Software Access Agreement

This Software Evaluation Agreement (“**Agreement**”) is effective as of the last date signed by the Parties (the “**Effective Date**”) and is entered by and between **[Company Name]** (“**Licensor**”) and the Licensee identified on the signature lines hereto (“**Licensee**”). Licensor and Licensee are sometimes referred to hereinafter individually as a “**Party**” and collectively as the “**Parties**.” Licensor shall provide to Licensee the software or other technology identified on Exhibit A attached hereto (the “**Software**”) under the terms and conditions of this Agreement.

**RECITALS**

WHEREAS, Licensor wishes to provide Licensee with access to the Software for internal research purposes related to **[brief description of research areas]**;

WHEREAS, the Parties agree that the Software and the parameters thereof are proprietary and highly confidential, and misuse of the Software could cause significant harm to the Parties and to the public at large;

WHEREAS, the Parties wish to minimize the potential harm that may arise from the dissemination and misuse of the Software; and

WHEREAS, Licensee agrees to enter into this Agreement governing the dissemination and use of the Software and of any results generated by the Software;

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, Licensor and Licensee hereby agree as follows:

**TERMS**

1. **Grant of Rights; Exclusions; Restrictions; Feedback.**
	1. **Grant of Rights**. Subject to the terms and conditions of this Agreement, and during the Evaluation Period (as defined on **Exhibit A**), Licensor hereby grants to Licensee **[**and its Affiliates**]** a nonexclusive, royalty-free, fully paid up, worldwide, nontransferable license, without the right of sublicense, to Use the Software at no cost solely in the **Licensed Field**, solely for **Approved Uses**, and pursuant to the restrictions set forth in this Agreement. **[**“**Affiliates**” means with respect to Licensee, any entity that directly or indirectly controls, is controlled by, or is under common control with that party.**]** “**Approved Uses**” means all Use of the Software for the purposes set out in Exhibit A. “**Use**” means to load, execute, store, transmit, display, copy, amend, modify, enhance and otherwise utilize the Software.
	2. **Licensed Field**. For purposes of this Agreement, “Licensed Field” means internal research purposes related to **[brief description of research areas].**
	3. **Specific Exclusions**. Licensor does ***not*** (i) grant to Licensee any other licenses, implied or otherwise, to any patents or other rights of Licensor other than those rights expressly granted hereunder, or (ii) agree to furnish to Licensee any technology or technological information other than the Software.
	4. **License Restrictions**. Absent explicit prior written approval signed by Licensor, Licensee shall not: (i) distribute, sell, lend, rent, lease, transfer, or grant any rights in or to all or any portion of the Software to any third party; (ii) remove or alter any trademark, logo, copyright or other proprietary notices, legends, symbols or labels in the Software; (iii) use the Software for commercial or revenue-generating purposes; (iv) permit third parties to access or use the Software, or develop or deploy any system or software including the Software for use by any third parties; (v) reverse assemble, reverse compile, decompile, translate or otherwise attempt to discover the source code of any component of the Software (except to the extent that such acts are carried out in furtherance of the Approved Uses); (vi) rent, lease, sell, or assign, the Software or any components thereof to any third party; (vii) without the prior written consent of an authorized representative of Licensor, reproduce, prepare derivative works of, display, perform, license, sublicense, distribute or otherwise transfer the Software or any components thereof to any third party; or (viii) access or use the Software in order to build a directly commercially competitive product or service (although Licensor acknowledges that Licensee **[**and its Affiliates**]** may independently develop similar potentially competing technology and use publicly available information from Licensor or others in doing so).
	5. **Feedback**. Licensee will use commercially reasonable efforts to report to Licensor any “bugs” or reproducible errors in the Software as they are encountered by Licensee. Licensee grants Licensor a non-exclusive, worldwide, fully paid up, perpetual and irrevocable license to use this Feedback in Licensor’s business activities without restriction and without payment or accounting to Licensee or any third party provided that Licensee Feedback is aggregated, anonymized and de-identified and is otherwise not reasonably associated or linked to Licensee or any other identifiable individual person or entity or reasonably capable of being reidentified, excluding any license to Licensee’s Background IP. “**Background IP**” means intellectual property, proprietary information, or confidential know-how which is owned by a party prior to the Effective