
COMMERCIAL SOFTWARE LICENSE AGREEMENT NUMBER

[REDACTED]

BETWEEN
BATTELLE MEMORIAL INSTITUTE
AND

[NAME OF LICENSEE]

[month/year]

SAMPLE ONLY

COMMERCIAL SOFTWARE LICENSE AGREEMENT

THIS AGREEMENT made and entered into at Richland, Washington, and effective the date affixed hereto by the party last signing this Agreement, by and between [Company], having its principal place of business in [City, State], herein called "LICENSEE", and Battelle Memorial Institute, having a place of business in Richland, Washington, herein called "BATTELLE".

WHEREAS, BATTELLE is an incorporated charitable trust exempt from federal income taxes under Section 501(c)(3) of the United States Internal Revenue Code; and

WHEREAS, LICENSEE desires the right to use certain BATTELLE software in its business and for services to others.

NOW THEREFORE in consideration of the mutual covenants herein contained and intending to be legally bound hereby, the parties agree as follows:

1. DEFINITIONS

As used herein, the following terms shall have the meanings set forth below:

- A. SOFTWARE means Version 7 of the Facility Energy Decision Screening Software (FEDS), program (BATTELLE IPID 11149-E) in executable code in electronic format including DOCUMENTATION. No other version of the SOFTWARE shall be included under this Agreement and no obligation to provide any other version is assumed by BATTELLE unless specifically identified herein.
- B. OBJECT CODE means computer software programs, assembled or compiled substantially or entirely in binary form, which are readable and usable by computer equipment, but not generally readable by humans without reverse assembly, reverse-compiling or reverse engineering.
- C. DERIVATIVE WORK means a work that is based on one or more pre-existing versions of the SOFTWARE and that, if prepared without BATTELLE's permission, would constitute copyright infringement.
- D. DOCUMENTATION means SOFTWARE user manuals and related information, if any, as provided by BATTELLE.
- E. The word "use" means any form of utilization of SOFTWARE or any portion thereof including, but not limited to, copying the SOFTWARE from any media into equipment for processing, or utilizing the SOFTWARE in printed form.

[Licensee]

[Date]

- F. END USER means a party to whom LICENSEE provides a copy of the SOFTWARE object code under the terms of a separate END USER license agreement, and parties who benefit directly from use of the SOFTWARE by LICENSEE on behalf of such parties.
- G. GROSS SALES means amounts received by LICENSEE for its sales, rental, licensing, service fees or other disposition or use of LICENSED PRODUCTS and LICENSED SERVICES.
- H. LICENSED FIELD means all fields of use.
- I. LICENSED TERRITORY means worldwide.
- J. LICENSED PRODUCTS means the SOFTWARE, DOCUMENTATION and DERIVATIVE WORKS in any form transferred by LICENSEE to END USERS.
- K. LICENSED SERVICES means LICENSEE using LICENSED PRODUCTS to provide services to third parties for which payment is received separate from any END USER license fee.

2. LICENSE GRANT

- A. BATTELLE hereby grants to LICENSEE a nonexclusive license under any BATTELLE copyrights, trademarks, or any other BATTELLE intellectual property rights necessary to reproduce, use, sell, license and distribute LICENSED PRODUCTS in the LICENSED FIELD and the LICENSED TERRITORY, and to provide LICENSED SERVICES.
- B. The license granted pursuant to Paragraph A hereof is subject to any rights the Government of The United States of America may presently have or may assert in the future for any reason. As to data produced with Government funding, the Government is granted for itself and others acting on its behalf a nonexclusive, paid-up, irrevocable worldwide license in this data to reproduce, prepare derivative works, and perform publicly and display publicly, by or on behalf of the Government. At the conclusion of a five (5) year period from which BATTELLE was granted permission to assert statutory copyright, October 31, 2019, the Government may be granted for itself and others acting on its behalf a nonexclusive, paid-up, irrevocable, worldwide license in this data to reproduce, prepare derivative works, distribute copies to the public, perform publicly and display publicly, and to permit others to do so. The specific term of the license can be identified by inquiry made to BATTELLE or DOE. NEITHER THE UNITED STATES NOR THE UNITED STATES DEPARTMENT OF ENERGY, NOR ANY OF THEIR EMPLOYEES, MAKES ANY WARRANTY, EXPRESS OR IMPLIED OR ASSUMES ANY LEGAL LIABILITY OR RESPONSIBILITY FOR THE ACCURACY, COMPLETENESS OR USEFULNESS OF ANY DATA, APPARATUS, PRODUCT, OR PROCESS DISCLOSED, OR REPRESENTS THAT ITS USE WOULD NOT INFRINGE PRIVATELY OWNED RIGHTS.

