

EXCLUSIVE SOFTWARE COPYRIGHT LICENSE AGREEMENT  
LSU FILE \_\_\_\_\_ TECHNOLOGY

This Agreement is effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (the "Effective Date"), between \_\_\_\_\_, a \_\_\_\_\_ organized in the State of \_\_\_\_\_, with offices located at \_\_\_\_\_ ("LICENSEE"), and the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, a public constitutional corporation of the State of Louisiana ("LSU"). LICENSEE and LSU agree as follows:

ARTICLE 1 - DEFINITIONS

1.1 "DERIVATIVE WORK" means all works developed by LICENSEE that would be characterized as derivative works of the PROGRAM under the United States Copyright Act of 1976, or subsequent revisions thereof, specifically including, but not limited to, translations, abridgments, condensations, recastings, transformations, or adaptations of the PROGRAM, or works comprising editorial revisions, annotations, elaborations, or other modifications of the PROGRAM. The term "DERIVATIVE WORK" shall not, however, include any derivative works that are developed by LSU.

1.2 "END USER" means any authorized person or other entity to whom the PROGRAM or DERIVATIVE WORKS are distributed and who is not granted any rights to sublicense or distribute the PROGRAM or DERIVATIVE WORKS to others.

1.3 "FIELD OF USE" means [Insert definition \_\_\_\_\_].

1.4 "FIRST COMMERCIAL SALE" means the earlier of (a) the first commercial use by LICENSEE or a SUBLICENSEE, or (b) the date the first commercial license is granted to an END USER by LICENSEE or a SUBLICENSEE – but in neither case including a license that is granted for use in trials, such as field trials or clinical trials, being conducted to obtain FDA or other governmental approval.

1.5 "NET SALES" means the amount billed, invoiced, or received for licenses, sales, rentals, or leases to END USERS, however characterized, by LICENSEE and SUBLICENSEES of the PROGRAM and DERIVATIVE WORKS and for uses of the PROGRAM and DERIVATIVE WORKS by LICENSEE and SUBLICENSEES, less only the following deductions when documented and factually applicable:

- (a) cash discounts actually granted to SUBLICENSEES or END USERS, not to exceed amounts customary in the trade;
- (b) sales, tariff duties, and use taxes separately stated in bills or invoices with reference to particular sales, and actually paid by LICENSEE or a SUBLICENSEE to a governmental unit;
- (c) freight expenses actually incurred, to the extent such expenses are not charged to or reimbursed by SUBLICENSEES or END USERS; or
- (d) amounts actually refunded or credited on returns.

No other deductions of any kind shall be taken, whether for the cost of collections, or for commissions to independent sales agents or regular employees of LICENSEE, or otherwise.

Where LICENSEE receives any consideration other than cash for such transactions, the fair market cash value of such consideration, to be agreed upon by the parties hereto, shall be included in NET SALES.

If LICENSEE distributes, licenses, rents, or leases the PROGRAM or a DERIVATIVE WORK to an AFFILIATE, at a price less than the regular price charged to other parties, then NET SALES for such transactions shall be computed on the basis of the regular amounts otherwise charged to arms-length third parties

1.6 "PROGRAM" means the software and any related user documentation listed in APPENDIX A, in the form it exists on the Effective Date.

1.7 "ROYALTY PERIOD(S)" means the six-month period(s) ending on the last days of each June and December during the term of this Agreement.

1.8 "SUBLICENSE" means an agreement between LICENSEE and a SUBLICENSEE under which any of LICENSEE's rights under this Agreement are licensed. Licenses to END USERS, though in fact sublicenses under the license granted by this Agreement, shall be excluded from the defined, capitalized term "SUBLICENSES," and are instead referred to herein as "END USER licenses."

1.9 "SUBLICENSEE(S)" means any person or entity who is granted a SUBLICENSE under this Agreement, or who is granted an option to take a SUBLICENSE under this Agreement; other than an END USER.

1.10 "TERRITORY" means **[Insert definition, such as: all countries of the world.]**

1.11 An "AFFILIATE" of LICENSEE shall mean a company or other person controlling, controlled by, or under common control with LICENSEE, where "control" shall mean the direct or indirect control by ownership or otherwise of more than fifty percent (50%) of the outstanding voting shares or voting rights, or other similar measure of control.

## ARTICLE 2 - GRANT OF LICENSE

2.1 Subject to the terms and conditions of this Agreement, LSU hereby grants to LICENSEE an exclusive license under LSU's copyright in the PROGRAM to create DERIVATIVE WORKS, and to use, reproduce, market, distribute, publicly display, publicly perform, and otherwise commercially exploit the PROGRAM and DERIVATIVE WORKS in the TERRITORY for use in the FIELD OF USE, including by way of END USER licenses. This license includes the right to grant SUBLICENSES, as provided in greater detail in Article 6.

2.2 LSU reserves the rights to create derivative works of the PROGRAM, and to use, reproduce, publicly display, and publicly perform the PROGRAM and derivative works thereof, for research, internal, educational, and noncommercial purposes.

2.3 LSU further reserves the right to grant to the United States Government all rights that may be required by research funding agreements between LSU and the U.S. Government, or by applicable statutes and regulations.

2.4 LICENSEE agrees to grant and hereby grants to LSU a perpetual, non-exclusive, royalty-free, irrevocable license for LSU to create derivative works of LICENSEE's DERIVATIVE WORKS and to use, reproduce, publicly display, and publicly perform the DERIVATIVE WORKS and LSU's derivative works thereof, for research, internal, educational, and noncommercial purposes.

2.5 Should LICENSEE have such in its possession, on request from LSU, at any time during the term of this Agreement or thereafter, LICENSEE shall provide to LSU one complete copy of the PROGRAM, including but not limited to executable code, source code, and user and programmer documentation. LICENSEE shall also provide to LSU copies of each DERIVATIVE WORK, and related user and

programmer documentation, at the time each of those is made available to END USERS, directly or indirectly, by LICENSEE or SUBLICENSEES.

2.6 The term of this Agreement shall extend until expiration of the last-to-expire of the copyright rights in the PROGRAM, unless sooner terminated as provided in another specific article of this Agreement.

