

MASSACHUSETTS INSTITUTE OF TECHNOLOGY
COEUS® DEVELOPMENT CONSORTIUM PROGRAM

This Consortium Agreement (the “Agreement”) between _____ (“**the Member**”) and **Massachusetts Institute of Technology (“MIT”)** describes the ways in which the parties will cooperate in a program of research, development and education to be performed under the COEUS® DEVELOPMENT CONSORTIUM PROGRAM, effective as of _____, the “Effective Date.”

For the purposes of this Agreement, the Member is designated as a _____.
<Basic Member> <Development Member> <Steering Member> <Industry Member>

WHEREAS, MIT has created the Coeus software program (“Coeus”®) to facilitate institutional clients’ management of research and development activities such as proposal development and pre- and post-award administration; and

WHEREAS, MIT has established the Coeus Development Consortium at MIT to develop Coeus infrastructure enhancements for data acquisition and management, and to provide leadership to facilitate administration of research operations at research institutions (the “Program”) and the Member is willing to support and participate in the Program, along with other Members; and

WHEREAS, only Licensees of the Coeus® University End-Use Software License Agreement are eligible for membership in this Consortium which license is hereby granted and the terms of which are contained in Appendix C to this Agreement; and

WHEREAS, the Member and MIT have a mutual interest in the advancement of technology and the Program contemplated by this Agreement will further the instructional and research objectives of MIT in a manner consistent with its status as a non-profit, tax-exempt, educational institution.

NOW, THEREFORE, the parties hereto agree as follows:

1. **PROGRAM DESCRIPTION.** MIT agrees to use reasonable efforts to conduct the Program as described in the overview that appears in the Benefits Statement, including its management structure, under Appendix A to this Agreement.
2. **PROGRAM DIRECTOR.** The Program will be supervised by Stephen Dowdy. If, for any reason, he is unable to continue to serve as Program Director, the Member will be notified of his successor at the discretion of MIT. All Program matters will be managed and administered subject to the discretion and authority of the Program Director.
3. **TERM OF AGREEMENT.** The term of this Agreement shall begin on the Effective Date and shall continue in full force and effect for three (3) years thereafter, through the “Expiration Date”. This Agreement is renewable only by a mutual written agreement signed by the parties.

4. MEMBERSHIP.

a. Categories

There are four membership categories available in this Consortium Program:

- Basic Member
- Development Member
- Steering Member
- Industry Member

b. Membership Fees:

| Membership Fee (per year) | Categories of membership |
|---------------------------|--------------------------|
| USD \$7,500 | Basic Member |
| USD \$25,000 | Development Member |
| USD \$50,000 | Steering Member |
| USD \$75,000 | Industry Member |

The Member will pay to MIT the annual membership fee listed in 4.b. above. The funds will be used by MIT for the direct and indirect (F&A) costs of the Program.

c. Rights and Privileges of Member

The Member's rights and privileges are determined by the membership category selected by the Member.

A Basic Member will be entitled, for the minimum fee, to secure a license to Coeus and to be able to download all upgrades to the software that may arise out of the Consortium activities from time to time during the period of Membership.

A Development Member, in addition to all rights granted to a Basic Member, will be entitled to participate in Consortium meetings to be held from time to time to discuss current and future development activities and to suggest possible areas of such development.

A Steering Member, in addition to all rights granted to a Development Member, will be entitled to designate an individual to serve on a Steering Committee that will assist the Program Director with the establishment of Program priorities and initiatives.

An Industry Member will have the same rights as a Steering Member.

A Basic Member will have access to all developments produced by the Coeus Consortium.

A Development member may propose the development of (new) COEUS functionalities or improvements for which the Development Member is willing to provide additional funding beyond the annual membership fee. The Program Director will consider the proposed development, in consultation with the Steering Committee, as described in Appendix A, to decide whether to proceed with development. Final decisions regarding all such proposals shall rest with the Program Director.

A Steering Member and an Industry Member shall be represented on the Steering Committee and may annually allocate up to fifty percent (50%) of its annual membership fee toward an Infrastructure Project (Industry Members capped at \$25,000), as further described in Article 6 below. Such Infrastructure Project(s) will be selected by the Steering Committee, subject to final approval by the MIT Program Director, as described in Appendix A. MIT's performance of such Infrastructure Project(s) and the rights and obligations of the Member with respect to such projects will be governed by the terms of this Agreement. Member rights and privileges are described further in Appendix A to this Agreement.