[Licensee]

[Date]

- C. The license granted to the Government in Paragraph B above shall extend to subsequent integer versions of version 7 the SOFTWARE funded by the Government licensed hereunder.
- D. BATTELLE reserves for itself and its affiliates the right to reproduce and use the SOFTWARE, DERIVATIVE WORKS, and DOCUMENTATION for research, development, and demonstration purposes, and to license the SOFTWARE in other fields of use or territories not exclusively licensed herein.
- E. The SOFTWARE, DERIVATIVE WORKS, and DOCUMENTATION shall be owned by and remain the property of BATTELLE, and LICENSEE shall not receive proprietary rights to said SOFTWARE, DERIVATIVE WORKS, and DOCUMENTATION by virtue of this Agreement, except as specified herein.
- F. LICENSEE shall and hereby does grant to BATTELLE a license for use by BATTELLE on behalf of itself and others of any and all modifications and new SOFTWARE developments it makes to the SOFTWARE, whether or not considered DERIVATIVE WORKS.
- G. So long as this Agreement is still in effect, prior to the conclusion of each five (5) year period during which BATTELLE was granted permission by DOE to assert statutory copyright in the government funded SOFTWARE, BATTELLE shall request permission from DOE to assert statutory copyright in such SOFTWARE for an additional five (5) year period. BATTELLE represents and warrants that it shall use best efforts to request and obtain such permission from the DOE to assert statutory copyright in such SOFTWARE for an additional five (5) year period and when BATTELLE receives such permission from the DOE, the licenses granted in this Article 2 shall automatically extend for an additional five (5) year period.

3. RESPONSIBILITIES

- A. LICENSEE shall expend commercially reasonable financial resources to market, distribute, and support LICENSED PRODUCTS subject to this Agreement. BATTELLE may review at LICENSEE's request marketing and advertising material regarding the LICENSED PRODUCTS prepared by LICENSEE.
- B. LICENSEE will provide maintenance and END USER operational support/service for the LICENSED PRODUCTS using trained support specialists. This will include telephone consultation END USER support providing full operational assistance with problems END USERS may experience in both installing LICENSED PRODUCTS and in day-to-day operation.
- C. LICENSEE will provide all necessary training to END USERS.

[Licensee]

[Date]

- D. LICENSEE agrees to provide BATTELLE a copy of its standard license agreement for END USERS. LICENSEE shall require that each END USER to whom a copy of LICENSED PRODUCTS is licensed execute an END USER license agreement acceptable to BATTELLE, which shall obligate such END USER to maintain the proprietary nature of the LICENSED PRODUCTS.
- E. BATTELLE shall provide one set of DOCUMENTATION for the SOFTWARE in mutually agreed upon format. Such DOCUMENTATION will be provided without any obligation on BATTELLE's part to provide additional DOCUMENTATION.
- F. Upon fourteen (14) days' notice by LICENSEE, BATTELLE shall permit LICENSEE or its duly authorized agent to inspect BATTELLE Technical Information related to the SOFTWARE if any, limited to flow charts, program documentation, specifications, and program architecture.
- G. BATTELLE may deliver to LICENSEE enhancements to the SOFTWARE and related DOCUMENTATION it develops if any, and such enhancements shall be licensed under the terms of this Agreement.