2.7 The license granted to LICENSEE shall extend to an AFFILIATE of LICENSEE as well, provided that LSU first receives written notice, signed on behalf of both LICENSEE and the AFFILIATE: (1) stating that the AFFILIATE intends to exercise such rights, and (2) agreeing that the AFFILIATE and LICENSEE shall be jointly and severally liable for all obligations to LSU under this Agreement arising from the activities of that AFFILIATE. The activities of the AFFILIATE under this Agreement shall then be deemed to be the activities of LICENSEE. The rights of an AFFILIATE under this Agreement shall terminate if LICENSEE's rights under this Agreement terminate. An AFFILIATE may not sublicense, assign, or otherwise transfer any rights under this Agreement.

**ARTICLE 3 - CONSIDERATION**

3.1 LICENSEE shall pay royalties to LSU until this Agreement is terminated. Royalties shall include:

- (a) License Issue Fee of \_\_\_\_\_ dollars (\$\_\_\_\_\_). Such License Issue Fee shall be nonrefundable, and is due thirty (30) days from the Effective Date of this Agreement.
- (b) Sales-based royalties equal to \_\_\_\_\_ percent (\_\_\_\_%) of NET SALES in the Territory.
- (c) Non-sales-based sublicensing royalties equal to fifty percent (50%) of any consideration that is not based on NET SALES that LICENSEE receives from SUBLICENSEES or assignees in consideration for rights in the PROGRAM or in DERIVATIVE WORKS (e.g., sublicense issue fees, sublicense maintenance fees); excluding only *bona fide* research and development funding.
- (d) LICENSEE shall pay to LSU an annual license maintenance fee ("Annual Fee"). This Annual Fee shall be due on the last day of June of each of the years specified below. LICENSEE may credit each Annual Fee in full against all royalties otherwise due LSU for the calendar year in which LICENSEE pays the specific Annual Fee. This credit may not otherwise be carried forward or carried back for any other ROYALTY PERIOD.

The Annual Fees shall be:

- (1) In \_\_\_\_\_ : \$ \_\_\_\_\_ ;
- (2) In \_\_\_\_\_ : \$ \_\_\_\_\_ ;
- (3) In \_\_\_\_\_ : \$ \_\_\_\_\_ ; and
- (4) In \_\_\_\_\_ and in each year thereafter during the term of this Agreement: \$\_\_\_\_\_.

- (e) milestone payments, if any **{to be specified}**

3.2 LICENSEE shall be responsible for the payment of all taxes, duties, levies, and other charges imposed by any taxing authority with respect to any amounts payable to LSU under this Agreement. Should LICENSEE be required under any law or regulation of any government entity or authority, domestic or foreign, to withhold or deduct any portion of the payments due to LSU, then the sum payable

to LSU hereunder shall be increased by the amount necessary to yield to LSU an amount equal to the sum LSU would have received had no withholdings or deductions been made. LSU shall cooperate reasonably with LICENSEE in the event LICENSEE elects to assert, at LICENSEE's expense, LSU's exemption from any such tax or deduction.

3.3 Royalty payments shall be payable to "Louisiana State University" in United States dollars, delivered as provided in Article 13 or at such other place as LSU may reasonably designate consistent with the laws and regulations controlling in any country within the Territory.

3.4 In computing royalties, LICENSEE shall convert any revenues it receives in foreign currency into its equivalent in United States dollars at the exchange rate LICENSEE, using its standard accounting procedures, uses to make reports to relevant regulatory and taxing authorities, as long as such accounting procedures are consistent with fair business practices and generally accepted accounting principles.

3.5 Royalty payments shall be made on a semi-annual basis, within thirty-one (31) days of the close of each ROYALTY PERIOD (i.e., each January 31 and July 31). Any overdue amounts shall be subject to interest, compounded monthly until payment, at a per annum rate of five percent (5%) above the prime rate in effect at the JP Morgan Chase & Co. Bank or its successor, (or at the highest allowed rate if a lower rate is required by law), or to payment of an administrative late fee of five hundred dollars (\$500), whichever is greater. The payment of such interest or late fee shall not preclude LSU from exercising any other rights it may have as a result of a late payment. LICENSEE shall reimburse LSU's costs, including reasonable attorneys' fees, for expenses paid to collect any amounts that are overdue by more than one hundred and twenty (120) days.

#### ARTICLE 4 - REPORTS

4.1 Until the FIRST COMMERCIAL SALE, LICENSEE shall provide to LSU a written annual report on or before July 31<sup>st</sup> of each calendar year. The annual report shall include: reports of progress and on the amount of capital expended on research and development, regulatory approvals, manufacturing, sublicensing, marketing and sales during the preceding twelve (12) months, and plans for the coming year.

4.2 After the FIRST COMMERCIAL SALE, LICENSEE shall provide semi-annual reports to LSU. By each July 31<sup>st</sup> and January 31<sup>st</sup> (i.e. within one month after each ROYALTY PERIOD closes, including the close of the ROYALTY PERIOD immediately following any termination of this Agreement), LICENSEE shall report to LSU for that ROYALTY PERIOD:

- (a) number of END USER licenses and number of the PROGRAM and DERIVATIVE WORKS licensed by LICENSEE and all SUBLICENSEES;
- (b) total billings for END USER licenses by LICENSEE and all SUBLICENSEES;
- (c) computation of NET SALES, showing detailed, self-explanatory calculations of the allowed exclusions;
- (d) amounts due under each of the subparagraphs in Paragraph 3.1 above, with detailed calculations explaining same;
- (e) names and addresses of all SUBLICENSEES;
- (f) a copy of each SUBLICENSE or amendment thereto completed in the prior six-month period, if not previously submitted as required under Article 6.2; and

- (g) a description of each milestone achieved under Article 3 or Article 5, and also specifying any milestone that was due during the ROYALTY PERIOD but that was not achieved.

