The University of Southern California

SOFTWARE LICENSE AGREEMENT

This Software License Agreement (hereinafter "Agreement") is between the University of Southern California ("University") and _____("Licensee") and is effective on _____ ("Effective Date").

USC has developed software applications for tracking patient information in clinical trials, which applications Licensee desires to license from USC.

In consideration of the terms and conditions set forth below, USC and Licensee agree as follows:

1. DEFINITIONS

1.1 "License Fee" has the meaning set forth in Section 3.1.

1.2 "Object Code" means machine-readable, executable code of a computer program.

1.3 "Software" means the Object Code form of the computer software application(s) developed by USC identified in Exhibit A hereto.

1.4 "Trial(s)" means the clinical trial(s) identified in Exhibit A hereto.

2. LICENSE GRANT

2.1 Subject to the terms and conditions in this Agreement, including payment of the License Fee, USC hereby grants to Licensee a nontransferable, non-exclusive license to use the Software for internal business purposes for managing information regarding the Trials.

2.2 The Licensee agrees not to duplicate, provide, or otherwise make available the Software or other material, if any, provided with the Software, including but not limited to documentation and the Software Object Code, in any form, to any person or entity without the prior written consent of USC. Licensee agrees not to reverse engineer, decompile or disassemble, in whole or in part, the Software. Licensee may not copy the Software, with the exception for the limited purpose for use as a back-up copy. The license grants and restrictions include and cover error corrections and other computer code and material, if any, provided to Licensee by USC

3. LICENSE

3.1 The license fee for the use of the Software for the term is $ _____ (the "License Fee") and is due within ten days of the Effective Date. Payment to USC will be to the address provided in Section 8.6.

4. DELIVERY, INSTALLATION AND SUPPORT

4.1 USC will make available one copy of Object Code for the Software to Licensee within 30 days after the Effective Date.

4.2 Licensee will be solely responsible for installation of the Software on its equipment.

4.3 There is no support or maintenance provided for the Software pursuant to this Agreement.

5. TERM AND TERMINATION

5.1 The term of this Agreement will commence on the Effective Date and will continue until the completion of the Trial(s) for which the Software is to be used, unless earlier terminated as provided in this Section.

5.2 Upon any material breach or default by Licensee, USC will have the right to terminate this Agreement and the rights and license granted hereunder by 10 days' written notice to Licensee. Such termination will become effective unless Licensee has cured any such breach or default prior to the expiration of the 10-day period. However, should Licensee breach any of the terms of Section 2 above, this Agreement will automatically terminate.

5.3 Licensee may terminate this Agreement upon 30 days' written notice to USC.

5.4 Upon termination of this Agreement for any reason, nothing herein will be construed to release either party of any obligation which matured prior to the date of such termination. No refunds of amounts paid to USC will be made upon termination for any reason.

5.5 The following will survive termination or expiration: (a) any cause of action or claim of Licensee or USC, accrued or to accrue, because of any breach or default by the other party; and (b) the provisions of Paragraphs 6, 7, and 8.

5.6 Licensee will do the following upon termination or expiration: (a) delete the Software from all equipment on which it has been installed; (b) immediately deliver to USC or destroy all copies of the Software and other supplied materials (upon USC's written consent, Licensee may retain one copy of the Software for archive purposes only); (c) erase all copies of the Software from any storage media before discarding the storage media; and (d) within one month after the termination or expiration of this Agreement, certify in writing to USC that, to the best of the Licensee's knowledge, all copies of the Software have been returned or destroyed.

6. DISCLAIMERS; DAMAGE LIMITATION

> **The Software is not intended to be used in providing professional medical advice or as a substitute for professional medical advice. Licensee and its staff should NOT use or rely on any information obtained from the Software to diagnose, treat, cure, or prevent any health or medical condition.**

THE SOFTWARE IS FURNISHED TO LICENSEE AS-IS. USC MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED. BY WAY OF EXAMPLE,

BUT NOT LIMITATION, USC MAKES NO REPRESENTATIONS OR WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, OR THAT THE USE OF THE SOFTWARE COMPONENTS OR DOCUMENTATION WILL NOT INFRINGE ANY PATENTS, COPYRIGHTS, TRADEMARKS OR OTHER RIGHTS.

USC WILL NOT BE HELD LIABLE FOR ANY LIABILITY NOR FOR ANY DIRECT, INDIRECT, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING DAMAGES FOR LOST GOODWILL, LOST PROFITS, LOST BUSINESS OR OTHER INDIRECT ECONOMIC DAMAGES, WHETHER SUCH CLAIM IS BASED ON CONTRACT, NEGLIGENCE, TORT (INCLUDING STRICT LIABILITY) OR OTHER LEGAL THEORY, WITH RESPECT TO ANY CLAIM BY LICENSEE OR ANY THIRD PARTY ON ACCOUNT OF OR ARISING FROM THIS AGREEMENT OR USE OF THE SOFTWARE, AND REGARDLESS OF WHETHER USC WAS ADVISED OR HAD REASON TO KNOW IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES.