4. LICENSE FEE

LICENSEE shall pay to BATTELLE the nonrefundable sum of Five Thousand United States Dollars (\$5,000 US) at the time of execution of this Agreement.

5. ROYALTIES

- A. LICENSEE shall pay to BATTELLE a royalty of ten percent (10%) of the GROSS SALES of LICENSED PRODUCTS and LICENSED SERVICES, from licensing of the LICENSED PRODUCTS to END USERS and providing LICENSED SERVICES in the LICENSED FIELD and the LICENSED TERRITORY. Such royalty shall not be collected or paid to BATTELLE for the distribution of any LICENSED PRODUCTS to the U.S. Government.
- B. Royalties shall apply to all LICENSED PRODUCTS copies distributed, less returns, including copies licensed as part of imbedded turn-key systems and copies used for commercial purposes by LICENSEE.
- C. If as a result of litigation financed by LICENSEE, damages, royalties, or other consideration is received by LICENSEE, BATTELLE shall receive the greater of: (i) a royalty as set forth above as applied to the level of infringing sales determined by a court or as a result of settlement of such claims, or (ii) twenty-five percent (25%) of all monies received by LICENSEE, after LICENSEE deducts all reasonable out-of-pocket costs of prosecuting such litigation.

[Licensee]

[Date]

- D. If this Agreement is for any reason terminated before all of the earned royalties herein provided for have been paid, LICENSEE shall immediately pay to BATTELLE any remaining unpaid balance of royalties earned prior to termination even though the due date provided in Article 8 has not been reached.

6. ANNUAL LICENSE MAINTENANCE FEE

- A. LICENSEE shall pay to BATTELLE an Annual License Maintenance Fee, which shall be offset by earned royalties paid to BATTELLE for the calendar year. LICENSEE shall pay to BATTELLE royalties as stated in Article 5, but in no event shall royalties for a calendar year be less than the Annual License Maintenance Fee of Ten Thousand United States Dollars (\$10,000 US). LICENSEE shall pay to BATTELLE on the last day of the following January the amount (if any) required to satisfy the Annual License Maintenance Fee obligation for the preceding calendar year. If LICENSEE does not pay the amount (if any) required to be paid hereunder to satisfy the Annual License Maintenance Fee obligation, BATTELLE may, in its sole discretion, elect to terminate this Agreement or waive this obligation in whole or in part.
- B. If this Agreement is terminated for any reason, except for breach of contract by BATTELLE, during any year that any Annual License Maintenance Fee obligations are due to BATTELLE, upon termination, LICENSEE shall immediately pay to BATTELLE the proportionate amount of the Annual License Maintenance Fee owed to BATTELLE that represents that portion of the year elapsed prior to termination. For example, if LICENSEE terminates without breach by BATTELLE after the expiration of three (3) months of the new year, LICENSEE shall pay to BATTELLE one-fourth ($\frac{1}{4}$) of the yearly Annual License Maintenance Fee due for that year.

7. SUBLICENSING

No right is granted to sublicense to any third party other than END USERS.

8. REPORTS AND PAYMENTS

- A. Not later than the last day of each January, April, July and October, LICENSEE shall furnish to BATTELLE a written statement setting forth the volume of all LICENSED PRODUCTS distributed or transferred, including all SOFTWARE sold for which no royalty is due under Paragraph 5A or 5B above; and LICENSEE shall also include a description of LICENSED SERVICES provided to third parties. Such statement shall include customer names (subject to confidentiality obligations and other third party restrictions; if such restrictions apply, LICENSEE shall uniquely identify customers through some other means), and the amount due to BATTELLE pursuant to Article 5 for the quarterly periods ended the last days of the preceding December, March, June and

[Licensee]

[Date]

September, respectively, and LICENSEE shall pay to BATTELLE all amounts due to BATTELLE. Such amounts are due at the dates the statements are due. If no amount is accrued during any quarterly period, a written statement to that effect shall be furnished. All written statements provided to BATTELLE by LICENSEE shall be executed by an individual having actual authority to bind LICENSEE.