These reports shall specify the quantity, description (nomenclature and type designation as described in Paragraph 4.3 below), country of production, and country of distribution, sale, or license. If no payment is due, LICENSEE shall so report to LSU. LICENSEE shall direct its authorized representative to certify that reports required hereunder are correct to the best of LICENSEE's knowledge and information. Failure to provide reports as required under this Article shall be a material breach of this Agreement.

4.3 LICENSEE covenants that it will promptly establish and consistently employ a system of specific nomenclature and type designations for the PROGRAMS and DERIVATIVE WORKS to permit identification and segregation of various types where necessary. LICENSEE shall consistently employ, and shall require SUBLICENSEES to consistently employ, the system when rendering invoices thereon and shall inform LSU, or its auditors, when requested, as to the details concerning such nomenclature system, and all additions thereto and changes therein.

4.4 LICENSEE shall keep, and shall require all SUBLICENSEES to keep, true and accurate records containing data reasonably required for the computation and verification of payments due under this Agreement. LICENSEE shall, and it shall require all SUBLICENSEES to:

- (a) open such records for inspection upon reasonable notice during business hours by either LSU auditor(s) or an independent certified accountant selected by LSU, for the purpose of verifying the amount of payments due; and
- (b) retain such records for six (6) years from date of origination.

The provisions of this Article shall survive any termination of this Agreement. LSU is responsible for all expenses of such inspection, except that if any inspection reveals an underpayment greater than five percent (5%) of royalties due LSU for any ROYALTY PERIOD, then LICENSEE shall pay all expenses of that inspection and the amount of the underpayment and interest to LSU within twenty-one (21) days of written notice. LICENSEE shall also reimburse LSU for reasonable expenses incurred to collect the amount underpaid.

#### ARTICLE 5 - DILIGENCE

5.1 LICENSEE shall undertake commercially reasonable efforts to obtain and maintain any governmental approvals that may be required to use, produce, promote, distribute, sell, or sublicense the PROGRAM and DERIVATIVE WORKS.

5.2 LICENSEE shall use commercially reasonable efforts to bring the PROGRAM (or at least one DERIVATIVE WORK) to market or otherwise to be put into commercial use through a thorough, vigorous and diligent program for exploitation of the PROGRAM or DERIVATIVE WORKS, and to continue active, diligent marketing efforts for the PROGRAM or DERIVATIVE WORKS throughout the term of this Agreement.

5.3 As part of the diligence required by Paragraphs 5.1 and 5.2, LICENSEE agrees to reach the following commercialization milestones for the PROGRAMS and DERIVATIVE WORKS (the "MILESTONES") by the following dates:

- 1) \_\_\_\_\_
- 2) \_\_\_\_\_

5.4 LICENSEE must achieve the MILESTONES on or before the dates indicated; LSU shall have the sole discretion to determine whether a MILESTONE requirement has been satisfied. LICENSEE shall notify LSU within ten (10) days after each deadline as to whether such MILESTONE was timely met. If LICENSEE'S failure to meet any MILESTONE under this Article continues for thirty (30) days after the date of any MILESTONE deadline, LICENSEE will be deemed to be in material breach of this Agreement, and LSU may terminate the Agreement on ten (10) days' notice, unless LICENSEE achieves the MILESTONE within this ten (10) day period.

#### ARTICLE 6 - SUBLICENSING & END-USER LICENSES

6.1 END USER licenses of the PROGRAM and DERIVATIVE WORKS entered into by LICENSEE and SUBLICENSEES shall be in writing and consistent with the terms and provisions of this Agreement.

6.2 LICENSEE shall provide LSU with a copy of each SUBLICENSE agreement and of each END USER license form, and all amendments thereto, within thirty (30) days of execution.

6.3 LICENSEE shall contemporaneously certify to LSU that all END USER Licenses (by LICENSEE and SUBLICENSEES), and that all SUBLICENSES:

- (1) are consistent with the terms and conditions of this Agreement;
- (2) contain the disclaimer of warranty and limitation on LSU's liability, as provided by Article 9 below (for END USER licenses only, this may optionally be accomplished by a disclaimer and limitation on liability having a more general reference to third parties that would include LSU);
- (3) include the duty to comply with applicable law, including that pertaining to the control of exports and re-exports, as required by Paragraph 14.8 of this Agreement;
- (4) include the provisions required by Article 7.1 to maintain confidentiality and to protect LSU's financial interests in the PROGRAM and DERIVATIVE WORKS, such provisions in END USER licenses to include prohibition of reverse engineering;
- (5) for SUBLICENSES, contain provisions under which the SUBLICENSEE expressly accepts duties at least equivalent to those accepted by the LICENSEE in the following Articles of the present Agreement:

4.4 duty to keep records

6.5 termination upon termination of this Agreement

7.2 duty to secure appropriate third-party rights

9.4 duty to avoid improper representations or responsibilities

10.1 duty to defend, hold harmless, and indemnify LSU

10.3 duty to maintain insurance

14.5 duty to properly mark product with copyright notices

14.7 duty to restrict the use of LSU's name

6.4 LICENSEE shall not receive from a SUBLICENSEE anything of value other than cash payments in consideration for any sublicense under this Agreement, without the express prior written permission of LSU, such permission to be granted or withheld in LSU's sole discretion.

6.5 Each SUBLICENSE granted by LICENSEE under this Agreement shall provide for its termination upon termination of this Agreement. Each SUBLICENSE shall automatically terminate upon any termination of this Agreement unless LICENSEE previously has assigned its rights under the SUBLICENSE to LSU and LSU has expressly agreed in writing, in LSU's sole discretion, to accept such assignment.

6.6 LICENSEE shall include, and shall require its SUBLICENSEES to include, the following statement (or any newer version of the required statement as may be required by contemporaneous federal regulations) in any END USER license for the PROGRAM or for a DERIVATIVE WORK:

Where LICENSEE is the United States Federal Government or Agency, or any agent acting for or on its behalf in licensing this PROGRAM, the following clause shall apply:

**UNITED STATES GOVERNMENT RESTRICTED RIGHTS:**

This software and any associated documentation is provided with RESTRICTED RIGHTS. Use, duplication or disclosure by the Government is subject to restrictions as set forth in FAR 52.227-19, or in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013, as applicable. Contractor/manufacturer is [name of business], [city, state, ZIP code of business].

