

MASSACHUSETTS INSTITUTE OF TECHNOLOGY

PATENT AND COPYRIGHT LICENSE AGREEMENT

FOR

D4M DATABASE AND COMPUTATION SOFTWARE

COMMERCIAL LICENSE
(sub license to end users only)

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APPENDIX A12

**MASSACHUSETTS INSTITUTE OF TECHNOLOGY
PATENT AND COPYRIGHT LICENSE AGREEMENT
(Commercial For-Profit)**

This Agreement, effective as of the date set forth above the signatures of the parties below (the "EFFECTIVE DATE"), is between the Massachusetts Institute of Technology ("M.I.T."), a Massachusetts corporation, with a principal office at 77 Massachusetts Avenue, Cambridge, MA 02139-4307 and _____ ("COMPANY"), a _____ for-profit corporation, with a principal place of business at _____.

RECITALS

WHEREAS, M.I.T. is the owner of certain PATENT RIGHTS (as later defined herein) relating to M.I.T. Case No. 14324L, "Dynamic Distributed Dimensional Data Model (D4M) Database and Computation", by Jeremy Victor Kepner and has the right to grant licenses under said PATENT RIGHTS;

WHEREAS, M.I.T. is also the owner of certain rights, title and interest in the software disclosed in M.I.T. Case No. 15908L, "D4M (Dynamic Distributed Dimensional Data Model)", by Jeremy Victor Kepner, (the "PROGRAM", as further defined below) and has the right to grant licenses thereunder;

WHEREAS, COMPANY desires to acquire a license to develop the PATENT RIGHTS and the intellectual property represented by the PROGRAM from M.I.T., and M.I.T. desires to grant such license to COMPANY on the terms and conditions hereinafter set forth; and

WHEREAS, COMPANY has represented to M.I.T., to induce M.I.T. to enter into this Agreement, that COMPANY shall commit itself to a thorough, vigorous and diligent program of exploiting the PATENT RIGHTS and incorporating the PROGRAM into a product so that public utilization shall result therefrom.

NOW, THEREFORE, M.I.T. and COMPANY hereby agree as follows:

1. DEFINITIONS.

1.1 "AFFILIATE" shall mean any legal entity (such as a corporation, partnership, or limited liability company) that is controlled by COMPANY. For the purposes of this definition, the term "control" means (i) beneficial ownership of at least fifty percent (50%) of the voting securities of a corporation or other business organization with voting securities or (ii) a fifty percent (50%) or greater interest in the net assets or profits of a partnership or other business organization without voting securities.

1.2 "COPYRIGHT" shall mean M.I.T.'s copyright in the PROGRAM as ascribed in Sections 102 et seq. of the United States Copyright Act, amended from time to time, and International Treaty provisions, in effect from time to time, relating to the protection of copyrights worldwide.

1.3 "DERIVATIVE(S)" shall mean COMPANY-created and AFFILIATE-created computer software that includes, or is based in whole or in part on, the PROGRAM, including, but not limited to, translations of the PROGRAM to other foreign or computer languages, adaptations of the PROGRAM to other hardware platforms, abridgments, condensations, revisions, and software incorporating all or any part of the PROGRAM, and which may also include COMPANY-created or AFFILIATE-created modifications or enhancements or other COMPANY, AFFILIATE, or third party software.

1.4 "END USER(S)" shall mean a third party granted rights to run, reproduce, modify, perform or display the DERIVATIVE, but without any rights to sublicense or distribute such works.

1.5 "PATENT RIGHTS" shall mean:

- (a) the United States and international patents listed on Appendix A;
- (b) the United States and international patent applications and/or provisional applications listed on Appendix A and the resulting patents;
- (c) any patent applications resulting from the provisional applications listed on Appendix A, and any divisionals, continuations, continuation-in-part applications, and continued prosecution applications (and their relevant international equivalents) of the patent applications listed on Appendix A and of such patent applications that result from the provisional applications listed on Appendix A, to the extent the claims are directed to subject matter specifically described in the patent applications listed on Appendix A, and the resulting patents;

(d) any patents resulting from reissues, reexaminations, or extensions (and their relevant international equivalents) of the patents described in (a), (b), and (c) above; and

(e) international (non-United States) patent applications and provisional applications filed after the EFFECTIVE DATE and the relevant international equivalents to divisionals, continuations, continuation-in-part applications and continued prosecution applications of the patent applications to the extent the claims are directed to subject matter specifically described in the patents or patent applications referred to in (a), (b), (c), and (d) above, and the resulting patents.

1.6 "PROGRAM" means the computer program known as ", "D4M (Dynamic Distributed Dimensional Data Model)", as further described in M.I.T. Case No. 15908L by Jeremy Victor Kepner, and related documentation created by or on behalf of M.I.T., as it exists on the EFFECTIVE DATE.