- B. Not later than the last day of each January LICENSEE shall provide BATTELLE with a high-level annual report for the preceding calendar year describing usage of LICENSED PRODUCTS and energy savings data it has gathered, along with any other data and conclusions LICENSEE may have showing the impact of LICENSED PRODUCTS on its customers' businesses.
- C. Royalties earned on sales occurring in any country outside the United States shall not be reduced by LICENSEE for any taxes, fees, or other charges imposed by the government of such country on the payment of royalty income.
- D. LICENSEE shall allow BATTELLE or a designated representative to examine the records of distribution of LICENSED PRODUCTS and provision of LICENSED SERVICES during LICENSEE's normal business hours at LICENSEE's place of business, at a mutually acceptable time, not to exceed thirty (30) days from date of request and not more than one (1) time in any calendar year.
- E. Payments provided for in this Agreement, shall, when overdue, bear interest at a rate per annum equal to the lesser of (i) the highest amount permitted by law, or (ii) three percent (3%) in excess of the "Prime Rate" published by The Wall Street Journal at the time such payment is due until payment is received by BATTELLE.
- F. All payments made to BATTELLE under this Agreement are nonrefundable.
- (i) If payments are made by check, please submit payment in U.S. funds to:
- Battelle
Attn: CASHIER
P.O. BOX 84262
Seattle, WA 98124-5691
- (ii) If payments are made by wire transfer, such transfers shall be in accordance with the following wire instructions; unless and until written notice is provided by BATTELLE of a change in the wire instructions. If LICENSEE makes payments to BATTELLE by Electronic Funds Transfers, LICENSEE shall also provide a written report to BATTELLE to the address set forth in Article 23 as required in Paragraph 8A, above, along with a statement indicating that payments have been made by Electronic Funds Transfers. Such payments shall be made to the following account (for international transfers, use Swift Code: USBKUS44IMT):

[Licensee]

[Date]

U. S. Bank of Washington
Account Name: Battelle Memorial Institute
ABA No. 125000105
Account No. 153502962134

9. REPRESENTATIONS

- A. This Agreement is entered into by BATTELLE in its private capacity. It is understood and agreed that the U.S. Government is not a party to this Agreement and in no manner whatsoever shall be liable for nor assume any responsibility or obligation for any claim, cost or damages arising out of or resulting from this Agreement or the subject matter licensed.
- B. (i) NOTHING IN THIS AGREEMENT SHALL BE DEEMED TO BE A REPRESENTATION OR WARRANTY BY BATTELLE, OR THE U.S. GOVERNMENT, OF THE ACCURACY, SAFETY, OR USEFULNESS FOR ANY PURPOSE OF ANY SOFTWARE, DOCUMENTATION, TECHNIQUES, OR PRACTICES AT ANY TIME MADE AVAILABLE BY BATTELLE. LICENSEE RECOGNIZES THAT THE SOFTWARE PROGRAM IS PROVIDED BY BATTELLE ON AN AS-IS BASIS.
- (ii) NEITHER THE U.S. GOVERNMENT NOR BATTELLE NOR ANY AFFILIATED COMPANY OF BATTELLE SHALL HAVE ANY LIABILITY WHATSOEVER TO LICENSEE OR ANY OTHER PERSON INCLUDING CUSTOMERS OF LICENSEE FOR OR ON ACCOUNT OF ANY INJURY, LOSS, OR DAMAGE, OF ANY KIND OR NATURE SUSTAINED BY, OR ANY DAMAGE ASSESSED OR ASSERTED AGAINST, OR ANY OTHER LIABILITY INCURRED BY OR IMPOSED UPON LICENSEE OR ANY OTHER PERSON, ARISING OUT OF OR IN CONNECTION WITH OR RESULTING FROM (1) THE PRODUCTION, USE OR SALE OF THE LICENSED SOFTWARE OR ANY APPARATUS, PRODUCT, OR PROCESS; (2) THE USE OF ANY TECHNICAL INFORMATION, TECHNIQUES, OR PRACTICES DISCLOSED BY BATTELLE; OR (3) ANY ADVERTISING OR OTHER PROMOTIONAL ACTIVITIES WITH RESPECT TO ANY OF THE FOREGOING, AND
- (iii) LICENSEE SHALL HOLD THE U.S. GOVERNMENT, BATTELLE, AND ANY AFFILIATED COMPANY OF BATTELLE, HARMLESS IN THE EVENT THE U.S. GOVERNMENT, BATTELLE, OR ANY AFFILIATED COMPANY OF BATTELLE, IS HELD LIABLE as a result of actions of LICENSEE.
- (iv) Further, LICENSEE agrees to assume the defense of (1) any suit brought against BATTELLE or any affiliated company of BATTELLE resulting from any action of LICENSEE undertaken under this Agreement, and (2) any action brought against LICENSEE or BATTELLE resulting from any action of LICENSEE relating to the LICENSED PRODUCTS.

