

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

EXCLUSIVE SOFTWARE LICENSE

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

WHEREAS, WARF owns by assignment certain rights in the Licensed Software as defined below, and WARF is willing to and hereby offers to grant a license to Licensee under such rights to the Licensed Software. Licensee desires to take a license under such rights as part of its plan to commercialize products and/or services based on the Licensed Software.

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

Section 1. Definitions.

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

Section 2. Grant.

A. License.

WARF hereby grants to Licensee an exclusive license, limited to the Licensed Field and Licensed Territory, under WARF’s Rights in the Licensed Software to make Derivative Works based on the Licensed Software and to install, use, host, execute, perform, distribute, copy, reproduce, sell, and offer for sale Products pursuant to End-User Sublicenses in the Licensed Territory.

B. End-User Sublicenses.

Licensee shall commercialize Products to End-Users through licensing, not selling, Products, unless WARF agrees otherwise in writing. Such licensing shall be through written, nonexclusive End-User Sublicenses, without the right to further sublicense, granting to End-Users the right to use the specific Products they acquire under the sublicense for their own individual use as End-Users, for the Products’ intended purposes. End-User Sublicenses shall contain terms and conditions by which the End User agrees not to copy, modify, create Derivative Works of, sublicense, assign, publish, transfer, sell, offer for sale, or otherwise convey or distribute copies of Products. Each sublicense agreement shall name WARF as a third party beneficiary, and shall not grant any End-User the right to access or use any source code of the Licensed Software without WARF’s prior written permission. Without limitation of the foregoing, Licensee is responsible for ensuring that any sublicense rights under WARF’s Rights granted by Licensee to an End User are limited by, and do not exceed the scope of, Licensee’s rights hereunder. All End User Sublicenses that are granted on a Subscription basis (as defined below) shall contain terms providing that, upon

termination of this Agreement, the Sublicenses will terminate at the end of the then-current period of the Subscription. All End User Sublicenses that are granted on a fully paid-up basis (e.g., for site-installed Products, or via sale of a physical medium containing a Product) shall survive termination of this Agreement, with Licensee remaining obligated for any warranties or similar continuing obligations contained therein.

C. Commercial Sublicensing.

Subject to the terms and limitations herein, Licensee may grant written, nonexclusive sublicenses, without the right to further sublicense, to third parties (each a “Commercial Sublicensee”) under Licensee’s rights under Section 2A. Any agreement granting such a sublicense will (1) contain terms and conditions no less restrictive than, no less protective of WARF’s rights than, and consistent with those set forth in this Agreement; (2) state that the sublicense is subject to the termination of this Agreement; and (3) identify WARF as a third party beneficiary. For clarity, and without limitation of the foregoing, such sublicenses shall contain terms: requiring the Commercial Sublicensee to use End-User Sublicenses, in accordance with Section 2B, if the Commercial Sublicensee will be commercializing Products; granting rights under the Commercial Sublicensee’s Derivative Works as set forth in Section 2D; requiring recordkeeping and permitting review of the records by WARF as set forth in Section 6; and obligating the Commercial Sublicensee to terms of indemnity and insurance as set forth in Section 10. Licensee will have the same responsibility for the activities of any Commercial Sublicensee as if the activities were directly those of Licensee, and any action or omission by a Commercial Sublicensee that would constitute a breach of this Agreement if performed by Licensee shall be deemed a breach. Upon WARF’s written request, Licensee shall provide to WARF copies of each sublicense agreement and any amendments thereto.

D. Derivative Works Grant.

Licensee hereby grants, and shall require its Commercial Sublicensee(s) to grant to WARF a nonexclusive, royalty-free, irrevocable, perpetual, fully paid-up, worldwide license, with the right to grant sublicenses, to install, use, host, execute, perform, copy, and reproduce any and all Derivative Works created by Licensee or any Commercial Sublicensee(s) based on the Licensed Software for Non-Commercial Research Purposes.

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. WARF and the creators of the Licensed Software shall at all times retain and have the right to publish written works describing the subject matter of the Licensed Software, its utility and performance, and the use of or results obtained from using the Licensed Software.

