

SAMPLE ISURF SOURCE AND EXECUTABLE CODE LICENSE AGREEMENT

Development and Distribution

THIS SOURCE AND EXECUTABLE CODE LICENSE AGREEMENT (the “Agreement”), is entered into by and between Iowa State University Research Foundation, Inc., having a place of business at Iowa State University Research Park, Economic Development Core Facility, 1805 Collaboration Place, Suite 2100, Ames, IA 50010 (“ISURF”), and _____, Inc., a _____ company having a place of business at _____ (together with its Affiliates, “LICENSEE”), each sometimes referred to herein as “Party” and collectively as “the Parties.” This Agreement is dated as of the last signature date of this Agreement by an authorized representative of Iowa State University Research Foundation, Inc., and an authorized representative of LICENSEE (the “Effective Date”).

Agreement

WHEREAS, ISURF has developed certain Software in both Source Code and Executable Code (each as defined below) form;

WHEREAS, LICENSEE desires to obtain a license to the Source Code and Executable Code of such Software from ISURF, and ISURF desires to grant LICENSEE such license;

NOW, THEREFORE, in consideration of the mutual representations, covenants and undertakings set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, ISURF and LICENSEE agree as follows:

1. Definitions. Unless the context otherwise requires, as used herein the following terms have the meaning specified below:

1.1 “Affiliate” means an entity that controls LICENSEE, is controlled by LICENSEE, or along with LICENSEE, is under the common control of a third party. An entity shall be deemed to have control of the controlled entity if it (i) owns, directly or indirectly, fifty percent (50%) or more of the outstanding voting securities of the controlled entity, or (ii) has the right, power or authority, directly or indirectly, to direct or cause the direction of the policy decisions of the controlled entity, whether by ownership of securities, by representation on the controlled entities governing body, by contract or otherwise. Such entity shall be deemed to be an Affiliate only so long as such ownership or control exists.

1.2 “Authorized Employees” means the definition for that term set forth in Exhibit B (“Source Code Handling Procedure”).

1.3 “Executable Code” means the fully compiled version of a Software Program that can be executed by a computer and used by a user without further compilation, and which is not debuggable.

1.4 “ISU” means Iowa State University.

1.5 “Licensed Product” means any product that includes any part of the Licensed Software.

1.6 “Licensed Software” means ISURF Software Program or programs described in Exhibit A (“Licensed Software”).

1.7 “Site(s)” means a single location, or multiple locations for the installation and operation of the Licensed Software, as the context of usage herein indicates.

1.8 “Software Program” means a plurality of instructions capable of being executed by a computer, data processor, or other information handling system, whether or not such instructions are in a machine readable form.

1.9 “Source Code” means the human-readable version of a Software Program that can be compiled into Executable Code.

1.10 “Type Number” means any combination of numbers, letters or words utilized by LICENSEE to identify a particular type or version of Licensed Product.

1.11 “User” means the legal entity or person who orders or downloads Licensed Product, who accesses Licensed Product, whether locally or remotely, and/or who activates any services or maintenance provided by LICENSEE with respect to Licensed Product.

2. License Grants.

2.1 Licenses.

(a) Executable Code License. Subject to the terms and conditions of this Agreement, ISURF hereby grants to LICENSEE an exclusive, non-transferable, royalty bearing, irrevocable (except as provided in Section 9.2 below), worldwide license, for all fields of use, to copy, execute and distribute the Executable Code of the Licensed Software, on an unlimited number of machines at an unlimited number of Sites, and to distribute such Executable Code. This license does not include the right to grant sublicenses. Notwithstanding the previous sentence, LICENSEE

may license the Executable Code of the Licensed Software to end users solely by the End User License Agreement set forth as Exhibit C (“End User License Agreement”), provided that the copyright notice shall be completed in the End User License Agreement.

