
applications, registered copyrights, pending patent applications, and issued patents included in the INTELLECTUAL PROPERTY RIGHTS.

Section 4.02 Notifications. LICENSEE shall promptly inform UNIVERSITY in writing of any alleged infringement of the INTELLECTUAL PROPERTY RIGHTS by a third party and shall provide UNIVERSITY with any available evidence thereof. LICENSEE shall not notify a third party of such infringement of the INTELLECTUAL PROPERTY RIGHTS.

Section 4.03 Challenge to IP. In the event that LICENSEE directly or indirectly: (a) issues a press release, public announcement, news release alleging invalidity, unenforceability, improper ownership, or improper authorship or inventorship of the INTELLECTUAL PROPERTY RIGHTS; or (b) asserts a claim or counterclaim in the courts or seeking to invalidate or render unenforceable any INTELLECTUAL PROPERTY RIGHTS, including on the basis of improper ownership, authorship, or inventorship; or (c) assists a third party with either or both (a) or (b) (each of (a), (b), or (c) being a “CHALLENGE EVENT”), then LICENSEE shall provide at least ninety (90) days written notice to UNIVERSITY prior to initiating such a CHALLENGE EVENT, along with a copy of any and all documents which form the basis for the CHALLENGE EVENT. Upon the occurrence of a CHALLENGE EVENT, UNIVERSITY, shall have the right, but not the obligation, to terminate this AGREEMENT with respect to the LICENSEE by providing written notice of the same. Any such judicial challenge by LICENSEE shall be brought in the courts of Missouri, and LICENSEE agrees not to challenge personal jurisdiction in that forum.

Article V. CONFIDENTIALITY

Section 5.01 Confidential Information Defined. “CONFIDENTIAL INFORMATION” means any and all information not generally known to the public, whether or not patentable or susceptible to any other form of legal protection, that is identified or designated by UNIVERSITY as being confidential or which, in light of the circumstances under which it was disclosed, whether oral or written, is reasonably apparent to LICENSEE to be considered confidential or proprietary by UNIVERSITY, including but not limited to concepts, designs, processes, specifications, schematics, equipment, processing techniques, technical information, drawings, diagrams, software (including SOURCE CODE), hardware, control systems, research, test results, manuals, trade secrets, commercialization studies, market studies, and business plans received by LICENSEE from UNIVERSITY except to the extent LICENSEE can prove by written documentation that such information:

(a) was in the public domain at the time of disclosure;

(b) later became part of the public domain through no act or omission or breach of this AGREEMENT by LICENSEE, its employees, agents, successors or assigns;

(c) was lawfully disclosed to LICENSEE by a third party having the right to make such disclosure; or

(d) was already known by LICENSEE at the time of disclosure; or
(e) was independently developed by LICENSEE without the aid, use or application of CONFIDENTIAL INFORMATION received from UNIVERSITY and such independent development can be properly demonstrated by LICENSEE; or

(f) is required by law or regulation to be disclosed.

Specific information shall not be deemed to be within the foregoing exceptions merely because it is embraced by more general information within the exceptions. In addition, any combination of the features shall not be deemed to be within the foregoing exception merely because individual features may be within the exceptions.

Section 5.02 Restrictions on Disclosure and Use. LICENSEE agrees that (a) all CONFIDENTIAL INFORMATION shall remain the exclusive property of UNIVERSITY, (b) LICENSEE shall receive and hold the CONFIDENTIAL INFORMATION in strict confidence, (c) LICENSEE shall use the CONFIDENTIAL INFORMATION only for the purposes of this AGREEMENT, and (d) LICENSEE shall not disclose the CONFIDENTIAL INFORMATION to third parties without the prior written consent of UNIVERSITY, and (e) LICENSEE shall protect the CONFIDENTIAL INFORMATION to the same extent that it protects its own trade secrets and confidential information, but in no less than commercially reasonable care.

Section 5.03 Legally Required Disclosures. In the event that LICENSEE receives a request or is required by open records request, deposition, interrogatory, request for documents, subpoena, civil investigative demand, or similar process to disclose any or part of the CONFIDENTIAL INFORMATION, LICENSEE agrees to (a) immediately notify UNIVERSITY in writing of the existence, terms, and circumstances surrounding such a request or requirement and (b) assist UNIVERSITY in seeking a protective order or other appropriate remedy satisfactory to UNIVERSITY. In the event that such a protective order or other remedy is not obtained, (a) LICENSEE may disclose that portion of the CONFIDENTIAL INFORMATION which it is legally required to disclose, (b) LICENSEE shall exercise reasonable efforts to obtain assurance that confidential treatment will be accorded the CONFIDENTIAL INFORMATION to be disclosed, and (c) LICENSEE shall give written notice to UNIVERSITY of the information to be disclosed as far in advance of its disclosure as practical.

Section 5.04 Sunshine Law. LICENSEE acknowledges that UNIVERSITY is subject to the Missouri Sunshine Act, 610 RSMo, and that all agreements, plans, reports, and other information marked “Confidential” shall be treated by UNIVERSITY as confidential only to the extent permitted by law.