MIT will consider in-kind substitution for payment by a prospective or current member upon consultation with members of the Steering Committee and at the discretion of the Program Director.

5. **PAYMENT.** The Member shall make annual payments to MIT in U.S. dollars, net of taxes or impost of any kind, upon full execution of this Agreement and within thirty (30) days of issue of MIT's invoice, as follows:

\$ _____ due by _____.

\$ _____ due by _____.

\$ _____ due by _____.

6. **INFRASTRUCTURE PROJECT(S).** Pursuant to Article 4 above, the Steering Member may allocate up to fifty percent (50%) of its annual membership fee toward an Infrastructure Project to be performed under the terms of this Agreement. MIT and the Member shall mutually agree upon a budget for such Infrastructure Projects and MIT will expend those allocated funds for all direct and indirect costs incurred in the performance of the Infrastructure Project. Any unused Infrastructure Project funds not so expended shall be used at the discretion of the Program Director to support the Program. Should the costs of an Infrastructure Project exceed the Member's annual allocation, the Member may be required to provide supplemental funds in the event that the Steering Committee is unable to provide such funds from the collective Consortium Basic Member and Development Member fees. Each Infrastructure Project will be supervised by an individual designated by the Program Director from among the MIT staff or the Steering Committee representatives as may best serve the particular project.

7. **TERMINATION.** This Agreement may be terminated by the Member upon written notice to MIT at least sixty (60) days prior to the anniversary date of the Effective Date of this Agreement. If such termination is exercised by a Basic Member within the first three years of membership, then the Coeus® University End-Use Software License Agreement will terminate as well, requiring the terminating Basic Member to acquire a Non-Member End-Use Software License Agreement if said party intends upon continued use of Coeus software. The current annual paid membership fee will be applied towards the cost of the Non-Member End-Use Software License, requiring any balance due to be paid prior to the effective termination date of the Basic Membership. MIT may terminate this Agreement if (1) the Member fails to make payment to MIT in accordance with Article 5 above and does not remedy the non-payment within thirty (30) days' written notice from MIT or (2) circumstances beyond MIT's reasonable control preclude continuation of this Agreement and, in such case, unused and uncommitted funds may be redirected at the discretion of the Program Director to continue Coeus enhancement activities or may be returned to the Member on a pro rata basis.

8. **PROPRIETARY INFORMATION.** If, during the term of this Agreement, the Member chooses to disclose to MIT any Member information that is proprietary to the Member, the obligations and rights of the parties with respect to such information will be governed by the terms and conditions in Appendix B to this Agreement.
9. **PUBLICATIONS.** MIT will be free to publish information about Program activities performed under this Agreement, including information about any Infrastructure Project performed hereunder.
10. **COPYRIGHTS.** All rights of the Member under this Program shall be subject to the Coeus® University End-Use Software License Agreement, a copy of which appears under Appendix C hereto.
11. **WARRANTY DISCLAIMER.**

THE PROGRAM PERFORMED BY MIT AND RESOURCES PROVIDED BY THE MEMBER IN ACCORDANCE WITH THE TERMS OF THIS AGREEMENT ARE WITHOUT EXPRESS OR IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND THE PARTIES MAKE NO WARRANTY OR REPRESENTATION THAT THE SAID RESOURCES OR PROGRAM RESULTS DO NOT OR WILL NOT INFRINGE THE INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES. ALL MEMBER RESOURCES ARE PROVIDED TO MIT "AS IS" AND ALL PROGRAM RESULTS ARE DELIVERED TO THE MEMBER "AS IS". MIT SHALL BEAR NO LIABILITY FOR ANY CLAIM, ACTION, DAMAGE OR INJURY ON ACCOUNT OF THE MEMBER'S USE OF ANY OF THE RESULTS OF THE PROGRAM PERFORMED BY MIT HEREUNDER.

IN NO EVENT SHALL EITHER PARTY, ITS TRUSTEES, DIRECTORS, OFFICERS, EMPLOYEES, STUDENTS, AGENTS AND AFFILIATES, BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING ECONOMIC DAMAGES OR INJURY TO PERSONS OR PROPERTY AND LOST PROFITS, REGARDLESS OF WHETHER THAT PARTY SHALL BE ADVISED, SHALL HAVE OTHER REASON TO KNOW OR IN FACT SHALL KNOW OF THE POSSIBILITY OF THE FOREGOING. THIS ARTICLE 11 SHALL SURVIVE THE EXPIRATION OR ANY EARLIER TERMINATION OF THIS AGREEMENT.