F. Restrictions on Licensed Software Use.

Except as expressly permitted herein, Licensee agrees it has no right to, agrees not to, and agrees to obligate its Commercial Sublicensees and End User Sublicensees not to:

(i) distribute or allow access to the Licensed Software or Derivative Works, whether in whole or in part, except in object code as embodied in Products;

(ii) distribute or allow access to the source code of either the Licensed Software, Derivative Works, or any Products, whether in whole or in part, except as provided in Section 2D;

(iii) permit any third party to create a Derivative Work, other than a Commercial Sublicensee in accordance with Section 2C, or to translate, reverse engineer, decompile, disassemble (except to the extent applicable laws specifically prohibit such restriction) or otherwise attempt to derive the source code of the Licensed Software or any Derivative Work;

(iv) use or otherwise exploit in any way the Licensed Software, Derivative Works or any Products outside the Licensed Field and Licensed Territory; and

(v) alter or remove any of WARF's copyright or proprietary rights notices or legends appearing on or in the Licensed Software.

Section 3. Development.

A. Licensee agrees to, represents that it intends to, and warrants that it will diligently develop, seek any necessary regulatory approval for, manufacture, market and sell Products in each Licensed Field and 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 the commercial market and that it intends to develop Products based on 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 an upfront, nonrefundable license fee of \$_____ within thirty (30) days of receipt of an invoice from WARF, which WARF will send upon Licensee's execution of this Agreement.

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 Products in accordance with the terms and conditions of this Agreement. The royalty will remain fixed while this Agreement is in effect at the rate of __ percent (__ %) of the Selling Price of Products. The royalty is deemed earned as of the earliest of the date (i) the Product is (sub)licensed to an End-User, or otherwise performed or provided as permitted by this Agreement, for consideration; (ii) an invoice is sent by Licensee or its Commercial Sublicensee(s) with respect to such Product; or (iii) the Product is transferred to, made accessible to, or performed for a third party without charge or at a discount. In the case of Products commercialized on a subscription, membership, period of access, or similar basis (collectively, a "Subscription"), royalties shall be deemed earned and accrued in full no later than the date payment becomes due under the terms of the Subscription agreement.

C. Sublicensing Royalties and Fees.

(i) With respect to Commercial Sublicenses granted by Licensee under Section 2C, Licensee will pay to WARF an amount equal to what Licensee would have been required to pay to WARF had Licensee been responsible for the Products commercialized by the Commercial Sublicensee.

(ii) In addition, if Licensee receives any fees, minimum royalties, or other payments in consideration for any rights granted under a Commercial Sublicense, or option to a Commercial Sublicense, or other similar rights, and such payments are not based directly upon the amount or value of Products sold by the Commercial Sublicensee (hereinafter "Sublicense Fees"), then Licensee will pay WARF fifty percent (50%) of such payments within thirty (30) days of receipt of such payments, and otherwise in the manner specified in Section 4E, with the amounts due to WARF being deemed earned as of the date they are received by Licensee. Licensee will not receive from its Commercial Sublicensees anything of value in lieu of cash payments in consideration for any Commercial Sublicense granted under this Agreement without the express prior written consent of WARF. Additionally, Licensee will not agree to postpone, forgive, or modify the payment of any Sublicense Fee in exchange for any payment or other consideration not itself accounted for as part of the Sublicense Fees. No payments owed for Sublicense Fees will be prorated, whether the sublicense to the Licensed Software is bundled with other licenses or sublicenses or not, without WARF's written consent.

D. 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, the first of which will be due for calendar year _____, against which any earned royalty paid for the same calendar year will be credited. The minimum royalty for a given year will be due at the time payments are due for the calendar quarter ending on December 31. It is understood that the minimum royalties will apply on a calendar year basis, and that royalties that accrue on Products during a prior or subsequent calendar year will have no effect on the annual minimum royalty due to WARF for any other given calendar year.