(b) Source Code License. Subject to the terms and conditions of this Agreement, ISURF hereby grants to LICENSEE an exclusive, non-transferable, irrevocable (except as provided in Section 9.2 below), worldwide license, for all fields of use, to copy, execute, and make derivative works, of the Source Code of the Licensed Software, on an unlimited number of machines at a single Site. Subject to ISURF’s ownership of the Source Code of the Licensed Software, and subject to Section 2.1(d) (“Derivative Works License”) LICENSEE shall own all derivative works made by LICENSEE. Such derivative works become, and are, part of the Licensed Software. This license does not include the right to grant sublicenses.

(c) Source Code Limitation. LICENSEE shall not provide the Source Code to any third party, or otherwise distribute such Source Code. LICENSEE shall use such Source Code only in accordance with the license granted in Section 2.1 (b) (“Source Code License”). LICENSEE agrees to treat such Source Code in strict accordance with the Source Code Handling Procedure of Exhibit B (“Source Code Handling Procedure”). Exhibit B (“Source Code Handling Procedure”) shall be promptly updated by LICENSEE to list each employee who is designated an Authorized Employee and to delete each employee who is no longer designated an Authorized Employee and, in both cases, such updated Exhibit B shall be promptly communicated to ISURF and shall automatically become a part of this Agreement.

(d) The licenses granted to LICENSEE in this Agreement on the conditions that (1) LICENSEE maintains a copyright legend on the Licensed Software, in both Executable Code and Source Code form, that identifies the copyright owner as ISURF, with the correct years of publication; and (2) LICENSEE licenses the Executable Code of the Licensed Software solely at a bonafide cash price that reflects the cash value of such code.

(e) Derivative Works License. LICENSEE hereby grants ISU a non-exclusive, non-transferable, sublicensable, irrevocable, worldwide license, for all fields of use, to use, copy, execute, and make derivative works, of derivative works of the Licensed Software that are made by LICENSEE, on an unlimited number of machines at any number of Sites, and to distribute such copies and derivative works. ISU shall exercise such license only in the exercise of ISU’s reservation of rights set forth in Section 2.1(h) (“Reservation of Rights”). Notwithstanding

the foregoing, should the license granted be terminated pursuant to Section 9.2 (“Termination”), ISU may exercise such license for any purpose including, but not limited to, granting commercial licenses.

(f) No Updates or Support. Neither ISURF nor ISU are obligated to provide updates or support for the Licensed Software.

(g) Subcontracting. LICENSEE may elect to have Licensed Products made on its behalf by a third party provided that LICENSEE enters into a written non-transferable agreement with such third party containing terms and conditions consistent with those herein, including all limitations and restrictions, and no additional terms or conditions in contravention thereof. LICENSEE shall remain liable for, and such written non-transferable agreement shall provide that ISURF shall have the right to audit the third party’s compliance with, the applicable terms and conditions of this Agreement.

(h) ISURF Reservation of Rights. Notwithstanding the foregoing, ISU and ISURF reserve the right to use, copy and distribute the Executable Code and the Source Code of the Licensed Software, and to make and distribute derivative works of the Source Code of the Licensed Software, and to distribute derivative works made by LICENSEE, all of the foregoing for research and educational purposes for itself and ISU. The reservation by ISU and ISURF includes the right to grant sublicenses under the Licensed Software and such derivative works to third parties who enter into an agreement with ISURF or ISU for research and educational purposes. Notwithstanding the foregoing, all derivative works made by LICENSEE that are brought to ISU or ISURF premises or stored in any ISU or ISURF computer, data processor, or other information handling system, by a LICENSEE principal, employee, consultant, or otherwise, and that become included in one or more ISU or ISURF Software Program(s), are licensed to ISU and ISURF without restriction. ISU, ISURF and their respective Affiliates may use such derivative works and grant licenses for such derivative works for any purpose.