Date or generated after the Effective Date but independent of the Software or the licenses granted hereunder. Notwithstanding any license granted under this Agreement to Feedback, the parties agree that Feedback may only be attributed to Licensee internally, any other attribution shall not be permitted without Licensee's prior written consent. Further, Licensor shall not publicly discuss Licensee’s involvement in any evaluation of the Software without Licensee’s prior written consent. “**Feedback**” means: (i) any feedback or suggestions that Licensee provides to Licensor in writing regarding the improvement or change to the Software; and (ii) any information described in 3 below. For the avoidance of doubt, Feedback does not include: (a) any information or communication which is Confidential Information (as defined in 12); or (b) any feedback or suggestion not actively provided to Licensor in writing.
2. **Support**. This Agreement does not entitle Licensee to support. Despite the foregoing, Licensor will make reasonable efforts to provide technical support and guidance to Licensee to enable Licensee’s use of the Software.
3. **Reporting**. Once every 4 weeks from provision of the Software, Licensee shall contact Licensor to provide an update (including via telephone). In addition, Licensee will submit a written report to Licensor at the end of the Evaluation Period describing, where relevant, key scientific discoveries and summaries of work carried out relating to the Software.
4. **Intellectual Property**.
	1. **Ownership of Intellectual Property**. Software are proprietary and confidential information of Licensor. Except to the extent licenses are expressly granted hereunder, each Party and each Party’s licensors, respectively, retains all right, title and interest in and to all IPR: (a) in and to that Party’s respective products and services, and (b) that is owned or controlled by or licensed to a Party and is introduced by that Party (whether before or after the Effective Date) for the purpose of any activity contemplated under this Agreement. Without limitation to the foregoing, Licensor retains all right, title and interest in and to any work product created by Licensor in the course of providing the Software and any service or support under this Agreement. Licensee retains all right, title and interest in and to (i) any work product created by Licensee in the course of using the Software and (ii) any service carried out under this Agreement, in each of the foregoing clauses (i) and (ii), except to the extent expressly provided for in this Agreement, solely to the extent that such work product or service does not contain and/or is not derived from Licensor IPR. “**Intellectual Property Rights**” or “**IPR**” means any and all patents, utility models, design rights, copyrights, moral rights, trade marks, domain names, database rights, rights in respect of confidential information (including know-how), and any other intellectual property rights, in each case whether registered or unregistered, and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
	2. **Marks**. Neither Party will use (i) the other Party’s name, logo, or trademarks, (ii) the name, logo, or trademarks of any organization related to the other Party (including, without limitation, any Affiliates of the other Party), or (iii) the name of any employee, personnel, or contractor of the other Party, in each case without the prior written consent of such other Party. Permission may be withheld at such other Party’s sole discretion. This prohibition includes, but is not limited to, use in press releases, advertising, marketing materials, other promotional materials, presentations, case studies, reports, websites, application or software interfaces, and other electronic media.
5. **Publishing**. If Licensee desires to publish any results of any evaluations, tests or research related to the Software, or any **[describe other types of results, e.g. text generated by the Software]** (“Results”), then Licensee shall provide to Licensor a pre-publication manuscript for a safety review at least thirty (30) days before the proposed publication is submitted to any publisher (“**Review Period**”). Licensor shall review the publication within the Review Period and may provide feedback on such publication and:
	1. if Licensee does not receive feedback from Licensor within the Review Period, Licensee may proceed with the proposed publication; or
	2. if Licensor does provide feedback with in the Review Period, Licensee agrees that it will not publish or present any Results absent prior written approval by Licensor, which approval will not be unreasonably withheld and may only be withheld to prevent the potential harm to the public that Licensor believes is likely to result from such publication.

Licensee further agrees that any publication or presentation of Results shall appropriately cite the contributions of Licensor, using customary standards of attribution, and in the case of any text generated by the Software, Licensee shall clearly and explicitly label such text as having been generated by the Software.

