EXHIBIT A
SOFTWARE LICENSE TERMS AND CONDITIONS

These Software License Terms and Conditions (“Terms and Conditions”) govern the grant of a software license by The University of Texas at Austin (“Licensor”), a component of the University of Texas System (“System”), an agency of the State of Texas, when incorporated by reference into a Software License Agreement executed by the Licensor and a Licensee identified therein. All Section references in these Terms and Conditions shall be references to provisions in these Terms and Conditions unless explicitly stated otherwise.

1. **DEFINITIONS.** As used in the Agreement, these terms shall have the following definitions:

   “Agreement” means collectively (i) these Terms and Conditions, and (ii) the Software License Agreement.

   “Effective Date” means the date indicated as the Effective Date in Section 1 of the Software License Agreement.

   “Licensed Software” means the software identified as the Licensed Software in Section 1 of the Software License Agreement, including all Updates and Upgrades provided in accordance with Section 2.7 below

   “Licensee” means the party identified as the Licensee in Section 1 of the Software License Agreement.

   “Licensee Products” means those software products of Licensee, if any, that incorporate the Licensed Software.

   “Software License Agreement” means the particular Software License Agreement to which these Terms and Conditions are attached and incorporated into by reference.

   “Updates” and “Upgrades” have the meanings given in Section 2.7 below.

2. **LICENSE RIGHTS AND LIMITATIONS**

   **2.1 Internal Use License.** Subject to the terms and conditions of the Agreement and Licensee’s compliance therewith, Licensor hereby grants to Licensee a non-exclusive, non-transferable, worldwide license to use the Software solely for the internal business purposes of Licensee.

   **2.2 Redistribution Rights.** Only if Section 2.2 of the Software License Agreement indicates that Licensee has Redistribution Rights, then, subject to the terms and conditions of the Agreement and Licensee’s compliance therewith, Licensor hereby grants to Licensee a non-exclusive, non-transferable, worldwide license to distribute through multiple tiers of distribution a number of copies of the object code version of the Licensed Software (including object code versions compiled by Licensee if it has obtained a source code license) indicated in Section 2.2 of the Software License Agreement solely as incorporated in the Licensee Products. Object code versions compiled by Licensee from source code may be so redistributed if Licensee has obtained Redistribution Rights and a license to use the source code version of the Licensed Software hereunder. Licensee shall only redistribute the Licensed Software subject to an end user license agreement containing terms and conditions that are at least as protective of Licensor’s interests as the terms of the Agreement. IN NO CIRCUMSTANCES MAY SOURCE CODE OR DOCUMENTATION BE REDISTRIBUTED BY LICENSEE.
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2.5 **Additional Restrictions.**

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(e) Licensee’s use of the License Software shall be subject to the additional restrictions set forth in Section 2.5(e) of the Software License Agreement, if any.

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2.7 **Updates and Upgrades.** Licensee acknowledges and agrees that, Licensor is a public university, and, as such, Licensor does not offer traditional maintenance and support services with respect to the Licensed Software. If, however, Licensor makes any Updates and Upgrades to the Licensed Software generally publicly available during the Maintenance Term identified in Section 2.7 of the Software License Agreement (including posting under some form of public use license), and Licensee is
current with the payment of all fees to Licensor, then Licensee will be entitled to obtain such Updates and Upgrades which will be deemed Licensed Software (and subject to the terms of the Agreement) for no additional fees. Licensee acknowledges and agrees that notwithstanding the foregoing, Licensor is not obligated to make any Updates or Upgrades generally publicly available. “Updates” means any “bug” fixes or error corrections of the Licensed Software or any component thereof. “Upgrades” means minor enhancements to functionality and other minor modifications to the Licensed Software that are not Updates.

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2.9 **Licensee Intellectual Property Rights.** Licensor acknowledges that nothing herein shall grant Licensor any rights in Licensee Products or any intellectual property rights associated therewith.

