

## SOFTWARE LICENSE AGREEMENT *UC-SDRL Research Software*

This Agreement is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ (the "Effective Date"), by and between the University of Cincinnati, having an office at 51 Goodman Dr., Suite 240, Cincinnati, Ohio 45221 0829 ("UC") and \_\_\_\_\_ having an office at \_\_\_\_\_ ("Licensee").

**WHEREAS**, UC is the owner of certain right, title and interest in the computer program(s) entitled UC-SDRL RESEARCH SOFTWARE (the "Program"), specifically including X-Modal, and has the right to grant licenses to use the Program, and wishes to have this Program utilized in the public interest; and

**WHEREAS**, Licensee wishes to obtain a nonexclusive license to use the Program and certain updates upon the terms and conditions hereinafter set forth; and

**WHEREAS**, UC intends this Agreement to confer a license for end use only, with UC retaining to its own use all ownership rights in the Program, including, but not limited to, patent rights, copyrights and licensing rights therein, and further intends that no license, expressed or implied, for other than herein set out shall be transferred hereby; and

**NOW THEREFORE**, in consideration of the foregoing and of the mutual covenants, terms and conditions herein contained, the parties agree as follows:

### Article 1. Grant

**1.1.** UC hereby grants to Licensee a nonexclusive right to use the Program for Licensee's internal purposes only as described below and subject to **Appendix A**, which is attached hereto and incorporated herein, without any rights whatsoever to distribute; the use of the Program shall be further restricted to Licensee's own personnel for use only on the Licensee's computer(s) authorized according to the procedure described in **Appendix B**. Said rights granted shall herein be the "Rights Granted."

**1.1.1.** A **Single User License** shall mean the Rights Granted to use the Program on the one (1) computer identified by the process defined in **Appendix B**. Further, Licensee shall have the right to receive updates to the Program developed by UC during the Term.

**1.1.2.** An **Educational User License** shall mean the Rights Granted to use the Program on multiple computers, but no more than thirty-two (32), as authorized according to the

process described in **Appendix B** located at the Licensee's organization; provided however that the Licensee must be a university or other institution of higher education or an organization of the type described in Section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under Section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute including government agencies or the foreign equivalent. Use on more than thirty-two (32) computers, requires an additional license. Further, Licensee shall have the right to receive updates to the Program developed by UC during the Term.

- 1.1.3.** A **Multiple-User License** shall mean the Rights Granted to use the Program on multiple computers, but no more than sixteen (16), as authorized according to the process described in **Appendix B**. Use on more than sixteen (16) computers, requires an additional license. Further, Licensee shall have the right to receive updates to the Program developed by UC during the Term.
- 1.1.4.** A **Source Code Access License** shall mean the right to use the Program on an unlimited number of computers within the Licensee's organization. Further, UC also grants the Licensee a nonexclusive right to:
  - 1.1.4.1.** Access and use the source code, in the form of text files containing java code, C code, and Matlab® m-files, of the Program (in combination with the Program shall herein be the Complete Program; provided, however, the Complete Program shall not include those portions which implement, or are necessary to support, the Program's security mechanisms and are identified with each source code release);
  - 1.1.4.2.** Generate and distribute license activation (security) files for internal use by the Licensee;
  - 1.1.4.3.** Use in any manner the Complete Program should UC discontinue development and support of the Program; and
  - 1.1.4.4.** Receive updates to the Complete Program developed by UC during the Term.
- 1.2.** In the context of this Agreement, "use" shall include the copying of any portion of the instructions or data in the Program, and any material associated therewith, from storage units or media into the CPU's or other central processing units identified by the Licensee and authorized according to the process described in **Appendix B**.
- 1.3.** Licensee agrees that the Program shall not be used as the basis of a commercial or hardware product or otherwise transferred to a third party and that the Program shall not be rewritten in another computer language or otherwise adapted to circumvent the need for obtaining a license from UC for use of the Program other than as specified by this Agreement, including any portion of the Program which has not been provided as source code. Furthermore the Licensee is specifically prohibited from circumventing the Program's security mechanism or otherwise

transferring or releasing internal modifications that do not include the Program's security mechanisms.

## **Article 2. Distribution/Maintenance Fee**

- 2.1.** In consideration of the Rights Granted herein, Licensee agrees to pay to UC, upon execution of this Agreement, the fee as specified in **Appendix A**, which is attached hereto and incorporated herein by reference ("Distribution Fee"). The Distribution Fee includes the initial distribution of the Program along with any maintenance (updates) to the Program for the Term. This includes the ability to reassign the designated computers using the process described in **Appendix B** during the Term.

