

LICENSE AGREEMENT

Carnegie Mellon University – <COMPANY>

This Agreement (hereinafter "this Agreement") entered into as of <DATE> ("Effective Date") by and between Carnegie Mellon University, a Pennsylvania not-for-profit corporation, having a principal place of business at 5000 Forbes Avenue, Pittsburgh, PA ("Carnegie Mellon") and <COMPANY>, a <STATE OF INCORPORATION> <TYPE OF CORPORATION>, having a principal place of business at <ADDRESS> ("Licensee").

Witnesseth

Whereas, Carnegie Mellon owns certain rights in certain technology relating to <_____>, and is interested in licensing same;

Whereas, Licensee desires to acquire rights in and to that technology upon the terms and conditions herein set forth;

Now Therefore, in consideration of the mutual covenants contained herein and intending to be legally bound hereby, the parties agree as follows:

1. Certain Definitions ("Defined Terms")

1.1. **"Code"** shall mean Source Code and Object Code collectively.

1.2. **"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.

1.3. **"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.

1.4. **"Copyrights"** shall mean Carnegie Mellon's copyrights in the Licensed Technology.

1.5. **"Patent(s)"** shall mean any patent application, including any continuation, continuation-in-part, divisional or modification filed in the U.S. or in any other country and any patent claiming priority therefrom or reissue thereof, which issues to Carnegie Mellon and specifically claims any of the Licensed Technology in existence on the Effective Date.

1.6. **"Licensed Technology"** or **"Technology"** shall mean (a) the technology described in Attachment A on an "as is" basis on the Effective Date, (b) the trade secrets, know-how, [design architecture, software and algorithm(s) including related Code and related Copyrights,] owned by

All provisions are subject to addition, elimination, or revision by either party. All communications and discussions are tentative until execution of a written agreement by both parties.

Carnegie Mellon [and/or for which Carnegie Mellon has the right to license] and related to the technology described in Attachment A, on an "as is" basis on the Effective Date; and [(c) any Patents specifically claiming the technology or other intellectual property described in (a) or (b) above, including any claims issuing on US Patent Application Number #####].

*1.7. "**Derivative**" shall mean computer software or other intellectual property developed by Licensee [and/or its sublicensees], which includes, or is based in whole or in part on, the Licensed Technology, including, but not limited to, translations of the Licensed Technology to other foreign or computer languages, adaptation of the Licensed Technology to other hardware platforms, abridgments, condensations, revisions, and software incorporating all or any part of the Licensed Technology which may also include Licensee-created [and/or sublicensee created] modifications, enhancements or other software.*

1.8. "**Licensed Product**" or "**Product**" shall mean any product and/or service which constitutes, is based on, incorporates or utilizes, wholly or in part, Licensed Technology [and/or any and all Derivatives].

1.9. "**Year**" refers to contract years of this Agreement, i.e. a twelve (12) month period starting with the date (or anniversary) of the Effective Date.

1.10. "**Fiscal Quarter**" or "**Quarter**" shall refer to the normal quarterly accounting periods of Licensee; if Licensee does not have normal quarterly accounting periods, then a "Fiscal Quarter" shall mean the calendar three months period commencing with January of each year.

1.11. "**Dispose**" or "**Disposition**" shall mean the use, sale, lease or other transfer.

1.12. "**Revenue**" shall mean the U.S. Dollar value of all consideration realized by Licensee [and/or its sublicensees] for the Disposition of Licensed Product(s).

*1.13. "**Combined Product**" shall mean a Licensed Product Disposed of in combination with another product of Licensee [or sublicensee, as applicable].*

*1.14. "**Fair Market Value**" shall mean a price established by Licensee [or a sublicensee, as applicable] on the same basis and by applying the same principles that Licensee [or the sublicensee, as applicable] has used in establishing current list prices for similar products.*

1.15. "**Net Sales**" shall mean the total Revenues, less the total of all of the following deductions (to the extent included in computing Revenue):

- (a) discounts allowed in amounts customary in the trade;
- (b) sales tariffs, duties and/or taxes imposed on the Licensed Products;
- (c) outbound transportation prepaid or allowed; and
- (d) amounts allowed or credited on returns.

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No deduction shall be made for commissions paid to individuals or entities whether they be independent sales agents or persons regularly engaged or employed by Licensee [and/or a sublicensee].

If a Licensed Product is Disposed of in a Combined Product, then Net Sales for that Licensed Product shall, to the extent Disposed of in a Combined Product, be computed in the following manner:

First, the consideration realized for the Disposition of the Combined Product by Licensee [and/or its sublicensees] shall be reduced by the allowable deductions itemized in paragraphs (a) – (d) above in order to arrive at Net Sales for the Combined Product; second, Net Sales for the Licensed Product shall be calculated by employing the following formulas:

Net Sales for the Licensed Product = C times D divided by T, where:

C= Net Sales for the Combined Product

D= list price of the Licensed Product when sold independently, or if such list price is unavailable, a fair and reasonable estimate of the Fair Market Value of the Licensed Product.

T= combined list prices of all products contained in the Combined Product, or if any such list prices are unavailable for any component products, the Fair Market Value of such component products.

1.16. **"Royalties"** shall mean Disposition royalties which are calculated as a percentage of Net Sales and will be payable by Licensee to Carnegie Mellon under the provisions of this Agreement.