2.2 Title. ISURF is the exclusive owner of all right, title, and interest in Licensed Software. LICENSEE acquires under this agreement only a license to use, copy, execute and distribute the Executable Code of the Licensed Software, and to make derivative works of the Source Code of the Licensed Software, and ownership of such derivative works, as expressly set forth in Section 2.1 (“Licenses”). All rights in and to the Licensed Software not expressly granted

to LICENSEE in this Agreement are reserved by ISURF. LICENSEE agrees not to remove, alter or obscure any proprietary notices (including copyright notices) on the Licensed Software.

2.3 Government Rights. It is understood that if the United States Government (through any of its agencies or otherwise) has funded research, during the course of or under which any inventions embodied in the Licensed Software were conceived, made, or reduced to practice, or any copyrightable works were created, the United States Government is entitled, as a right, under the provisions of 35 U.S.C. §§ 200 through 212 and applicable regulations of Chapter 37 of the Code of Federal Regulations and the Federal Acquisition Regulations (FAR) 27.4 and FAR 52.227-14 through 23, to a nonexclusive, nontransferable, irrevocable, paid-up license to practice and have practiced such inventions, and to use such copyrightable works, including data, for U.S. governmental purposes. Any license granted to LICENSEE in this Agreement shall be subject to such rights.

2.4 Inventions. The *Statement of Patent Policy* of Iowa State University states, in part:

Occasionally, however, original inventions may be produced by members of the faculty or staff utilizing University resources, and these may better be dedicated to the public service through obtaining patents and controlling licensing and distribution arrangements to assure that the public interest will be served.

...

The various agencies of the Federal Government require that when any invention, process, or new development which is thought to be patentable arises from studies supported in whole or in part with funds from federal sources, it must be reported to the appropriate agency.

...

When inventions which are thought to be patentable and for which patent protection should be sought arise during the course of the normal activities of the employees of the University, utilizing University resources, information concerning the invention should be furnished to the appropriate administrative officer of the University.

To the extent that any principal, employee or consultant of LICENSEE makes an invention utilizing Iowa State University resources, such invention will be handled in accordance with the *Statement of Patent Policy of Iowa State University*.

3. License Fee, Royalty and Minimum Royalty.

3.1 License Fee. LICENSEE shall pay to ISURF a non-refundable, non-creditable license fee of _____ dollars (\$_____), within thirty (30) days of the Effective Date of this Agreement.

3.2 Royalty. LICENSEE shall pay royalty with respect to all Licensed Software of the same Type Number upon which royalty has accrued during an accounting period pursuant to Section 4.1. LICENSEE shall pay a royalty computed as ___ percent (___%) of LICENSEE's revenue due for each calendar quarter in respect of Licensed Product, whether such revenue is due under a license agreement, distribution or other access agreement, maintenance agreement or otherwise, for Licensed Product. LICENSEE shall not use the Licensed Software, or distribute the Licensed Software at a discount or without charge, for the purpose of promoting Licensed Products or for promoting the sales or other distribution of other product(s).

3.3 Minimum Royalty. LICENSEE shall pay ISURF an annual minimum royalty of _____ dollars (\$_____) per year beginning [here place the date minimums begin.] If the royalty of Section 3.2 does not amount to the minimum royalty, LICENSEE may pay all or part of the minimum royalty from other sources of funds.

4. Accruals, Records and Reports.

4.1 Royalties shall accrue on the earlier of (1) when Licensed Product is first distributed to, or made available to, a User, or (2) services derived from Licensed Product are first made available to a User, or (3) maintenance is provided to a user by or for LICENSEE.

4.2 An accounting period shall end on the last day of each March, June, September and December during the term of this Agreement. Within thirty (30) days after the end of each such period LICENSEE shall furnish to ISURF a written report containing the information specified in Section 4.4 and shall pay to ISURF all unpaid royalties accrued hereunder to the end of each such period.

4.3 Except as otherwise directed in writing by ISURF, all amounts owing to ISURF under this Agreement shall be paid in U.S. dollars to ISURF at the address provided in Section 12.3 ("Notices"). All royalties owing with respect to revenue stated in currencies other than U.S. dollars shall be converted at the rate shown in the on-line Oanda Currency Trading at www.oanda.com on the last day of the quarterly payment period referred to above.

