

This draft is dated _____,____, and is solely for purposes of negotiation. No contract shall exist until a final, written agreement is signed by WARF and an authorized representative of Licensee. This draft shall expire thirty (30) days after the above date.

EXCLUSIVE SOFTWARE LICENSE

This Agreement is made effective the _____ day of _____, _____ (the “Effective Date”), by and between the Wisconsin Alumni Research Foundation (hereinafter called “WARF”), a nonstock, nonprofit Wisconsin corporation, and _____ (hereinafter called “Licensee”), a corporation organized and existing under the laws of _____.

WITNESSETH

WHEREAS, WARF owns by assignment the copyright rights to certain computer software that is described in the “Licensed Software” defined below, and WARF is willing to and hereby offers to grant a license to Licensee under WARF’s copyright rights to the Licensed Software, and Licensee desires to take a license of WARF’s copyright rights in the Licensed Software;

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth below, the parties covenant and agree as follows:

Section 1. Definitions.

For the purpose of this Agreement, the Appendix A definitions shall apply.

Section 2. Grant.

A. License.

WARF hereby grants to Licensee an exclusive license, limited to the Licensed Territory, under the copyright rights to the Licensed Software to make derivative works based on the Licensed Software and to reproduce, sell, and distribute copies of the Licensed Software in the Licensed Territory.

B. Sublicense.

Licensee may grant written, nonexclusive sublicenses to End-Users to use the Licensed Software as End-Users but not to sell or otherwise distribute copies of the Licensed Software.

C. Grant Forward.

WARF hereby grants Licensee a license under the same terms as for the Licensed Software to any and all derivative works created by the authors of the Licensed Software which are based on the Licensed Software and assigned to WARF.

D. Grant Back.

Any and all derivative works created by Licensee based on the Licensed Software shall be copyrighted and the copyright to such derivative works is hereby assigned by Licensee to WARF and hereby licensed by WARF to Licensee under the same terms and conditions as the Licensed Software. Licensee shall deliver to WARF at least once per calendar year a current copy of the source code and a current copy of the object code (in machine-readable form) for any derivative work based on the Licensed Software. Upon the termination of this Agreement for any reason, Licensee shall assign to WARF the full copyright rights to any such derivative works, with full rights to license others.

E. Reservation of Rights.

WARF hereby reserves the right to grant non-profit research institutions and governmental agencies non-exclusive licenses to practice and use the Licensed Software for Non-Commercial Research purposes. As used herein, "Non-Commercial Research Purposes" shall mean the use of the Licensed Software for academic research purposes or other not-for-profit scholarly purposes not involving the use of the Licensed Software to perform services for a fee or for the production or manufacture of products for sale to third parties.

Section 3. Development.

A. Licensee shall diligently develop, manufacture, market and sell the Licensed Software in the Licensed Territory throughout the term of this Agreement. Such activities shall include, without limitation, those activities listed in the Development Plan attached hereto as Appendix D. Licensee agrees that said Development Plan is reasonable and that it shall take all reasonable steps to meet the development program as set forth therein.

B. Beginning in calendar year 20__ and until the Date of First Commercial Sale, Licensee shall provide WARF with a written Development Report summarizing Licensee's development activities since the last Development Report and any necessary adjustments to the Development Plan. Licensee agrees to provide each Development Report to WARF on or before thirty (30) days from the end of each semi-annual period ending June 30 and December 31 for which a report is due, and shall set forth in each Development Report sufficient detail to enable WARF to ascertain Licensee's progress toward the requirements of the Development Plan. WARF reserves the right to audit Licensee's records relating to the development activities required hereunder. Such record keeping and audit procedures shall be subject to the procedures and restrictions set forth in Section 6 for auditing the financial records of Licensee.

C. Licensee agrees to and warrants that it has, or will obtain, the expertise necessary to independently evaluate the Licensed Software for sale in the commercial market and that it so intends to develop the Licensed Software for the commercial market. Licensee acknowledges that any failure by Licensee to reasonably implement the Development Plan, or to make timely submission to WARF of any Development Report, or the providing of any false information to WARF regarding Licensee's development activities hereunder, shall be a material breach of this Agreement.

