SOFTWARE LICENSE AGREEMENT

THIS AGREEMENT is made and entered into the [___] day of [_______], 20[__], (the “Effective Date”) by and between the GEORGIA TECH RESEARCH CORPORATION, a nonprofit corporation organized and existing under the laws of the State of Georgia and having its principal offices at 505 Tenth Street, Atlanta, Georgia 30332-0415, (hereinafter “GTRC”) and [_______________], a corporation existing under the laws of the State of [___] and having its principal offices at [___________________________________] (hereinafter “LICENSEE”).

WITNESSETH:

WHEREAS, GTRC is the owner of all right, title and interest in the computer program described in Exhibit “A” attached hereto and incorporated herein by reference; and

WHEREAS, GTRC has the right to grant licenses to use SOFTWARE and desires to license SOFTWARE for the public use and benefit in the area of [_________________]; and

WHEREAS, LICENSEE wishes to obtain a nonexclusive license to use SOFTWARE upon the terms and conditions contained herein.

NOW, THEREFORE, in consideration of the obligations herein made and undertaken, the parties hereto do hereby covenant and agree as follows:

1. DEFINITIONS

1.1 “Agreement” shall mean this Agreement including any exhibits attached hereto.

1.2 “SOFTWARE” shall mean the programs, documentation, designs, databases, related materials, associated intellectual property, and information pertaining thereto described in Exhibit A, attached hereto and incorporated herein by reference.

1.3 “End-User” shall mean a direct customer of LICENSEE, which uses the SOFTWARE.

1.4 “Source Code” shall mean computer programs written in higher-level programming languages, sometimes accompanied by English language comments. Source code is intelligible to trained programmers and may be translated into Object Code for operation on computer equipment through the process of compiling.

1.5 “Object Code” shall mean computer programs assembled or compiled in magnetic or electronic binary form on software media, which are readable and useable by machines, but not generally readable by humans without reverse assembly, reverse compiling, or reverse engineering.
1.6 “Sublicense” shall mean the form of agreement to be entered into between LICENSEE and End-Users, which shall grant the End-Users a right to use SOFTWARE licensed by LICENSEE for internal use only and not for remarketing or distribution.

1.7 “Net Receipts” means the gross payments from Sublicenses less (a) any customary trade, quantity, and cash discounts actually allowed and taken and (b) packing, shipping and insurance costs, if separately itemized on the invoice paid by the customer.

1.8 “Proprietary Information” shall mean information and trade secrets owned or controlled by GTRC which relate to the SOFTWARE, including but not limited to, invention records, research records and reports, engineering and technical data, designs, production specifications, processes, methods, procedures, facilities and know-how.

2. GRANT OF LICENSE TO LICENSEE

2.1 With respect to SOFTWARE, GTRC hereby grants to LICENSEE:

2.1.1 A non-exclusive, non-transferable world-wide right and license, to reproduce, adapt, display, or copy SOFTWARE in Source Code or Object Code, for the purpose of merging or adapting any [_______________] software interface with, or to SOFTWARE, as necessary for the use or maintenance of SOFTWARE in any of [_______________] computer systems.

2.1.2 The right to sublicense SOFTWARE in Object Code form only to End-Users pursuant to a Sublicense, for internal use on End-User systems and not for remarketing or distribution. The Sublicense shall be a restricted system license granting the right to copy (for backup purposes) and use SOFTWARE on a single computer system. Such Sublicense shall specifically prohibit the use of SOFTWARE in more than one system or across any network configuration. End-Users shall be prohibited from any further sale, assignment, use, reverse compiling, disassembling, reverse assembly, reverse engineering, or sublicensing of SOFTWARE. [All Sublicenses shall be approved by GTRC.]

2.2 Said grant of license shall be for a term of [__] year(s) from the Effective Date of this Agreement.

2.3 Neither title to, nor ownership of, SOFTWARE is transferred hereunder to LICENSEE. Additionally, the license granted hereunder does not include any right, either express or implied, to use, reproduce, print or display SOFTWARE for any purpose not specified in this Agreement.

2.4 Subject to the terms and conditions set forth herein, LICENSEE shall not export SOFTWARE without fully and completely complying with any and all United States export or munitions control regulations and laws.
2.5 LICENSEE agrees that any enhancements to the SOFTWARE made by LICENSEE during the term of this Agreement shall be the exclusive property of GTRC and all right, title and interest in and to such enhancements shall belong to GTRC. Such enhancements shall be deemed to be included in the license granted to LICENSEE in this Agreement.

2.6 Except as otherwise provided in this Agreement, no right is granted to use any trademark or tradename of GTRC or GIT.