[Licensee]

[Date]

- C. BATTELLE represents that it has the right to grant all of the rights granted herein, except as to such rights as the Government of the United States of America may have or may assert.
- D. BATTELLE is unaware of any claims that have been, are, or could reasonably be asserted against BATTELLE by third parties with respect to infringement of the copyright or any other type of liability relevant to licensing of the LICENSED PRODUCTS, which have not been disclosed to LICENSEE as of the date of this Agreement.
- E. LICENSEE agrees to use LICENSED PRODUCTS only as provided in this Agreement and agrees not to make LICENSED PRODUCTS available to any third party except to LICENSEE's sales representatives, authorized resellers, manufacturer's representatives and distributors, and to END USERS, as provided herein, without written permission from BATTELLE. LICENSEE shall not authorize others to have access to the source code version of the SOFTWARE or to reverse compile or reverse assemble the object code version of the SOFTWARE in whole or in part. The obligations of this paragraph shall survive termination of this Agreement.
- F. LICENSEE has tested and evaluated the SOFTWARE and DOCUMENTATION. The signing of this Agreement constitutes acceptance by LICENSEE of the SOFTWARE as provided and without change.

10. TERMINATION

- A. LICENSEE may terminate this Agreement at any time upon sixty (60) days' written notice in advance to BATTELLE, but LICENSEE shall thereafter discontinue any use of the LICENSED PRODUCTS.
- B. Except as provided below in Paragraph 10C, if either party shall be in default of any obligation hereunder, the other party may terminate this Agreement by giving Notice of Termination by personal delivery, telefax, electronic mail transmission or by United States mail, express mail, or courier service, with postage or fees prepaid, to the party at fault, specifying the basis for termination. Notice by personal delivery, telefax or electronic mail is deemed to have been given when delivered or transmitted. Notice sent by U.S. mail, express mail or courier service is deemed to have been given when mailed. If within sixty (60) days after the receipt of such Notice of Termination, the party in default shall remedy the condition forming the basis for termination, such Notice of Termination shall cease to be operative, and this Agreement shall continue in full force. If Notice of Termination is given by BATTELLE to LICENSEE for the third time then this grace period shall not be available unless permitted in such third Notice of Termination, and this Agreement shall be finally terminated.

[Licensee]

[Date]

- C. If any report or payment due to BATTELLE is overdue for a third time, then any subsequent Notice of Termination is not subject to the sixty (60) day cure provision of Paragraph 10B.
- D. LICENSEE hereby agrees that, in the event LICENSEE (by its own actions, or the action of any of its shareholders or creditors), (if applicable), files or has filed against it (with an order for relief being entered) a case under the Bankruptcy Code of 1978, as previously or hereafter amended, BATTELLE shall be entitled to relief from the automatic stay of Section 362 of Title 11 of the U.S. Code, as amended, on or against the exercise of the rights and remedies available to BATTELLE and LICENSEE hereby waives the benefits of such automatic stay and consents and agrees to raise no objection to such relief.
- E. Termination of this Agreement shall not extinguish any rights or obligations accrued hereunder at the time of termination; and obligations undertaken independent of the licenses granted under Article 2 shall survive termination to the extent necessary to permit their complete fulfillment or discharge.