Section 4. Consideration.A. License Fee.

Licensee agrees to pay to WARF a license fee of \$_____ by _____, _____.

B. Royalty.

In addition to the Section 4A license fee, Licensee agrees to pay to WARF as “earned royalties” a royalty calculated as a percentage of the Selling Price of Licensed Software in accordance with the terms and conditions of this Agreement. The royalty shall be calculated on the basis of ____ percent of the Selling Price of the Single Copy Sales, and ____ percent of any income resulting from Right-to-Copy Licenses or any other transaction involving a grant of rights to use, copy, make or sell Licensed Software. All royalties shall be deemed earned as of the earlier of the date a payment is actually made to Licensee, the date an invoice is sent by Licensee, or the date the Licensed Software is transferred to a third party End-User for any promotional reasons.

C. Minimum Royalty.

Licensee further agrees to pay to WARF a minimum royalty of \$ _____ per calendar year or part thereof during which this Agreement is in effect starting in calendar year _____, against which any earned royalty paid for the same calendar year will be credited. The minimum royalty for a given year shall be due at the time payments are due for the calendar quarter ending on December 31. It is understood that the minimum royalties are calculated on a calendar year basis, and that sales of Licensed Software made during a prior or subsequent calendar year shall have no effect on the annual minimum royalty due WARF for any given calendar year.

D. Accounting; Payments.

(i) Amounts owing to WARF under Section 4B shall be paid on a quarterly basis, with such amounts due and received by WARF on or before the thirtieth day following the end of the calendar quarter ending on March 31, June 30, September 30 or December 31 in which such amounts were earned. The balance of any amounts which remain unpaid more than thirty (30) days after they are due to WARF shall accrue interest until paid at the rate of the lesser of one percent (1%) per month or the maximum amount allowed under applicable law. However, in no event shall this interest provision be construed as a grant of permission for any payment delays.

(ii) Except as otherwise directed, all amounts owing to WARF under this Agreement shall be paid in U.S. dollars to WARF at the address provided in Section 13(a) or paid via wire transfer if agreed upon. All royalties owing with respect to Selling Prices stated in currencies other than U.S. dollars shall be converted at the rate shown in the Federal Reserve Noon Valuation - Value of Foreign Currencies on the day preceding the payment. WARF is exempt from paying income taxes under U.S. law. Therefore, all payments due under this Agreement shall be made without deduction for taxes, assessments, or other charges of any kind which may be imposed on WARF by any government outside of the United States or any political subdivision of such government with respect to any amounts payable

to WARF pursuant to this Agreement. All such taxes, assessments, or other charges that may reduce WARF's net royalties, such as bank transfer fees, shall be assumed by Licensee.

(iii) A full accounting showing how any amounts owing to WARF under Section 4B have been calculated shall be submitted to WARF on the date of each such payment. Such accounting shall be on a per-country and product line, model or tradename basis and shall be summarized on the form shown in Appendix B of this Agreement. In the event no payment is owed to WARF, a statement setting forth that fact shall be supplied to WARF.

Section 5. Warranties.

A. WARF Warranties.

(i) WARF warrants that it owns title to all of the copyright rights licensed hereunder or otherwise has the right to grant the licenses granted under this Agreement. WARF further agrees to arrange the delivery of the Deliverable Materials to Licensee as soon as reasonable. However, nothing in this Agreement shall be construed as:

(1) a warranty or representation by WARF as to the validity or the scope of protection of the copyright on the Licensed Software;

(2) a warranty or representation that the publication or sublicensing of the Licensed Software is or will be free from infringement of the patent or copyright rights of third parties;

(3) an obligation to bring or prosecute actions or suits against third parties for infringement; or

(4) an obligation to furnish other technical information, documentation, or know-how other than the source code of the Licensed Software and whatever documentation currently exists or to furnish any services other than those specified in this Agreement.