1.17. **"Sublicense Fees"** shall mean any consideration realized by Licensee from a sublicensee, excluding amounts payable to Licensee by a sublicensee on account of Net Sales.

1.18. **"Dollar", "U.S. Dollar" and "\$ U.S."** shall mean lawful money of the United States of America.

1.19. **"Prime Rate"** shall mean the prime rate in the Wall Street Journal newspaper in its "Money Rates" column on the Effective Date.

1.20. **"Field of Use"** shall mean < DEFINE FIELD(S) OF USE >.

2. License Grant

2.1. Carnegie Mellon hereby grants to Licensee, and Licensee hereby accepts, an [exclusive or non-exclusive], [world-wide or Territory] right to use the Licensed Technology to make, have

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made, use, [copy], and otherwise Dispose of Licensed Products [and to create Derivatives for the Field of Use].

2.2. Licensee [and/or its sublicensees] shall be entitled to establish all proprietary rights for itself in the intellectual property represented by Derivatives, whether in the nature of trade secrets, copyrights, patents or other rights, provided that Licensee shall promptly notify Carnegie Mellon of Licensee-originated [and/or sublicensee originated] bug fixes to the Licensed Technology, which shall be part of the Licensed Technology and owned by Carnegie Mellon. Any copyright registration by Licensee for Derivatives shall give full attribution to Carnegie Mellon's Copyrights. Carnegie Mellon shall have the right to use Derivatives for research, educational, academic, and/or administrative purposes.

2.3. No right to sublicense the Technology is hereby granted to Licensee except (a) that Licensee may sublicense to its customers Licensed Technology in the ordinary course of business to the extent necessary for use and practice of the Licensed Product Disposed of by Licensee to said customers or (b) with the prior written agreement by Carnegie Mellon. Licensee agrees that any sublicenses granted by Licensee to third parties, other than to customers in the ordinary course of business (even though the prior written agreement by Carnegie Mellon to such a sublicense has been obtained) shall provide that the obligations to Carnegie Mellon under this Agreement, including but not limited to, the obligation to indemnify Carnegie Mellon, the obligation to obtain and maintain insurance to protect Carnegie Mellon and the obligation relating to settlement of claims and/or controversies specified in this Agreement, shall be binding upon such sublicensee as if it were a party to this Agreement, and the economic return to Carnegie Mellon by reason of such sublicense shall be at least as great as if any Disposition by the sublicensee had been a Disposition by Licensee.

ALT 2.3. Licensee will have the right to sublicense the Technology without the right to further sublicense (except to the relevant sublicensee's direct customers in the ordinary course of business and to the extent necessary for the use and practice of the Licensed Products Disposed of by sublicensee to said customers as required to enable such customers to use and practice the Licensed Technology which is the subject of the applicable sublicense) within the Field of Use.

(1) Any sublicenses granted by Licensee to any person or entity, other than customers in the ordinary course of business and to the extent necessary for the use and practice of the Licensed Products Disposed of by Licensee to said customer, must provide that the obligations to Carnegie Mellon under this Agreement are met and will be conditioned upon and subject to the following conditions:

(a) LICENSEE will provide to Carnegie Mellon a copy of each sublicense within sixty (60) days of the date of each such sublicense has been entered into subject to redaction of confidential commercial terms that are not Revenue related.

(b) Further, any such sublicense entered into by Licensee will expressly include the following provisions for the benefit of Carnegie Mellon:

All provisions are subject to addition, elimination, or revision by either party. All communications and discussions are tentative until execution of a written agreement by both parties.

THE INTELLECTUAL PROPERTY, TECHNOLOGY, INFORMATION, PRODUCTS AND/OR MATERIALS FURNISHED OR MADE AVAILABLE HEREUNDER ARE FURNISHED OR MADE AVAILABLE, IN WHOLE OR IN PART, BY _____ [Insert name of Licensee] UNDER A LICENSE FROM CARNEGIE MELLON UNIVERSITY (“CARNEGIE MELLON”). CARNEGIE MELLON MAKES NO WARRANTIES OF ANY KIND, EITHER EXPRESSED OR IMPLIED, AS TO ANY MATTER INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, EXCLUSIVITY OR RESULTS OBTAINED FROM USE OF ANY INTELLECTUAL PROPERTY, TECHNOLOGY, INFORMATION, PRODUCTS AND/OR MATERIALS FURNISHED OR PROVIDED. FURTHER, CARNEGIE MELLON MAKES NO WARRANTIES OF ANY KIND WITH RESPECT TO FREEDOM FROM PATENT, TRADEMARK, OR COPYRIGHT INFRINGEMENT, OR THEFT OF TRADE SECRETS AND DOES NOT ASSUME ANY LIABILITY HEREUNDER OR OTHERWISE FOR ANY INFRINGEMENT OF ANY PATENT, TRADEMARK, OR COPYRIGHT ARISING FROM THE USE OF THE INTELLECTUAL PROPERTY, TECHNOLOGY INFORMATION, PRODUCTS AND/OR MATERIALS.