11. LITIGATION

- A. LICENSEE shall notify BATTELLE of any suspected infringement of the copyright or the trademark and shall inform BATTELLE of any evidence of such infringement(s).
- B. In the event LICENSEE receives any monies or other consideration from a third party as a result of LICENSEE's rights under this Agreement, BATTELLE shall receive its payment under Article 5 as applied to all such monies or other consideration whether such monies or other consideration are denoted as "royalties", "damages", "release" from prior acts, or any other designation.

12. RECORDS

- A. In addition to the right of inspection provided in Article 8C, above, LICENSEE shall keep accurate records of all operations affecting LICENSEE's duties and obligations hereunder, including but not limited to payment of royalties and fees, and shall permit BATTELLE or its duly authorized agent to inspect all such records and to make copies of or extracts from such records during regular business hours throughout the term of this Agreement and for a period of not less than three (3) years thereafter, but not more than one (1) time in any calendar year and only at a mutually agreed upon date and time not more than thirty (30) days following BATTELLE's request. BATTELLE shall bear its costs to conduct such audit; provided, however, LICENSEE shall reimburse BATTELLE for BATTELLE's and/or its duly authorized agent's actual costs to conduct the audit if as part of the audit it is deemed that LICENSEE has failed to perform its

[Licensee]

[Date]

material obligations under this Agreement (including its underrepresentation of NET SALES and earned royalties in a reporting period by five percent (5%) or more).

- B. If such audit shows an underreporting or underpayment in excess of five percent (5%) in a reporting period as set forth in Paragraph 12A, then LICENSEE shall pay the cost of such audit as set forth in Paragraph 12A, as well as any other additional sum that would have been payable to BATTELLE had LICENSEE reported correctly, plus interest on said sum at the rate set forth and owing in accordance with Paragraph 8E.

13. ASSIGNABILITY

- A. LICENSEE shall not assign any rights under this Agreement not specifically transferable by its terms without the written consent of BATTELLE. BATTELLE may assign its rights hereunder. Upon approval of assignment, LICENSEE shall pay to BATTELLE an assignment fee of Twenty-five Thousand United States Dollars (\$25,000 US).

14. REFORM

- A. The parties agree that if any part, term, or provision of this Agreement shall be found illegal or in conflict with any valid controlling law, the validity of the remaining provisions shall not be affected thereby.
- B. In the event the legality of any provision of this Agreement is brought into question because of a decision by a court of competent jurisdiction of any country in which this Agreement applies, BATTELLE, by written notice to LICENSEE, may revise the provision in question or may delete it entirely so as to comply with the decision of said court.

15. PUBLICITY

LICENSEE agrees that unless required by law, or unless otherwise agreed in advance in writing by BATTELLE, LICENSEE will not use or imply the name "BATTELLE", or any affiliated company of BATTELLE, or "Pacific Northwest National Laboratory", or "PNNL", or associated trademarks, or other trade dress, or use BATTELLE or PNNL reports, for advertising, promotional purposes, raising of capital, recommending investments, or in any way that implies endorsement by BATTELLE or PNNL. However, LICENSEE may publicly disclose the fact that an agreement has been entered into with BATTELLE, including the name of BATTELLE. LICENSEE may disclose in a factual manner that is accurate and not misleading, material facts pertaining to the nature of this Agreement to the extent such disclosure complies with or is required by applicable U.S. Federal and state securities and other laws or the rules and regulations of any public stock exchange, provided that such disclosure does not, in whole or in part, imply any endorsement by BATTELLE or PNNL. LICENSEE further agrees to indemnify and hold BATTELLE, its directors, officers, agents

[Licensee]

[Date]

and employees harmless for any damage, loss, claim or suit arising from or relating to LICENSEE's use of the BATTELLE name.