(ii) WARF MAKES NO REPRESENTATIONS, EXTENDS NO WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION MERCHANTABILITY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE, AND ASSUMES NO RESPONSIBILITIES WHATSOEVER WITH RESPECT TO USE, SALE, OR OTHER DISPOSITION BY LICENSEE OR ITS VENDEES OR OTHER TRANSFEREES OF PRODUCTS INCORPORATING OR MADE BY USE OF INVENTIONS LICENSED UNDER THIS AGREEMENT.

B. Licensee Warranties.

Licensee warrants that:

(i) it has the power to enter into this Agreement;

(ii) it will take no action which would negatively affect the enforceability of the copyright rights of WARF in the Licensed Software;

(iii) it will require an effective copyright notice to appear printed on all media, displayed as a part of the user interface during execution, and in the program code, if possible, of all copies of the Licensed Software; and

(iv) it will consider all source code of the Licensed Software delivered to Licensee to be trade secret information. Licensee will not permit disclosure of the source code to any person other than employees of Licensee and shall take all such reasonable measures to maintain the confidentiality of the source code including at least the same measures that Licensee takes to protect its own trade secrets.

Section 6. Recordkeeping.

A. Licensee shall keep books and records sufficient to verify the accuracy and completeness of Licensee's accounting referred to above, including without limitation inventory, purchase and invoice records relating to the Products or their manufacture. Such books and records shall be preserved for a period not less than six years after they are created during and after the term of this Agreement.

B. Licensee shall take all steps necessary so that WARF may within thirty days of its request review and copy all the books and records at a single U.S. location to verify the accuracy of Licensee's accounting. Such review may be performed by any employee of WARF as well as by any attorney or registered CPA designated by WARF, upon reasonable notice and during regular business hours.

C. If a royalty payment deficiency is determined, Licensee shall pay the royalty deficiency outstanding within thirty (30) days of receiving written notice thereof, plus interest on outstanding amounts as described in Section 4D(i).

D. If a royalty payment deficiency for a calendar year exceeds five percent (5%) of the royalties paid for that year, then Licensee shall be responsible for paying WARF's out-of-pocket expenses incurred with respect to such review.

Section 7. Term and Termination.

A. The term of this Agreement shall begin on the Effective Date and continue until the earlier of the date that is ten (10) years after the Effective Date, subject to the renewal for one additional time period of ten years unless either WARF or Licensee provide to the other a written notice of termination at least thirty days before the expiration of the ten year term, or the payment of earned royalties under Section 4B, once begun, ceases for more than _____ (__) calendar quarters.

B. Licensee may terminate this Agreement at any time by giving at least ninety (90) days written and unambiguous notice of such termination to WARF. Such a notice shall be accompanied by a statement of the reasons for termination.

C. WARF may terminate this Agreement by giving Licensee at least ninety (90) days written notice if the Date of First Commercial Sale does not occur on or before _____, ____.

D. If Licensee at any time defaults in the timely payment of any monies due to WARF or the timely submission to WARF of any Development Report, fails to actively pursue the development plan, or commits any breach of any other covenant herein contained, and Licensee fails to remedy any such breach or default within ninety (90) days after written notice thereof by WARF, WARF may, at its option, terminate this Agreement by giving notice of termination to Licensee.

E. Upon the termination of this Agreement, Licensee shall remain obligated to provide an accounting for and to pay royalties earned up to the date of the termination and any minimum royalties shall be prorated as of the date of termination by the number of days elapsed in the applicable calendar year. Licensee shall also remain obligated to pay all other amounts owed under this Agreement to WARF prior to termination. Termination of this Agreement shall not terminate any sublicense granted to an End-User; however, any royalties due from such End-User after termination of this Agreement shall be paid directly to WARF.

Section 8. Assignment.

This Agreement may not be transferred or assigned by Licensee, whether pursuant to a change of control event or otherwise, without the prior written consent of WARF.