4.4 LICENSEE's quarterly report shall be certified by an officer of LICENSEE and shall contain the following information:

4.4.1 identification by Type Number, quantity, and description of each Licensed Product upon which royalty has accrued pursuant to Section 4.1;

4.4.2 identification of each license, distribution, or maintenance agreement with respect to which the Licensed Product identified pursuant to Section 4.4.1 has accrued royalty;

4.4.3 the process used to compute the amount of royalties; the amount of royalties due for each Licensed Product; and the aggregate amount of all royalties due; and

4.4.4 in the event that any of Sections 4.4.1 through 4.4.3 do not apply, LICENSEE shall so state as to each such Section. In the event no royalties are due, LICENSEE's report shall so state.

4.5 LICENSEE will promptly provide to ISURF upon request, without charge, a copy of each manual (including, but not limited to, service, use and other technical manuals) and specifications relevant to LICENSEE'S Licensed Product, and a requested number of samples of such products, also without charge. Subject to Section 4.6, such documentation and samples shall be used to determine royalties due and payable.

4.6 LICENSEE shall keep records in sufficient detail to permit the determination of royalties payable hereunder, and also the determination that the confidentiality and source code handling obligations of this Agreement are being met. At the request of ISURF, LICENSEE will permit an independent auditor and technological personnel familiar with Software, selected by ISURF, to examine, during ordinary business hours no more than once in each calendar year, such records and other materials as may be required by the auditor to verify or determine royalties paid or payable under this Agreement, and that such confidentiality and source code handling obligations are met. The cost of such audit shall be paid for by ISURF unless (1) an under-reporting of royalties of ten percent (10%) or more is found for any twelve (12) month period, or (2) that a confidentiality or source code handling obligation has not been met, in which event (in addition to any other remedy ISURF may have) LICENSEE shall pay the cost of such audit. Books and records shall be preserved for a period not less than six (6) years after they are created during and after the term of this Agreement.

4.7 LICENSEE shall bear and pay all taxes (including, without limitation, sales and value added taxes imposed by the national government, including any political subdivision

thereof), of any country in which LICENSEE is doing business, as the result of the existence of this Agreement or the exercise of rights hereunder.

5. Representations and Warranties; Exceptions.

5.1 General Representations and Warranties of ISURF. ISURF represents and warrants that:

(a) it is a nonprofit corporation duly organized and existing under the laws of the State of Iowa;

(b) it has the full right, power, and authority to enter into and perform its obligations under this Agreement.

5.2 General Representations and Warranties of LICENSEE. LICENSEE represents and warrants that:

(a) it is a corporation duly organized and existing under the laws of the State of _____;

(b) it has the full right, power, and authority to enter into and perform its obligations under this Agreement.

5.3 Exceptions. EXCEPT AS EXPRESSLY SET FORTH IN SUBSECTION 5.1 (“GENERAL REPRESENTATIONS AND WARRANTIES OF ISURF”), THE LICENSED SOFTWARE IS LICENSED “AS IS” AND ISURF MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, REGARDING THE LICENSED SOFTWARE, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS. LICENSEE ACKNOWLEDGES THAT IT HAS RELIED ON NO WARRANTIES IN ENTERING THIS AGREEMENT, OTHER THAN THOSE EXPRESSLY SET FORTH IN THIS AGREEMENT, AND THAT NO WARRANTIES ARE MADE BY ISURF, OR ANY OF ISURF’S LICENSORS, EXCEPT AS EXPRESSLY SET FORTH IN THE ABOVE SUBSECTION 5.1.