3. **LICENSEE’S OBLIGATIONS.** Except as expressly set forth in the Agreement otherwise, Licensee agrees: (a) not to remove from any copies of the Licensed Software or Documentation any product identification, copyright or other notices; and (b) not to reproduce, modify, translate or create derivative works of all or any portion of the Licensed Software except as expressly permitted by the Agreement. Licensee further agrees that it shall not make any use of the Licensed Software and Documentation except as specifically permitted by the Agreement.

4. **DELIVERY.** Licensor shall deliver theLicensed Software in accordance with Section 4 of the Software License Agreement.

5. **PAYMENT TERMS.** Licensee shall pay the fees to Licensor as stated in Section 5 of the Software License Agreement (“Fees”) on the due date(s) indicated therein. Such Fee(s) are exclusive of any federal, state, municipal or other governmental taxes, duties, licenses, fees, excises or tariffs (“Charges”) imposed on the production, storage, licensing, sale, transportation, import, export, or use of the Licensed Software. Licensee agrees to pay, and to indemnify and hold Licensor harmless from such Charges; provided, however, Licensee shall not be responsible for taxes based on Licensor’s income. Licensee shall, if applicable, provide an exemption certificate acceptable to Licensor and the applicable authority as necessary. All amounts payable hereunder by Licensee shall be payable in United States funds without deductions for taxes, assessments, fees, or charges of any kind. Checks shall be made payable to University of Texas and shall be forwarded to

   The Office of Technology Commercialization  
   The University of Texas at Austin  
   3925 West Braker Lane, Suite 1.9A (R3500)  
   Austin, Texas, 78759  
   Attn: Accounts Receivable

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(5%) or other material non-compliance with the Agreement, then Licensee shall pay Licensor’s costs of conducting the audit, as well as any underpaid amount within thirty (30) days of notice from Licensor.

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8. **LIMITATION OF LIABILITY.** Licensor shall not be liable for any indirect, incidental, special, or consequential damages, or damages for loss of profits, revenue, data, or use, incurred by Licensee or any third party, whether in an action in contract or tort (including negligence), or any other legal theory, even if Licensor has been advised of the possibility of such damages.

9. **INDEMNIFICATION.** Licensee shall indemnify and hold harmless System, University, their Regents, officers, agents and employees from and against any claims, demands, or causes of action whatsoever relating to the Agreement, including without limitation those arising on account of Licensee’s use of the Licensed Software or otherwise caused by, or arising out of, or resulting from, the exercise or practice of the license granted hereunder by Licensee, its permitted sublicensees, if any, its subsidiaries or their officers, employees, agents or representatives.

10. **TERM AND TERMINATION**

10.1 **Term.** The term of the Agreement shall commence on the Effective Date and shall continue for the period indicated as the Term in Section 10.1 of the Software License Agreement, unless terminated earlier as set forth below.

10.2 **Termination for Breach.** Either party may terminate the Agreement immediately for a material breach by the other party if such material breach of any provision under the Agreement is not cured within thirty (30) business days after receipt of written notice of breach by the non-breaching party.

10.3 **Effect of Termination.** At the termination or expiration of the Agreement, (a) Licensee must destroy all copies of the Licensed Software (except those already incorporated into Licensee Products); provided, however, that Licensee may keep a reasonable number of copies of the Licensed Software, solely to support customers that have previously purchased the Licensee Products; (b) all fees due to Licensor shall immediately become due and payable by Licensee to Licensor; and (c) provided that Licensee’s customers are in compliance with their end user license agreements, all customers may continue to use the Licensed Software as incorporated in the Licensee Products. The following terms of the Agreement shall survive any expiration or termination: Sections 1 (Definitions), 2.8 (Licensor Intellectual Property Rights), 2.9 (Licensee Intellectual Property Rights), 3 (Licensee’s Obligations), 5 (Payment Terms) with respect to any payment obligations that accrued prior to termination or expiration of the Agreement, 7 (Warranty Disclaimer), 8 (Limitation of Liability), 9 (Indemnification), 10 (Term and Termination), and 11 (General Provisions).

