SOFTWARE LICENSE AGREEMENT
(NON-EXCLUSIVE; NON-COMMERCIAL RESEARCH ONLY)

THIS SOFTWARE LICENSE AGREEMENT ("AGREEMENT") is made and entered into this _____ day of _____, 201____ ("EFFECTIVE DATE"), by and between THE CURATORS OF THE UNIVERSITY OF MISSOURI, a public corporation of the State of Missouri having a principal office at the Office of Technology Management and Industry Relations, 1601 South Providence, Columbia, Missouri 65211, ("UNIVERSITY") and _____ having offices at _____ ("LICENSEE"). UNIVERSITY and LICENSEE may sometimes be referred to herein as a "PARTY" or "PARTIES" as the case may be.

WHEREAS, UNIVERSITY has an interest in the computer software and/or related documentation, manuals, and guides created by or on behalf of UNIVERSITY and disclosed in UM Disclosure No. 16UMC-CR009 titled "TREND: Track Equilibrium or Non-Equilibrium Data" as it exists on the EFFECTIVE DATE ("SOFTWARE");

WHEREAS, the SOFTWARE was developed under a research program sponsored by the National Science Foundation under grant NSF MCB1409898. Therefore, this AGREEMENT is subject to the terms and conditions of Public Law 96-517 and 98-620 as amended;

WHEREAS, LICENSEE acknowledges that the SOFTWARE includes certain open source software, and such components of the SOFTWARE that include the open source software will be governed by this AGREEMENT as well as the applicable open source license terms thereof as set forth in Appendix A; and

WHEREAS, LICENSEE is desirous of obtaining a non-exclusive research license to use the SOFTWARE for research purposes and UNIVERSITY is desirous of granting such a license to LICENSEE in accordance with the terms of this AGREEMENT.

NOW, THEREFORE, in consideration of the foregoing premises and the covenants, representations and warranties contained herein, the PARTIES agree as follows:

Article I. DEFINITIONS

Section 1.01 "DERIVATIVE WORK" means all works that would be characterized as a derivative work of the SOFTWARE, in whole or in part, under the United States Copyright Act of 1976 as amended from time to time, specifically including, but not limited to, translations, abridgments, condensations, recastings, transformations, or adaptations of the SOFTWARE or works comprising editorial revisions, annotations, elaborations, or other modifications of the SOFTWARE. For clarity, new versions of the SOFTWARE shall be a DERIVATIVE WORK. A "LICENSEE DERIVATIVE WORK" is a DERIVATIVE WORK developed, authored, or created by LICENSEE or on LICENSEE's behalf.

Section 1.02 "ENHANCEMENT" means any changes or upgrades made to the SOFTWARE or any software code or algorithm that is interoperable with the SOFTWARE and enhances or improves the SOFTWARE. An ENHANCEMENT encompasses, but is not limited to, a

1

DERIVATIVE WORK. A "LICENSEE ENHANCEMENT" is an ENHANCEMENT developed, authored, or created by LICENSEE or on LICENSEE's behalf.

Section 1.03   "LICENSED COPYRIGHTS" means the UNIVERSITY's copyrights in the LICENSED SOFTWARE under the United States Copyright Act of 1976 as amended from time to time, and International Treaty provisions, in effect from time to time, relating to the protection of copyrights worldwide, but excluding any third party rights therein. For clarity, the LICENSED COPYRIGHTS include any copyrights in LICENSEE ENHANCEMENTS (including LICENSEE DERIVATIVE WORKS).

Section 1.04   "LICENSED FIELD" means the field of non-commercial research performed by LICENSEE or LICENSEE's employees.

Section 1.05   "LICENSED SOFTWARE" means the SOFTWARE and any LICENSEE DERIVATIVE WORKS or LICENSEE ENHANCEMENTS owned by the UNIVERSITY under Section 2.04 (University Ownership of Licensee Enhancements).

Section 1.06   "LICENSED TERRITORY" means LICENSEE's premises.