6. Limitation of Liability. EXCEPT AS OTHERWISE REQUIRED BY LAW, IN NO EVENT WILL ISURF BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES, INCLUDING ANY LOST DATA AND LOST PROFITS, ARISING FROM OR RELATING TO THIS AGREEMENT. LICENSEE

ACKNOWLEDGES THAT ISURF WOULD NOT HAVE ENTERED INTO THIS AGREEMENT WITHOUT THESE LIMITATIONS ON ITS LIABILITY. TO THE EXTENT THAT REMEDIES ARE SPECIFICALLY SET FORTH IN THIS AGREEMENT, SUCH REMEDIES CONSTITUTE EACH PARTY'S SOLE AND EXCLUSIVE REMEDIES FOR THE OTHER PARTY'S BREACH TO WHICH SUCH REMEDIES RESPECTIVELY RELATE.

7. Confidentiality

7.1 LICENSEE shall keep confidential and not disclose to any third party, or use for its own benefit (other than exercising the licenses herein granted), or for the benefit of any third party, or adversely to any interest of the ISURF, any of the following information disclosed by ISURF to LICENSEE (collectively "**Confidential Information**"): (i) the terms of this Agreement, (ii) the Licensed Software, including the Source Code and the Executable Code of the Licensed Software, and (iii) any information that is provided marked with a proprietary, confidential or other similar notice or, if not so marked, or if disclosed orally, information, that should be reasonably understood by LICENSEE to be confidential.

7.2 The term Confidential Information shall not be deemed to include information which: (a) is now, or hereafter becomes, through no act or failure to act on the part of LICENSEE, generally known or available; (b) is known by LICENSEE at the time of receiving such information as evidenced by its written records; (c) is hereafter furnished to LICENSEE by a third party, as a matter of right and without restriction of disclosure or use as evidenced by written records; or (d) is the subject of written permission to disclose provided by ISURF. Further, LICENSEE may disclose Confidential Information pursuant to a court order, provided LICENSEE has given ISURF written notice in reasonable time to approve such court order and obtain a protective order or other appropriate relief. LICENSEE agrees to be bound by the obligations of such protective order.

7.3 LICENSEE shall not disclose, disseminate or publish Confidential Information received hereunder to any person or entity without the prior written consent of ISURF, except to employees of LICENSEE who have a need to know in order to exercise the licenses granted herein to LICENSEE, who have been informed of LICENSEE's obligations hereunder, and who have agreed in a writing not to use or disclose Confidential Information (which writing is satisfied by an employee agreement that meets the confidentiality and non-use obligations of

this Agreement). LICENSEE agrees that it shall use the Confidential Information only to exercise such licenses. LICENSEE shall make no other use of the Confidential Information. The discussions between the Parties under this Agreement shall be deemed Confidential Information. LICENSEE may make only as many copies of the Confidential Information as required to carry out the intent of this Agreement, which copies shall include a legend that the information is confidential to ISURF.

7.4 LICENSEE shall hold the Confidential Information received in trust and confidence and protect such Confidential Information with at least the same degree of care it uses to protect its own most sensitive confidential information from unauthorized use and disclosure, but in no event shall LICENSEE use less than reasonable care.

7.5 All Confidential Information (including all copies thereof) shall remain the property of ISURF and shall be destroyed or returned to ISURF, at ISURF's discretion, after LICENSEE's need for the Confidential Information has expired, or upon request of ISURF, and, in any event, upon termination of this Agreement. Notwithstanding the foregoing, each Party may use Confidential Information of the other Party as necessary in exercising the licenses granted to or reserved by each Party hereunder.

8. Indemnification. LICENSEE shall indemnify, defend and hold ISURF and ISU (including ISURF's and ISU's trustees, members, officers, directors, employees and Affiliates), and the authors of the Licensed Software (hereinafter all collectively referred to as "the Indemnified Parties"), harmless against any and all claims, proceedings, demands, liabilities, 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 resulting from LICENSEE's activities with respect to the Licensed Software. ISURF at all times reserves the right to select and retain counsel of its own to defend ISURF's interests.

9. Term and Termination.

9.1 Term. This Agreement shall take effect upon the Effective Date and continue until terminated as set forth in Section 9.2 ("Termination").

9.2 Termination.

(a) By LICENSEE. LICENSEE may terminate this Agreement at any time, with or without cause, with thirty (30) days prior written notice to ISURF.