E. Accounting; Payments.

(i) Amounts owing to WARF under Sections 4B and 4C will be paid on a quarterly basis, with such amounts due and received by WARF within thirty (30) days of the end of the calendar quarter ending on March 31, June 30, September 30 or December 31 in which such amounts a. A full accounting showing how such amounts have been calculated will be submitted to WARF on the date of each such payment. For royalties, such accounting will be on a per country and product line, model, or tradename basis and will be summarized on the form shown in Appendix C of this Agreement, which will include a quarterly royalty forecast. In the event no payment is owed to WARF, a statement setting forth that fact will be supplied to WARF. Any payments not made when due will bear interest at the lower of (a) the Prime Rate published in the Wall Street Journal plus 200 basis points, or (b) the maximum rate permitted by 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 will 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 will be converted at the rate shown in the Wall Street Journal, New York Edition on the last business day of each month of the calendar quarter on the day preceding the payment due date. WARF is exempt from paying income taxes under U.S. law. Therefore, all payments due under this Agreement will 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, will be assumed by Licensee.

Section 5. Warranties.A. WARF Warranties.

(i) WARF warrants that it is the owner of WARF's Rights licensed hereunder or otherwise has the right to grant the licenses granted to Licensee in this Agreement. However, nothing in this Agreement will be construed as:

(1) a warranty or representation by WARF as to the validity, registrability, or scope of protection of WARF's Rights or the Licensed Software;

(2) a warranty or representation that the use, copying, publication, sublicensing, commercialization, or other exploitation of the Licensed Software, Derivative Works, Products or any rights granted in this Agreement is or will be free from any claim of infringement or misappropriation of any intellectual property rights other than WARF's Rights;

(3) an obligation to bring or prosecute any suits or other proceedings, or take other action, against third parties for infringement of WARF's rights; or

(4) a warranty or representation as to the availability of, or any obligation to furnish, any manuals or other documentation, technical support, integration assistance, bug fixes, updates, upgrades, or any know-how or expertise other than as already embodied in the Licensed Software as of the Effective Date, or to provide access or a license to any other intellectual property owned or controlled by WARF.

(ii) WARF MAKES NO REPRESENTATIONS AND EXTENDS NO WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION AS TO MERCHANTABILITY, NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE, REGULATORY APPROVAL OR COMPLIANCE, COMPATIBILITY, ADAPTABILITY, ACCURACY, SECURITY, OR OBSOLESCENCE. WARF ASSUMES NO RESPONSIBILITIES, OBLIGATIONS, OR LIABILITIES WHATSOEVER WITH RESPECT TO THE USE, COMMERCIALIZATION, OR OTHER DISPOSITION BY LICENSEE, ITS SUBLICENSEES, OR ITS VENDEES OR OTHER TRANSFEREES OF THE LICENSED SOFTWARE, DERIVATIVE WORKS, OR ANY PRODUCTS 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 or protectability of WARF's Rights;

(iii) it will require an effective copyright notice to appear printed on all media, the display of any portal or other part of the user interface during execution, and in the program code, if possible, of all Products, Derivative Works, and the Licensed Software; and

(iv) to the extent the source code of the Licensed Software remains Confidential Information in accordance with Section 15, Licensee has in place and will take reasonable measures to treat the source code as a trade secret.

Section 6. Recordkeeping.

A. Licensee shall, and shall require its Commercial Sublicensee(s) to, keep books and records sufficient to verify the accuracy and completeness of Licensee’s accounting referred to above, including without limitation inventory, purchase, Subscription, hosting, and invoice records relating to the Products and their distribution and performance. 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 (30) days of its request, review and copy all such 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. If any payment deficiency is determined, Licensee shall pay the deficiency outstanding within thirty (30) days of receiving written notice thereof, plus interest on outstanding amounts as described in Section 4E(i). 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 for a period of ten (10) years (“Initial Term”), except that the term shall be automatically renewed for successive one (1) year periods after the Initial Term unless, at least sixty (60) days prior to the end of the then-current period, either party provides written notice of termination to the other party. The term of this Agreement shall earlier terminate:

(i) upon written notice by WARF if the payment of earned royalties under Section 4B, once begun, ceases for more than _____ () calendar quarters;

(ii) if Licensee gives 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;

(iii) upon ninety (90) days written notice from WARF, if the Date of First Commercial Sale does not occur on or before _____, _____;

(iv) 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, or if Licensee commits any act of bankruptcy, becomes insolvent, is unable to pay its debts as they become due, files a petition under any bankruptcy or insolvency act, or has any such petition filed against it which is not dismissed within sixty (60) days, or if Licensee or its Commercial Sublicensee(s) offer any component of the Licensed Software to their creditors, WARF may, at its option, terminate this Agreement by giving notice of termination to Licensee.

B. Upon the effective termination or expiration of this Agreement, Licensee shall remain obligated to provide an accounting for and to pay to WARF within thirty (30) days of termination all amounts owed under this Agreement, including without limitation royalties earned up to the date of the termination or expiration and the prorated amount of any minimum annual royalties according to the number of days elapsed in the then-current calendar year. For clarity, termination of this Agreement shall not itself terminate any sublicense granted to an End-User (though WARF will not become a party to, or responsible for any of Licensee's obligations under such sublicense); however, any amounts due from such End-User after termination of this Agreement shall be paid directly to WARF.

C. Waiver by either party of a single breach or default, or a succession of breaches or defaults, will not deprive such party of any right to terminate this Agreement in the event of any subsequent breach or default.

Section 8. Assignability.

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. Any transfer or assignment in breach of this Section 8 will be deemed null and void, and immediately ineffective.

Section 9. Enforcement.

WARF intends to protect WARF's Rights in the Licensed Software under this Agreement from infringers or otherwise act to abate infringement, when, in WARF's sole judgment, such action may be necessary, proper, and justified and makes reasonable business sense considering all factors. In the event that Licensee believes there is infringement of any Licensed Software under this Agreement which is to Licensee's substantial detriment, Licensee will 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). For clarity, in no event will Licensee or any sublicensee have the right to require WARF to initiate or join in any suit for infringement; WARF at all times retains sole discretion over how, when, and whether to bring any such suit.

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, the University of Wisconsin, and the creators of the Licensed Software harmless against all claims, judgments, losses, liabilities, damages, and expenses, including legal expenses and reasonable attorneys fees, arising out of the death of or injury to any person(s) or out of any damage to property and against any other claim, allegation, proceeding, demand, expense, loss and liability of any kind whatsoever, including without limitation claims based on: (i) Licensee's negligence or reckless or intentional acts or omissions; (ii) any breach by Licensee or a sublicensee of the terms, conditions, representations, and warranties herein; (iii) the practice of any rights granted hereunder, or the production, design, hosting, installation, execution, copying, security, sale, use, marketing, or advertisement of the Licensed Software, Derivative Works, or Products; (iv) any data breach, malicious attack, or similar

occurrence relating to any Product hosted by, performed by, or otherwise under the control of Licensee; or (v) otherwise arising from any right or obligation of Licensee or its Commercial Sublicensee(s) 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 creators 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 creators listed as additional insureds.

Section 11. Use of Names.

Licensee shall not use WARF's name, the name of any of the creators 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. Confidentiality.

The parties hereto agree to keep any information identified as confidential by the disclosing party confidential using methods at least as stringent as each party uses to protect its own confidential information, but in no event less than a reasonable degree of care. "Confidential Information" shall include the terms of this Agreement, any payment or royalty reports and forecasts, sublicenses, the Licensed Software, and all information concerning them and any other information either (i) marked confidential or accompanied by correspondence indicating such information is exchanged in confidence between the parties or (ii) the nature of which, or the circumstances of its disclosure, would reasonably infer the information is proprietary or confidential to the disclosing party. Except as may be authorized in advance in writing by WARF, Licensee shall only grant access to WARF's Confidential Information to its sublicensee(s) and those employees of Licensee and its sublicensee(s) involved in or with the Licensed Software. Licensee shall require its sublicensee(s) and all such employees to be bound by terms of confidentiality no less restrictive than those set forth in this Section 15. Licensee and its sublicensee(s) shall not use any Confidential Information to WARF's detriment.