6.7 No SUBLICENSEE shall have the right to grant further sublicenses or sub-sublicenses without the express, prior, written permission of LSU.

**ARTICLE 7 - NONDISCLOSURE; OBLIGATIONS TO OBTAIN AND SECURE RIGHTS**

7.1 LICENSEE agrees to secure and protect the PROGRAM and DERIVATIVE WORKS and any copies from disclosure in a manner consistent with the maintenance of LSU's rights in the PROGRAM, exercising at least the same degree of care that LICENSEE exercises in protecting its own proprietary information, and in no case less than reasonable care. LICENSEE also agrees to take appropriate action by instruction or agreement with its employees, consultants, agents and SUBLICENSEES who are permitted access to the PROGRAM or DERIVATIVE WORKS in order to satisfy LICENSEE's confidentiality obligations under this Agreement. However, LICENSEE shall have no confidentiality obligations with respect to any information that is or becomes publicly known through no act of LICENSEE, that is independently developed by LICENSEE as demonstrated by satisfactory documentation, or that is received unrestricted from another source who was not under an obligation of confidentiality to LSU.

7.2 LICENSEE represents and warrants that it will secure all rights from third parties (*e.g.*, rights to functions, toolkits, other software code, images, sounds and writings) that may be necessary to reproduce, modify, distribute, perform, display or use the PROGRAM and DERIVATIVE WORKS, and to allow for the practice of the rights licensed in Article 2 herein. LICENSEE further represents and warrants that it will include in the PROGRAM and DERIVATIVE WORKS, and in SUBLICENSES and END USER licenses and documentation thereof, all statements and copyright notices as required by such third parties, and that it will make clear to SUBLICENSEES and END USERS any needs for licenses or other rights that must be secured from other parties in order to use the PROGRAM and DERIVATIVE WORKS. LSU makes no representation or warranty of any kind that the PROGRAM or any DERIVATIVE WORKS will be free from infringement of patent rights, copyrights, or other rights held by third parties.

## ARTICLE 8 - ENFORCEMENT

8.1 Each party shall promptly advise the other in writing of any known, unauthorized acts of infringement or potential infringement of the PROGRAM or DERIVATIVE WORKS. LICENSEE has the first option to police the PROGRAM and DERIVATIVE WORKS against infringement by other parties within the TERRITORY and the FIELD OF USE, but LICENSEE shall notify LSU in writing thirty (30) days before filing any suit. LICENSEE shall not file any suit without a diligent investigation of the merits of such suit by its counsel. This right to police includes defending any action for declaratory judgment of non-infringement or invalidity; and prosecuting, defending or settling all infringement and declaratory judgment actions at its expense and through counsel of its selection, except that LICENSEE shall make any such settlement only with the advice and consent of LSU. If LICENSEE has a reasonable basis for policing the rights outlined above, LSU shall provide reasonable assistance to LICENSEE with respect to such actions, but only if LICENSEE reimburses LSU for out-of-pocket legal and other expenses incurred in connection with any such assistance rendered at LICENSEE's request or reasonably required by LSU, and if LICENSEE notifies LSU in writing thirty (30) days before filing any suit. LSU retains the right to participate, with counsel of its own choosing and at its own expense, in any action under this Paragraph. LICENSEE shall defend, indemnify and hold harmless LSU with respect to any claims or counterclaims asserted by an alleged infringer reasonably related to the enforcement of intellectual property rights licensed under this Agreement, including but not limited to antitrust counterclaims and claims for recovery of attorney fees.

8.2 If LICENSEE undertakes to enforce and/or defend the licensed intellectual property rights by litigation in any country, LICENSEE may withhold up to fifty percent (50%) of sales based royalties (as described in Article 3.1(b)) due to LSU for sales in such country in which the litigation is pending to reimburse up to fifty percent (50%) of LICENSEE's actual out-of-pocket litigation expenses, including reasonable attorneys' fees, but not including salaries of LICENSEE's employees. Such pending litigation does not affect any other payment due to LSU under this Agreement. If LICENSEE recovers damages in the litigation, the award shall be applied first to satisfy LICENSEE'S unreimbursed expenses and legal fees for the litigation, next to reimburse LSU for any payments under Article 3 which are past due or were withheld pursuant to this Article 8, and then to reimburse LSU for any other unreimbursed expenses and legal fees for the litigation. The remaining balance shall be divided equally between LICENSEE and LSU.

If LICENSEE undertakes to enforce or defend the licensed intellectual property rights by litigation in a county outside the United States, LICENSEE may withhold up to fifty percent (50%) of the payments otherwise thereafter due during the course of such litigation to LSU under Article 3 under the following terms. LICENSEE may apply the amounts withheld to pay up to half of LICENSEE's out-of-pocket litigation expenses, including reasonable attorneys' fees, but not including salaries of LICENSEE's employees. If LICENSEE recovers damages in the litigation, then the award shall be applied first to satisfy LICENSEE's unreimbursed expenses and legal fees for the litigation, and next to reimburse LSU for any payments under Article 3 that are past due, and then to reimburse LSU for any unreimbursed expenses and legal fees for the litigation. The remaining balance shall be divided equally between LICENSEE and LSU. This provision shall control the division of revenues where a license is granted as part of a settlement of such litigation.

8.3 If LICENSEE fails to take action to abate an alleged infringement within sixty (60) days of a request from LSU to do so (or within a shorter period if required to preserve the legal rights of LSU under applicable law), then LSU shall have the right to take such action (including prosecution of a lawsuit) at LSU's expense, and LICENSEE shall use reasonable efforts to cooperate in such action at LICENSEE's expense. During such action LICENSEE shall not have the right to grant SUBLICENSES without LSU'S permission, and LSU shall have full authority to settle on such terms as LSU determines. LSU shall retain one hundred percent (100%) of any recovery or settlement under this Paragraph 8.3 after reimbursement of LSU's out-of-pocket expenses and payment to LICENSEE of any unrecovered expenses LICENSEE pays at LSU's request to third parties in furtherance of such action (such payment not to exceed the recovery or settlement amounts LSU actually receives).