16. WAIVER AND ALTERATION

- A. The waiver of a breach hereunder may be effected only by a writing signed by the waiving party and shall not constitute a waiver of any other breach.
- B. A provision of this Agreement may be altered only by a writing signed by both parties, except as provided in Article 14, above.
- C. (i) To amend this Agreement in a manner that alters any of BATTELLE's rights or LICENSEE's duties under this Agreement, LICENSEE shall provide BATTELLE with a written request to amend this Agreement at least thirty (30) calendar days before BATTELLE's rights or LICENSEE's duties accrue. LICENSEE's request shall: (1) specifically identify the clauses to be amended; (2) identify the requested amendments; and (3) provide BATTELLE with documentary evidence that the requested amendments are in BATTELLE's and LICENSEE's best interests.
- (ii) If BATTELLE determines that any or all of LICENSEE's requested amendments are in the Parties' best interests, then the Parties shall initiate good faith negotiations to address the amendments consistent with BATTELLE's determination. Such negotiations shall conclude within ninety (90) days after the date BATTELLE actually receives LICENSEE's request to amend the Agreement as set forth above in Paragraph 16C(i) (the "Renegotiation Period"). The Parties shall enter into these negotiations with the understanding that they may not reach mutually acceptable terms within the Renegotiation Period. BATTELLE's rights shall continue to accrue and LICENSEE's obligations shall remain in force during the Renegotiation Period.
- (iii) If BATTELLE and LICENSEE agree to mutually acceptable terms during the Renegotiation Period, then such renegotiated terms shall be reflected in a formal amendment of this Agreement executed by both BATTELLE and LICENSEE and shall apply to any of BATTELLE's rights or LICENSEE's obligations that accrue during the Renegotiation Period or at any time thereafter during the remaining term of this Agreement.
- (iv) If BATTELLE and LICENSEE do not agree to mutually acceptable terms during the Renegotiation Period then BATTELLE may enforce the original terms and conditions of this Agreement or rely upon other remedies as permitted by the terms of this Agreement.
- D. LICENSEE acknowledges that BATTELLE, by virtue of its status as an incorporated charitable trust exempt from federal income taxes under Section 501(c)(3) of the

[Licensee]

[Date]

Internal Revenue Code, cannot renegotiate any terms of this Agreement in a manner which may be construed as creating an impermissible private benefit for, or private inurement to, LICENSEE.

17. MARKING

- A. LICENSEE shall place in a conspicuous location on all copies of the SOFTWARE and DOCUMENTATION the following copyright notice:

Copyright © 2014 Battelle Memorial Institute

- B. LICENSEE shall place on all copies of the SOFTWARE and DOCUMENTATION, in the format specified below, the following statement:

NOTICE: These data were produced by Battelle Memorial Institute (BATTELLE) under Contract No. DE-AC05-76RL01830 with the U.S. Department of Energy (DOE). For a five year period from October 31, 2014, the Government is granted for itself and others acting on its behalf a nonexclusive, paid-up, irrevocable worldwide license in this data to reproduce, prepare derivative works, and perform publicly and display publicly, by or on behalf of the Government. There is provision for the possible extension of the term of this license. Subsequent to that period or any extension granted, the Government is granted for itself and others acting on its behalf a nonexclusive, paid-up, irrevocable worldwide license in this data to reproduce, prepare derivative works, distribute copies to the public, perform publicly and display publicly, and to permit others to do so. The specific term of the license can be identified by inquiry made to BATTELLE or DOE. NEITHER THE UNITED STATES NOR THE UNITED STATES DEPARTMENT OF ENERGY, NOR BATTELLE, NOR ANY OF THEIR EMPLOYEES, MAKES ANY WARRANTY, EXPRESS OR IMPLIED, OR ASSUMES ANY LEGAL LIABILITY OR RESPONSIBILITY FOR THE ACCURACY, COMPLETENESS, OR USEFULNESS OF ANY DATA, APPARATUS, PRODUCT, OR PROCESS DISCLOSED, OR REPRESENTS THAT ITS USE WOULD NOT INFRINGE PRIVATELY OWNED RIGHTS.