Section 9. Enforcement.

WARF intends to protect its Licensed Software under this Agreement from infringement and to prosecute infringers or otherwise act to eliminate infringement, when, in WARF's sole judgment, such action may be reasonably necessary, proper, and justified. In the event that Licensee believes there is infringement of any Licensed Software under this Agreement which is to Licensee's substantial detriment, Licensee shall provide WARF with notification and reasonable evidence of such infringement. Upon request by WARF, Licensee will provide WARF with such assistance and information as may be useful to WARF in connection with WARF's taking such action (if the cause of action arose during the term of this Agreement and WARF reimburses Licensee for Licensee's reasonable out-of-pocket expenses).

Section 10. Product Liability; Conduct of Business.

A. Licensee shall, at all times during the term of this Agreement and thereafter, indemnify, defend and hold WARF and the authors of the Licensed Software harmless against all claims and expenses, including legal expenses and reasonable attorneys fees, arising out of the death of or injury to any person or persons or out of any damage to property and against any other claim, proceeding, demand, expense and liability of any kind whatsoever (other than patent infringement claims), including

without limitation claims based on WARF's or an author's negligence or breach of warranty, resulting from the production, manufacture, sale, use, lease, consumption or advertisement of Licensed Software arising from any right or obligation of Licensee hereunder. Notwithstanding the above, WARF at all times reserves the right to retain counsel of its own to defend WARF's interests.

B. Licensee warrants that it now maintains and will continue to maintain liability insurance coverage appropriate to the risk involved in marketing Licensed Software and that such insurance coverage lists WARF and the authors of the Licensed Software as additional insureds. Upon WARF's request, Licensee will present evidence to WARF that the coverage is being maintained with WARF and its authors listed as additional insureds.

Section 11. Use of Names.

Licensee shall not use WARF's name, the name of any of the authors of the Licensed Software, or the name of the University of Wisconsin in sales promotion, advertising, or any other form of publicity without the prior written approval of the entity or person whose name is being used.

Section 12. Miscellaneous.

This Agreement shall be construed in accordance with the internal laws of the State of Wisconsin. If any provisions of this Agreement are or shall come into conflict with the laws or regulations of any jurisdiction or any governmental entity having jurisdiction over the parties or this Agreement, those provisions shall be deemed automatically deleted, if such deletion is allowed by relevant law, and the remaining terms and conditions of this Agreement shall remain in full force and effect. If such a deletion is not so allowed or if such a deletion leaves terms thereby made clearly illogical or inappropriate in effect, the parties agree to substitute new terms as similar in effect to the present terms of this Agreement as may be allowed under the applicable laws and regulations. The parties hereto are independent contractors and not joint venturers or partners.

Section 13. Notices.

Any notice required to be given pursuant to the provisions of this Agreement shall be in writing and shall be deemed to have been given at the earlier of the time when actually received as a consequence of any effective method of delivery, including but not limited to hand delivery, transmission by telecopier, electronic transmission, i.e., email, or delivery by a professional courier service or the time when sent by certified or registered mail addressed to the party for whom intended at the address below or at such changed address as the party shall have specified by written notice, provided that any notice of change of address shall be effective only upon actual receipt.

- (a) Wisconsin Alumni Research Foundation
 - Attn: Contracts Manager
 - 614 Walnut Street
 - Madison, Wisconsin 53726
 - Phone: (608) 263-2500
 - Facsimile: (608) 263-1064

Email: contracts@warf.org

(b) Licensee _____

Attn: _____

Phone: _____

Facsimile: _____

Email: _____

Section 14. Integration.

This Agreement constitutes the full understanding between the parties with reference to the subject matter hereof, and no statements or agreements by or between the parties, whether orally or in writing, except as provided for elsewhere in this Section 14, made prior to or at the signing hereof, shall vary or modify the written terms of this Agreement. Neither party shall claim any amendment, modification, or release from any provisions of this Agreement by mutual agreement, acknowledgement, or otherwise, unless such mutual agreement is in writing, signed by the other party, and specifically states that it is an amendment to this Agreement.