1.7 "SUBLICENSEE" shall mean any non-AFFILIATE sublicensee pursuant to Section 2.2, but shall not include END USERS.

1.8 "TERM" the term of this Agreement shall commence on the EFFECTIVE DATE and shall remain in effect for ten (10) years, unless earlier terminated pursuant to the terms of this Agreement.

2. GRANT OF RIGHTS AND DELIVERY.

2.1 Software Grants.

(a) Right to Use, Copy, and Modify. Subject to the terms of this Agreement, M.I.T. hereby grants to COMPANY and its AFFILIATES a worldwide nonexclusive license under the COPYRIGHTS to the following for the TERM:

- (i) the right to run and reproduce the PROGRAM;
- (ii) the right to create DERIVATIVES and to run and reproduce the PROGRAM as part of such DERIVATIVES;
- (iii) the right to distribute, transfer, sell, lease or sublicense the right to use, reproduce or modify DERIVATIVES and to run and reproduce the PROGRAM as part of such DERIVATIVES.

(iv) to sublicense the right to run and reproduce the PROGRAM as part of such DERIVATIVES to END USERS.

(b) Patent Grants. Subject to the terms of this Agreement, M.I.T. hereby grants to COMPANY and its AFFILIATES for the TERM a worldwide nonexclusive license under the PATENT RIGHTS to develop, make, have made, use, sell, offer to sell, lease, and import licensed products and licensed processes for the TERM in so far as such rights and license are required or related to the PROGRAM and DERIVATIVES. Except as provided in Article 2.1(iv), neither COMPANY nor its AFFILIATES shall have the right to enter into sublicensing agreements.

(c) COMPANY Rights in DERIVATIVES. COMPANY shall be entitled to establish all proprietary rights for itself in the intellectual property represented by DERIVATIVES, whether in the nature of trade secrets, copyrights, patents or other rights, provided that all such rights are subject to the COPYRIGHT and PATENT RIGHTS. Any copyright registration by COMPANY for DERIVATIVES shall give full attribution to the COPYRIGHT. In the event COMPANY receives a patent on a DERIVATIVE, COMPANY hereby grants M.I.T. worldwide non-exclusive royalty-free irrevocable rights solely sufficient for M.I.T. to fully practice and comply with the retained rights in Section 2.3.

2.2 Sublicenses.

(a) Grant. COMPANY shall have the right to sublicense any of the rights granted in Section 2.1(a)(iii) above. COMPANY shall incorporate terms and conditions into its sublicense agreements sufficient to enable COMPANY and SUBLICENSEES to comply with this Agreement. Within 30 days of the end of each calendar quarter, COMPANY shall promptly furnish M.I.T. with a list of SUBLICENSEES. Upon request from M.I.T., COMPANY shall furnish M.I.T. with specific license agreements.

(b) Rights Upon Termination of this Agreement. Upon termination of this Agreement for any reason, SUBLICENSEES' rights shall also terminate. Any SUBLICENSEE not then in default shall have the right to seek a license from M.I.T. M.I.T. agrees to negotiate such licenses in good faith under reasonable terms and conditions.

Licenses of DERIVATIVES to END-USERS shall survive the termination of this Agreement, so long as such licenses specifically disclaim any and all warranties by M.I.T. in relation to the DERIVATIVES to the full extent permitted by law and limit M.I.T.'s liability for damages related to the DERIVATIVES to the full extent permitted by law.

2.3 Retained Rights.

(a) Non-Commercial Use. Regardless of any intellectual property rights to be established by COMPANY in DERIVATIVES, M.I.T. hereby retains now and forever the right to modify the PROGRAM in any way whatsoever, the right to use the PROGRAM for M.I.T.'s educational and research purposes, the right to distribute the PROGRAM to the United States government or to any United States government contractor for use on a United States government contract, and to distribute the PROGRAM and M.I.T.-created modifications, improvements, enhancements, or upgrades to third parties for educational, non-profit and non-commercial use.

(b) Federal Government. COMPANY acknowledges that the U.S. federal government retains a royalty-free, non-exclusive, non-transferable license to the PROGRAM pursuant to 48 CFR 52.227-14 (Civilian Agencies) or DFARS 252.227-7014 (Defense Agencies).

2.4 Delivery of PROGRAM. M.I.T. shall make the PROGRAM available to COMPANY by download within ten (10) days of the EFFECTIVE DATE.

2.5 Limitation. Nothing in this Agreement shall be construed to confer any rights upon COMPANY or its AFFILIATES by implication, estoppel or otherwise to any computer software, trademark, technology or patent rights of M.I.T., or of any other entity, except as explicitly granted herein.