(b) By ISURF. ISURF may terminate this Agreement, or any license granted hereunder, if (1) LICENSEE materially breaches any provision of this Agreement and does not cure the breach within thirty (30) days after receiving written notice thereof from ISURF, (2) LICENSEE is not engaged in an active program to develop the Licensed Software and exploit the commercial market for the Licensed Software or (3) LICENSEE does not market a commercial product under the licenses granted herein in production quantities by _____.

(c) Termination for Financial Conditions of LICENSEE. This Agreement will terminate on ISURF's notice to LICENSEE, after

(i) the liquidation dissolution, reorganization, merger, sale of substantially all of the assets, or change in management, voting control or corporate form of LICENSEE; or

(ii) a receiver, receiver and manager, liquidator, sequestrator, trustee, sheriff, judicial officer or other similar officer is appointed for LICENSEE or its property or any part or parts thereof; or

(iii) LICENSEE becomes insolvent or unable to pay its debts as they fall due (whether in the ordinary course of business, by acceleration or otherwise) or makes an assignment for the benefit of its creditors; or

(iv) any proceedings are commenced against LICENSEE under any bankruptcy, dissolution, winding up, insolvency or debtor's relief law and such proceedings are not vacated or set aside within thirty (30) days from the date of commencement thereof.

9.3 Effect of Termination. Upon termination or expiration of this Agreement for any reason, the licenses granted to LICENSEE pursuant to Section 2 shall terminate.

9.4 Survival. Sections 1 (“Definitions”), 2.1(c) (“Source Code Limitation”), 2.1 (d) (“Derivative Works License”), 2.1 (g) (“ISURF Reservation of Rights”), 2.2 (“Title”), 2.3 (“Government Rights”), 3 (“Royalty; Minimum Royalty”), 4 (“Accruals, Records and Reports”), 5 (“Representations and Warranties; Exceptions”), 6 (“Limitation of Liability”), 7

(“Confidentiality”), 8 (“Indemnification”), 9.3 (“Effect of Termination”), 9.4 (“Survival”) and 11 (“General”) will survive expiration or termination of this Agreement.

10. Interest on Overdue Royalties. LICENSEE shall be liable for, and shall pay, interest on any overdue royalty commencing on the date such royalty becomes due, at the rate of one and one-half per cent (1-1/2 %) per month until such royalty is paid. If such interest rate exceeds the maximum legal rate in the jurisdiction where a claim therefor is being asserted, the interest rate shall be reduced to such maximum legal rate.

11. Advertising and Use of Names. LICENSEE shall not use the name of Iowa State University, ISURF, any trustees, officers, directors, members, employees, inventors, students or Affiliates of ISURF or Iowa State University, or any agents of the foregoing, in sales promotions, advertising or any other form of publicity without the prior written approval of the entity or person whose name is to be used. Advertising material which identifies publications by citations in customary form shall not be subject to the limitations of this Section 11. Notwithstanding the foregoing, each Party and Iowa State University may make true statements indicating that LICENSEE has licensed the Licensed Software from ISURF and that Licensed Products are made, used and/or sold by LICENSEE under license from ISURF in the Licensed Field and Licensed Territory under the Licensed Software. All other sales promotion, advertising, or any other form of publicity related to the Licensed Software, Licensed Products or this Agreement requires prior written approval from ISURF.

12. General.

12.1 Export of Technical Data. LICENSEE acknowledges that ISURF's Confidential Information, and the Licensed Software, can be subject to export control by the United States Government. LICENSEE shall strictly comply with all requirements of United States laws and regulations related to the Product and deliverable items, including the Export Administration Regulations, 15 C.F.R. Parts 730 through 774, and all licenses and authorizations issued under such laws and regulations. LICENSEE agrees that it will not, and will cause its representatives, employees, agents, contractors, and customers to agree not to, export, reexport,

divert, release, or transfer any ISURF Confidential Information or ISURF intellectual property rights, or any direct product thereof, to any prohibited destination, or to any national or resident thereof, except in accordance with all United States export control laws and regulations. LICENSEE shall make its records available to ISURF or its designee upon reasonable request to permit ISURF to confirm LICENSEE's compliance with its obligations as set forth in this Section 11.1.