Section 15. Contract Formation and Authority.

A. No agreement between the parties shall exist unless the duly authorized representative of Licensee and the director of licensing of WARF have signed this document within thirty (30) days of the Effective Date of this Agreement.

B. The persons signing on behalf of WARF and Licensee hereby warrant and represent that they have authority to execute this Agreement on behalf of the party for whom they have signed.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement on the dates indicated below.

WISCONSIN ALUMNI RESEARCH FOUNDATION

By: _____ Date: _____, _____

Leigh Cagan, Chief Technology Commercialization Officer

LICENSEE

By: _____ Date: _____, _____

Name and Title: _____

WARF Ref: _____ - P _____

APPENDIX A

DEFINITIONS

A. “Date of First Commercial Sale” shall mean the date when cumulative sales by Licensee of Licensed Software exceeds \$ _____

B. “Deliverable Materials” consists of one copy of the source code of the Licensed Software, as delivered to WARF, in machine-readable format and _____.

C. “Development Report” shall mean a written account of Licensee’s progress under the development plan having at least the information specified on Appendix C to this Agreement, and shall be sent to the address specified on Appendix C.

D. “End-User” is an entity which purchases a copy or a license to a copy of the Licensed Software for its own use and without the right to resell, distribute or publish the Licensed Software.

E. “Licensed Software” includes _____ and the derivative works assigned to WARF under Sections 2C and 2D.

F. “Licensed Territory” consists of _____.

G. “Right-to-Copy License” is a transfer of a copy or the grant of permission to make a copy or copies of the Licensed Software which includes the right to make additional copies of the transferred copy for uses other than archival and back-up purposes.

H. “Selling Price” shall mean, in the case of Licensed Software that is sold or leased in a Single Copy Sale to the End-User, the actual selling price received by Licensee (regardless of uncollectible accounts) less any shipping costs, allowances because of returned Licensed Software, or sales taxes. The “Selling Price” for Licensed Software that is transferred to a third party End User for promotional purposes without charge or at a discount shall be the average invoice price to the retail customer of that type of Licensed Software during the applicable calendar quarter.

I. “Single Copy Sale” is a transfer of a copy or copies of the Licensed Software, whether denominated a sale or a license, without any accompanying right to make additional copies except for archival or back-up purposes.

APPENDIX B

WARF ROYALTY REPORT

Licensee: _____ Agreement No: _____
 Inventor: _____ P#: _____
 Period Covered: From: _____ Through: _____
 Prepared By: _____ Date: _____
 Approved By: _____ Date: _____

If license covers several major product lines, please prepare a separate report for each line. Then combine all product lines into a summary report.

Report Type: **Single Product Line Report:** _____
 Multiproduct Summary Report. Page 1 of _____ Pages
 Product Line Detail. Line: _____ Tradename: _____ Page: _____
Report Currency: **U. S. Dollars** **Other** _____

Country	Gross Sales	* Less: Allowances	Net Sales	Royalty Rate	Period Royalty Amount	
					This Year	Last Year
U.S.A						
Canada						
Europe:						
Japan						
Other:						
TOTAL:						

Total Royalty: _____ Conversion Rate: _____ Royalty in U.S. Dollars: \$ _____

The following royalty forecast is non-binding and for WARF's internal planning purposes only:
 Royalty Forecast Under This Agreement: Next Quarter: _____ Q2: _____ Q3: _____ Q4: _____

* On a separate page, please indicate the reasons for returns or other adjustments if significant. Also note any unusual occurrences that affected royalty amounts during this period. To assist WARF's forecasting, please comment on any significant expected trends in sales volume.