CARNEGIE MELLON SHALL NOT BE LIABLE TO [INSERT NAME OF SUBLICENSEE] OR ANY THIRD PARTY FOR ANY REASON WHATSOEVER ARISING OUT OF OR RELATING TO THIS [INSERT NAME OF SUBLICENSE], INCLUDING ANY OF THE INTELLECTUAL PROPERTY, TECHNOLOGY, INFORMATION, PRODUCTS AND/OR MATERIALS FURNISHED OR MADE AVAILABLE HEREUNDER, FOR INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES SUCH AS LOSS OF PROFITS OR INABILITY TO USE SAID INTELLECTUAL PROPERTY, TECHNOLOGY, INFORMATION, PRODUCTS AND/OR MATERIALS OR ANY APPLICATIONS OR DERIVATIONS THEREOF, EVEN IF CARNEGIE MELLON AND/OR ANY OF ITS LICENSEES HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

[insert name of sublicensee] shall defend, indemnify and hold harmless Carnegie Mellon, its trustees, officers, employees, attorneys and agents from and against all claims or demands made against any one or more them (and any related losses, expenses and costs, including attorneys’ fees and expenses) arising out of or relating to [insert name of sublicensee]’s use or disposition of or act or omission regarding, the intellectual property, technology, information, products or materials furnished or provided hereunder and/or any goods or services which are based on or utilize any of the foregoing in whole or in part including but not limited to, any claims of product liability, personal injury (including, but not limited to, death), damage to property or violation of any laws or regulations including, but not limited to, claims of active or passive negligence.

Carnegie Mellon is an express third party beneficiary of this [insert name of sublicense].

2.4. Carnegie Mellon shall have the right to use the Licensed Technology and, free of charge, any product or process developed by Licensee [and/or any sublicensee] which contains or is based on any of the Licensed Technology [and/or Derivatives], for Carnegie Mellon research, educational, academic, and/or administrative purposes.

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2.5. Nothing in this Agreement shall restrict academic research or other not-for-profit scholarly activities, which are undertaken at a nonprofit or governmental institution in the Field of Use and/or in the area of Licensed Technology and/or any other areas.

2.6. All Licensed Products shall be Disposed of and performed by Licensee [and its sublicensees] in compliance with all applicable governmental laws, rules, and regulations. Licensee shall keep Carnegie Mellon fully informed of, and shall move expeditiously to resolve, any complaint by a governmental body relevant to the Licensed Products, [except for complaints subject to Section 22 (Infringement) of this Agreement].

2.7. Carnegie Mellon retains the right, exercisable in the sole discretion of Carnegie Mellon and upon advance notice to Licensee, to grant non-exclusive licenses to practice the Licensed Technology in the Field of Use to third parties as a means to resolve disputes or settle claims, suits, or proceedings arising out of allegations that the Licensed Technology infringes upon the intellectual property rights of the third party. Each party shall promptly notify the other parties hereto of its receipt of any such allegations. Nothing in this Section 2.7 shall be construed as obligating Carnegie Mellon to resolve any dispute or to settle or defend any claim, suit, or proceeding arising out of Licensee's Disposition of Licensed Products. If Carnegie Mellon grants such non-exclusive license, the economic terms of this Agreement will be adjusted accordingly. Carnegie Mellon retains the right to grant either exclusive or non-exclusive licenses for the Licensed Technology in fields of use other than the Field of Use for which the license hereunder is granted.

2.8. This Agreement is subject to any government purpose license rights under 35 USC §202 (c) (4) and any march-in rights of the United States of America under 35 USC §203.

3. Term of this Agreement

The term of this Agreement shall conclude [at the end of twenty (20) years from the Effective Date, or on the expiration date of the last-to-expire Patent, whichever comes later], unless otherwise terminated pursuant to another provision of this Agreement.

4. Minimum Performance Requirements

4.1. Licensee shall use its best efforts to effect introduction of Licensed Technology into the commercial market as soon as possible; thereafter, until the expiration of this Agreement, Licensee shall keep Licensed Technology reasonably available to the public.

4.2. Licensee shall achieve the following milestones:
<Specify milestones>

4.3. Licensee's failure to perform in accordance with Sections 4.1 or 4.2 herein shall be grounds for Carnegie Mellon to terminate this Agreement pursuant to Section 10.2 herein.

All provisions are subject to addition, elimination, or revision by either party. All communications and discussions are tentative until execution of a written agreement by both parties.

5. Royalties and Payment Terms

5.1. Royalties payable by Licensee to Carnegie Mellon shall be _____ percent (x %) of Net Sales.

5.2. Licensee shall pay to Carnegie Mellon _____ percent (x %) of Sublicense Fees.

5.3. Licensee shall pay Carnegie Mellon a non-refundable up-front royalty of _____ U.S. Dollars (\$U.S. _____) due and payable thirty (30) days after the Effective Date. This up-front royalty will not be credited against any other amounts due under this Agreement.

5.4. Licensee shall pay Carnegie Mellon a non-refundable, minimum royalty of _____ U.S. Dollars (\$U.S. _____) ("**Annual Minimum Royalty**"), [payable on <date> of each Year]. The Annual Minimum Royalty shall be credited against the Royalties payable in a Year. Annual Minimum Royalty payments are to be adjusted by the cumulative percentage change in the CPI-W Consumer Price Index between December <____> and the December preceding the date on which the payment in question is payable. [Licensee shall pay Carnegie Mellon Annual Minimum Royalties according to the following schedule:]

5.5. Royalties [and Sublicense Fees] payable to Carnegie Mellon shall be paid by Licensee to Carnegie Mellon, as set forth in this Section 5, for each Fiscal Quarter within sixty (60) days after the end of such Fiscal Quarter, until this Agreement expires or is terminated in accordance with the terms of this Agreement. If this Agreement terminates before the end of a Fiscal Quarter, the payment for the terminal fractional portion of a Fiscal Quarter shall be made within ninety (90) days after the date of termination of this Agreement. All Royalties and other amounts payable hereunder shall be paid in U.S. Dollars and shall be made by wire transfer to Carnegie Mellon's account No. 197-9003 ABA043000261, Carnegie Mellon Ref. No <FILE #>, at Mellon Bank's Pittsburgh office, or by Licensee's check sent in accordance with Section 22 (Notices).