Section 1.07   "OPEN SOFTWARE" shall mean elements of the LICENSED SOFTWARE, if any, that are available royalty-free or are otherwise available from the public domain or a third party, and are not owned by the UNIVERSITY. The term includes (a) software components that are licensed under a license approved by the Open Source Initiative ("OSI") or similar open source or freeware licenses and includes the General Public License ("GPL"), Lesser General Public License ("LGPL"), Apache Software Foundation License, Berkley Source Distribution ("BSD") License, and Massachusetts Institute of Technology ("MIT") License, and (b) software that is licensed pursuant to any of the following terms (i) any requirement for distribution of SOURCE CODE, (ii) any requirement for disclosure of any modifications to the software; or (iii) any attribution requirements other than to maintain notices within the SOURCE CODE of the software.

Section 1.08   "SOURCE CODE" shall mean code, other than OBJECT CODE, and related source code level system documentation, comments and procedural code, such as job control language, which may be printed out or displayed in human readable form.

Article II.   GRANT

Section 2.01   <u>Grant.</u> Subject to the terms and conditions of this AGREEMENT, except for portions of the LICENSED SOFTWARE that include OPEN SOFTWARE, UNIVERSITY hereby grants to LICENSEE, and LICENSEE accepts, a royalty-free, non-transferrable, non-exclusive license under the LICENSED COPYRIGHTS in the LICENSED SOFTWARE (a) to create LICENSEE DERIVATIVE WORKS and LICENSEE ENHANCEMENTS thereto, and (b) to use and reproduce the LICENSED SOFTWARE, solely in the LICENSED TERRITORY in the LICENSED FIELD for a term as set forth in Section 6.01 unless this AGREEMENT shall be sooner terminated according to the terms hereof. LICENSEE shall have no right to grant sublicenses. For the avoidance of doubt, this grant is subject to any rights of the owners of OPEN SOFTWARE included within the LICENSED SOFTWARE in Section 2.02, and any rights of the GOVERNMENT as set forth in Section 2.06.

Section 2.02   Third Party Software. If any component of the SOFTWARE is offered under an OPEN SOFTWARE license, UNIVERSITY will make the OPEN SOFTWARE license available to the LICENSEE under such OPEN SOFTWARE license, and the provisions of that OPEN SOFTWARE license may expressly override some of the terms of this AGREEMENT. APPENDIX A lists the OPEN SOFTWARE licenses that UNIVERSITY believes govern the OPEN SOFTWARE and copyright and license notices associated with UNIVERSITY's use of the OPEN SOFTWARE. While UNIVERSITY has sought to provide complete and accurate licensing information for each OPEN SOFTWARE component used in the LICENSED SOFTWARE, UNIVERSITY does not represent or warrant that the licensing information provided in APPENDIX A is correct or error-free.   LICENSEE should investigate identified OPEN SOFTWARE components to confirm that accuracy of the licensing information provided in APPENDIX A.

Section 2.03   University Derivative Works and Enhancements in the Open Software. To the extent permitted by the applicable OPEN SOFTWARE license (as in the case of permissive open source licenses such as the Apache, BSD and MIT licenses) with respect to the portions of LICENSED SOFTWARE that includes OPEN SOFTWARE, UNIVERSITY hereby grants to LICENSEE, and LICENSEE accepts, a royalty-free, non-exclusive license under the LICENSED COPYRIGHTS in any DERIVATIVE WORKS or ENHANCEMENTS of the LICENSED SOFTWARE owned by UNIVERSITY and provided to LICENSEE (a) to create LICENSEE DERIVATIVE WORKS and LICENSEE ENHANCEMENTS thereto and (b) to use and reproduce the LICENSED SOFTWARE, solely in the LICENSED TERRITORY in the LICENSED FIELD for a term as set forth in Section 6.01 unless this AGREEMENT shall be sooner terminated according to the terms hereof. LICENSEE shall have no right to grant sublicenses.