12. **USE OF NAMES.** Neither party will use the name of the other in any advertising or other form of publicity without the written permission of the other. As an example for MIT, the Member shall not use the name of "Massachusetts Institute of Technology," "COEUS" or any variation, adaptation or abbreviation thereof, or that of any of its trustees, officers, faculty, students, employees, or agents, or any trademark owned by MIT. For MIT, the Director of the MIT News Office has authority to grant to the Member any approved use of the MIT name.

13. **NOTICES.** Any notices required to be given or which shall be given under this Agreement shall be in writing and be addressed to the parties as shown below. Notices shall be delivered by certified or registered first class mail (air mail if not domestic) or by commercial courier service, and shall be deemed to have been given or made as of the date received.

MEMBER

**MASSACHUSETTS INSTITUTE
OF TECHNOLOGY**

Rosemary Hanlon
Senior Contract Administrator
Office of Sponsored Programs
Massachusetts Institute of Technology
77 Massachusetts Avenue, Bldg E19-750
Cambridge, MA 02139-4307
Phone: 617-253-3529
Fax: 617-253-4734
Email: rhanlon@mit.edu

14. **ASSIGNMENT.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and the successors to substantially the entire business and assets of the respective parties hereto. This Agreement shall not be assignable by either party without the prior written consent of the other party; any attempted assignment is void.
15. **FORCE MAJEURE.** Neither party shall be responsible to the other for failure to perform any of the obligations imposed by this Agreement, provided such failure shall be occasioned by fire, flood, explosion, lightning, windstorm, earthquake, subsidence of soil, failure or destruction, in whole or in part, of machinery or equipment, or failure of supply of materials, discontinuity in the supply of power, governmental interference, civil commotion, riot, war, strikes, labor disturbance, transportation difficulties, labor shortage or any cause beyond its reasonable control.
16. **EXPORT CONTROLS.** It is understood that MIT is subject to United States laws and regulations controlling the export of technical data, computer software, laboratory prototypes and other commodities, and that its obligations hereunder are contingent on compliance with applicable U.S. export laws and regulations (including the Arms Export Control Act, as amended, and the Export Administration Act of 1979). The transfer of certain technical data and commodities may require a license from the cognizant agency of the United States Government and/or written assurances by the Member that the Member will not re-export data or commodities to certain foreign countries without prior approval of the cognizant government agency. While MIT agrees to cooperate in securing any license which the cognizant agency deems necessary in connection with this Agreement, MIT cannot guarantee that such licenses will be granted.
17. **INDEPENDENT CONTRACTORS.** Each Consortium Member is acting as an independent contractor and nothing contained in this Agreement is to be construed as creating a partnership, joint enterprise, or any other agency relationship between the parties.

18. **ENTIRE AGREEMENT.** Unless otherwise specified, this Agreement and its Appendix embody the entire understanding between MIT and the Member for the Member's support of the Program and any selected Infrastructure Project(s) performed under this Agreement, and any prior or contemporaneous representations, either oral or written, are hereby superseded. No amendments or changes to this Agreement, including without limitation, changes in the Program Description, Membership fees and Term of Agreement shall be effective unless made in writing and signed by authorized representatives of the parties.

MEMBER

**MASSACHUSETTS INSTITUTE
OF TECHNOLOGY**

By: _____

By: _____
Thomas B. Duff

Title: _____

Title: Associate Director, OSP

Date: _____

Date: _____

APPENDIX A

Benefits Statement

During the past five years, Coeus has developed into a software program that has broad applicability to research institutions for cradle-to-grave management of research awards and activities, including but not limited to proposal development, pre-award and post-award functionalities. To address the evolving needs of research institutions, as well as unique requirements of particular organizations, further development of Coeus is required on a regular basis. Sometimes these development needs are applicable to many institutions; sometimes they are institution-specific.

The Coeus Consortium will bring institutional licensees of Coeus together to comment on their experiences with the program, to identify needs for future development, to contribute programming/programmer resources, and to engage in other related activities to assist MIT with further development of new and improved functionalities of Coeus for the collective benefit of all institutions.