Section 5.05 Survival. LICENSEE’s obligations of confidentiality and non-use shall exist during the term of this AGREEMENT and for so long as such CONFIDENTIAL INFORMATION remains confidential in accordance with Section 5.01.

Article VI. TERM AND TERMINATION

Section 6.01 Term. This AGREEMENT shall become effective upon the EFFECTIVE DATE and, unless sooner terminated in accordance with any of the provisions herein, shall remain in
full force for a period of five (5) years unless otherwise terminated as provided in this AGREEMENT.

Section 6.02 Right to Terminate. LICENSEE may terminate this AGREEMENT at any time by providing written notice to UNIVERSITY.

Section 6.03 Breach. In the event that either PARTY defaults or breaches any of the provisions of this AGREEMENT, the other PARTY shall have the right to terminate this AGREEMENT by giving written notice to the defaulting PARTY; provided, however, that if the defaulting PARTY cures the default within thirty (30) days after the notice shall have been given, this AGREEMENT shall continue in full force and effect. The failure on the part of either of the PARTIES hereto to exercise or enforce any right conferred upon it hereunder shall not be deemed to be a waiver of any such right nor operate to bar the exercise or enforcement thereof at any time or times thereafter.

Section 6.04 Rights after Termination. Upon termination or expiration of this AGREEMENT for any reason, LICENSEE shall:

(a) return any CONFIDENTIAL INFORMATION provided to LICENSEE by UNIVERSITY in connection with this AGREEMENT, or, with UNIVERSITY’s prior approval, destroy such materials, and LICENSEE shall certify in writing that such materials have all been returned or destroyed; and

(b) cease all use of the LICENSED SOFTWARE, LICENSEE DERIVATIVE WORKS, and LICENSEE ENHANCEMENTS;

(c) provide UNIVERSITY with copies of all LICENSEE DERIVATIVE WORKS and LICENSEE ENHANCEMENTS, including any applicable SOURCE CODE and OBJECT CODE;

(d) return or destroy all copies of the LICENSED SOFTWARE in LICENSEE’s possession, and LICENSEE shall certify in writing that all such copies have been returned or destroyed. Notwithstanding the foregoing, LICENSEE may each retain two copies of the LICENSED SOFTWARE strictly for archive and backup purposes.

Nothing in this section shall be construed as limiting in any way UNIVERSITY’S rights or remedies that UNIVERSITY may otherwise have, either in law or in equity.

Section 6.05 Insolvency. In the event that LICENSEE dissolves, liquidates, ceases to carry on business, becomes insolvent, is unable to pay its debts as they become due, makes an assignment for the benefit of creditors, or has a petition for bankruptcy filed for or against it, this AGREEMENT shall automatically terminate.

Section 6.06 Survival. Termination of this AGREEMENT for any reason shall not release either PARTY from any obligation theretofore accrued. All provisions of this AGREEMENT that would reasonably be expected to survive the termination or expiration of this AGREEMENT shall do so, including Article III (all—indemnity, limitations on liability, disclaimer of

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warranties and damages), Article V (all—confidentiality), Section 2.06 (governmental rights), Section 6.06 (survival), and Article VII (general -- all) survive the termination of this AGREEMENT.

Article VII. GENERAL

Section 7.01 Marking. LICENSEE shall not remove any copyright notices of all LICENSED SOFTWARE in accordance with 17 U.S.C. § 401 or in such a manner as to conform with the copyright laws and practice of the country of distribution.

Section 7.02 Compliance with Laws; Export Controls. LICENSEE agrees to comply with all applicable federal, state, and local laws and regulations. In particular, LICENSEE shall comply with all applicable U.S. laws dealing with the export and/or management of commodities, technology or information, and that LICENSEE will be responsible for any violation of such by LICENSEE, and that it will defend and hold UNIVERSITY harmless in the event of any legal action of any nature occasioned by such violation. LICENSEE understands that the Arms Export Control Act (AECA), including its implementing International Traffic In Arms Regulations (ITAR,) and the Export Administration Act (EAA), including its Export Administration Regulations (EAR), are some (but not all) of the laws and regulations that comprise the U.S. export laws and regulations. LICENSEE further understands that the U.S. export laws and regulations include (but are not limited to): (a) ITAR and EAR product/service/data-specific requirements; (b) ITAR and EAR ultimate destination-specific requirements; (c) ITAR and EAR end user-specific requirements; (d) ITAR and EAR end use-specific requirements; (e) Foreign Corrupt Practices Act; and (f) anti-boycott laws and regulations. LICENSEE will comply with all then-current applicable export laws and regulations of the U.S. Government (and other applicable U.S. laws and regulations) pertaining to the LICENSED SOFTWARE (including any associated products, items, articles, computer software, media, services, technical data, and other information). LICENSEE warrants that it will not, directly or indirectly, export (including any deemed export), nor re-export (including any deemed re-export) the LICENSED SOFTWARE (including any associated products, items, articles, computer software, media, services, technical data, and other information) in violation of U.S. export laws and regulations or other applicable U.S. laws and regulations. LICENSEE shall ensure that it complies with all then-current applicable U.S. export laws and regulations and other applicable U.S. laws and regulations. LICENSEE’S OBLIGATIONS TO COMPLY WITH U.S. EXPORT CONTROL LAWS AND REGULATIONS ARE INDEPENDENT OF AND SURVIVE THE TERMINATION OF THIS AGREEMENT.