Section 2.04   University Ownership and Licensing of Licensee Enhancements. To the extent permitted by the applicable OPEN SOFTWARE license, any and all right, title, and interest in any copyrights in the LICENSEE ENHANCEMENTS are hereby assigned, conveyed and otherwise transferred by LICENSEE to UNIVERSITY. UNIVERSITY hereby grants LICENSEE a license, under the same terms and conditions of Section 2.01 and this AGREEMENT, to such LICENSEE ENHANCEMENTS. Upon request of UNIVERSITY, LICENSEE shall execute any assignments or other documentation for any such LICENSEE ENHANCEMENT, with full rights to license others, to perfect UNIVERSITY's ownership rights in the same. For the avoidance of doubt, upon termination or expiration of the license granted in Section 2.01, all of LICENSEE's rights in any LICENSEE ENHANCEMENTS shall terminate. If the applicable OPEN SOFTWARE license requires that LICENSEE ENHANCEMENTS be distributed under the applicable OPEN SOFTWARE license, LICENSEE will make the LICENSEE ENHANCEMENTS available to the UNIVERSITY under such OPEN SOFTWARE license, and the provisions of that OPEN SOFTWARE license may expressly override some of the terms of this AGREEMENT.

Section 2.05   License Scope. The license granted herein shall not be construed to confer any rights upon LICENSEE by implication, estoppel or otherwise as to any copyright, technology or software not specifically set forth in LICENSED SOFTWARE or LICENSED COPYRIGHTS. UNIVERSITY shall be free to grant commercial licenses to the LICENSED SOFTWARE or LICENSED COPYRIGHTS to third parties in all fields.

Section 2.06 Governmental Rights.   LICENSEE understands that the SOFTWARE was developed under a funding agreement with the Government of the United States of America

("GOVERNMENT") and that the GOVERNMENT may have certain rights relative thereto. Thus, notwithstanding anything hereunder, any and all licenses and other rights granted hereunder are limited by and subject to the rights and requirements of the GOVERNMENT which may arise out of its sponsorship of the research which led to the conception or reduction to practice of the LICENSED SOFTWARE. If there is a conflict between the GOVERNMENT funding agreement, applicable law or regulation and this AGREEMENT, the terms of the GOVERNMENT funding agreement, applicable law or regulation shall prevail. LICENSEE agrees to take any actions necessary to enable UNIVERSITY to satisfy its obligations with the GOVERNMENT relating to the LICENSED SOFTWARE.

Section 2.07   Challenge to Copyrights. In the event that LICENSEE directly or indirectly: (a) issues a press release, public announcement, news release alleging invalidity, unenforceability, improper ownership, or improper authorship of the LICENSED COPYRIGHTS; or (b) asserts a claim or counterclaim in the courts or seeking to invalidate or render unenforceable any LICENSED COPYRIGHTS, including on the basis of improper ownership or authorship; or (c) assists a third party with either or both (a) or (b) (each of (a), (b), or (c) being a "CHALLENGE EVENT"), then LICENSEE shall provide at least ninety (90) days written notice to UNIVERSITY prior to initiating such a CHALLENGE EVENT, along with a copy of any and all documents which form the basis for the CHALLENGE EVENT. Upon the occurrence of a CHALLENGE EVENT, UNIVERSITY, shall have the right, but not the obligation, to terminate this AGREEMENT with respect to the LICENSEE by providing written notice of the same. In the event that UNIVERSITY elects not to terminate this AGREEMENT, and should the outcome of any such action or proceeding be unsuccessful, then LICENSEE challenging such claim shall pay all of UNIVERSITY's costs, expenses, and reasonable attorneys' fees incurred in such action. An action or proceeding shall be deemed "unsuccessful" for purposes of this Section 2.07 if: (i) the proceeding or lawsuit is terminated for any reason prior to a settlement or judgment from which no appeal can be or is taken; (ii) any of the LICENSED COPYRIGHTS challenged by the lawsuit remain valid and enforceable after any such settlement or judgment is in effect; or (iii) if LICENSEE would still require a license to any of the LICENSED COPYRIGHTS to copy, distribute, or use the LICENSED SOFTWARE after any such settlement or judgment is in effect. Any such judicial challenge by LICENSEE shall be brought in the courts of Missouri, and LICENSEE agree not to challenge personal jurisdiction in that forum. LICENSEE shall not be relieved from any payments that accrue before any decision rendering the LICENSED COPYRIGHTS invalid or unenforceable.

