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BACKGROUND

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- B. User wishes to obtain a royalty free license to use the Software to enable User to evaluate, and Licensor wishes to grant such a license to User, pursuant and subject to the terms and conditions of this Agreement.
- C. As a condition to Licensor's provision of the Software to User, Licensor has required User to execute this Agreement.

In consideration of these premises, and the mutual promises and conditions in this Agreement, the parties hereby agree as follows:

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(c) User shall take appropriate action, by instruction, agreement, or otherwise, with respect to its employees permitted under this Agreement to have access to the Software to ensure that all of User's obligations under this Section 4 shall be satisfied.

5. Indemnity. User shall defend, indemnify and hold harmless Licensor, its agents and employees, from any loss, damage, or liability arising in connection with User's improper or unauthorized use of the Software. Licensor SHALL HAVE THE SOLE RIGHT TO CONDUCT DEFEND ANY ACTION RELATING TO THE SOFTWARE.

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7. Limitation of Liability. IN NO EVENT SHALL Licensor BE LIABLE TO USER OR TO ANY THIRD PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO DAMAGES FOR PERSONAL INJURY, PROPERTY DAMAGE, LOST PROFITS, OR OTHER ECONOMIC LOSS, ARISING IN CONNECTION WITH USER'S USE OF OR INABILITY TO USE THE SOFTWARE, IN CONNECTION WITH LICENSOR'S PROVISION OF OR FAILURE TO PROVIDE SERVICES PERTAINING TO THE SOFTWARE, OR AS A RESULT OF ANY DEFECT IN THE SOFTWARE. THIS DISCLAIMER OF LIABILITY SHALL APPLY REGARDLESS OF THE FORM OF ACTION THAT MAY BE BROUGHT AGAINST Licensor, WHETHER IN CONTRACT OR TORT, INCLUDING WITHOUT LIMITATION ANY ACTION FOR NEGLIGENCE. USER'S SOLE REMEDY IN THE EVENT OF ANY BREACH OF THIS AGREEMENT BY Licensor SHALL BE TERMINATION PURSUANT TO SECTION 3.

8. No Assignment or Sublicense. Neither this Agreement nor any right or license under this Agreement, nor the Software, may be sublicensed, assigned, or otherwise transferred by User without Licensor's prior written consent.

9. General

(d) If any provision, or part of a provision, of this Agreement is or becomes illegal, unenforceable, or invalidated, by operation of law or otherwise, that provision or part shall to that extent be deemed omitted, and the remainder of this Agreement shall remain in full force and effect.

(e) This Agreement is the complete and exclusive statement of the agreement between the parties with respect to the subject matter hereof, and supersedes all written and oral contracts, proposals, and other communications between the parties relating to that subject matter.

(f) Subject to Section 8, this Agreement shall be binding on, and shall inure to the benefit of, the respective successors and assigns of Licensor and User.

(g) If either party to this Agreement initiates a legal action or proceeding to enforce or interpret any part of this Agreement, the prevailing party in such action shall be entitled to recover, as an element of the costs of such action and not as damages, its attorneys' fees and other costs associated with such action or proceeding.

(h) This Agreement shall be governed by and interpreted under the laws of Japan, without reference to conflicts of law principles. All disputes arising out of or in connection with this Agreement shall be finally settled by arbitration in Tokyo in accordance with the Commercial Arbitration Rules of the Japan Commercial Arbitration Association. The arbitration shall be conducted by three (3) arbitrators and in Japanese. The award rendered by the arbitrators shall be final and binding upon the parties. Judgment upon the award may be entered in any court having jurisdiction thereof.

(f) Licensor shall not be liable to the User or to any third party for any delay or failure to perform Licensor's obligation set forth under this Agreement due to any cause beyond Licensor's reasonable control.