3. DELIVERY OF MATERIALS TO LICENSEE

3.1 Upon execution of this Agreement, GTRC shall provide LICENSEE with the most recent version of the SOFTWARE in Source Code form, all accompanying documentation, and related materials.

3.2 GTRC shall, during the term of this Agreement, provide LICENSEE with the Source Code, documentation and relevant materials pertaining to SOFTWARE, as they are developed by GIT. All right, title, and interest in and to any said upgrades, updates, modifications and enhancements shall be and remain with GTRC and LICENSEE’s use of said materials shall be only in accordance with the terms and conditions of this Agreement and License.

3.3 GTRC grants LICENSEE the right to use, copy, reproduce, amend, edit and/or organize any SOFTWARE documentation provided to LICENSEE by GTRC. Such amended SOFTWARE documentation shall be the property of GTRC. LICENSEE shall ensure that all materials provided to End-Users include GTRC’s copyright and other proprietary notices.

4. CONSIDERATION

4.1 In consideration for the license granted hereunder, LICENSEE shall pay GTRC:

(a) a sum of $[_____] U.S. Dollars ($[___]) within ten (10) days of the Effective Date of this Agreement; and

(b) the royalties as set forth below in Article 5.

5. ROYALTIES

5.1 As further consideration of the granting herein of the License, as specified in Paragraph 2.1, LICENSEE shall pay GTRC royalties in the manner indicated below;

(a) LICENSEE shall pay GTRC a royalty at the rate of [____] percent (___%) of the Net Receipts of LICENSEE for each copy of SOFTWARE distributed by LICENSEE to an End-User. LICENSEE shall be responsible for paying any sales and use taxes pertaining to the granting of sublicenses for SOFTWARE to End-Users.

(b) All payments to GTRC under this Agreement shall be made in U.S. dollars at GTRC’s address for notice. Such payments shall be paid to GTRC
quarterly on a calendar year basis. Payment for sales made during each quarter of each calendar year shall be made to GTRC within thirty (30) days after the last day of each quarter.

5.2 LICENSEE shall use commercially reasonable efforts to market the Software.

6. REPORTS AND ACCOUNTING

6.1 Not later than thirty (30) days after the end of each calendar-year quarter, LICENSEE shall submit to GTRC a written report, accompanying each royalty payment, showing (a) the number of copies sublicensed by LICENSEE to End-Users during the reporting period; (b) the names of sublicensees; (c) the Net Receipts; and (d) the basis for royalty calculations and total royalties due that quarter.

6.2 LICENSEE shall keep at its usual place of business true and particular accounts of all matters connected with the use of SOFTWARE and shall keep books of account relating to royalties payable hereunder containing true entries complete in every particular as may be necessary or proper for enabling the amount of such royalties to be conveniently ascertained.

6.3 If requested in writing by GTRC, LICENSEE, and any sublicensee of LICENSEE, shall at all reasonable times during normal business hours permit GTRC representatives to make an examination and audit of all records required to be kept pursuant to Paragraph 6.2 hereof. Prompt adjustment shall be made for any errors disclosed by such examination.

7. TERM OF AGREEMENT AND TERMINATION

7.1 The License granted hereunder shall remain in full force and effect for [___] years in accordance with Paragraph 2.2 above, unless sooner terminated in accordance with the provisions contained herein. The obligations contained in Articles 7, 8, 10 and 11 shall survive any termination of this Agreement.

7.2 During the Term of this Agreement, either party may terminate this Agreement immediately upon the occurrence of any of the following events: (a) the other party has failed to fulfill one or more of its obligations under this Agreement and has failed to cure such a breach within thirty (30) days after receiving written notice thereof; (b) the other party institutes proceedings under bankruptcy or insolvency laws, for corporate reorganization, receivership, dissolution, or similar proceedings; (c) proceedings under bankruptcy or insolvency laws, for corporate reorganization, receivership, dissolution or similar proceeding are filed against the other party and are not dismissed within ninety (90) days after filing; (d) the other party makes a general assignment for the benefit of creditors; (e) the other party becomes insolvent; or (f) the other party ceases to conduct business or to conduct the business relevant hereunder.

7.3 During the Term of this Agreement, GTRC shall have the right to terminate this Agreement with or without cause upon thirty (30) days prior written notice to LICENSEE.
7.4 In event of termination of this Agreement or License for any reason, LICENSEE shall immediately discontinue all use of SOFTWARE and shall, at the option of GTRC, either: (a) destroy all copies (including partial copies) of SOFTWARE including Source Code and Object Code or (b) return all copies of SOFTWARE including Source Code and Object Code to GTRC. In either event, LICENSEE shall promptly forward written notice to GTRC that all programs and materials containing SOFTWARE including Source Code and Object Code have been deleted from all computer libraries and storage or memory devices and are no longer stored therein.