5.6. All amounts payable hereunder which are overdue shall bear interest until paid at a rate equal to the Prime Rate in effect at the date such amounts were due plus four percent (4%) per annum, but in no event to exceed the maximum rate of interest permitted by applicable law. This provision for interest shall not be construed as a waiver of any rights Carnegie Mellon has as a result of Licensee's failure to make timely payment of any amounts.

6. Reports and Audits

6.1. Licensee shall report Quarterly to Carnegie Mellon Net Sales and Revenues [and Sublicense Fees] which are subject to Royalty and other payments within sixty (60) days of the end of the relevant Quarter.

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6.2. Licensee shall maintain accurate books and records such that the Royalties and other amounts due and payable hereunder can be easily ascertained. Such books and records shall be maintained at Licensee's principal place of business. Licensee shall make available Licensee's books and records for audit by Carnegie Mellon or its designee, and Licensee agrees to cooperate fully in any such audit, provided that Carnegie Mellon and its designee (if any) agree to protect the confidentiality of the information as to the customers of Licensee. Any such audit shall not be more frequent than annually. In the event of any deficiency in payment, in addition to paying the deficiency, if the audit determines that any amounts paid to Carnegie Mellon were deficient by more than five percent (5%), Licensee shall also pay the costs of the audit, all within thirty (30) days following written notice of such deficiency.

6.3. Licensee shall report to Carnegie Mellon the date of the first commercial Disposition of a Licensed Product within sixty (60) days of occurrence in each country.

6.4. Within sixty (60) days after the end of each of Licensee's fiscal years, Licensee shall furnish Carnegie Mellon with a written report on the progress of its efforts during the immediately preceding fiscal year to develop and commercialize Licensed Products. The report shall also contain a discussion of intended efforts and sales projections for the year in which the report is submitted.

6.5. Within sixty (60) days after the end of each of Licensee's fiscal years, Licensee shall provide Carnegie Mellon with Licensee's financial statements for the immediately preceding fiscal year (including, at a minimum, an income statement, a statement of cash flows, and a balance sheet) that have been certified by Licensee's treasurer, chief financial officer, or an independent auditor.

7. Improvements

7.1. Discussion of a problem during collaboration between the parties to this Agreement will not create any rights to ownership of patents, copyrights, mask work rights, trade secrets or other intellectual property rights in solutions to the problem developed solely by employees or agents of the other party hereto.

7.2. Licensee will own all of the right, title and interest (including patents, copyrights, mask work rights, trade secrets and any other intellectual property rights, [but excluding Patents]) in and to the results of the collaboration between the parties that are developed solely by Licensee employees or agents.

7.3. Carnegie Mellon will own all of the right, title and interest (including patents, [Patents], copyrights, Copyrights, mask work rights, trade secrets and any other intellectual property rights) in and to the results of the collaboration between the parties that are developed solely by Carnegie Mellon employees or agents.

7.4. All intellectual property which results in [Patents or] Licensed Technology developed jointly by employees or agents of Carnegie Mellon and Licensee shall be owned by Carnegie

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Mellon. Licensee may utilize such jointly developed property pursuant to the terms of this Agreement. Carnegie Mellon may issue licenses to others regarding such jointly developed property which results in [Patents or] Licensed Technology, as long as such licenses do not violate any exclusive license to Licensee then existing under Section 2 (License Grant). If any other property rights are developed jointly by employees or agents of Carnegie Mellon and Licensee which would not constitute [a Patent or] Licensed Technology and which are not subject to another agreement between Carnegie Mellon and Licensee, Carnegie Mellon and Licensee shall jointly own (without any duty to account to the other for profits) all right, title and interest (including patents, copyrights, mask work rights, trade secrets, and other intellectual property rights) in and to the results of such joint development. If any patentable invention which would not constitute [a Patent or] Licensed Technology arises out of such joint development by employees or agents of Carnegie Mellon and Licensee, Carnegie Mellon and Licensee will engage in good faith efforts to mutually agree on whether and how to pursue patent, copyright or mask work protection of the invention in the U.S. and elsewhere.

7.5. Except as provided in this Section 7, nothing herein shall be deemed to grant any license or rights in any other technology in addition to the Licensed Technology.

8. Patents and Other Intellectual Property

8.1. Intellectual property rights to Licensed Technology such as [Patent(s)], patent(s), and Copyrights which may be obtainable will remain the property of Carnegie Mellon. Trademarks existing on the Effective Date belong to Carnegie Mellon.

8.2 Within thirty (30) days of the Effective Date, Licensee shall make a one-time payment to Carnegie Mellon of US\$_____ for patenting and other intellectual property protection costs incurred by Carnegie Mellon prior to the Effective Date and relating to the Licensed Technology.