This Consortium Program will be supervised by Stephen Dowdy, Assistant Director at MIT's Office of Sponsored Programs. The Program Director will exercise management authority and maintain standards and for all decisions made and activities performed under this Agreement.

The Members of this Consortium will be offered four levels of participation.

A Basic Member will have access to all developments produced by the Coeus Consortium during the course of their membership.

A Development Member will be entitled to participate in Consortium meetings to be held from time to time to discuss future development activities and to assist in the identification of detailed specifications of those development activities. The Development Member will also be entitled to propose a specific functionality or a specific infrastructure project related to the "Program" on payment of additional sums (i.e., in excess of the basic \$25,000) subject to the review of the Steering Committee and the final decision of the Program Director.

The third level of participation will be the Steering Member who will provide a greater amount of financial support and, in addition to being able to allocate a portion of its membership fee towards a specific focused Infrastructure Project, will be entitled to designate an individual to serve on a Steering Committee that will assist the Program Director with the establishment of Program priorities and initiatives. The Program Director will receive and be responsive to comments from and the consensus of the Steering Committee in selection of initiatives for implementation. In this manner, Steering Members will assist the Program Director with the choice of new developments. The Steering Committee will meet as often as necessary to determine Program issues, but at least semi-annually. The Steering Committee will support the Program director in preparing an annual summary of Program activities for all Members of the Consortium.

The fourth level of participation will be Industry Member which, because of its commercial interests, will also provide a greater amount of financial support. The Industry Member will be entitled to the same program participation as the Steering Member.

At any time, a Member which desires to have a Coeus application customized for its institution's specific needs (which it cannot or does not wish to develop internally pursuant to its license) and to fund it independently, may propose this to the Program Director, who will consider the feasibility of such an endeavor and make an appropriate decision.

APPENDIX B

MEMBER PROPRIETARY INFORMATION

If, in the performance of the Program performed under this Agreement, the Program Director and individuals designated by him require and accept access offered by the Member to certain information that the Member considers proprietary, the rights and obligations of the parties with respect to such information are as follows:

1. PROPRIETARY INFORMATION. For the purposes of this Agreement, "Proprietary Information" refers to information of any kind which is disclosed by the Member to MIT and which, by appropriate marking, is identified as confidential and proprietary at the time of disclosure. In the event that proprietary information is provided visually or orally, obligations of confidentiality shall attach only to that information which is identified as confidential and proprietary at the time of disclosure and is confirmed by the Member in writing within ten (10) working days as being confidential.
2. LIMITATIONS ON USE. MIT shall use the Member's Proprietary Information solely for the purposes of the Program performed under this Agreement. It is agreed by the Member and MIT that the disclosure of Proprietary Information shall not be construed as a grant of any right or license with respect to such information except as set forth herein or in a duly executed license agreement.
3. CARE OF PROPRIETARY INFORMATION. The Member and MIT agree that all Proprietary Information communicated by the Member and accepted by the Program Director in connection with the Program activities performed under this Agreement shall be kept confidential by MIT as provided herein unless specific written release is obtained from the Member. MIT agrees to make Proprietary Information available only to those individuals who require access to it in the performance of activities under this Agreement and to inform them of the confidential nature of such information. MIT shall exert reasonable efforts to maintain such information in confidence.

MIT shall be deemed to have discharged its obligations hereunder provided MIT has exercised the foregoing degree of care and provided further that MIT shall immediately, upon discovery of any disclosure not authorized hereunder, notify the Member and take reasonable steps to prevent any further disclosure or unauthorized use.

When the Proprietary Information is no longer required for the purposes of the Program, MIT shall return it or dispose of it as directed by the Member. MIT's obligations of confidentiality with respect to Proprietary Information provided under this Agreement will expire three (3) years after the Expiration Date of this Agreement.

4. INFORMATION NOT COVERED. It is agreed by the Member and MIT that the above obligations of confidentiality shall not attach to information which:
 - (a) is publicly available prior to the date of the Agreement or becomes publicly available thereafter through no wrongful act of MIT;
 - (b) was known to MIT prior to the date of disclosure or becomes known to MIT thereafter from a third party having an apparent bona fide right to disclose the information;
 - (c) is disclosed by MIT in accordance with the terms of the Member's prior written approval;
 - (d) is disclosed by the Member without restriction on further disclosure;
 - (e) is independently developed by MIT;
 - (f) MIT is obligated to produce pursuant to an order of a court of competent jurisdiction or a valid administrative or Congressional subpoena, provided that MIT (i) promptly notifies the Member and (ii) cooperates reasonably with the Member's efforts to contest or limit the scope of such order.