8. DISCLAIMERS OF WARRANTIES AND LIMITATION ON LIABILITY

8.1 LICENSEE ACCEPTS SOFTWARE ON AN “AS IS” BASIS. GTRC MAKES NO WARRANTY THAT ALL ERRORS CAN BE OR HAVE BEEN ELIMINATED FROM SOFTWARE. GTRC SHALL NOT BE LIABLE TO LICENSEE, AN END-USER OR ANY OTHER PARTY FOR LOSSES OR DAMAGES OF ANY KIND RESULTING FROM THE USE OF SOFTWARE AND ITS ACCOMPANYING DOCUMENTATION, AND SHALL NOT PROVIDE COMPENSATION FOR ANY LOSSES SUSTAINED, BY LICENSEE OR ANY END-USER INCLUDING BUT NOT LIMITED TO ANY OBLIGATION, LIABILITY, RIGHT, CLAIM OR REMEDY FOR TORT, OR FOR ANY ACTUAL OR ALLEGED INFRINGEMENT OF PATENTS, COPYRIGHTS, TRADE SECRETS, OR SIMILAR RIGHTS OF THIRD PARTIES, NOR ANY BUSINESS EXPENSE, MACHINE DOWNTIME OR DAMAGES CAUSED LICENSEE OR ANY OTHER PERSON BY ANY DEFICIENCY, DEFECT OR ERROR IN SOFTWARE OR MALFUNCTION THEREOF. GTRC SHALL NOT BE LIABLE TO LICENSEE, AN END-USER OR ANY OTHER PARTY FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES OR ECONOMIC LOSS, INCLUDING WITHOUT LIMITATION, LOSS OF PROFITS, HOWEVER CAUSED, EVEN IF GTRC HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. GTRC DISCLAIMS ALL WARRANTIES, BOTH EXPRESS AND IMPLIED RESPECTING THE USE AND OPERATION OF SOFTWARE AND ITS ACCOMPANYING DOCUMENTATION, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PARTICULAR PURPOSE AND ANY IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE. GTRC MAKES NO WARRANTY THAT SOFTWARE IS ADEQUATELY OR COMPLETELY DESCRIBED IN, OR BEHAVES IN ACCORDANCE WITH ANY ACCOMPANYING DOCUMENTATION. THE USER OF SOFTWARE IS EXPECTED TO MAKE THE FINAL EVALUATION OF SOFTWARE’S USEFULNESS IN USER’S OWN ENVIRONMENT.

8.2 GTRC represents that, to its knowledge as of the Effective Date, the SOFTWARE furnished hereunder does not infringe any copyright or patent.

8.3 GTRC shall have no obligation for support or maintenance of SOFTWARE, unless negotiated under separate contract and in good faith.

9. OWNERSHIP AND PROTECTION
9.1 LICENSEE acknowledges having been informed that GTRC is the sole owner of a valid and existing copyright in and to the SOFTWARE. LICENSEE shall retain the copyright and any other proprietary notices affixed to any SOFTWARE program provided by GTRC to LICENSEE. LICENSEE shall further cause such copyright and any other proprietary notices to be reproduced and affixed to any and all copies or partial copies of SOFTWARE made by LICENSEE. Said copyright notice shall read as follows:

Copyright 20[__]
Georgia Tech Research Corporation
Atlanta, Georgia 30332-0415
ALL RIGHTS RESERVED

10. INDEMNIFICATION

10.1 LICENSEE hereby indemnifies and holds harmless GTRC, GIT, and the Board of Regents of the University System of Georgia, and their employees, officers, board members and agents (hereinafter “Indemnitees”) from and against all claims, suits, liabilities, damages, costs, fees, expenses or losses arising out of or resulting from LICENSEE’s performance of this Agreement in whatever manner the same may be caused, and whether or not the same be caused by or arise out of the joint, concurrent, or contributing negligence of any Indemnitee, including but not limited to any third party claims against Indemnitees for patent, copyright, and/or trademark infringement and/or patent interference, and any damages, losses or liabilities whatsoever with respect to death or injury to any person and damage to any property arising from the possession, use or operation of SOFTWARE by LICENSEE, an End-User or their customers and/or sublicensees in any manner whatsoever.

11. CONFIDENTIALITY

11.1 LICENSEE shall not disclose any Proprietary Information pertaining to SOFTWARE other than to LICENSEE employees who must have access to such Proprietary Information in order to carry out LICENSEE’s obligations under this Agreement and to potential sublicensees of SOFTWARE. Prior to disclosure of Proprietary Information to LICENSEE employees, such employees shall be under a written obligation of confidentiality to LICENSEE at least as restrictive as the provisions contained herein. Notwithstanding and state or federal law governing Trade Secrets, all Proprietary Information shall be maintained in confidence by LICENSEE for three (3) years from the expiration of the original term of this Agreement.