1. **No Indemnities by Licensor; No Warranties**. THIS AGREEMENT DOES NOT ENTITLE LICENSEE TO ANY INDEMNIFICATION OF ANY KIND. THE SOFTWARE IS LICENSED “AS IS.” EXCEPT AS SET FORTH IMMEDIATELY BELOW, LICENSOR MAKES NO WARRANTIES (EXPRESS, IMPLIED, STATUTORY OR OTHERWISE) WITH RESPECT TO THE SOFTWARE, AND EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. LICENSOR DOES NOT WARRANT THAT THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE OR SUCCEED IN RESOLVING ANY PROBLEM. LICENSEE FURTHER AGREES THAT USE OF THE SOFTWARE IS AT LICENSEE’S OWN RISK. LICENSEE HAS NO WARRANTY OR GUARANTEE UNDER THIS AGREEMENT THAT THE OPERABILITY OF ANY OF LICENSEE’S APPLICATIONS RUNNING WITH THE SOFTWARE WILL BE MAINTAINED WITH ANY SUBSEQUENT OR GENERALLY AVAILABLE VERSIONS OF THE SOFTWARE OR THAT ANY VERSION OF THE SOFTWARE WILL EVER BE MADE AVAILABLE OR MARKETED.

Licensor warrants, represents and undertakes that: (a) it has, and will continue to have, all necessary rights including IPR to grant the licenses as set out in this Agreement; and (b) Licensee's use of the Software as contemplated under this Agreement shall not infringe, violate or misappropriate the rights including IPR of any third party.