Appendix C:

CONSORTIUM MEMBER COEUS ® University End-Use Software License Agreement

PREAMBLE

This Agreement applies to Coeus 4.0, or any later version made available for download with this Agreement, a software program (“Software”) developed at MIT, often used to manage sponsored programs databases and to transfer and manage the exchange of money related to research grants. You may not use the Software in any manner unless You accept the terms and conditions of this Agreement. You must indicate acceptance of the terms and conditions by reading the Agreement and then manually clicking to accept the terms and conditions.

In relation to the development of all future versions of Coeus, the Coeus Consortium (“Consortium”) has been formed. The Consortium consists of companies, colleges, and universities that work together to support the development of future versions of Coeus. Members of the Consortium receive versions of Coeus released while they remain Members, with their Membership fees covering the cost of any such version. Members also receive limited support related to the Software from MIT during the time of their Membership.

The intent of the Agreement is to grant You a non-exclusive license to reproduce, modify, or prepare Derivative Works of the Software (“Derivative Works”) for internal use, research, and development only by You, subject to certain terms and conditions within the Agreement. Acceptance of this Agreement and proper payment under the Agreement grant You access to both the executable codes and source codes of the Software.

Installation and use of the Software may require You to install certain third party programs. The installation and use of such third party programs will be governed by the licenses that are granted by those third parties to You.

Under no circumstances does this Agreement give You the right to distribute, sublicense, sell, or in any other way gain a commercial benefit from the use of the Software. Furthermore, this Agreement does not grant You the rights to any other intellectual property unless it is clearly stated in the Agreement.

This Preamble is not a part of the Agreement. The legal effect of this Agreement is dependent only upon the terms of the Agreement and not this Preamble.

1. DEFINITIONS

As used in this Agreement, “Consortium” means an organization of companies, colleges, and/or universities that work together to support the Software.

As used in this Agreement, “Derivative Works” means computer software created by You that includes, or is based in whole or in part on, the Software, including, but not limited to, translations of the Software to other foreign or computer languages, adaptations of the Software to other hardware platforms, abridgments, condensations, revisions, and software incorporating all or any part of the Software, and which may also include modifications or enhancement created by You, a third party, or software from a third party.

As used in this Agreement, “Effective Date” means the date on which You click “I agree” and download the software.

As used in this Agreement, “Members” means those companies, colleges, and universities that are paying and supporting contributors of the Consortium on the Effective Date.

As used in this Agreement, “Software” means Coeus 4.0, or any later version made available for download with this Agreement.

As used in this Agreement, “Sun Code” means any and all components of the Software originally licensed from Sun Microsystems, Inc. and redistributable under the terms of the Sun Binary Code License Agreement and Supplemental License Terms, available at <http://java.sun.com/webservices/docs/1.5/LICENSE>.

As used in this Agreement, “You” means the legal entity (such as a company, college, or university), with whom You are employed. By accepting the terms and conditions of this Agreement, You are representing to MIT that You have the authority to enter into this Agreement on behalf of such legal entity.

2. LICENSE GRANT

Subject to the terms and conditions hereof, and solely for the internal use, research, and development only by You, M.I.T. hereby grants You a world-wide, royalty-free, non-exclusive, perpetual license to the source code and executable code of the Software to do the following:

- (a) to reproduce the Software in copies;
- (b) to make an archival copy of the Software;
- (c) to display the Software;
- (d) to place the Software on a secure server connected to Your intranet;
- (e) to make modifications to the Software; and
- (f) to prepare Derivative Works based upon the Software;

3. LICENSE GRANT EXCLUSIONS

This Agreement shall not be construed to confer any rights upon You by implication, estoppel, or otherwise except as specifically set forth in “Section 1. License Grant.” Specifically, this Agreement in no way provides You the rights to do any of the following:

- (a) to distribute the Software;
- (b) to sublicense the Software;
- (c) to sell the Software;
- (d) to gain a commercial benefit from the use of the Software; or
- (e) to reproduce the Software, make modifications to the Software, or to prepare Derivative Works based upon the Software that are not solely for the internal use, research, and development by You.