APPENDIX C

DEVELOPMENT REPORT

- A. Date development plan initiated and time period covered by this report.
- B. Development Report (4-8 paragraphs).
 - 1. Activities completed since last report including the object and parameters of the development, when initiated, when completed and the results.
 - 2. Activities currently under investigation, i.e., ongoing activities including object and parameters of such activities, when initiated, and projected date of completion.
- C. Future Development Activities (4-8 paragraphs).
 - 1. Activities to be undertaken before next report including, but not limited to, the type and object of any studies conducted and their projected starting and completion dates.
 - 2. Estimated total development time remaining before a product will be commercialized.
- D. Changes to Development Plan submitted to WARF (2-4 paragraphs).
 - 1. Reasons for change.
 - 2. Variables that may cause additional changes.
- E. Items to be provided if applicable:
 - 1. Information relating to Licensed Software that has become publicly available, e.g., published articles, competing products, patents, etc.
 - 2. Development work being performed by third parties other than Licensee to include name of third party, reasons for use of third party, planned future uses of third parties including reasons why and type of work.
 - 3. Update of competitive information trends in industry, government compliance (if applicable) and market plan.

PLEASE SEND DEVELOPMENT REPORTS TO:

Wisconsin Alumni Research Foundation
Attn.: Contracts Manager
614 Walnut Street
P.O. Box 7365
Madison, WI 53707 7365

APPENDIX D

DEVELOPMENT PLAN

(To be provided by Licensee prior to execution)

OPTIONAL PROVISIONS**A. Sublicense.**

(i) i. Licensee may grant written, nonexclusive sublicenses either directly to End-Users to use the Licensed Software or to non-End-Users who sell and distribute the Licensed Software to End-Users. Any agreement granting a sublicense to a non-End-User shall state that the sublicense is subject to the termination of this Agreement. Licensee shall have the same responsibility for the activities of any sublicensee as if the activities were directly those of Licensee. Licensee shall not receive from sublicensees anything of value in lieu of cash payments in consideration for any sublicense under this Agreement without the express prior written permission of WARF.

(ii) ii. In respect to sublicenses granted by Licensee to non-End-Users under this Section 2B, Licensee shall pay to WARF an amount equal to what Licensee would have been required to pay to WARF had Licensee distributed the amount of Licensed Software distributed by such sublicensee. In addition, if Licensee receives any fees, minimum royalties, or other payments in consideration for any rights granted under a sublicense, and such payments are not based directly upon the amount or value of Licensed Software distributed by the sublicensee, then Licensee shall pay WARF _____ percent (___%) of such payments in the manner specified in Section 3E. Licensee shall not receive from sublicensees anything of value in lieu of cash payments in consideration for any sublicense under this Agreement without the express prior written permission of WARF.

IF THIS PROVISION IS USED: THE FOLLOWING CHANGES SHOULD ALSO BE MADE TO OTHER SECTIONS OF THE AGREEMENT:

1. Section 3E should be revised by substituting “Sections 2B and 3C” for “Section 3C” throughout.
2. The first sentence of Section 2B (which will become Section 2C) should be revised by inserting “and shall require its non-End-User sublicensee(s) to grant” after “Licensee hereby grants” and by inserting “(or its non-End-User sublicensee(s))” after “acquired by Licensee”.
3. The second sentence of Section 3C should be revised by inserting “or its non-End-User sublicensee(s)” after “Licensee”.
4. Section 4A(ii) should be revised by substituting “LICENSEE, ITS SUBLICENSEES OR THEIR” FOR “LICENSEE OR ITS”.
5. Section 5 should be revised by inserting “and its non-End-User sublicensee(s)” after “Licensee” and by inserting “and its non End-User sublicensee(s)’s” after “Licensee’s” wherever they occur except the last sentence. The last sentence of Section 5 should be revised by inserting “or its non-End-User sublicensee(s) after “Licensee”.
6. Section 9A should be revised by substituting “Licensee or any non-End-User sublicensee hereunder” for “Licensee hereunder.”

7. Section 10 should be revised by inserting “and its non-End-User sublicensee(s) after “Licensee”.

[See standard exclusive license for other optional provisions]