Section 7.03 University Name. LICENSEE agrees not to identify UNIVERSITY in any promotional advertising or other promotional materials to be disseminated to the public or any portion thereof or to use the name of any UNIVERSITY faculty member, employee, or student or any trademark, service mark, trade name, or symbol of UNIVERSITY, without UNIVERSITY’S prior written consent.

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Section 7.04  **Press.** Notwithstanding Section 7.01, UNIVERSITY may disclose the existence of this AGREEMENT.

Section 7.05  **Assignment.** This AGREEMENT is binding upon and shall inure to the benefit of UNIVERSITY, its successors and assigns. However, this AGREEMENT shall be personal to LICENSEE, and it is not assignable by LICENSEE to any other person or entity without the prior written consent of UNIVERSITY, such consent to be in UNIVERSITY’s sole discretion.

Section 7.06  **Consulting.** In the event LICENSEE wishes to engage the authors as consultants, such an arrangement shall be separate and apart from this AGREEMENT, but shall be in keeping with UNIVERSITY’S policy on consulting and ownership of intellectual property developed by UNIVERSITY employees.

Section 7.07  **Notices.** Any notice, or other communication given under this AGREEMENT shall be in writing and shall be deemed delivered when sent by certified first class mail, registered mail, or overnight courier, or by facsimile, provided that a copy of such facsimile is promptly sent by certified first class mail, registered or overnight courier, addressed to the PARTIES as follows (or at such other addresses as the PARTIES may notify each other in writing):

If to UNIVERSITY:
University of Missouri
Technology Management & Industry Relations
Mizzou North, Room 706
115 Business Loop 70 W
Columbia, MO 65211-8375

If to LICENSEE:
____________________________________
____________________________________
____________________________________

Section 7.08  **No Other Relationship.** In assuming and performing the respective obligations under this AGREEMENT, LICENSEE and UNIVERSITY are each acting as independent parties and neither shall be considered or represent itself as a joint venture, partner, agent or employee of the other.

Section 7.09  **No Waiver.** None of the terms, covenants, and conditions of this AGREEMENT can be waived except by the written consent of the PARTY waiving compliance. A failure by one of the PARTIES to this AGREEMENT to assert its rights for or upon any breach or default of this AGREEMENT shall not be deemed a waiver of such rights nor shall any such waiver be implied from acceptance of any payment. No such failure or waiver in writing by any one of the PARTIES hereto with respect to any rights, shall extend to or affect any subsequent breach or impair any right consequent thereon.

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Section 7.10 **Injunctive Relief.** LICENSEE acknowledges that UNIVERSITY will be irreparably harmed by the unauthorized use of the LICENSED SOFTWARE and, further, that monetary damages may not be a sufficient remedy for such harm. LICENSEE agrees that UNIVERSITY shall be entitled, without waiving any other rights or remedies and without further demonstration of irreparable harm or the inadequacy of monetary damages, to obtain injunctive or other equitable relief in the event of any breach of this AGREEMENT by LICENSEE or by LICENSEE’s unauthorized use of the LICENSED SOFTWARE.

Section 7.11 **Severability.** If any sentence, paragraph, clause or combination of the same is found by a court of competent jurisdiction to be in violation of any applicable law or regulation, or is unenforceable or void for any reason whatsoever, such sentence, paragraph, clause or combinations of the same shall be severed from the AGREEMENT and the remainder of the AGREEMENT shall remain binding upon the PARTIES.

Section 7.12 **Headings.** The headings of the paragraphs of this AGREEMENT are inserted for convenience only and shall not constitute a part hereof.

Section 7.13 **Sovereign Immunity.** The PARTIES agree that nothing in this AGREEMENT is intended or shall be construed as a waiver, either express or implied, of any of the immunities, rights, benefits, defenses or protections provided to UNIVERSITY under governmental or sovereign immunity laws from time to time applicable to UNIVERSITY.

Section 7.14 **Counterparts.** This AGREEMENT may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute but one and the same instrument.

Section 7.15 **Entire Agreement.** This AGREEMENT constitutes the entire and only agreement between the PARTIES for INTELLECTUAL PROPERTY RIGHTS and the LICENSED SOFTWARE and all other prior negotiations, representations, agreements, and understandings are superseded hereby. No agreements altering or supplementing the terms hereof may be made except by a written document signed by both PARTIES.

IN WITNESS WHEREOF, the PARTIES hereto have executed this AGREEMENT in duplicate originals by their duly authorized officers or representatives.

THE CURATORS OF THE UNIVERSITY OF MISSOURI

LICENSEE

BY: ___________________________   BY: ____________________________
NAME:                      NAME:
TITLE:                     TITLE:
DATE __________________________   DATE ___________________________

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