Furthermore, You shall not use the Software title or the names or trademarks of the Massachusetts Institute of Technology or Lincoln Laboratory, nor any adaptation thereof, nor the names of any of their employees, in any advertising, promotional, or sales literature without prior written consent obtained from M.I.T. in each case, except that You shall give appropriate credits in professional journals and publications.

4. LICENSE GRANT BACK

As a condition of acceptance of this Agreement by You, You hereby grant M.I.T. the irrevocable, perpetual nonexclusive rights to use, reproduce, modify, display, lease, and sublicense Derivative Works based on the Software created by You, provided that M.I.T. shall give full attribution to the proprietary rights of You in the intellectual property represented by the Derivative Works.

5. FEES AND MATERIALS

You agree to pay to M.I.T. the amount agreed upon per Your Consortium Membership agreement. Your payment entitles You to both the executable code and source code of the Software's most current version released during the time of Your Membership or within three months after expiration of Your Membership. While You are a Consortium Member, You will be entitled to receive newer versions of the Software at no additional cost.

You accept the Software on an "AS IS" basis. Accordingly, M.I.T. shall not be required to load the Software onto Your machines, test for proper operation, or make any corrections. The Software is a research program, and M.I.T. does not represent that it is free of errors or bugs or suitable for any particular tasks.

6. ATTRIBUTIONS AND NOTICES

You acknowledge that the title to the Software (including copyright) shall remain with M.I.T. and its contributors and that any reproductions of the Program or portions thereof made by You in accordance with this Agreement shall include the copyright notice appearing on Your downloaded copy of the Software. The notice shall be affixed to all reproductions or portions thereof in such manner and location as to give reasonable notice of the claim of copyright and shall be in the format as it appears in the Software. You shall at all times hereafter protect the Software, and all related documentation, if any, from transfer using measures at least as strong as those used by You in protecting Your own proprietary software.

Furthermore, You must retain in the source code of any Derivative Works that You create, all copyright, patent or trademark notices from the source code of the originally downloaded Software, as well as any descriptive text identified therein as an "Attribution Notice." You must also cause the source code for any Derivative Works that You create to carry a prominent Attribution Notice reasonably calculated to inform users that You have modified the Software.

7. DISCLAIMER OF WARRANTIES

YOU AGREE 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, AND FURTHER INCLUDING NO WARRANTY AS TO CONFORMITY WITH WHATEVER USER MANUALS OR OTHER LITERATURE MAY BE ISSUED FROM TIME TO TIME. NOTHING IN THIS AGREEMENT SHALL BE CONSTRUED AS A REPRESENTATION MADE OR WARRANTY GIVEN BY M.I.T. OR OTHER CONTRIBUTORS TO THE SOFTWARE THAT THE PRACTICE BY YOU OF THE RIGHTS GRANTED HEREUNDER SHALL NOT INFRINGE THE PATENT RIGHTS, COPYRIGHTS, OR OTHER INTELLECTUAL PROPERTY RIGHTS OF M.I.T., ITS CONTRIBUTORS, OR ANY THIRD PARTY.

8. LIMITATION OF LIABILITY

IN NO EVENT SHALL M.I.T., ITS CONTRIBUTORS, OR THEIR RESPECTIVE TRUSTEES, DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, AND ASSOCIATES BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING ECONOMIC DAMAGE OR INJURY TO PROPERTY AND LOST PROFITS, REGARDLESS OF WHETHER M.I.T. OR ITS CONTRIBUTORS SHALL BE ADVISED, SHALL HAVE OTHER REASON TO KNOW, OR IN FACT SHALL KNOW OF THE POSSIBILITY. THIS DISCLAIMER OF WARRANTY CONSTITUTES AN ESSENTIAL PART OF THIS AGREEMENT.

M.I.T.'s LIABILITY FOR DAMAGES TO LICENSEE FOR ANY CAUSE WHATSOEVER, REGARDLESS OF THE FORM OF ANY CLAIM OR ACTION, SHALL BE LIMITED TO TEN THOUSAND DOLLARS (\$10,000.00), WHICH IS THE SOFTWARE LICENSE FEE FOR NON-CONSORTIUM MEMBERS.