ARTICLE 9 - NO WARRANTIES; LIMITATION ON LSU'S LIABILITY

9.1 LSU, INCLUDING ITS BOARD MEMBERS, OFFICERS, EMPLOYEES, AND AGENTS, MAKES NO REPRESENTATIONS OR WARRANTIES THAT THE REPRODUCTION, MODIFICATION, USE, OFFER FOR SALE, SALE, PERFORMANCE, DISPLAY, LICENSE OR OTHER DISTRIBUTION OF THE PROGRAM OR DERIVATIVE WORKS WILL BE FREE FROM INFRINGEMENT OF THIRD-PARTY COPYRIGHTS, PATENTS, OR OTHER RIGHTS.

9.2 THE PROGRAM IS BEING PROVIDED TO LICENSEE "AS IS." LSU, INCLUDING ITS BOARD MEMBERS, OFFICERS, EMPLOYEES, AND AGENTS, MAKES NO REPRESENTATIONS, EXTENDS NO WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ASSUMES NO RESPONSIBILITIES WHATEVER WITH RESPECT TO DESIGN, DEVELOPMENT, REPRODUCTION, USE, DISTRIBUTION, DISPLAY, PERFORMANCE, IMPORTATION, LICENSE, SALE OR OTHER DISPOSITION BY LICENSEE, END USERS, SUBLICENSEES, OR ANY OTHER PERSON OR ENTITY OF THE PROGRAM OR ANY DERIVATIVE WORKS.

9.3 LICENSEE AND SUBLICENSEES ASSUME THE ENTIRE RISK AS TO PERFORMANCE OF THE PROGRAM AND ALL DERIVATIVE WORKS. In no event shall LSU, including its Board members, officers, employees, and agents, be responsible or liable for any direct, indirect, special, incidental, or consequential damages or lost profits or other economic loss or damage with respect to this Agreement, the PROGRAM, or any DERIVATIVE WORKS, to LICENSEE, END USERS, SUBLICENSEES or any other individual or entity, regardless of legal theory. The above limitations on liability apply even though LSU, its Board members, officers, employees, and agents may have been advised of the possibility of such damage.

9.4 LICENSEE shall not, and shall require that its SUBLICENSEES do not, make any statements, representations or warranties whatsoever to any person or entity, or accept any liabilities or responsibilities whatsoever from any person or entity that are inconsistent with any disclaimer or limitation included in this Article 9.

9.5 LICENSEE AGREES THAT IN NO EVENT SHALL LSU, INCLUDING ITS BOARD MEMBERS, OFFICERS, EMPLOYEES, AND AGENTS, BE LIABLE TO LICENSEE, ITS AFFILIATES, SUBLICENSEES OR END USERS, WHETHER SUCH LIABILITY IS BASED ON CONTRACT, NEGLIGENCE, STRICT LIABILITY IN TORT, INFRINGEMENT, WARRANTY, OR ANY OTHER LEGAL OR EQUITABLE THEORY, FOR RELIEF ARISING OUT OF OR RELATING TO THE PROGRAM OR DERIVATIVE WORKS, OR THIS AGREEMENT, ITS SUBJECT MATTER, OR ANY CONDUCT RELATING THERETO, FOR AN AMOUNT IN EXCESS OF THE ROYALTIES ACTUALLY PAID TO LSU UNDER THIS AGREEMENT.

ARTICLE 10 - INDEMNITY; INSURANCE

10.1 LICENSEE shall defend, indemnify, and hold harmless and shall require its SUBLICENSEES to defend, indemnify and hold harmless LSU, including LSU's Board members, officers, employees, and agents, from and against any claims, damages or expenses (including attorney's fees and other litigation expenses) arising out of any asserted patent, trade secret, copyright, or trademark infringement action brought as a result of the use, reproduction, modification, performance, display, licensing or other distribution of the PROGRAM or DERIVATIVE WORKS by LICENSEE, SUBLICENSEES or END USERS.

LICENSEE shall defend, indemnify and hold harmless and shall require its SUBLICENSEES to defend, indemnify and hold harmless LSU, its Board members, officers, employees, and agents, for and against any and all claims, demands, damages, losses, and expenses of any nature (including attorneys' fees and other litigation expenses), resulting from, but not limited to, death, personal injury, illness, property damage, economic loss, or products liability arising from or in connection with, any of the following:

- (a) Any reproduction, use, display, performance, license, sale, distribution, or other disposition by LICENSEE, SUBLICENSEES, END USERS or other transferees of the PROGRAM or any DERIVATIVE WORKS;
- (b) The direct or indirect use by any person of the PROGRAM or DERIVATIVE WORKS reproduced, used, displayed, performed, licensed, sold or otherwise distributed by LICENSEE, END USERS or SUBLICENSEES.

10.2 LSU is entitled to participate at its option and expense through counsel of its own selection, and may join in any legal actions related to any such claims, demands, damages, losses and expenses under Paragraph 10.1 above.

10.3 Prior to any distribution, sale, lease, or other commercial use of the PROGRAM or any DERIVATIVE WORKS by LICENSEE (including use in a clinical trial), LICENSEE shall purchase and maintain in effect a policy of product liability, completed operations, and errors and omissions insurance. Prior to any distribution or commercial use of the PROGRAM or any DERIVATIVE WORKS by a SUBLICENSEE, LICENSEE shall require that each SUBLICENSEE purchase and maintain in effect a policy of product liability, completed operations, and errors and omissions insurance. LICENSEE and LSU shall mutually agree in writing, in advance, as to what levels of such insurance coverage are considered reasonable in light of all pertinent circumstances. Each such insurance policy must provide reasonable coverage for all claims with respect to the use, display, or performance of the PROGRAM and any DERIVATIVE WORKS reproduced, used, displayed, performed, sold, licensed or otherwise distributed by LICENSEE -- or, in the case of a SUBLICENSEE's policy, by said SUBLICENSEE -- and must specify LSU, including its Board members, officers and employees, as additional insureds. LICENSEE shall promptly furnish certificate(s) evidencing such insurance and of their renewal to LSU. The insurer shall be required to give LSU a minimum of thirty (30) days' notice prior to any cancellation or non-renewal of such a policy.

