SAMPLE ISURF SOURCE AND EXECUTABLE CODE LICENSE AGREEMENT
Single User

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 _____, a _____ company having a place of business at _____ (together with its affiliates, "Company"), 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 represented of _____ (the "Effective Date").

Agreement

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

WHEREAS, Company desires to obtain a license to the Source Code and Executable Code of such software from ISURF, and ISURF desires to grant Company 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 Company agree as follows:

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

1.1 "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.

1.2 "Licensed Software" means the ISURF software program or programs described in Exhibit A ("Licensed Software").

1.3 "Site(s)" means a single location, or multiple locations for the installation and operation of the Licensed Software.

1.4 "Source Code" means the human-readable version of a software program that can be compiled into Executable Code.

2. License Grant; Reservation of Rights.

    2.1 License and Reservation of Rights.

        (a) License. Subject to the terms and conditions of this Agreement, ISURF hereby grants to Company an exclusive, non-transferable, sublicensable, irrevocable (except as provided in Section 8.2 below), worldwide license, for all fields of use, to use, copy, execute, and make derivative works of, the Licensed Software in both Executable Code and Source Code form, on an unlimited number of machines at any number of Sites, and to distribute such copies and derivative works. Subject to ISURF's ownership of the Licensed Software, Company shall own all such derivative works.

        (b) ISURF Reservation of Rights. Notwithstanding the foregoing, ISURF reserves for itself and for Iowa State University ("ISU") the right to use, copy, execute, and make derivative works of, the Licensed Software in Executable Code and Source Code form, and to distribute such copies of the Licensed Software for research and educational purposes, and to distribute copies of derivative works for commercial, research and educational purposes. The grant to Company hereunder includes Company's ownership of all such derivative works made by ISURF or ISU that may be supported through funding by Company under a funding agreement with ISU. The reservation by ISURF includes the right to grant licenses under the Licensed Software to third parties who enter into an agreement with ISURF or ISU for research and educational purposes and to grant commercial licenses under such derivative works.

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

    2.2 Title. ISURF is the exclusive owner of all right, title, and interest in the Licensed Software. Company acquires under this Agreement only an exclusive license to use, copy, execute, and make derivative works of, the Licensed Software in Executable Code and Source Code form, and to distribute such copies and distribute derivative works, and ownership of derivative works, as expressly set forth in Section 2.1(a) ("License"). All rights in and to the Licensed Software not expressly granted to Company in this Agreement are reserved by ISURF.

Company agrees not to remove, alter or obscure any proprietary notices (including copyright notices) on the Licensed Software.

2.3 <u>Government Rights</u>.   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 Company in this Agreement shall be subject to such rights.

3. <u>Fees and Payment</u>.

3.1 <u>License Fees</u>.   Company will pay ISURF a non-refundable license fee of _____ dollars ($.00) upon execution of this Agreement.

4. <u>Representations and Warranties; Exceptions</u>.

4.1 <u>General Representations and Warranties of ISURF.</u> 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.

4.2 <u>General Representations and Warranties of Company.</u> Company represents and warrants that:

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

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

4.3 Exceptions. EXCEPT AS EXPRESSLY SET FORTH IN SUBSECTION 4.1 ("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. Company ACKNOWLEDGES THAT IT HAS RELIED ON NO WARRANTIES IN ENTERING THIS AGREEMENT, OTHER THAN THOSE 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 4.1.

5. Limitation of Liability. SUBJECT TO BREACH OF SECTION 6 ("CONFIDENTIALITY") AND SUBJECT TO SECTION 7 ("INDEMNITY"), IN NO EVENT WILL EITHER PARTY 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. EACH PARTY ACKNOWLEDGES THAT NEITHER PARTY WOULD ENTER 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.