If You are a for-profit legal entity, then You shall at all times during the term of this Agreement and thereafter, indemnify, defend, and hold harmless M.I.T., its contributors, or their respective 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 use of the Software by You.

In consideration of M.I.T. providing Software packaged with and including Sun Code for Your convenience, and in order for M.I.T. to comply with its license from Sun Microsystems, Inc., You agree not to bring any claim, lawsuit, or action ("Claim") for any damages, costs, liabilities, settlement amounts and/or expenses (including attorneys' fees) against M.I.T., Sun, or Sun's licensors arising out of or relating to Your use, implementation, or execution of any of the Sun Code redistributed to You by M.I.T. in the Software. Your license to the Software shall terminate immediately upon instituting any such Claim.

9. TERMINATION

Upon any material breach of this Agreement by You, M.I.T. shall have the right to terminate this Agreement by giving thirty (30) days written notice thereof to You. Such termination shall become effective unless You shall have cured any such breach prior to the expiration of said thirty (30) day period. Upon termination for any reason, You shall provide M.I.T. with written assurance that the original and all reproductions of the Software, including partial reproductions in modifications, have been destroyed, except that, upon prior written authorization from M.I.T., You may retain a reproduction for archive purposes.

Provisions which, by their nature, should remain in effect beyond the termination of this Agreement shall survive, including but not limited to Sections 1, 4, 6, 7, 8, 9, and 10.

10. MISCELLANEOUS

- 10.1 The Software and related documentation are "Commercial Items", as that term is defined at 48 C.F.R. §2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation", as such terms are used in 48 C.F.R. §12.212 or 48 C.F.R. §227.7202, as applicable. Consistent with 48 C.F.R. §12.212 or 48 C.F.R. §227.7202-1 through 227.7202-4, as applicable, the Commercial Computer Software and Commercial Computer Software Documentation are being licensed to U.S. Government end users (a) only as Commercial Items and (b) with only those rights as are granted to all other end users pursuant to the terms and conditions herein. Unpublished-rights reserved under the copyright laws of the United States.

- 10.2 The parties hereto acknowledge that this Agreement sets forth the entire Agreement and understanding of the parties hereto as to the subject matter hereof, and shall not be subject to any change or modification except by the execution of a written instrument subscribed to by the parties hereto. This Agreement supersedes any and all provisions on the face and reverse side of any Purchase Order or any attachment thereto inconsistent with the provisions hereof.
- 10.3 This Agreement will not be construed as creating an agency, partnership, joint venture, or any other form of legal association between or among You and M.I.T. and You will not represent to the contrary, whether expressly, by implication, appearance, or otherwise.
- 10.4 The provisions of this Agreement are severable, and in the event that any provisions of this Agreement shall be determined to be invalid or unenforceable under any controlling body of the law, such invalidity or unenforceability shall not in any way affect the validity or enforceability of the remaining provisions hereof.
- 10.5 The failure of either party to assert a right hereunder or to insist upon compliance with any term or condition of this Agreement shall not constitute a waiver of that right or excuse a similar subsequent failure to perform any such term or condition by the other party.
- 10.6 M.I.T. may publish revised and/or new versions of this Agreement from time to time to apply to new versions of the Software. Each such agreement version will be given a distinguishing version number. Once Software has been published under a particular version of this Agreement, You may continue to use it under the terms of that version. You may also choose to use such Software under the terms of any subsequent version of this Agreement published by M.I.T.
- 10.7 You may be restricted with respect to downloading by United States and other applicable laws and regulations. By downloading the Software, You are agreeing to be responsible for compliance with all applicable laws and regulations, including but not limited to those involving export restrictions.
- 10.8 Any litigation or other dispute resolution between You and M.I.T. relating to this Agreement shall take place in Massachusetts, and You and M.I.T. hereby consent to the personal jurisdiction of, and venue in, the state and federal courts within that District with respect to this Agreement, provided, however, that with respect to an entity of state government, including, but not limited to, a state university, such consent shall not apply. The application of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded.

11. ACCEPTANCE

Prior to downloading and using the Software, You must read the terms and conditions of this Agreement. In order to acknowledge that You have read and understand the terms and conditions of this Agreement, You must check the corresponding box below. Failure to assent to these terms and conditions means that You will not be permitted to download or use the Software.

I have read, understand and assent to the terms and conditions of this Agreement.