#### ARTICLE 11 - TERM AND TERMINATION

11.1 This Agreement becomes effective on its Effective Date and, unless earlier terminated under another specific provision of this Agreement, remains in effect until the expiration of LSU's copyright in the PROGRAM.

11.2 If LICENSEE ceases to carry on its business, this Agreement shall terminate upon written notice by LSU, delivered (or attempted to be delivered) as provided in Article 13.

11.3 If LICENSEE fails to make any payment due to LSU, then this Agreement shall automatically terminate upon ten (10) days' written notice from LSU, unless LSU specifically extends such date in writing. Such termination shall not foreclose LSU from collection of any amounts remaining unpaid or from seeking other legal relief.

11.4 Upon any material breach or default of this Agreement by LICENSEE -- other than those occurrences listed in Paragraphs 5.3, 5.4, 11.2 and 11.3 (the terms of which shall take precedence over this Paragraph 11.4 to the extent applicable) -- LSU shall have the right to terminate this Agreement on sixty (60) days' written notice to LICENSEE. Such termination automatically shall become effective upon expiration of the sixty (60) day period unless LICENSEE cures the material breach or default before the sixty-day period expires.

11.5 LICENSEE has the right to terminate this Agreement at any time on ninety (90) days' written notice to LSU, with or without cause, provided that LICENSEE, within said 90 days, must:

- (a) promptly pay all amounts due LSU through the effective date of the termination (even if they would otherwise be due at a later date under Paragraph 3.5);

- (b) submit a final report of the type otherwise described in Paragraph 4.2;
- (c) return any confidential or trade-secret materials provided to LICENSEE by LSU in connection with this Agreement, or, with LSU's prior approval, destroy such materials, and LICENSEE shall certify in writing that such materials have all been returned or destroyed;
- (d) return or destroy all copies of the PROGRAM and DERIVATIVE WORKS in LICENSEE's possession, and LICENSEE shall certify in writing that all such copies have been returned or destroyed; and LICENSEE shall cause its SUBLICENSEES to return to LSU, by way of LICENSEE, or to destroy any confidential or trade-secret materials provided directly or indirectly by LSU and all copies of the PROGRAM and DERIVATIVE WORKS in the possession of the SUBLICENSEES, and to certify the same in writing to LSU. Notwithstanding the obligations of Paragraphs 11.5(c) and (d), LICENSEE and its SUBLICENSEES may each retain two copies of the PROGRAM and DERIVATIVE WORKS strictly for archive and backup purposes.
- (e) immediately and permanently terminate all use and sale of the PROGRAM and DERIVATIVE WORKS; and
- (f) provide LSU a copy of any regulatory data or information filed with any U.S. or foreign government agency with respect to the PROGRAM and DERIVATIVE WORKS.

11.6 (a) From and after the date of any termination of this Agreement, LICENSEE shall, and shall require its SUBLICENSEES, to refrain from any further use, reproduction, creation of DERIVATIVE WORKS, sublicensing, distribution or other commercial exploitation of the PROGRAM and DERIVATIVE WORKS.

(b) In addition, upon termination of this Agreement, LICENSEE shall return any confidential or trade-secret materials provided to LICENSEE by LSU in connection with this Agreement, or, with LSU's prior approval, destroy such materials, and LICENSEE shall certify in writing that such materials have all been returned or destroyed. LICENSEE shall also return or destroy all copies of the PROGRAM and DERIVATIVE WORKS in LICENSEE's possession, and LICENSEE shall certify in writing that all such copies have been returned or destroyed; and LICENSEE shall cause its SUBLICENSEES to return to LSU, by way of LICENSEE, or to destroy any confidential or trade-secret materials provided directly or indirectly by LSU and all copies of the PROGRAM and DERIVATIVE WORKS in the possession of the SUBLICENSEES, and to certify the same in writing to LSU. Notwithstanding the obligations of this Paragraph, LICENSEE and its SUBLICENSEES may each retain two copies of the PROGRAM and DERIVATIVE WORKS strictly for archive and backup purposes.

11.7 Upon any termination of this Agreement, and except as provided herein to the contrary, all rights and obligations of the parties hereunder shall cease, except any previously accrued rights and obligations and further as follows:

- (1) Obligations to pay royalties and other sums accruing through the date of termination, and obligations to provide reports covering periods prior to the date of termination;
- (2) LSU's rights to inspect books and records as described in Article 4, and LICENSEE's obligations to keep such records for the required time;
- (3) Obligations to hold harmless, defend, and indemnify LSU, and to maintain liability insurance, all as provided in Article 10;

- (4) Any cause of action or claim of LICENSEE or LSU accrued or to accrue because of any breach or default by the other party hereunder;
- (5) The provisions of Articles 1, 9, 13, and 14; and
- (6) All other terms, provisions, representations, rights and obligations contained in this Agreement that by their sense and context are intended to survive until performance thereof by either or both parties.

11.8 Notwithstanding anything in this Agreement to the contrary, upon termination of this Agreement or the license(s) granted herein,