12.2 Injunctive Relief. In the event of any use or transfer of the Executable Code or the Source Code of the Licensed Software or portions thereof by LICENSEE in a manner that is not expressly permitted herein, or in the event of any breach or threatened breach of Section 2.1(a) ("Executable Code License"), Section 2.1(b) ("Source Code License"), Section 2.1(c) ("Source Code Limitation"), or Section 7 ("Confidentiality") by LICENSEE, ISURF may suffer an irreparable injury, such that no remedy at law will afford it adequate protection against or appropriate compensation for such injury. Accordingly, in addition to remedies available at law, LICENSEE hereby agrees that ISURF shall be entitled to seek, in a court of competent jurisdiction, specific performance of LICENSEE's obligations under this Agreement, as well as such further injunctive relief as may be granted by such court, without posting bond.

12.3 Notices. Other than routine communications made in the ordinary course of performing any obligations under this Agreement, all notices or other communications required or permitted to be given under this Agreement must be in writing and will be deemed to have been sufficiently given when delivered in person (with written confirmation of receipt), on the date of delivery via a responsible international courier, on the date sent by email, electronic facsimile transmission or other direct human-readable electronic means (with electronic confirmation of receipt), or on the third business day after mailing by first class registered or certified mail, postage prepaid, to the following addresses:

if to ISURF:

Iowa State University Research Foundation, Inc.
Attn.: Executive Director
Iowa State University Economic Development Core Facility
1805 Collaboration Place, Suite 2100
Ames, IA 50010

if to LICENSEE:

Please supply contact information for LICENSEE.

Either Party may from time to time change its above address by providing the other Party with notice thereof in writing by one of the above methods. .

12.4 Force Majeure. Neither Party shall be liable for any loss or damage or be deemed to be in breach of this Agreement, except with respect to the payment of money, to the extent that performance of such Party's obligations under this Agreement are delayed or prevented as a result of any event or circumstance beyond its reasonable control, including without limitation, war, invasion, act of foreign enemy, terrorism, hostilities, civil war or rebellion (whether war be declared or not), strike, lockout or other industrial dispute, or act of God; provided, that for the duration of such *force majeure* the Party claiming such *force majeure* must continue to use all reasonable efforts to overcome such *force majeure*.

12.5 No Partnership or Joint Venture. ISURF and LICENSEE are independent contractors and neither Party is the legal representative, agent, joint venturer, partner, or employee of the other Party for any purpose whatsoever.

12.6 Waivers, Modifications. No failure or delay by either Party in exercising any right, power, or remedy under this Agreement shall operate as a waiver of any such right, power, or remedy. No waiver or modification of any provision of this Agreement shall be effective unless in writing and signed by ISURF and LICENSEE. Any waiver by either party of any provision of this Agreement shall not be construed as a waiver of any other provision of this Agreement, nor shall such waiver operate as or be construed as a waiver of such provision respecting any future event or circumstance.

12.7 Assignment. Neither party may assign or transfer, by operation of law or otherwise, any of its rights under this Agreement to any third party without the prior written consent of the other party. Such consent shall be deemed given upon notice of assignment to an acquirer of all or substantially all of the portion of the assignor's business to which this Agreement relates, provided that the assignee accepts in writing all of LICENSEE's obligations under this Agreement. Any attempted or purported assignment without such required consent shall be void. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the Parties, and their respective successors and permitted assigns.