3. LICENSE ISSUE FEE AND PAYMENT TERMS.

3.1 Consideration. COMPANY shall pay to M.I.T. on the EFFECTIVE DATE, a license issue fee of one hundred eighty thousand dollars (\$180,000), which shall be the sole sum payable by COMPANY hereunder. This payment is nonrefundable.

3.2 Payments. All payments under this Agreement should be made payable to "Massachusetts Institute of Technology" and sent to the address identified in Section 10.1. Each payment should reference this Agreement.

4. OWNERSHIP OF INTELLECTUAL PROPERTY.

COMPANY acknowledges that this Agreement does *not* transfer title to PROGRAM or PATENT RIGHTS to COMPANY or its AFFILIATES. Nothing in this Agreement shall be construed as a transfer of title to PROGRAM or PATENT RIGHTS to COMPANY or its AFFILIATES by implication, estoppel or otherwise. To the extent the PROGRAM contains a copyright notice, COMPANY shall retain prominently, and shall cause its AFFILIATES to retain prominently, such copyright notice in any DERIVATIVE.

4.1 Responsibility for PATENT RIGHTS M.I.T. shall, in its sole discretion, apply for, seek issuance of, maintain, or abandon the PATENT RIGHTS during the term of this Agreement.

5. INDEMNIFICATION AND INSURANCE.

5.1 Indemnification. COMPANY shall indemnify, defend, and hold harmless M.I.T. and its trustees, officers, faculty, students, employees, and agents and their respective successors, heirs and assigns (the "Indemnitees"), against any liability, damage, loss, or expense (including reasonable attorneys fees and expenses) incurred by or imposed upon any of the Indemnitees in connection with any claims, suits, actions, demands or judgments arising out of any theory of liability (including without limitation actions in the form of tort, warranty, or strict liability and regardless of whether such action has any factual basis), concerning any product, process, or service that is made, used, sold, or licensed pursuant to any right arising out of or related to the exercise of any rights granted to COMPANY under this Agreement or any breach of this Agreement by COMPANY.

5.2 Insurance. COMPANY shall obtain and carry in full force and effect commercial general liability insurance, including product liability insurance which shall protect COMPANY and Indemnitees with respect to events covered by Section 5.1 above. COMPANY shall continue to maintain such insurance after the expiration or termination of this Agreement during any period in which COMPANY or SUBLICENSEE or END-USER continues to use the PROGRAM or any DERIVATIVE.

6. NO REPRESENTATIONS OR WARRANTIES.

THE PROGRAM IS DELIVERED "AS IS." M.I.T. MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND CONCERNING THE PATENT RIGHTS AND THE PROGRAM OR THE COPYRIGHT, AND HEREBY DISCLAIMS ALL

REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF M.I.T. OR THIRD PARTIES, VALIDITY, ENFORCEABILITY, AND SCOPE OF PATENT RIGHTS, WHETHER ISSUED OR PENDING, AND THE ABSENCE OF LATENT OR OTHER DEFECTS, WHETHER OR NOT DISCOVERABLE. M.I.T. EXTENDS NO WARRANTIES OF ANY KIND AS TO PROGRAM CONFORMITY WITH WHATEVER USER MANUALS OR OTHER LITERATURE MAY BE ISSUED FROM TIME TO TIME. Furthermore, and not to limit the foregoing, M.I.T. makes no warranty or representation that the exploitation of the PROGRAM or any DERIVATIVE will not infringe any patents or other intellectual property rights of M.I.T. or of a third party.

IN NO EVENT SHALL M.I.T., ITS TRUSTEES, DIRECTORS, OFFICERS, EMPLOYEES AND AFFILIATES BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING ECONOMIC DAMAGES OR INJURY TO PROPERTY AND LOST PROFITS, REGARDLESS OF WHETHER M.I.T. SHALL BE ADVISED, SHALL HAVE OTHER REASON TO KNOW, OR IN FACT SHALL KNOW OF THE POSSIBILITY OF THE FOREGOING.

If, by operation of law or otherwise, any of the aforementioned warranty disclaimers are determined inapplicable, COMPANY's and AFFILIATE's sole remedy against MIT, regardless of the form of action, including, but not limited to, negligence and strict liability, shall be replacement of the licensed PROGRAM or refund of the license issue fee, to be determined at M.I.T.'s option.

7. ASSIGNMENT.

This Agreement is personal to COMPANY and no rights or obligations may be assigned by COMPANY without the prior written consent of M.I.T.

8. GENERAL COMPLIANCE WITH LAWS

8.1 Compliance with Laws. COMPANY shall use reasonable commercial efforts to comply with all commercially material local, state, federal, and international laws and regulations relating to the development, manufacture, use, sale and license of DERIVATIVES.