Article III.   INDEMNITY, LIMITATIONS ON LIABILITY, DISCLAIMER OF WARRANTIES AND DAMAGES

Section 3.01   Indemnity. LICENSEE shall at all times during the term of this AGREEMENT and thereafter, indemnify, defend and hold UNIVERSITY, its current or former Curators, officers, employees and affiliates, harmless from any claim, proceeding, suit, demand, expense, loss, penalty, judgment, or liability of any kind whatsoever, including costs, expenses and reasonable attorneys' fees, resulting from, related to, arising out of, or in connection with (1) the reproduction or use of the LICENSED SOFTWARE by LICENSEE, including but not limited to (i) any infringement or misappropriation of a patent, copyright, trade secret or other intellectual property or proprietary right of any third party or (ii) any product liability claims, such as those involving the death of or injury to any person or persons or damage to property; or (2) any breach of any

obligation, covenant, representation, or warranty by LICENSEE hereunder; or (3) a breach or violation of applicable law by LICENSEE; (4) the exercise of LICENSEE's rights under this AGREEMENT; (5) LICENSEE's violation of the terms of any OPEN SOFTWARE license; or (6) LICENSEE licensing of any LICENSED COPYRIGHTS under any reciprocal or copy-left license such as the GPL or LGPL. If any such claims or causes of action are made, UNIVERSITY shall be defended by counsel selected by LICENSEE, subject to UNIVERSITY's approval, which shall not be unreasonably withheld. UNIVERSITY reserves the right to be represented by its own counsel at its own expense.

Section 3.02   Licensee Representations/Warranties. LICENSEE represents and warrants to UNIVERSITY at all times that:

(a) Organization & Power. LICENSEE is a corporation duly organized, validly existing, and in good standing under the laws of its state of incorporation and has all requisite corporate power and authority to enter into this AGREEMENT;

(b) Authorization. The execution, delivery and performance by LICENSEE of this AGREEMENT and the consummation of the transactions contemplated hereby and thereby have been duly authorized by all requisite action on the part of the LICENSEE and do not conflict with or cause a default with respect to LICENSEE's obligations under any other agreement;

(c) Third Party Rights. LICENSEE will secure all rights from third parties (*e.g.*, rights to functions, toolkits, other software code, images, sounds and writings) that may be necessary to sell, license, reproduce, modify, distribute, perform, display or use the LICENSED SOFTWARE, and to allow for the practice of the rights licensed in Article II herein. LICENSEE further represents and warrants that it will include in the LICENSED SOFTWARE and documentation thereof, all statements and copyright notices as required by such third parties, including those for the OPEN SOFTWARE as set forth in Exhibit A.

(d) Other Duties. LICENSEE, on behalf of its employees represents and warrants that LICENSEE:

1) shall be solely responsible for ensuring that its access and/or use of the LICENSED SOFTWARE by its end users does not violate any laws to which LICENSEE is subject or violate or infringe the rights of any third party, including without limitation those involving spamming, privacy, obscenity, or defamation, copyright, trademark, patent, child protective email address registry, FERPA, and export control;

2) shall not remove any proprietary notices or labels of UNIVERSITY or third parties with respect to any third party content;

3) shall provide to UNIVERSITY such information and data as is reasonably necessary to enable UNIVERSITY to perform its obligations under this AGREEMENT;

4) shall not use the LICENSED SOFTWARE to store or transmit any unlawful, hateful, infringing, harmful, threatening, abusive, harassing, offensive, libelous, defamatory, slanderous, immoral, pornographic, indecent, obscene, fraudulent, discriminatory, or objectionable or unacceptable material;

5) shall not use the LICENSED SOFTWARE to store or transmit viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs;

6) shall not advertise or solicit funds for goods or services using the LICENSED SOFTWARE; and

7) shall not, except for LICENSEE's own non-commercial research use, copy, frame, or mirror any part or content of the LICENSED SOFTWARE.