- (1) LICENSEE and its SUBLICENSEES may retain copies of the PROGRAM and DERIVATIVE WORKS for use solely in connection with contractual technical support, maintenance, warranty and consulting obligations associated with END USER license Agreements entered prior to the earlier of the date LICENSEE gives notice to LSU of LICENSEE's intent to terminate, or the date of termination, but specifically excluding any right or obligation to create or provide DERIVATIVE WORKS.
- (2) So long as each SUBLICENSE agreement is consistent with the terms of this Agreement, then each such SUBLICENSE agreement shall continue in force in accordance with its terms, but without any renewals, extensions or the like unless specifically agreed to in writing by LSU, but only to the extent necessary for a SUBLICENSEE to perform the activities allowed under the above Paragraph 11.8(1); the provisions of Paragraph 11.8(1) shall not apply to any SUBLICENSE agreement that is not consistent with the terms of this Agreement; furthermore, unless LSU expressly agrees in writing to the contrary, LSU shall have no affirmative obligations of any kind to a SUBLICENSEE in such a circumstance, beyond an obligation not to enforce the licensed intellectual property rights against the SUBLICENSEE in a manner that is inconsistent with the activities permitted under Paragraph 11.8(1).
- (3) So long as each END USER license is consistent with the terms of this Agreement, then each such END USER license may continue in force in accordance with its terms but without any renewals, extensions or the like unless specifically agreed to in writing by LSU; furthermore, unless LSU expressly agrees in writing to the contrary, LSU shall have no affirmative obligations of any kind to an END USER in such a circumstance, beyond an obligation not to enforce the licensed intellectual property rights against the END USER in a manner that is inconsistent with the END USER license.
- (4) Any END USER license or SUBLICENSE agreement that is not consistent with the terms of this Agreement, and that has not previously been terminated shall automatically terminate as of the earlier of the date of termination of this Agreement or the date of termination of the license(s) granted by this Agreement.
- (5) If this Agreement would otherwise be terminated, whether by LICENSEE or by LSU or automatically by the terms of the Agreement, then the Agreement shall nevertheless remain in effect to the extent necessary for the activities allowed under this Paragraph 11.8. All other applicable provisions of this Agreement shall apply to activities conducted under this Paragraph 11.8 (including, by way of example and not limitation, obligations to pay royalties, to indemnify LSU, and to maintain insurance). The rights granted in Paragraph 11.8 shall terminate when the respective SUBLICENSES and END USER licenses terminate.

(6) After the license(s) granted herein expire or otherwise validly terminate, LICENSEE agrees upon request to enter into good faith negotiations with LSU or LSU's future licensee(s) for the purpose of granting general licensing rights to use of DERIVATIVE WORKS for commercial purposes in a timely fashion and under commercially reasonable terms.

#### ARTICLE 12 - REGISTRATION AND RECORDATION

12.1 If the terms of this Agreement, or any assignment or license under this Agreement are or become such as to require that the Agreement or license or any part thereof be registered with or reported to a governmental or supranational agency in any area in which LICENSEE or SUBLICENSEES conduct business, LICENSEE will, at its expense, undertake such registration or report. LICENSEE shall give LSU prompt notice and verification of the act of registration or report, as well as any agency rulings pertaining to same, along with English translations where readily available.

12.2 LICENSEE shall also carry out, at its expense, any formal recordation of this Agreement or any license herein granted that the law of any country requires as a prerequisite to enforceability of the Agreement or license in the courts of any such country or for other reasons, and shall promptly furnish to LSU appropriately verified proof of recordation.

#### ARTICLE 13 - NOTICES

13.1 Any notice, request, report or payment required or permitted to be given or made under this Agreement by either party is effective when mailed if sent by certified or registered mail, return receipt requested, to the address set forth below, or such other address as such party specifies by written notice given in conformity herewith. Any notice, request, report or payment not so given is not effective until actually received by an authorized representative of the affected party.

To LSU:            Director  
                         Office of Intellectual Property  
                         203 David Boyd Hall  
                         Louisiana State University  
                         Baton Rouge, Louisiana 70803-6100

To LICENSEE: {Licensee, Inc.}  
                         {Street address}  
                         {City, State ZIP}  
                         {Attn: }

#### ARTICLE 14 - MISCELLANEOUS PROVISIONS

14.1 This Agreement shall be construed, governed, interpreted and applied according to United States and Louisiana law (disregarding choice of law provisions).

14.2 In the event of a controversy or claim arising out of or relating to this Agreement, or the breach, validity, or termination of this Agreement, the parties shall first negotiate in good faith for a period of sixty days to try to resolve the controversy or claim. If the controversy or claim is unresolved after these negotiations, the parties shall then make good-faith efforts for sixty days to mediate the controversy or claim in Baton Rouge, Louisiana before a mediator selected by the Center for Public Resources, Inc. (New York, New York) ("CPR"), under CPR's Model Mediation Procedure for Business Disputes in effect as of the Effective Date. If the controversy or claim is unresolved after mediation, on the written demand of either party any controversy arising out of or relating to this Agreement or to the breach, termination, or

validity of this Agreement shall be settled by binding arbitration in Baton Rouge, Louisiana in accordance with CPR's Rules for Non-Administered Arbitration of Patent and Trade Secret Disputes in effect as of the Effective Date, before a single arbitrator. The arbitration shall be governed by the United States Arbitration Act, 9 U.S.C. §§ 1-16, and judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. All applicable statutes of limitation and defenses based on the passage of time shall be tolled while the procedures described in this Paragraph are pending. LSU and LICENSEE shall each take such action, if any, required to effectuate this tolling. Each party is required to continue to perform its obligations under this Agreement pending final resolution of any dispute arising out of or relating to this Agreement. Otherwise, any controversy arising under or relating to this Agreement, or the breach, termination, or validity of this Agreement, may be adjudicated only in a court, state or federal, having jurisdiction over the subject matter and including Baton Rouge, Louisiana within its territorial district. Both parties consent to the jurisdiction and venue of such a court. A party's right to demand arbitration of a particular dispute arising under or related to this Agreement, or the breach, termination, or validity of this Agreement, shall be waived if that party either: (1) brings a lawsuit over that controversy or claim against the other party in any state or federal court; or (2) does not make a written demand for mediation, arbitration, or both within 60 days of service of process on that party of a summons or complaint from the other party instituting such a lawsuit in a state or federal court of competent jurisdiction.

14.3 LSU and LICENSEE agree that this Agreement sets forth their entire understanding concerning the subject matter of this Agreement, and that no modification of the Agreement will be effective unless both LSU and LICENSEE agree to it in writing.

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**If a non-disclosure, material transfer or other agreement is in place between LSU and LICENSEE at the time this Agreement is executed, consider mention of such agreement, either to state that the other agreement is intended to continue in effect, or to state that it terminates and is superseded by the present Agreement.**

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14.4 If an arbitrator or a court of competent jurisdiction finds any term of this Agreement to be invalid, illegal, or unenforceable, then that term will be curtailed, limited or deleted, but only to the extent necessary to remove the invalidity, illegality, or unenforceability, and without in any way affecting or impairing the remaining terms.