Thereafter, Licensee shall bear [fifty percent (50%) of (in the case of a nonexclusive)] all patenting and other intellectual property protection costs relating to intellectual property rights to Licensed Technology. Licensee will reimburse Carnegie Mellon for all amounts related to such patenting and other intellectual property costs, within thirty (30) days of the receipt of each notification or bill therefor from Carnegie Mellon.

8.3. Carnegie Mellon has applied for, and/or will apply for and prosecute Patent coverage in any country if so requested by Licensee, at Licensee's sole expense, for any and all Patents to the extent that such protection is reasonably obtainable.

8.4. Carnegie Mellon may, at its option and sole discretion and at its own expense pursue patent, copyright and/or trademark rights for Licensed Technology in any country for which coverage has not been requested by Licensee in accordance with Subsection 8.3 herein. If Licensee does not reimburse Carnegie Mellon for such amounts within thirty (30) days of the receipt of each notification or bill therefor, then Licensee shall have no rights relating to same in that country.

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8.5. No less than forty-five (45) days before instituting any legal proceeding contesting the validity or enforceability or use of a license granted hereunder, Licensee shall give written notice to Carnegie Mellon of its intention to bring such a challenge and a detailed description of the legal and factual basis for such a challenge to preserve Carnegie Mellon's ability to have any such challenge proceed in a forum convenient for Carnegie Mellon and to assist the parties in seeking to resolve the dispute without the need for judicial action.

9. Markings, Trademarks and Trade Names

9.1. Licensee shall have included in all sales, marketing literature and invoices relating to Licensed Product, a statement to the effect that "this product or portions thereof is manufactured under license from Carnegie Mellon University" [and, if applicable, either "Patent Pending" or, if applicable, "U.S. Patent Number [X,XXX,XXX]]."

9.2. Licensee shall have marked the appropriate portions of all Licensed Product with any applicable U.S. and foreign Patent numbers in accordance with the applicable laws of the countries in which the materials are intended to be used.

9.3. Licensee acknowledges that the title to the Technology (including Copyright) shall remain with Carnegie Mellon and that any copies of the Technology or portions thereof made by Licensee in accordance with the rights granted hereunder shall include a Carnegie Mellon copyright notice thereon. The notice shall be affixed to all copies or portions thereof in such a manner and location as to give reasonable notice of Carnegie Mellon's claim of copyright and shall be in the following format: "Copyright 200__ Carnegie Mellon University. All rights reserved." or "© 20__ Carnegie Mellon All Rights Reserved."

9.4. Licensee acknowledges that it does not have any rights or any title whatsoever in or to Carnegie Mellon's technology, trade name or in or to any of Carnegie Mellon's trademarks, except as provided under this Agreement. Licensee shall neither register nor use any Carnegie Mellon trademarks or trade names. Any reference by Licensee to Carnegie Mellon beyond the above may only be done with express written permission of Carnegie Mellon's Director of the Center for Technology Transfer and Enterprise Creation.

10. Termination

10.1. In the event that Licensee defaults in the payment in full of any amount required to be paid under this Agreement on the date such payment is due, in addition to utilizing any other legal and/or equitable remedies, Carnegie Mellon shall have the right by written notice to Licensee to [(a) terminate the exclusivity, if any, of any license hereunder (by amending the word "exclusive" in the related license grant to read "non-exclusive") without any reduction in any of the payments due from Licensee or (b)] terminate this Agreement. In addition to the foregoing, in the event that (a) Licensee shall make or offer to make any arrangement or composition with or for the benefit of its creditors, or (b) Licensee ceases or threatens to cease to carry on its business, or (c)

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Licensee is or becomes unable to pay its debts as they become due, or (d) Licensee commits any act of insolvency or bankruptcy, or (e) a petition or resolution for the making of an administration order or for the bankruptcy, winding-up or dissolution of Licensee is presented or passed, or (f) Licensee files a voluntary petition in bankruptcy or insolvency, or

(g) a receiver or administrator takes possession of or is appointed over the whole or any part of the assets of Licensee, or (h) any analogous procedure is commenced against or by Licensee in any jurisdiction, Carnegie Mellon shall have the right by written notice to Licensee to terminate this Agreement.

10.2. In the event that either party to this Agreement defaults in the performance of any of its obligations hereunder (other than any of the defaults or events referred to in Section 10.1. hereof) and fails to cure such default within thirty (30) days after written notice of such default from such other party, the other party shall have the right by written notice to the defaulting party to terminate this Agreement.

10.3. In the event that any of (a) Licensee, or (b) an affiliate of Licensee, or (c) a third party acting on behalf of Licensee or one of its affiliates, challenges or disputes the validity or enforceability of any intellectual property rights licensed hereunder in any judicial or administrative proceeding, Carnegie Mellon may, at its option and sole discretion, terminate the license [or terminate exclusivity] as to such challenged intellectual property by notice in writing to Licensee.