Section 3.03   Disclaimer of Warranties. THE LICENSED SOFTWARE IS DELIVERED "AS IS" IN EVERY RESPECT.   UNIVERSITY, ITS CURRENT OR FORMER CURATORS, OFFICERS, EMPLOYEES, AND AFFILIATES MAKE NO REPRESENTATIONS AND EXTEND NO WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF COMMERCIAL UTILITY, MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, THE ABSENCE OF LATENT OR OTHER DEFECTS, WHETHER OR NOT DISCOVERABLE, THE SCOPE, VALIDITY OR ENFORCEABILITY OF THE LICENSED COPYRIGHTS, OR THAT THE DESIGN, DEVELOPMENT, REPRODUCTION, MODIFICATION, USE, SALE, OFFER FOR SALE, RENTING, LEASE, LENDING, LICENSE, IMPORTATION, PERFORMANCE, DISPLAY, PERFORMANCE, PRODUCTION, MANUFACTURE, MARKETING, SHIPPING, ADVERTISEMENT, LABELING, PROMOTION, OR OTHER DISTRIBUTION OF THE LICENSED SOFTWARE BY LICENSEE OR ANY OTHER PERSON OR ENTITY WILL BE FREE FROM INFRINGEMENT OR MISAPPROPRIATION OF ANY PATENT, COPYRIGHT, TRADEMARK, OR OTHER RIGHTS OF ANY THIRD PARTY.

Section 3.04   Damages Exclusion / Limitation of Remedies. LICENSEE ASSUMES THE ENTIRE RISK AS TO PERFORMANCE OF THE LICENSED SOFTWARE.   IN NO EVENT SHALL UNIVERSITY ITS CURRENT OR FORMER CURATORS,   OFFICERS, EMPLOYEES, AND AFFILIATES BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES OF ANY KIND, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT OR IN TORT, INCLUDING NEGLIGENCE OR OTHERWISE, AND INCLUDING ECONOMIC DAMAGE OR INJURY TO PROPERTY AND LOST PROFITS, ATTORNEYS' AND EXPERTS' FEES, REGARDLESS OF WHETHER UNIVERSITY MAY BE ADVISED, MAY HAVE OTHER REASON TO KNOW, OR IN FACT SHALL KNOW OF THE POSSIBILITY, INCLUDING BUT NOT LIMITED TO ALL CLAIMS ARISING OUT OF THIS AGREEMENT, ALL USE OF THE LICENSED   SOFTWARE,   OR   WITH   RESPECT   TO   THE   INSTALLATION, IMPLEMENTATION, USE, INABILITY TO USE, OR OPERATION OF THE LICENSED SOFTWARE. WITHOUT LIMITING THE FOREGOING, UNIVERSITY SHALL HAVE NO LIABILITY WITH RESPECT TO ANY OPEN SOFTWARE INCLUDED IN THE LICENSED SOFTWARE.

Section 3.05   For the avoidance of doubt, nothing in this AGREEMENT shall be construed as:
   a.   a warranty or representation by UNIVERSITY as to the validity or scope of any LICENSED COPYRIGHTS in the LICENSED SOFTWARE;

b. a warranty or representation by UNIVERSITY that the reproduction, marketing, distribution, public display, public performance, production, manufacture, shipping, modification, use, importation, sale, rental, lease, lending, license, advertisement, labeling, promotion, publication or sublicensing of the LICENSED SOFTWARE will be free from infringement of intellectual property rights of third parties;

c. a representation or warranty that the LICENSED SOFTWARE does not contain OPEN SOFTWARE;

d. an obligation by UNIVERSITY to bring or prosecute actions or suits against third parties for copyright infringement; or

e. an obligation to furnish any training, technical information, documentation, or know-how, or to furnish any services.