18. IMPLEMENTATION

Each party shall execute any instruments reasonably believed by the other party to be necessary to implement the provisions of this Agreement.

19. CONSTRUCTION

- A. This Agreement shall be construed in accordance with the laws of the State of Washington of The United States of America and in the English language, and any action brought to enforce any provision or obligation hereunder shall be brought in a court of competent jurisdiction in the State of Washington.

[Licensee]

[Date]

B. The titles used herein are for identification purposes only and are not to be used to limit the meaning of any provision hereof.

20. EXPORTATION OF TECHNICAL INFORMATION

LICENSEE agrees not to export from The United States of America, or re-export directly or indirectly, LICENSED PRODUCTS (or the direct product thereof) furnished to LICENSEE either directly or indirectly by BATTELLE, unless permitted by the laws of The United States of America, under either a validated license or an appropriate general license. LICENSEE agrees to indemnify, defend and hold harmless BATTELLE, its officers, agents and employees from all liability involving the violation of such export regulations, either directly or indirectly, by LICENSEE.

21. NO PRESUMPTION

No provision of this Agreement shall be interpreted for or against any party to this Agreement on the basis that that party was the drafting party of the provision and no presumption or burden of proof shall arise disfavoring or favoring any party by virtue of the authorship of any of the provisions of this Agreement.

22. ENTIRE UNDERSTANDING

This Agreement represents the entire understanding between the parties, and supersedes all other agreements, express or implied, between the parties concerning LICENSED PRODUCTS. This Agreement shall not be modified except in writing, signed by both parties.

23. ADDRESSES

For the purpose of all written communications between the parties, their addresses shall be:

[LICENSEE NAME]
Attention [Principal Contact]

[Street Address]

[City, State, ZIP/other]

Telephone: [REDACTED]

Email:

Battelle Memorial Institute
Technology Deployment and Outreach
Attention PNNL IP Compliance Office
P.O. Box 999, Mailstop K1-71
902 Battelle Blvd.

[Licensee]

[Date]

Richland, WA 99352
Telephone: (509) 375-2075
Fax: (509) 372-4589
Email: complianceoffice@pnl.gov

or any other addresses of which either party shall notify the other party in writing.

24. EXPIRATION

The offer to execute this Agreement shall expire if this Agreement is not signed by both parties and returned to BATTELLE on or before [Date no less than 10 business days following delivery of final Agreement to LICENSEE].

IN WITNESS WHEREOF the parties have caused this Agreement to be executed by their duly authorized officers on the respective dates and at the respective places.

BATTELLE MEMORIAL INSTITUTE

[LICENSEE]

BY	_____	BY	_____
PRINTED	Peter C. Christensen	PRINTED	_____
NAME	_____	NAME	_____
	Manager, Technology		_____
TITLE	Commercialization & Deployment	TITLE	_____
	_____		_____
DATE	_____	DATE	_____

[Licensee]

[Date]

ATTACHMENT 1

ROYALTY REPORT TO BATTELLE

From: [LICENSEE] - Agreement Number
 (Company Name and License Agreement No.)

Reporting Period:

From _____ To _____ (3 Month Period Ending March 31, June 30, September 30 and December 31, to be Reported by the Following April 30, July 31, October 31, and January 31 respectively).

Include a copy of the published price list for LICENSED PRODUCTS.

(i) GROSS SALES of LICENSED PRODUCTS	
Number of LICENSED PRODUCTS	_____
GROSS SALES Amount	_____
	\$

	X 0.1
Royalty Due	_____
	\$

(ii) GROSS SALES of LICENSED SERVICES	
Number of third party customers of LICENSED SERVICES	_____
GROSS SALES Amount	_____
	\$

	X 0.1
Royalty Due	_____
	\$

TOTAL Royalties Due (i) + (ii)	_____
	\$
	=====

Signed by: _____

Printed Name: _____

Date: _____

Telephone: _____

Email: _____