10.4. The Royalty rates and other amounts stated herein have been negotiated with the understanding that no court has made any determination as to the validity or enforceability of any Patent specifically claiming any of the Licensed Technology or whether any of Licensee's products infringe any claim of any Patent. Licensee desires to obtain a license under the terms stated herein, without regard to the lack of such adjudication. In the event that Licensee or any affiliate of Licensee, either directly or indirectly, challenges the validity or enforceability of any intellectual property rights licensed hereunder, or commences a judicial proceeding involving whether any of its products infringe any claim of Carnegie Mellon's intellectual property rights or would infringe in the absence of this license, and such validity, enforceability or infringement is upheld in any such judicial or administrative proceeding (including a reexamination that results in issuance of amended claims), Royalties due and payable under Section 5.1 herein shall, effective immediately as of the date such validity, enforceability or infringement is upheld, increase to _____ percent to take into account the additional certainty regarding Carnegie Mellon's rights provided by such a resolution and to compensate Carnegie Mellon for the burden and expense of such challenge.

10.5. The termination of this Agreement pursuant to this Section 10 or pursuant to Section 3 hereof shall not terminate (a) in the case of termination pursuant to Section 3 or by Carnegie Mellon pursuant to this Section 10, the obligation of Licensee to pay any amounts which have accrued or would otherwise be required to be paid by Licensee under the terms of this Agreement, and (b) the obligations of Licensee under Sections 6 (Reports and Audits), 8 (Patents and Other Intellectual Property), 10 (Termination), 11 (Taxes), 14 (Confidentiality and Trade

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Secrets), 15 (Indemnification), 16 (Insurance), 20 (Dispute Resolution), and [21 (Infringement)] hereunder.

11. Taxes

Licensee shall pay all taxes which may be assessed or levied on, or on account of, the Licensed Products made or Disposed of and all taxes assessed or levied on, or on account of, the amounts payable to, or for the account of, Carnegie Mellon under this Agreement (other than Carnegie Mellon's U.S. federal, state or local income or franchise taxes).

12. NO WARRANTY; LIMITATION AS TO TYPES OF DAMAGES

ANY AND ALL INFORMATION, MATERIALS, SERVICES, INTELLECTUAL PROPERTY AND OTHER PROPERTY AND RIGHTS GRANTED AND/OR PROVIDED BY CARNEGIE MELLON PURSUANT TO THIS AGREEMENT, INCLUDING THE LICENSED TECHNOLOGY ARE GRANTED AND/OR PROVIDED ON AN "AS IS" BASIS. CARNEGIE MELLON MAKES NO WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, AS TO ANY MATTER, AND ALL SUCH WARRANTIES, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE EXPRESSLY DISCLAIMED. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, CARNEGIE MELLON DOES NOT MAKE ANY WARRANTY OF ANY KIND RELATING TO EXCLUSIVITY, INFORMATIONAL CONTENT, ERROR-FREE OPERATION, RESULTS TO BE OBTAINED FROM USE, FREEDOM FROM PATENT, TRADEMARK AND COPYRIGHT INFRINGEMENT AND/OR FREEDOM FROM THEFT OF TRADE SECRETS. LICENSEE IS PROHIBITED FROM MAKING ANY EXPRESS OR IMPLIED WARRANTY TO ANY THIRD PARTY ON BEHALF OF CARNEGIE MELLON RELATING TO ANY MATTER, INCLUDING THE APPLICATION OF OR THE RESULTS TO BE OBTAINED FROM THE INFORMATION, MATERIALS, SERVICES, INTELLECTUAL PROPERTY OR OTHER PROPERTY OR RIGHTS, INCLUDING THE LICENSED TECHNOLOGY GRANTED AND/OR PROVIDED BY CARNEGIE MELLON PURSUANT TO THIS AGREEMENT

CARNEGIE MELLON SHALL NOT BE LIABLE TO LICENSEE OR ANY THIRD PARTY FOR ANY REASON WHATSOEVER ARISING OUT OF OR RELATING TO THIS AGREEMENT (INCLUDING ANY BREACH OF THIS AGREEMENT) FOR LOSS OF PROFITS OR FOR INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, EVEN IF CARNEGIE MELLON HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR HAS OR GAINS KNOWLEDGE OF THE EXISTENCE OF SUCH DAMAGES.

13. Costs

All provisions are subject to addition, elimination, or revision by either party. All communications and discussions are tentative until execution of a written agreement by both parties.

All costs and expenses incurred by Licensee in carrying out Licensee's obligations under this Agreement shall be paid by Licensee, and Licensee shall not be entitled to reimbursement from Royalties hereunder or otherwise therefor from Carnegie Mellon. Licensee [and its sublicensees] shall possess or obtain at its own expense all necessary licenses and permits and shall comply with all laws, ordinances, rules or regulations affecting the exportation or Disposition of Licensed Products, Licensed Technology [and/or Derivatives].

14. Confidentiality and Trade Secrets

14.1. "**Confidential Information**" shall mean any information relating to the Licensed Technology, the terms of this Agreement (as from time to time amended), Patents, copyrights, algorithms, and software covered by this Agreement or information disclosed to Licensee in the manner set forth hereinafter. All such information shall be Confidential Information, including information disclosed to Licensee prior to the Effective Date, unless such information (a) was already in Licensee's possession prior to the disclosure thereof by Carnegie Mellon as provided in subsection 14.1(1) hereof, (b) has been published or is published hereafter, unless such publication is a breach of this Agreement, (c) is received by Licensee from a third party not under an obligation of confidentiality with respect thereto, or (d) is independently developed by Licensee.