8.2 Export Control. COMPANY and its AFFILIATES shall comply with all United States laws and regulations controlling the export of certain commodities and technical data, including without limitation all Export Administration Regulations of the United States Department of Commerce. Among other things, these laws and regulations prohibit or require a license for the export of certain types of commodities and technical data to specified countries. COMPANY hereby gives written assurance that it will comply with, and will cause its AFFILIATES to comply with, all United States export control laws and regulations, that it bears sole responsibility for any violation of such laws and regulations by itself or its AFFILIATES, and that it will indemnify, defend, and hold M.I.T. harmless (in accordance with Section 5.1) for the consequences of any such violation.

9. TERMINATION.

9.1 Voluntary Termination by COMPANY. COMPANY shall have the right to terminate this Agreement, for any reason, upon written notice to M.I.T.

9.2 Termination for Default. In the event either party commits a material breach of its obligations under this Agreement and fails to cure that breach within sixty (60) days after receiving written notice of the existence of such breach, the non-breaching party may terminate this Agreement immediately upon written notice to the breaching party.

9.3 Effect of Termination. The following provisions shall survive the expiration or termination of this Agreement: Articles 1, 5, 6, and 10, and Sections 2.2(b) and 9.3.

10. MISCELLANEOUS.

10.1 Notice. Any notices required or permitted under this Agreement shall be in writing, shall specifically refer to this Agreement, and shall be sent by hand, recognized national overnight courier, confirmed facsimile transmission, confirmed electronic mail, or registered or certified mail, postage prepaid, return receipt requested, to the following addresses or facsimile numbers of the parties:

If to M.I.T.: Technology Licensing Office, Room NE18-501
Massachusetts Institute of Technology
One Cambridge Center, Kendall Square
Cambridge, MA 02142-1601
Attention: Director
Tel: 617-253-6966
Fax: 617-258-6790

If to COMPANY: _____

Attention: _____
Tel: _____
Fax: _____

All notices under this Agreement shall be deemed effective upon receipt. A party may change its contact information immediately upon written notice to the other party in the manner provided in this Section.

10.2 Governing Law. This Agreement and all disputes arising out of or related to this Agreement, or the performance, enforcement, breach or termination hereof, and any remedies relating thereto, shall be construed, governed, interpreted and applied in accordance with the laws of the Commonwealth of Massachusetts, U.S.A., without regard to conflict of laws principles.

10.3 Non-Use of M.I.T. Name. COMPANY and its AFFILIATES shall not use the name of "Massachusetts Institute of Technology," "Lincoln Laboratory" or any variation, adaptation, or abbreviation thereof, or of any of its trustees, officers, faculty, students, employees, or agents, or any trademark owned by M.I.T., or any terms of this Agreement in any promotional material or other public announcement or disclosure without the prior written consent of M.I.T. The foregoing notwithstanding, solely for the purpose of showing that COMPANY is legally licensed by M.I.T., COMPANY may state, without the consent of M.I.T., that it is licensed by M.I.T. under the COPYRIGHT, provided that such statement is not used as an endorsement or selling feature of COMPANY'S product.

10.4 Force Majeure. Neither party will be responsible for delays resulting from causes beyond the reasonable control of such party, including without limitation fire, explosion, flood, war, strike, or riot, provided that the nonperforming party uses commercially reasonable efforts

to avoid or remove such causes of nonperformance and continues performance under this Agreement with reasonable dispatch whenever such causes are removed.

10.5 Amendment and Waiver. This Agreement may be amended, supplemented, or otherwise modified only by means of a written instrument signed by both parties. Any waiver of any rights or failure to act in a specific instance shall relate only to such instance and shall not be construed as an agreement to waive any rights or fail to act in any other instance, whether or not similar.

10.6 Severability. In the event that any provision of this Agreement shall be held invalid or unenforceable for any reason, such invalidity or unenforceability shall not affect any other provision of this Agreement, and the parties shall negotiate in good faith to modify the Agreement to preserve (to the extent possible) their original intent.

10.7 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties and their respective permitted successors and assigns.

10.8 Headings. All headings are for convenience only and shall not affect the meaning of any provision of this Agreement.

10.9 Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to its subject matter and supersedes all prior agreements or understandings between the parties relating to its subject matter.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives.

The EFFECTIVE DATE of this Agreement is _____.

MASSACHUSETTS INSTITUTE OF

TECHNOLOGY

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

APPENDIX A

List of Patent Applications and Patents

I. United States Patents and Applications

M.I.T. Case No. 14324L

United States of America Serial No. 13/009100, Filed January 19, 2011
"Dynamic Distributed Dimensional Data Model (D4m) Database And Computation"

by Jeremy Victor. Kepner

II. International (non-U.S.) Patents and Applications