IN NO EVENT WILL USC'S TOTAL CUMULATIVE LIABILITY UNDER THE TERMS OF OR ARISING OUT OF THIS AGREEMENT EXCEED THE AMOUNT PAID BY LICENSEE TO USC UNDER THE TERMS OF THIS AGREEMENT.

7. INDEMNIFICATION

7.1 Licensee will defend, indemnify and hold harmless USC and its trustees, officers, professional staff, employees and agents and their respective successors, heirs and assigns (the "Indemnitees"), against all liability, demand, damage, loss, or expense incurred by or imposed upon the Indemnitees or any one of them in connection with any claims, suits, actions, demands or judgments arising out of any theory of product liability (including but not limited to, actions in the form of tort, warrantee, or strict liability) for death, personal injury, illness, or property damage arising from Licensee's use or other disposition of the Software.

7.2 Licensee agrees, at its own expense, to provide attorneys reasonably acceptable to USC to defend against any actions brought or filed against any Indemnitee with respect to the subject of indemnity contained herein, whether or not such actions are rightfully brought. To the extent that any proposed settlement directly affects USC, Licensee will obtain the approval of USC before finally agreeing to such settlement proposal, which consent will not be unreasonably withheld.

8. MISCELLANEOUS

8.1 Relationship of the Parties. In using the Software, Licensee will function solely as an independent contractor and not as agent, partner, employee or joint venturer with USC.

8.2 Non Waiver. A waiver of any breach of any provision of this Agreement will not be construed as a continuing waiver of said breach or a waiver of any other breaches of the same or other provisions of this Agreement.

8.3 Export and Laws. It is understood that USC is subject to United States laws and regulations controlling the export of technical data, computer software, laboratory prototypes and other

commodities (such laws include the Export Administration Act). Licensee agrees to comply with such laws in it use and export of the Software and any other material provided by USC under this Agreement, including, if required, a license from the cognizant agency of the United States Government. Licensee will not engage in any activity in connection with this Agreement that is in violation of any applicable U.S. law.

8.4 Assignment. Licensee may not assign or transfer this Agreement in whole or part to any third party without the prior written permission of USC. Such permission will be granted in USC's sole discretion.

8.5 Attorney Fees. If any action in law or in equity is brought to enforce or interpret the provisions of this Agreement, the prevailing party is entitled to reasonable attorney's fees, which may be set by the court in the same or separate action for that purpose, in addition to any other relief to which the prevailing party may be entitled.

8.6 Notice. Any notice or other communication pursuant to this Agreement will be sufficiently made or given on the date of mailing if sent to such party by a nationally recognized overnight courier service at the respective addresses given below. Licensee will promptly notify USC in writing of any change in address.

In the case of USC:

USC Stevens Center for Innovation
University of Southern California
1150 S. Olive Street, Suite 2300
Los Angeles, CA 90015
Attn: Licensing Director

In the case of Licensee:

_____
_____
_____
_____

8.7 Publications. Nothing in this Agreement will limit or prevent USC or its researchers from publishing any information about the Software.

8.8 Severability. If any provision of this Agreement is determined to be invalid or unenforceable under any controlling body of law, such invalidity or unenforceability will not in any way affect the validity of enforceability of the remaining provisions hereof.

8.9 Use of Names. Neither party will use the name, trade name, trademark or other designation of the other party in connection with any products, promotion or advertising without the prior

written permission of the other party, provided that USC may reference the fact that Licensee has licensed the Software from USC.

8.10 Governing Law and Venue. This Agreement will be deemed to be executed and to be performed in the State of California, and will be construed in accordance with the laws of the State of California as to all matters, including but not limited to matters of validity, construction, effect and performance. With respect to all disputes arising out of or related to this Agreement or the transactions contemplated hereunder, the parties hereby submit to the personam jurisdiction of the state and federal courts in Los Angeles, California.

8.11 Entire Agreement. This Agreement constitutes the entire agreement between the parties concerning the subject matter hereof. No amendment of this Agreement will be binding on the parties unless mutually agreed to and executed in writing by each of the parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year last written below.

University of Southern California   **[Licensee]**

By: _____   By: _____
    Richard Friedman   Name: _____
    Interim Executive Director and   Title: _____
    Sr. Dir. of Technology Advancement & Licensing
    USC Stevens Center for Innovation

Date: _____   Date: _____

Exhibit A

Software and Trials