## **Article 3. Delivery of Materials**

- 3.1.** Upon execution of the Agreement, and payment by Licensee of the appropriate Distribution Fee, UC shall deliver to Licensee one (1) copy of the Program with associated license activation (security) files, and accompanying documentation if any.
- 3.2.** Licensee acknowledges that title to the Program, including any copyright thereon, shall remain with UC and that any copies of the Program or portions thereof made by Licensee in accordance with the Rights Granted hereunder shall include a UC copyright notice thereon. The notice shall be affixed to all copies or portions thereof in such manner and location as to give reasonable notice of UC's claim of copyright and shall be in conformity with all applicable regulations on affixation prescribed by the United States Register of Copyright. Licensee shall at all times hereafter protect the Program, and all related technical information, data, and materials supplied by UC, from transfer measures at least as strong as those used by Licensee in protecting its own proprietary software.
- 3.3.** Licensee accepts Program on an "as is" basis. Accordingly, UC shall not be required to load the Program onto Licensee's machines, test for proper operation, perform any debugging, make any corrections, provide maintenance, provide any updates, or assist in the understanding or use of the Program. The Program is a research program, and UC does not represent that it is free of errors or bugs or suitable for any particular tasks. No guarantee is made that the Program is adequately or completely described in, or behaves in accordance with, the documentation, if any.

## **Article 4. Warranties**

- 4.1.** LICENSEE AGREES THAT THE RIGHTS GRANTED HEREUNDER ARE MADE AVAILABLE WITHOUT WARRANTY OF ANY KIND EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, A WARRANTY THAT THE USE WILL NOT INFRINGE ANY PATENT COPYRIGHT OR TRADEMARK OF ANOTHER, AND

FURTHER INCLUDING NO WARRANTY AS TO CONFORMITY WITH WHATEVER USER MANUALS OR OTHER LITERATURE MAY BE ISSUED FROM TIME TO TIME.

## **Article 5. Limitation of Liability**

- 5.1.** Licensee shall at all times during the term of this Agreement and thereafter, indemnify, defend and hold harmless UC, its trustees, directors, officers, employees, agents and affiliates, against all claims, proceedings, demands, and liabilities of any kind whatsoever, including legal expenses and reasonable attorneys' fees, arising out of, connected with, resulting from or sustained as a result of executing or performing all or any part of this Agreement or of use of the Program by Licensee. In no event shall UC be liable for special, direct, indirect or consequential damages, losses, costs, charges, claims, demands, fees or expenses of any nature or kind.

## **Article 6. Non-Use of Names**

- 6.1.** Licensee shall not use the name of University of Cincinnati nor the names of any of its employees nor any adaptation thereof in any advertising, promotional or sales literature without prior written consent obtained from UC in each case, **except that** Licensee shall give appropriate credit in professional journals and publications to UC and its Structural Dynamics Research Lab.

## **Article 7. Termination**

- 7.1.** This agreement shall terminate twelve (12) months after the date that Program is made available to the Licensee (said date shall herein be the "Receipt Date" and said twelve (12) month period after the Receipt Date shall herein be the "Term"). After the termination of this Agreement the Licensee shall have the continued right to use the Program, however they shall not have the right to receive maintenance or updates to the Program after the Term without payment of an additional fee.
- 7.2.** Notwithstanding the foregoing, a Licensee granted a Single User License, a Multiple User License or an Educational User License may pay an additional fee as determined by UC (the "Maintenance Fee" and receive updates to the Program for an additional period of twelve (12) months after the date of receipt of said Maintenance Fee under these same terms and conditions. The Maintenance Fee is subject to change.
- 7.3.** Notwithstanding Sections 7.1 and 7.2, a Licensee granted an Source Code Access License, must pay the appropriate Distribution/Maintenance Fee, subject to change, annually on the anniversary of the Receipt Date to maintain the rights described under Sections 1.1.4.1 - 1.1.4.4. If Licensee fails to pay said fee, then the Licensee shall have the continued right to use the Program but shall not have the right to:

- 7.3.1. Access and use the Complete Program; although Licensee shall have continued use of the Program.
  - 7.3.2. Generate and distribute access license activation (security) files for internal use by the Licensee;
  - 7.3.3. Use in any manner the Complete Program should UC discontinue development and support of the Program; and
  - 7.3.4. Receive updates to the Program further developed by UC.
- 7.4. Upon any material breach of this Agreement by Licensee, UC shall have the right to terminate this Agreement by giving thirty (30) days written notice thereof to Licensee. Such termination shall become effective unless Licensee shall have cured any such breach prior to the expiration of said thirty (30) day period. Upon termination, Licensee shall provide UC with written assurance that the original and all copies of the Program, including partial copies in modifications, have been destroyed, **except that**, upon prior written authorization from UC, Licensee may retain a copy for archive purposes.