The confidentiality obligations set forth above apply to all or any part of the Confidential Information disclosed hereunder except to the extent that: (i) the receiving party can show by competent evidence that it possessed the information prior to its receipt from the disclosing party; (ii) the information was already available to the public or became so through no fault of the receiving party; (iii) the information is subsequently disclosed to the receiving party by a third party that has the right to disclose it free of any obligations of confidentiality; (iv) the information is required by law, rule, regulation or judicial process to be disclosed (if such requirement arises, the receiving party shall, prior to any such disclosure, promptly notify the disclosing party and provide assistance in any reasonable effort to obtain confidential treatment

with respect to such disclosure); or (v) a period of five (5) years have elapsed from the expiration or termination of this Agreement.

Section 16. 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 ten (10) business days of one another.

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. This Agreement may be executed in one or more counterparts by the parties by signature of a person having authority to bind the party, each of which when executed and delivered by facsimile, electronic transmission, or by mail delivery, will be an original and all of which will constitute but one and the same Agreement. The parties agree this Agreement may be electronically signed and that the electronic signatures appearing on this Agreement are the same as handwritten signatures for the purposes of validity, enforceability and admissibility.

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

WISCONSIN ALUMNI RESEARCH FOUNDATION

By: _____ Date: _____,
Appropriate WARF representative, Title

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. “Derivative Work(s)” shall mean (a) any work which (in whole or in part) comprises, was made from, or is based on the Licensed Software, such as a revision, modification, enhancement, translation, abridgement, adaptation, recasting (e.g., from site-installed to cloud-based or mobile), condensation, expansion, collection, compilation or any similar work of the Licensed Software or a prior Derivative Work; and (b) the copyright protection thereon, including any registrations thereof.

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, which shall be sent to the address specified on Appendix C.

D. “End-User” is a person or entity that purchases a (sub)license to a copy of a Product, or a (sub)license to access a Product, in accordance with the terms and conditions of this Agreement for its own use and without the right to resell, distribute or publish the Product.

E. “Product(s)” means any product, process or service that: (a) contains, incorporates, uses or is compiled with the Licensed Software, Derivative Works, or any portion thereof, in any form; or (b) the development, manufacture, use, distribution, sale or importation of which would, absent this Agreement, constitute an infringement or misappropriation of WARF’s Rights or any portion of the Licensed Software.

F. “Licensed Software” means the software identified as [Title] and disclosed in _____.

G. “Licensed Territory” consists of _____.

H. “Non-Commercial Research Purposes” means use for academic research purposes or other not-for-profit or scholarly purposes not involving the performance of services for a fee or the production or manufacture of products for sale to third parties.

I. “Selling Price” shall mean the following: in the case of Products that are sold, leased, transferred or otherwise provided on a non-subscription basis (e.g., on an upfront, site-installed basis), the Selling Price shall be the invoice price to the End-User of such Products (regardless of uncollectible accounts), plus the invoice price to the End-User for any services related to, and performed on, through, or for the Licensed Product (including without limitation development work, custom integration, technical support, software updates, bug fixes, upgrades, etc.), less any shipping costs, allowances because of returned Licensed Products, or sales taxes to the extent included in the invoice price. In the case of Licensed Products that are provided on a subscription basis, the Selling Price shall be the total of all payments to be made during the term of the subscription (e.g., the sum of all monthly payments during a one year subscription), plus the total of all payments to be made for any services related to, and performed on, through, or for the Licensed Product (including without limitation development work, custom integration,

technical support, software updates, bug fixes, upgrades, etc.), less any sales taxes included in the payments to be made. The Selling Price for a Licensed Product that is transferred or provided to a third party for promotional or marketing purposes without charge or at a discount shall be the average invoice price to End-Users of that type of Licensed Product during the applicable calendar quarter.

J. “WARF’s Rights” shall mean the copyright rights in the Licensed Software obtained by WARF by assignment from the creators of the Licensed Software.

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	Royalty Amount 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)