(1) In the event that such information shall be established to have been known to Licensee prior to the disclosure thereof by Carnegie Mellon by reference to any publication thereof by Licensee or by reference to any internal writing or other business record maintained by Licensee in the ordinary course of business, such information shall not be deemed to be Confidential Information for purposes of this Agreement following notification to Carnegie Mellon of such fact.

(2) With respect to any information not related to the Licensed Technology which is sought by Carnegie Mellon to be Confidential Information subject to this Agreement, Carnegie Mellon shall mark such information as "Confidential" prior to disclosing it to Licensee.

(3) With respect to any oral communication not related to the Licensed Technology which is deemed by Carnegie Mellon to be Confidential Information subject to this Agreement, Carnegie Mellon shall notify Licensee of such fact and within thirty (30) days thereafter Carnegie Mellon shall send a memorandum to Licensee outlining the information deemed to be Confidential Information.

14.2. Licensee shall maintain in confidence and shall not disclose to any person not a party hereto, nor shall Licensee use or exploit in any way without Carnegie Mellon's written agreement, any Confidential Information until three (3) years after the later of the date of termination of this Agreement or the end of the term of the last to expire Patent, unless such information ceases to be Confidential Information prior to the end of such period through no fault of Licensee or Licensee and Carnegie Mellon enter into an agreement authorizing same.

All provisions are subject to addition, elimination, or revision by either party. All communications and discussions are tentative until execution of a written agreement by both parties.

14.3. Licensee shall exercise all reasonable precautions to prevent the disclosure of Confidential Information by its employees or representatives, and in any event shall maintain with respect to such Confidential Information a standard of care which is no less than that standard which Licensee maintains to prevent the disclosure of its own confidential information but no less than a reasonable standard of care.

14.4. Upon termination of this Agreement, Licensee agrees to return at once to Carnegie Mellon, without copying, all originals and copies of all materials (other than this Agreement) containing any Confidential Information.

14.5. For the purposes of this Section 14, the term "Carnegie Mellon" shall include the creators of the Licensed Technology and those working with or under them.

15. Indemnification

Licensee [and its sublicensees] shall defend, indemnify, and hold harmless Carnegie Mellon and its trustees, officers, employees, attorneys and agents from and against any liability, damage, loss or expense (including attorneys' fees and expenses) incurred by or imposed upon any of Carnegie Mellon and/or its trustees, officers, employees, attorneys and agents in connection with any claim, suit, action or demand arising out of or relating to any exercise of any right or license granted or provided to Licensee [and/or its sublicensees] under this Agreement [and/or any sublicense], including any Disposition of Licensed Product(s), under any theory of liability (including without limitation, actions in the form of tort, warranty, or strict liability, or violation of any law, and regardless of whether such action has any factual basis).

16. Insurance

Licensee [and each sublicensee] shall, at its own expense, obtain and maintain throughout the term of this Agreement, commercial general liability insurance with a limit of not less than <<one million>> U.S. Dollars (\$ U.S. <<1,000,000>>) per occurrence and <<two million>> U.S. Dollars (\$ U.S. <<2,000,000>>) aggregate for products liability and completed operations from an insurance company(ies) having a financial rating from AM Best or similar rating service of at least an "A-". Carnegie Mellon shall be identified and named as an additional insured on such insurance policy(ies). Licensee agrees to provide [and to cause each sublicensee to provide] Carnegie Mellon with evidence of such insurance upon the execution of this Agreement (and thereafter from time to time as Carnegie Mellon may request).

17. No Acquiescence

No acquiescence in any breach of this Agreement by either party shall operate to excuse any subsequent or prior breach.

All provisions are subject to addition, elimination, or revision by either party. All communications and discussions are tentative until execution of a written agreement by both parties.

18. Entire Agreement

This Agreement supersedes all previous agreements relating to the subject matter hereof, whether oral or in a writing, and constitutes the entire agreement of the parties hereto relating to the subject matter hereof and may not be amended or altered in any respect except in a writing executed by the parties.

19. Governing Law

This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the Commonwealth of Pennsylvania, without regard to conflict of law principles in that or any other jurisdiction.

20. Dispute Resolution

All claims and/or controversies of every kind and nature arising out of or relating to this Agreement, including any questions concerning its existence, negotiation, validity, meaning, performance, non-performance, breach, continuance or termination shall be settled (a) at Carnegie Mellon's election, by binding arbitration administered by the American Arbitration Association ("AAA") in accordance with its Commercial Arbitration Rules and, in such case (i) the arbitration proceedings shall be conducted before a panel of three arbitrators, with each party selecting one disinterested arbitrator from a list submitted by the AAA and the two disinterested arbitrators selecting a third arbitrator from the list, (ii) each party shall bear its own cost of arbitration, (iii) all arbitration hearings shall be conducted in Allegheny County, Pennsylvania, and (iv) the provisions hereof shall be a complete defense to any suit, action or proceeding instituted in any federal, state or local court of before any administrative tribunal with respect to any claim or controversy arising out of or relating to this Agreement and which is arbitrable as provided in this Agreement, provided that either party may seek injunctive relief in a court of law or equity to assert, protect or enforce its rights in any intellectual property and/or confidential or proprietary information as described in this Agreement, or (b) in the event that Carnegie Mellon does not elect binding arbitration as permitted in point (a) above, exclusively in the U.S. District Court for the Western District of Pennsylvania or, if such Court does not have jurisdiction, in any court of general jurisdiction in Allegheny County, Pennsylvania and each party consents to the exclusive jurisdiction of any such courts and waives any objection which such party may have to the laying of venue in any such courts.