## Article 8. Notices

- 8.1. Any notice required or permitted under this Agreement shall be sufficiently made or given on the date of mailing if in writing and sent to such party by registered or certified mail, postage prepaid or an overnight courier with signature required, addressed to it at its address below, or as it shall designate by written notice given to the other party.

In the case of UC:

Director of Intellectual Property  
 University of Cincinnati  
 P.O. Box 210829  
 Cincinnati, OH 45221-0829

In the case of the Licensee:

\_\_\_\_\_

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## Article 9. Miscellaneous

- 9.1. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio.
- 9.2. This Agreement constitutes the full and complete understanding between UC and Licensee with respect to this Agreement, and the provisions hereof replace and supersede any and every other

Agreement between them respecting the Program, or any service rendered hereunder, and supersede any provisions on the face and reverse side of any Purchase Order or any attachment thereto inconsistent with the provisions hereof.

- 9.3. Any modification of this Agreement to be effective must be in writing signed by both parties.
- 9.4. If one or more of the provisions of this Agreement shall be held to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
- 9.5. No waiver by either party of any rights hereunder shall be valid unless it shall be in writing signed by that party. The omission by either party to insist upon strict performance of any provision of the Agreement shall not be construed as a waiver of such provision.

**IN WITNESS WHEREOF**, the parties hereto have hereunto set their hands and seals and duly executed this Agreement.

**UC**

**Licensee**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: Geoffrey Pinski

Name: \_\_\_\_\_

Title: Director, OEATC

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## APPENDIX A – Distribution/Maintenance Fee

Single User License

Distribution or Maintenance Fee: \$1,250.

Educational User License

Distribution or Maintenance Fee: \$1,250.

Multiple User License

Distribution or Maintenance Fee: \$3,750

Source Code Access License

Distribution or Maintenance Fee: \$125,000 (First Year), \$100,000 (Second Year),  
\$105,000 +5%/Year (Thereafter)

Fee Waived

Distribution/Maintenance Fee is waived; provided however any rights to use the Program shall not extend for more than forty-five (45) days and the payment of a Distribution/Maintenance Fee shall be required for use beyond said period.

Approved by: \_\_\_\_\_  
Randall Allemang  
Director, UC-SDRL

Fee is payable and software is delivered once license has been signed by both parties.

Payable to: UNIVERSITY OF CINCINNATI

Mailed to: Structural Dynamics Research Lab (UC-SDRL)  
Attention: UC-SDRL Research Software Manager  
PO Box 210072  
Cincinnati, OH 45221-0072

## APPENDIX B – Computer and License Activation (Security)

UC-SDRL RESEARCH SOFTWARE is restricted for use on specific computer equipment owned by the Licensee. The number of computers is defined by the type of License (Single, Multiple, Educational or Source Code Access). The Licensee agrees to provide information about the organization and the computer(s) that will be utilized.

The required information will be collected via a single Microsoft Excel formatted file provided to the Licensee once the License is accepted. Once the information is provided via the Excel file and returned by the Licensee, a license activation (security) file will be provided that will allow the Licensee to run the software. Changes to this license activation (security) file can be made quarterly during the Term if changes to the computers or users are required. If there is no active Distribution or Maintenance Fee, no changes to the security file are permitted until the Term is renewed or extended.

The information that is collected via this process includes, but is not necessarily limited to, the following:

- Company Name and Address
- User (Technical Contact) Name, Address, Phone Number and Email.
- Purchasing Contact (if different than User) Name, Address, Phone Number and Email.
- Licensing Contact (if different than User) Name, Address, Phone Number and Email.
- List of Licensed Computer(s)
  - Computer Type (make/model):
  - Operating System:
  - Hardwire (internal) Ethernet MAC Address (xx-xx-xx-xx-xx-xx):
  - Wireless Ethernet MAC Address (xx-xx-xx-xx-xx-xx) if present:

The information collected by this process will be used primarily for the purpose of developing a license activation (security) file that will allow the software to run properly on the designated computer(s). The information will also be used as necessary to contact and interact with the users. At any time during the Term, the Licensee can update the file to change the information as needed.

The MAC address can be retrieved using the 'ipconfig' or ipconfig /all' command from the Command Prompt window also. The MAC Address of hard wired Ethernet connection (12 digit hex number returned by the "ipconfig /all" command in a Command Prompt window is what we use to lock the software to a specific computer. You need the physical address for the 'Ethernet adapter Local Area Connection', i.e. xx-xx-xx-xx-xx-xx)