Article IV.   INFRINGEMENT AND ENFORCEMENT OF INTELLECTUAL PROPERTY

Section 4.01   <u>University Ownership and University Control of Copyrights.</u> UNIVERSITY shall have full, complete, and sole ownership of any pending copyright applications and registered copyrights included in the LICENSED COPYRIGHTS. UNIVERSITY shall, at its discretion, prepare, file, prosecute and maintain any copyright applications or registered copyrights with the U.S. Copyright Office.

Section 4.02   <u>Notifications.</u> LICENSEE shall promptly inform UNIVERSITY in writing of any alleged infringement of the LICENSED COPYRIGHTS by a third party and shall provide UNIVERSITY with any available evidence thereof. LICENSEE shall not notify a third party of such infringement of the LICENSED COPYRIGHTS.

Article V. CONFIDENTIALITY

Section 5.01   <u>Confidential Information Defined.</u> "CONFIDENTIAL INFORMATION" means any and all information not generally known to the public, whether or not patentable or susceptible to any other form of legal protection, that is identified or designated by UNIVERSITY as being confidential or which, in light of the circumstances under which it was disclosed, whether oral or written, is reasonably apparent to LICENSEE to be considered confidential or proprietary by UNIVERSITY, including but not limited to invention disclosures, non-public patent prosecution information, including but not limited to concepts, designs, processes, specifications, schematics, equipment, processing, techniques, technical information, drawings, diagrams, software (including the SOURCE CODE for the LICENSED SOFTWARE, except for any OPEN SOFTWARE therein), hardware, control systems, research, test results, manuals, trade secrets, commercialization studies, market studies, business plans received by LICENSEE from UNIVERSITY except to the extent LICENSEE can prove by written documentation that such information:

(i) was in the public domain at the time of disclosure;

(ii) later became part of the public domain through no act or omission or breach of this AGREEMENT by LICENSEE, its employees, agents, successors or assigns;

(iii) was lawfully disclosed to LICENSEE by a third party having the right to make such disclosure; or

(iv) was already known by LICENSEE at the time of disclosure; or

(v) was independently developed by LICENSEE without the aid, use or application of CONFIDENTIAL INFORMATION received from UNIVERSITY and such independent development can be properly demonstrated by LICENSEE; or

(vi) is required by law or regulation to be disclosed.

Specific information shall not be deemed to be within the foregoing exceptions merely because it is embraced by more general information within the exceptions. In addition, any combination of the features shall not be deemed to be within the foregoing exception merely because individual features may be within the exceptions.

Section 5.02   Restrictions on Disclosure and Use.   LICENSEE agrees that (a) all CONFIDENTIAL INFORMATION shall remain the exclusive property of UNIVERSITY, (b) LICENSEE shall receive and hold the CONFIDENTIAL INFORMATION in strict confidence, (c) LICENSEE shall use the CONFIDENTIAL INFORMATION only for the purposes of this AGREEMENT, and (d) LICENSEE shall not disclose the CONFIDENTIAL INFORMATION to third parties without the prior written consent of UNIVERSITY, and (e) LICENSEE shall protect the CONFIDENTIAL INFORMATION to the same extent that it protects its own trade secrets and confidential information, but in no less than commercially reasonable care.

Section 5.03   Legally Required Disclosures.   In the event that LICENSEE receives a request or is required by deposition, interrogatory, request for documents, subpoena, civil investigative demand, or similar process to disclose any or part or the CONFIDENTIAL INFORMATION, LICENSEE agrees to (a) immediately notify UNIVERSITY in writing of the existence, terms, and circumstances surrounding such a request or requirement and (b) assist UNIVERSITY in seeking a protective order or other appropriate remedy satisfactory to UNIVERSITY. In the event that such a protective order or other remedy is not obtained, (a) LICENSEE may disclose that portion of the CONFIDENTIAL INFORMATION which it is legally required to disclose, (b) LICENSEE and shall exercise reasonable efforts to obtain assurance that confidential treatment will be accorded the CONFIDENTIAL INFORMATION to be disclosed and (c) LICENSEE shall give written notice to UNIVERSITY of the information to be disclosed as far in advance of its disclosure as practical.