21. Infringement

21.1. So long as Licensee remains the exclusive licensee of any of the Patents in the Field of Use, Licensee shall have the right during the term of this Agreement to commence an action for

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infringement of any of those Patents against any third party for any infringement occurring within the Field of Use, provided that Licensee shall provide Carnegie Mellon thirty (30) days' prior written notice of such infringement and of Licensee's intent to file such action. Carnegie Mellon shall have the right at its own expense (subject to being reimbursed from any settlement amount or proceeds as provided herein) to appear in such action by counsel of its own selection. If required by the jurisdictional laws of the forum that any such action be prosecuted in the name of the owner of the Patent or that Carnegie Mellon be joined as a party-plaintiff, Carnegie Mellon shall voluntarily appear; provided that Licensee shall hold Carnegie Mellon harmless from, and indemnify Carnegie Mellon against any liability, damage, loss, or expense that Carnegie Mellon suffers or incurs, including Carnegie Mellon's attorneys' fees and expenses, in connection with, in consequence of or resulting from such action and that if such appearance could subject Carnegie Mellon to any unrelated action or claim of a third party or Licensee in that or any other jurisdiction, then Carnegie Mellon shall have the right to decline such appearance. All liability, damage, loss, or expense suffered or incurred by Carnegie Mellon in accordance with the preceding sentence, including reasonable compensation for the time of any Carnegie Mellon personnel, shall be paid by Licensee as the same as incurred by Carnegie Mellon. Settlement of any action brought by Licensee shall require the consent of Carnegie Mellon and any settlement amount or recovery for damages shall be applied as follows: (a) first, to reimburse the parties for their unreimbursed expenses in connection with the litigation; and (b) second, Carnegie Mellon shall receive compensation for unreimbursed time of any Carnegie Mellon personnel involved in the action; and (c) third, Carnegie Mellon shall receive the following percentage of the monies remaining: The percentage specified in Section 5.1 for determining Royalties on Net Sales as may be increased per Section 10.4 when required by Section 10.4.

21.2. In the event that Licensee is unsuccessful in persuading an alleged infringer to desist or fails to initiate any infringement action contemplated by Section 22.1 within a reasonable time after Licensee first becomes aware of the basis for such action, Carnegie Mellon shall have the right, in its sole discretion, to prosecute such infringement action at its sole expense, and any settlement amount or recovery shall belong to Carnegie Mellon.

21.3. Notwithstanding the pendency of any infringement (or other) claim or action by or against Licensee, Licensee shall have no right to terminate or suspend (or escrow) payment of any amounts required to be paid to Carnegie Mellon pursuant to this Agreement.

22. Notices

Any notice under any of the provisions of this Agreement shall be deemed given when (a) personally delivered, or (b) sent prepaid by nationally recognized overnight carrier, or (c) deposited in the mail, postage prepaid, registered or certified first class mail, and in the case of (b) or (c), when addressed to the applicable party at the address stated on the signature page hereof, or such other address as such party shall specify for itself by like notice to other party. Each party shall in the case of (b) or (c), transmit to the other a facsimile copy or an electronic

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mail copy of each such notice promptly after sending same by nationally recognized overnight carrier or depositing same in the mail, as applicable.

23. Assignment

Licensee shall not assign or transfer this Agreement or any interest herein without the prior written consent of Carnegie Mellon.

24. Headings

The section headings contained in this Agreement are set forth for the convenience of the parties only, do not form a part of this Agreement and are not to be considered a part hereof for the purpose of construction or interpretation hereof, or otherwise.

25. Severability

If any provision of this Agreement or portion thereof is determined by a court of competent jurisdiction, or declared under any law, rule or regulation of any government having jurisdiction over the parties hereto, to be invalid, illegal or otherwise unenforceable, then such provision will, to the extent permitted by the court or government not be voided but will instead be construed to give effect to its intent to the maximum extent permissible under applicable law and the remainder of this Agreement will remain in full force and effect according to its terms.

(The balance of this page is intentionally left blank).

All provisions are subject to addition, elimination, or revision by either party. All communications and discussions are tentative until execution of a written agreement by both parties.

The parties hereto have caused this Agreement to be executed by their duly authorized representatives in duplicate counterparts, each of which shall be deemed to constitute an original, effective as of the Effective Date.

Carnegie Mellon University

By: _____
Susan Burkett
Associate Vice President

Date: _____

Address for Notices:

Carnegie Mellon University
4615 Forbes Avenue, Suite 302
Pittsburgh, PA 15213
Attention: Director, Center for Technology Transfer and Enterprise Creation

Facsimile: 412-268-7395

<Company>

By _____
<name>

Date: _____

Address for Notices:

Attention:

Facsimile:

All provisions are subject to addition, elimination, or revision by either party. All communications and discussions are tentative until execution of a written agreement by both parties.

Attachment A

Description of Licensed Technology

The invention entitled "xxx" and the related documentation, if any, disclosed on <DATE> and bearing Carnegie Mellon File #xxx on an "as is" basis on the Effective Date.

Patent

Title:

Inventors:

All provisions are subject to addition, elimination, or revision by either party. All communications and discussions are tentative until execution of a written agreement by both parties.