6. Confidentiality. Each party (the "Receiving Party") shall keep confidential and not disclose to any third party or use for its own benefit, or for the benefit of any third party, or adversely to any interest of the other party (the "Disclosing Party"), any of the following information disclosed by the Disclosing Party to the Receiving Party (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 provided marked with a proprietary, confidential or other similar notice or, if not so marked, or if disclosed orally, information, that is reasonably understood by the Receiving Party to be confidential. 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 the Receiving Party, generally known or available; (b) is known by the Receiving Party at the time of receiving such information as evidenced by its written records; (c) is hereafter furnished to the Receiving Party by a third party, as a matter of right and without restriction of disclosure or use as evidenced by written records; and (d) is the subject of written permission to disclose provided by the Disclosing Party. Further, the Receiving Party may disclose Confidential Information pursuant to a court order, provided the Receiving Party has given the Disclosing Party written notice in reasonable time to approve such court order and obtain a protective order or other appropriate relief. The Receiving Party agrees to be bound by the obligations of such protective order. The Receiving Party 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 the Receiving Party use less than reasonable care. All Confidential Information (including all copies thereof) shall remain the property of the Disclosing Party and shall be destroyed or returned to the Disclosing Party, at the Disclosing Party's discretion, after the Receiving Party's need for the Confidential Information has expired, or upon request of the Disclosing Party, 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.

7. <u>Indemnification</u>. Company 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 attorney's 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 Company's or its sublicensee'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.

8. Term and Termination.

8.1 Term. This Agreement shall take effect upon the Effective Date and continue until terminated as set forth in Section 8.2 ("Termination").

8.2 Termination.

(a) By Company. Company 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 Company materially breaches any provision of this Agreement and does not cure the breach within thirty (30) days after receiving written notice thereof from ISURF.

8.3 Effect of Termination. Upon termination or expiration of this Agreement for any reason, the licenses granted to Company pursuant to Section 2 ("License Grant; Reservation of Rights") shall terminate.

8.4 Survival. Sections 1 ("Definitions"), 2.2 ("Title"), 2.3 ("Government Rights"), 4 ("Representations and Warranties; Exceptions"), 5 ("Limitation of Liability"), 6 ("Confidentiality"), 7 ("Indemnity"), 8.3 ("Effect of Termination"), 8.4 ("Survival") and 9 ("General") will survive expiration or termination of this Agreement.

9. General.

9.1 Export of Technical Data. Company acknowledges that ISURF's Confidential Information, and the Licensed Software, can be subject to export control by the United States Government. Company shall strictly comply with all requirements of United States laws and regulations related to the Licensed Software and deliverable items, including the Export Administration Regulations, 15 C.F.R. Parts 730 through774, and all licenses and authorizations issued under such laws and regulations. Company 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. Company

shall make its records available to ISURF or its designee upon reasonable request to permit ISURF to confirm Company's compliance with its obligations as set forth in this Section 9.1.

9.2 <u>Injunctive Relief</u>. In the event of any use or transfer of the Executable Code or the Source Code of the Licensed Software or portions thereof by Company in a manner that is not expressly permitted herein, or in the event of any breach or threatened breach of Section 2 ("License Grant, Reservation of Rights") or Section 6 ("Confidentiality") by Company, 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, and notwithstanding, Company hereby agrees that ISURF shall be entitled to seek, in a court of competent jurisdiction, specific performance of Company's obligations under this Agreement, as well as such further injunctive relief as may be granted by such court, without posting bond.

9.3 <u>Notices</u>. 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 Company:

Please supply contact information for Company.

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. .

9.4 *Force Majeure*. Neither Party shall be liable for any loss or damage or be deemed to be in breach of this Agreement, except for 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*.

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

9.6 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 both Parties. 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.

9.7 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. 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.

9.8 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the United States and of the State of New York as such laws are applied to agreements entered into and to be performed entirely within New York between New

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

9.9   Forum. Subject to the jurisdiction provisions of Section 9.2 ("Injunctive Relief") each of Company and ISURF irrevocably agrees to the exclusive jurisdiction of (a) the 5th Judicial District Court, Polk County, Iowa, and (b) the United States District Court for the Southern District of Iowa, Des Moines, Iowa, for the purpose of any suit, action or other proceeding arising out of this Agreement or any transaction contemplated hereby.

9.10   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.

9.11   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.

9.12   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.

9.13   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:_____   By:_____

Title:_____   Title:_____

EXHIBIT A
Licensed Software

Add software description