11.2 To protect GTRC’s Proprietary Information, LICENSEE shall adopt security measures commonly observed in industries that rely on Proprietary Information. These measures shall include, but not be limited to, restricted access to such information, marking such information, and the selective destruction of sensitive materials. Upon termination of this Agreement, LICENSEE shall return or destroy all documents or materials embodying GTRC Proprietary Information.
11.3 Any disclosure of Proprietary Information by LICENSEE to potential sublicensees of SOFTWARE shall be prohibited, unless such potential sublicense has signed an agreement which imposes obligations of confidentiality and nonuse at least as restrictive as those imposed on LICENSEE hereunder.

12. SUBLICENSES

12.1 LICENSEE agrees that in addition to other terms and conditions stated herein, the following terms and conditions shall be included, as a minimum, in Sublicenses:

(a) an End-User’s rights in the SOFTWARE shall not be transferable and shall not be sold, encumbered, pledged or transferred in any way without the prior written consent of LICENSEE and GTRC; and

(b) End-User shall undertake the same obligations for confidentiality as undertaken by LICENSEE herein.

12.2 No Sublicense shall extend beyond the Term of this Agreement.

12.3 No title to the SOFTWARE is transferred to the End-User.

12.4 LICENSEE shall use its best efforts to enforce the Sublicense with End-Users.

13. GENERAL PROVISIONS

13.1 Prohibition on Assignment: LICENSEE shall not assign, transfer or subcontract its rights or obligations under this Agreement without the prior written consent of GTRC, except by way of assignment to a party succeeding to substantially all of the business interests of LICENSEE. GTRC shall have the right to assign, transfer or subcontract any of its rights or obligations under this Agreement to the Georgia Institute of Technology, to any party succeeding to substantially all of the business interests of GTRC, and/or another entity selected or created by GTRC to assume part or all of GTRC’s rights and obligations incident to existing and future license agreements representing the subject matter hereof. Both parties agree that forty-five (45) days prior written notice shall be provided in the event of an assignment of any rights or obligations hereunder.

13.2 Notices: All notices and other communications required or permitted to be given under this Agreement shall be in writing and shall be effective three (3) days following deposit in the United States mail, first class postage prepaid and addressed to the parties at their respective addresses set forth below, unless by such notice a different person or address shall have been designated.

If to GTRC:

GEORGIA TECH RESEARCH CORPORATION
Georgia Institute of Technology
505 Tenth Street
Atlanta, Georgia 30332-0415
Attn: Director, Technology Licensing  
Telephone Number: (404) 894-6287

If to LICENSEE:

13.3 **Governing Law:** All questions concerning the validity, operation, interpretation and construction of this Agreement shall be governed by and determined in accordance with the internal laws of the State of Georgia, United States of America, without regard to the principles of conflicts of law.

13.4 **Non Waiver:** No waiver by either party of any breach of any provision hereof shall constitute a waiver of any other breach of that or any other provision hereof.

13.5 **Force Majeure:** Neither party shall be in default, if its failure to perform any obligation hereunder is caused solely by supervening conditions beyond such party’s control, including acts of God, civil commotion, strikes, labor disputes, or governmental demands or requirements.

13.6 **Severability:** If any part, term or provision of this Agreement shall be held illegal, unenforceable or in conflict with any law of a federal, state, or local government having jurisdiction over this Agreement, the validity of the remaining portions or provisions shall not be affected hereby.

13.7 **Publicity:** Both parties agree to obtain written approval prior to using the other party’s name any part thereof in any advertising or publicity matter related to this Agreement and License. In the case of GTRC’s name, this Paragraph shall extend, but not be limited, to the name of Georgia Tech Research Corporation, GTRC, Georgia Institute of Technology and Georgia Tech.

13.8 ** Entire Agreement:** The parties hereto acknowledge that each has read this Agreement, understands it, and agrees to be bound by its terms. This Agreement and the Stock Purchase Agreement set forth the entire agreement and understanding between the parties as to the subject matter hereof and thereof and merges all prior discussions between them; and neither party shall be bound by any conditions, definitions, warranties, understandings or representations with respect to such subject matter other than as expressly provided herein. This Agreement may not be modified or altered except in writing by an instrument duly executed by authorized officers of both parties. Provided, however, that no provision appearing in any standard form document originated by LICENSEE, including but not limited to any purchase order or confirmation order, shall be applicable, even if signed by both parties, unless the parties also execute a separate instrument expressly modifying this Agreement to include such provisions as set forth above.

**Signatures on next page**
IN WITNESS WHEREOF, the parties hereto have set their hands and seals and duly executed this AGREEMENT effective as of the day and year first above written.

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