11. **GENERAL PROVISIONS**

11.1 **Use of Names.** Licensee may use the name “The University of Texas at Austin” only in connection with factually based materials related to its use of the Licensed Software; provided, however, that Licensee may not use the name of System or University in connection with any name, brand or
trademark related to Licensee Products. Licensor may use Licensee’s name only in connection with factually based Licensor publicity related to Licensor intellectual property and commercialization activities and achievements.

11.2 **Notices.** Any notice or reports required or permitted to be given under the Agreement shall be given in writing and shall be delivered in a manner that provides confirmation or acknowledgement of delivery. Notices to Licensor shall be sent to the address set forth in Section 5. Notices to Licensee shall be sent to the address set forth in Section 11.2 of the Software License Agreement.

11.3 **Export Regulations.** Neither Licensor nor Licensee shall export, directly or indirectly, any information acquired under the Agreement or any Licensed Software utilizing any such information to any country for which the U.S. Government or any agency thereof at the time of export requires an export license or other government approval without first obtaining such license or approval.

11.4 **Severability.** If any provision hereof shall be held illegal, invalid or unenforceable, in whole or in part, such provision shall be modified to the minimum extent necessary to make it legal, valid and enforceable, and the remaining provisions of the Agreement shall not be affected thereby.

11.5 **Headings.** The paragraph headings and captions of the Agreement are included merely for convenience of reference and are not to be considered part of, or to be used in interpreting the Agreement and in no way limit or affect any of the contents of the Agreement or its provisions.

11.6 **Governing Law.** The Agreement shall be construed in accordance with and all disputes hereunder shall be governed by the laws of the State of Texas as applied to transactions taking place wholly within Texas between Texas residents. The parties exclude in its entirety the application to the Agreement of the United Nations Convention on Contracts for the International Sale of Goods.

11.7 **Jurisdiction and Venue.** The Texas state courts of Travis County, Texas (or, if there is exclusive federal jurisdiction, the United States District Court for the Travis County District of Texas) shall have exclusive jurisdiction and venue over any dispute arising out of the Agreement, and Licensee hereby consents to the jurisdiction of such courts.

11.8 **Assignment.** Licensee shall not directly or indirectly sell, transfer, assign, convey, pledge, encumber or otherwise dispose of the Agreement without the prior written consent of Licensor, which consent will not be unreasonably withheld. In the event that Licensor consents to an assignment, there will be a license assignment fee imposed by Licensor in the amount set forth in Section 11.8 of the Software License Agreement. In no event will Licensor assign Licensed Software or Documentation to Licensee. Assignments shall include assignments or transfers of the Agreement as part of a corporate reorganization, consolidation, merger or sale of substantially all assets or any other change of control.

11.9 **Relationship of the Parties.** Nothing contained in the Agreement shall be construed as creating any agency, partnership, or other form of joint enterprise between the parties. The relationship between the parties shall at all times be that of independent contractors. Neither party shall have authority to contract for or bind the other in any manner whatsoever. The Agreement confers no rights upon either party except those expressly granted herein.

11.10 **Counterparts.** The Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

11.11 ** Entire Agreement.** The Agreement is the complete, entire, final and exclusive statement of the terms and conditions of the agreement between the parties. The Agreement supersedes, and the
The terms of the Agreement govern, any prior or collateral agreements between the parties with respect to the subject matter hereof. The Agreement may not be modified except in a writing executed by duly authorized representatives of the parties. The terms and conditions of the Agreement shall prevail notwithstanding any variance with the terms and conditions of any other instrument submitted by Licensee.

11.12 **U.S. Government End Users.** The Licensed Software is a "commercial item," as that term is defined in 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 (Sept. 1995) and 48 C.F.R. 227.7202 (June 1995). Consistent with 48 C.F.R. 12.212, 48 C.F.R. 27.405(b)(2) (June 1998) and 48 C.F.R. 227.7202, all U.S. Government End Users acquire the Licensed Software with only those rights as set forth herein.

**END OF TERMS AND CONDITIONS.**