Section 5.04   Sunshine Law.   LICENSEE acknowledges that UNIVERSITY is subject to the Missouri Sunshine Act, 610 RSMo, and that all agreements, plans, reports, and other information marked "Confidential" shall be treated by UNIVERSITY as confidential only to the extent permitted by law.

Section 5.05   Survival.   LICENSEE's obligations of confidentiality and non-use shall exist during the term of this AGREEMENT and for so long as such CONFIDENTIAL INFORMATION remains confidential in accordance with Section 5.01.

Article VI. TERM AND TERMINATION

Section 6.01 <u>Term.</u> This AGREEMENT shall become effective upon the EFFECTIVE DATE and, unless sooner terminated in accordance with any of the provisions herein, shall remain in full force for a period of five (5) years unless agreed by mutual written consent of the PARTIES.

Section 6.02 <u>Right to Terminate.</u> This AGREEMENT is effective until terminated by LICENSEE or UNIVERSITY. LICENSEE's rights under this AGREEMENT shall terminate automatically by: (a) written notice from UNIVERSITY; or (b) without notice from UNIVERSITY if LICENSEE fails to comply with any term(s) of this AGREEMENT. LICENSEE may terminate this AGREEMENT by removing and destroying all copies of the LICENSED SOFTWARE and giving written notice to UNIVERSITY. Upon termination of this AGREEMENT, LICENSEE shall cease all use of the LICENSED SOFTWARE, and destroy all copies, full or partial, of the LICENSED SOFTWARE.

Section 6.03 <u>Survival.</u> Termination of this AGREEMENT for any reason shall not release either PARTY from any obligation theretofore accrued. All provisions of this AGREEMENT that would reasonably be expected to survive the termination or expiration of this AGREEMENT shall do so, Article III (all—indemnity, limitations on liability, disclaimer of warranties and damages), Article V (all--confidentiality), Section 2.04 (University ownership of licensee enhancements), Section 2.06 (governmental rights), and Article VII (general -- all) survive the termination of this AGREEMENT.

Article VII. GENERAL

Section 7.01 <u>University Name.</u> LICENSEE agrees not to identify UNIVERSITY in any promotional advertising or other promotional materials to be disseminated to the public or any portion thereof or to use the name of any UNIVERSITY faculty member, employee, or student or any trademark, service mark, trade name, or symbol of UNIVERSITY, without UNIVERSITY'S prior written consent.

Section 7.02 <u>Press.</u> Notwithstanding Section 7.01, UNIVERSITY may disclose the existence of this AGREEMENT.

Section 7.03 <u>Assignment.</u> This AGREEMENT is binding upon and shall inure to the benefit of UNIVERSITY, its successors and assigns. However, this AGREEMENT shall be personal to LICENSEE, and it is not assignable by LICENSEE to any other person or entity without the prior written consent of UNIVERSITY, such consent to be in UNIVERSITY's sole discretion.

Section 7.04 <u>Consulting.</u> In the event LICENSEE wishes to engage the authors as consultants, such an arrangement shall be separate and apart from this AGREEMENT, but shall be in keeping with UNIVERSITY'S policy on consulting and ownership of intellectual property developed by UNIVERSITY employees.

Section 7.05 <u>Notices.</u> Any payment, notice, or other communication given under this AGREEMENT shall be in writing and shall be deemed delivered when sent by certified first class mail, registered mail, or overnight courier, or by facsimile, provided that a copy of such facsimile

is promptly sent by certified first class mail, registered or overnight courier, addressed to the PARTIES as follows (or at such other addresses as the PARTIES may notify each other in writing):

If to UNIVERSITY:
Office of Technology Management & Industry Relations
University of Missouri
Missouri Innovation Center
1601 S. Providence Road
Suite 124
Columbia, Missouri 65211

If to LICENSEE:
_____
_____
_____

Section 7.06   No Other Relationship. In assuming and performing the respective obligations under this AGREEMENT, LICENSEE and UNIVERSITY are each acting as independent parties and neither shall be considered or represent itself as a joint venture, partner, agent or employee of the other.