12.8 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the United States and of the State of Iowa as such laws are applied to agreements entered into and to be performed entirely within Iowa between Iowa residents. Subject to Section 11.2 (“Injunctive Relief), the Parties consent to the exclusive jurisdiction of the courts of Polk County, Iowa to resolve any and all disputes relating to this Agreement that result in litigation. LICENSEE hereby irrevocably and unconditionally (i) waives any objection to the laying of venue in any court located in Polk County, Iowa with respect to any lawsuit relating to this Agreement, (ii) consents to receive service of any summons or other legal process by registered or certified mail, postage prepaid, at the address for notices described in the Section entitled “Notices” hereof, and (iii) waives any objection to the effectiveness or validity of service pursuant to subsection (ii) above. Notwithstanding the foregoing, any action brought under Section 12.2 (“Injunctive Relief”) may be brought in any court of competent jurisdiction.

12.9 The Parties agree that the United Nations Conventions on Contracts for the International Sale of Goods is specifically excluded from application to this Agreement.

12.10 Severability. In the event that any provision of this Agreement (or portion thereof) is determined by a court of competent jurisdiction to be invalid or otherwise unenforceable, such provision (or part thereof) shall be changed and interpreted so as to best accomplish the objective of such provision (or part thereof) within the limits of applicable law, while the remainder of this Agreement shall continue in full force and remain in effect according to its stated terms and conditions.

12.11 Headings. The paragraph headings used in this Agreement are for reference only and shall not be considered substantive provisions of this Agreement nor determine the construction or interpretation of this Agreement or any portion hereof. The uses of a singular or plural form in this Agreement shall include the other form, and the use of a masculine, feminine or neuter gender shall include the other genders.

12.12 Entire Agreement. This Agreement, together with any other exhibits or documents incorporated herein by reference, constitute the entire Agreement between the Parties pertaining in any manner to the subject matter of this Agreement, and contains all of the covenants and undertakings between the Parties with respect to such subject matter. Any and all prior or contemporaneous written or oral agreements between the Parties pertaining in any manner to the subject matter of this Agreement, are expressly superseded and canceled by this Agreement.

12.13 Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, deemed enforceable without production of the others, and all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the authorized representatives of the Parties have executed this Agreement as of the day and year first written above.

IOWA STATE UNIVERSITY RESEARCH FOUNDATION, INC.

By: _____ Date: _____, _____

Name and Office: _____

LICENSEE

By: _____ Date: _____, _____

Name and Office: _____

SAMPLE

EXHIBIT A
LICENSED SOFTWARE

Add software description

SAMPLE

EXHIBIT B
SOURCE CODE HANDLING PROCEDURE

Special Procedure for Handling Source Code. LICENSEE agrees to disclose the Source Code only to certain authorized employees (“Authorized Employees”) of LICENSEE who are listed below, and who LICENSEE warrants are its employees that (1) require access to the Source Code for the purpose of maintaining the Software; and (2) have entered into a confidentiality agreement with LICENSEE with confidentiality obligations at least as restrictive as those in this Agreement. Consultants shall not be Authorized Employees without prior written consent of ISURF, which consent shall not unreasonably be withheld, conditioned or delayed. The following is the exclusive list of Authorized Employees:

LICENSEE shall use the Source Code only on secured computer systems (1) that have the same security features that LICENSEE uses to protect its own most sensitive source code, but no less than a reasonably prudent business would exercise under similar circumstances, and (2) which computers are available to only the Authorized Employees and only within secured areas of LICENSEE’s offices which are locked. LICENSEE shall not allow hard copy printouts of any portion of the Source Code to exist in other than locked in foregoing secured areas. LICENSEE shall not allow work on the Source Code to be done over the Internet.

EXHIBIT C
End User License Agreement

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EXHIBIT C-1

<list of all Software programs>

[copy of manual(s) attached]

SAMPLE

EXHIBIT C-2

N

Royalty Reporting Form For Period Ending _____

Software Inventory Information:

Inventory Starting Balance

Copies Made During Period _____

Copies Distributed to End Users _____

Copies Returned
(show reasons) _____

Ending Balance in Inventory

End User Information:

Date of Sale	End User Name	No. of Copies	Revenues Received	Deductions	Net Revenues
TOTALS					

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