14.5 All copies of the PROGRAM or DERIVATIVE WORKS (both software and documentation) distributed by LICENSEE shall contain copyright notices, in appropriate locations and form. Such notices shall be consistent with any reasonable instructions that may be provided by LSU; and shall include all reasonable copyright and other notices in any form as supplied by LSU.

14.6 No waiver by either party of any breach of this Agreement, no matter how long continuing nor how often repeated, shall be construed as a waiver of any subsequent breach; nor shall any delay or omission by either party to exercise any right under this Agreement be construed as a waiver of that right. No waiver shall be deemed valid unless it is in writing and signed by an authorized representative of each affected party.

14.7 LICENSEE agrees to refrain from using and to require SUBLICENSEES to refrain from using the name of LSU in publicity or advertising without the prior written approval of LSU. Reports in scientific literature and presentations of joint research and development work are not considered to be "publicity" for this purpose. Notwithstanding the foregoing, without prior written approval of LSU, LICENSEE and SUBLICENSEES may use LSU's name in a submission to a government agency as required by law.

14.8 LICENSEE shall comply, and shall require its SUBLICENSEES to comply, with all applicable laws and regulations, including but not limited to those relating to this Agreement and to the testing, production, importation, transportation, packaging, labeling, use, sale, sublicensing or other distribution of the PROGRAM and DERIVATIVE WORKS, or otherwise applicable to LICENSEE's and its SUBLICENSEES' activities hereunder. LICENSEE understands and acknowledges that the transfer of certain commodities and technical data, including the transfer of products made with the use of technical data, is subject to United States laws and regulations controlling the export of such commodities and technical data, including the Export Administration Regulations of the United States Department of Commerce. LICENSEE understands that computer software is included in the definition of technical data. These laws and regulations prohibit or require a license for the export of certain types of products and technical data to certain specified countries, individuals and/or organizations. LICENSEE shall comply with all United States laws and regulations controlling the export of commodities and technical data, and shall be solely responsible for any violation of such laws and regulations by LICENSEE or its sublicensees, and shall defend, indemnify and hold harmless LSU and its Board members, officers, employees, and agents if any legal action of any nature results from any violation. LICENSEE shall comply with the Health Insurance Portability and Accountability Act, and shall defend and hold harmless LSU and its Board members, officers, employees and agents if any legal action of any nature results from any violation.

14.9 The relationship between the parties is that of independent contractors. Neither party is an agent of the other, and neither has any right or authority to assume or create any obligation or responsibility on behalf of the other.

14.10 Neither party hereto shall be in default of any provision of this Agreement for any failure in performance resulting from acts or events beyond the reasonable control of such party, such as Acts of God, acts of civil or military authority, civil disturbance, war, strikes, fires, power failures, natural catastrophes or other "force majeure" events.

14.11 LICENSEE may not assign this Agreement without the prior written consent of LSU, and shall not pledge any of the license rights granted in this Agreement as security for any creditor. Any attempted pledge of any of the rights under this Agreement or assignment of this Agreement without the prior consent of LSU will be void from the beginning. No assignment by LICENSEE will be effective until the intended assignee agrees in writing to accept all of the terms and conditions of this Agreement, and such writing is provided to LSU, and LSU has consented in writing to the assignment. Notwithstanding the foregoing, LICENSEE may, without LSU's consent, assign its rights under this Agreement to a purchaser of all or substantially all of LICENSEE's business relating to the subject matter of this Agreement, so long as such assignee provides a statement in writing to LSU that it agrees to accept all terms and conditions of this Agreement in the place of LICENSEE.

14.12 If during the term of this Agreement, LICENSEE makes or attempts to make an assignment for the benefit of creditors, or if proceedings in voluntary or involuntary bankruptcy or insolvency are instituted on behalf of or against LICENSEE, or if a receiver or trustee is appointed for the property of LICENSEE, then this Agreement shall automatically terminate. LICENSEE shall notify LSU of any such event mentioned in this Paragraph as soon as reasonably practicable, and in any event within five (5) days after any such event.

14.13 Whereas LSU is an academic institution, LSU shall be free to make such publications as LSU sees fit concerning the PROGRAM, or concerning derivative works prepared by LSU.

14.14 If it becomes necessary for one party to employ the services of an attorney for the protection and enforcement of its rights under the Agreement, or to compel performance of the other party's obligations under the Agreement, upon final judgment or award by a court of competent jurisdiction or by an arbitrator, the court or arbitrator in its discretion may order the defaulting party to pay the other party's reasonable attorney's fees at both trial and appellate levels.

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**Add the following if any LSU employees are principals in the licensee, or otherwise have an equity interest or a management, director, or employment position in the licensee:**

ARTICLE 15 - CONFLICT OF INTEREST MANAGEMENT

- 15.1 This agreement and the licenses granted hereunder are subject to the provisions of LSU's Permanent Memorandum 67, and the Louisiana Code of Governmental Ethics.
- 15.2 Unless LSU provides appropriate formal written approvals, all development, manufacture, and marketing of the PROGRAM and DERIVATIVE WORKS will take place without the use of LSU funds, facilities, other resources of LSU, or funds administered by LSU.
- 15.3 LICENSEE shall cooperate with LSU in developing and implementing appropriate plans for management of potential conflicts of interest and conflicts of LSU employees.

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

LICENSEE

BOARD OF SUPERVISORS OF  
LOUISIANA STATE UNIVERSITY AND  
AGRICULTURAL AND MECHANICAL  
COLLEGE

By \_\_\_\_\_  
(authorized representative)

By \_\_\_\_\_  
(authorized representative)

Typed Name \_\_\_\_\_

Typed Name \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

Version 10.17.05



APPENDIX A  
TO THE LICENSE AGREEMENT FOR LSU FILE(S) \_\_\_\_\_  
EFFECTIVE THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_\_  
BETWEEN \_\_\_\_\_  
AND THE BOARD OF SUPERVISORS OF LOUISIANA STATE UNIVERSITY AND  
AGRICULTURAL AND MECHANICAL COLLEGE