Section 7.07   No Waiver. None of the terms, covenants, and conditions of this AGREEMENT can be waived except by the written consent of the PARTY waiving compliance. A failure by one of the PARTIES to this AGREEMENT to assert its rights for or upon any breach or default of this AGREEMENT shall not be deemed a waiver of such rights nor shall any such waiver be implied from acceptance of any payment. No such failure or waiver in writing by any one of the PARTIES hereto with respect to any rights, shall extend to or affect any subsequent breach or impair any right consequent thereon.

Section 7.08   Injunctive Relief.   LICENSEE acknowledges that UNIVERSITY will be irreparably harmed by the unauthorized use of the LICENSED SOFTWARE and, further, that monetary damages may not be a sufficient remedy for such harm. LICENSEE agrees that UNIVERSITY shall be entitled, without waiving any other rights or remedies and without further demonstration of irreparable harm or the inadequacy of monetary damages, to obtain injunctive or other equitable relief in the event of any breach of this AGREEMENT by LICENSEE or by LICENSEE's unauthorized use of the LICENSED SOFTWARE.

Section 7.09   Severability. If any sentence, paragraph, clause or combination of the same is found by a court of competent jurisdiction to be in violation of any applicable law or regulation, or is unenforceable or void for any reason whatsoever, such sentence, paragraph, clause or combinations of the same shall be severed from the AGREEMENT and the remainder of the AGREEMENT shall remain binding upon the PARTIES.

Section 7.10   Headings. The headings of the paragraphs of this AGREEMENT are inserted for convenience only and shall not constitute a part hereof.

Section 7.11   Choice of Law and Venue. This AGREEMENT shall be construed, interpreted, and applied in accordance with the laws of the State of Missouri. Any action to enforce the provisions of the AGREEMENT shall be brought in a court of competent jurisdiction and proper venue in the State of Missouri. LICENSEE irrevocably submits to the jurisdiction of such courts in any such action or proceeding. LICENSEE further irrevocably and unconditionally waives any objection to the laying of venue of any suit, action or proceeding in such courts and irrevocably waives and agrees not to plead or claim in any court that such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.

Section 7.12   Sovereign Immunity. The PARTIES agree that nothing in this AGREEMENT is intended or shall be construed as a waiver, either express or implied, of any of the immunities, rights, benefits, defenses or protections provided to UNIVERSITY under governmental or sovereign immunity laws from time to time applicable to UNIVERSITY.

Section 7.13   Counterparts. This AGREEMENT may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute but one and the same instrument.

Section 7.14   Entire Agreement. This AGREEMENT constitutes the entire and only agreement between the PARTIES for LICENSED COPYRIGHTS and all other prior negotiations, representations, agreements, and understandings are superseded hereby. No agreements altering or supplementing the terms hereof may be made except by a written document signed by both PARTIES.

IN WITNESS WHEREOF, the PARTIES hereto have executed this AGREEMENT in duplicate originals by their duly authorized officers or representatives.

THE CURATORS OF THE   LICENSEE
UNIVERSITY OF MISSOURI

BY: _____   BY: _____

NAME: NAME:

TITLE: TITLE:

DATE _____   DATE _____

APPENDIX A

Contents

This APPENDIX contains licensing information relating to the use of OPEN SOFTWARE with or within the LICENSED SOFTWARE. Any terms, conditions, or restrictions on OPEN SOFTWARE included within the LICENSED SOFTWARE that are not included within the original OPEN SOFTWARE licenses are offered and imposed by UNIVERSITY alone. The authors, licensors, and distributors of the OPEN SOFTWARE disclaim all express or implied conditions, representations, and warranties relating to the OPEN SOFTWARE and any liability arising from use and distribution of the OPEN SOFTWARE.

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Python 3.5.1

https://www.python.org/
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