1. **No Indemnities by Licensee; No Warranties on Feedback**. THIS AGREEMENT DOES NOT ENTITLE LICENSOR TO ANY INDEMNIFICATION OF ANY KIND. THE FEEDBACK IS LICENSED “AS IS.” LICENSEE MAKES NO WARRANTIES (EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE) WITH RESPECT TO THE FEEDBACK AND DISCLAIMS ALL IMPLIED WARRANTIES INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF NONINFRINGEMENT, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE. LICENSEE DOES NOT WARRANT THAT THE FEEDBACK WILL BE ERROR FREE OR SUCCEED IN RESOLVING ANY PROBLEM. LICENSOR AGREES THAT THE USE OF THE FEEDBACK IS AT LICENSOR’S OWN RISK, AND THE FEEDBACK MAY NOT CONTAIN OR LEAD TO ANY PARTICULAR RESULT OR OUTCOME.
2. **Limitation of Liability**. TO THE EXTENT NOT PROHIBITED BY LAW, IN NO EVENT SHALL LICENSOR BE LIABLE FOR ANY DAMAGES, INCLUDING INTERRUPTION OF USE OR LOSS OR CORRUPTION OF DATA, LOST REVENUE OR PROFITS, COST OF COVER OR OTHER SPECIAL, INCIDENTAL, CONSEQUENTIAL, DIRECT, INDIRECT, OR PUNITIVE DAMAGES ARISING FROM THE USE OF THE SOFTWARE, HOWEVER CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY. EXCEPT IN THE CASE OF INFRINGEMENT BY THE SOFTWARE OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS FOR WHICH LICENSOR IS EXPRESSLY LIABLE HEREUNDER, IN NO EVENT SHALL LICENSOR’S LIABILITY, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE GREATER OF THE AMOUNT PAID FOR THE SOFTWARE UNDER THIS AGREEMENT OR [**LOW AMOUNT**]. IN THE CASE OF INFRINGEMENT BY THE SOFTWARE OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS FOR WHICH LICENSOR IS EXPRESSLY LIABLE HEREUNDER, IN NO EVENT SHALL LICENSOR’S LIABILITY, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED **[HIGHER AMOUNT]** DOLLARS. THE FOREGOING LIMITATIONS WILL APPLY EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE PARTIES ACKNOWLEDGE THAT THIS IS A REASONABLE ALLOCATION OF RISK.
3. **Export Compliance**. The parties will comply with all applicable export control and sanctions laws and regulations, including (i) the Export Administration Regulations (“EAR”) maintained by the U.S. Department of Commerce, (ii) trade and economic sanctions maintained by the U.S. Treasury Department's Office of Foreign Assets Control, and (iii) the International Traffic in Arms Regulations (“ITAR”) maintained by the U.S. Department of State. Each party shall indemnify, defend and hold the other harmless for the consequences of any violation of this Section.
4. **Termination**.
	1. **Termination**. This Agreement will terminate automatically at the end of the Evaluation Period, or earlier upon the material breach by either Party of any term set forth in this Agreement that remains uncured after thirty (30) days’ written notice of such breach by the non-breaching Party. In addition, either party may terminate the Agreement at any time by giving the other party 30 days’ written notice of termination.
	2. **Effect of Termination**. Upon termination or expiration of this Agreement, all licenses granted hereunder shall cease. Substantially concurrent with the end of the Evaluation Period or any earlier termination of this Agreement, Licensee shall remove the Software (by deleting the Software and all copies thereof to the extent technically feasible) from Licensee’s premises, and any copies of it made by Licensee, unless Licensor gives Licensee authorization before close of the Evaluation Period or any earlier termination to retain possession of the Software and copies for a longer time period.
	3. **Survival**. The following sections shall survive any termination of this Agreement: 1(c), 1(d), 3-9, 10(b), 10(c), and 11 - 14, all associated definitions, all rights to any claim of breach accrued prior to termination, and all accrued rights to payment, if any.
5. **Relationship of the Parties**. Nothing in this Agreement will be construed to create a partnership, joint venture or agency relationship between the parties. The parties agree that each is an independent contractor and neither party will have the power to bind the other or to incur obligations on the other’s behalf without such other party’s prior written consent. Nothing in this Agreement shall be construed as an obligation by either party to enter into a contract, subcontract, or other business relationship with the other party. Each party shall bear all costs and expenses incurred by it under or in connection with this Agreement.
6. **Confidential Information**. The recipient will not disclose the discloser’s Confidential Information, except to Affiliates, directors, officers, employees, agents, or professional advisors, who need to know it and who have agreed in writing (or in the case of professional advisors are otherwise bound) to keep it confidential. The recipient will ensure that those people and entities use the Confidential Information only to exercise rights and fulfil obligations under this Agreement, and that they keep it confidential. The recipient may also disclose Confidential Information when required by law after giving reasonable notice to the discloser and a reasonable opportunity for the discloser to challenge such disclosure, if permitted by law. The recipient shall apply the same security measures and degree of care to the Confidential Information as the recipient applies to its own Confidential Information, which the recipient warrants as providing adequate protection from unauthorized disclosure, copying or use. “**Confidential Information**” means information that one party (or an Affiliate) discloses to the other party under this Agreement, and that is marked as confidential or would normally be considered confidential information under the circumstances. It does not include Licensee Feedback only if Licensee Feedback is aggregated, anonymized and de-identified and is otherwise not reasonably associated or linked to Licensee or any other identifiable individual person or entity or reasonably capable of being reidentified, information that the recipient already knew (other than information subject to an obligation of confidentiality), that becomes public through no fault of the recipient, that was independently developed by the recipient without reference to or use of any Confidential Information, or that was lawfully given to the recipient by a third party. Each party acknowledges that a party receiving Confidential Information may, as of the date of disclosure of the relevant Confidential Information, be developing or may, in the future, develop proprietary information internally or receive proprietary information from third parties that may be similar to the received Confidential Information. Nothing in this Agreement will be construed as a representation or inference that the receiving party will not develop products, for itself or third parties, that compete with the products, processes, systems or methods contemplated by the received Confidential Information, so long as the receiving party does not do so in breach of this Agreement and so long as the receiving party independently develops such products without reference to or use of any Confidential Information.
7. **Miscellaneous**. All notices required or permitted under this Agreement will be in writing, will reference this Agreement, and will be deemed given: (i) when delivered personally; (ii) one business day after deposit with a nationally recognized express courier, with written confirmation of receipt; (iii) three business days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (iv) on the date of receipt when delivered by email. All notices of termination or breach must be in writing and addressed to the other party’s Legal Department and may be delivered by email. The address for notices being sent to Licensor is: **[INSERT]**. The address for notices being sent to Licensee is: **[INSERT]**. This Agreement is not assignable or transferable by either Party without the other Party’s prior written consent. No failure or delay in exercising any right hereunder will operate as a waiver, thereof, nor will any partial exercise of any right or power hereunder preclude further exercise. If any provision of this Agreement is held to be unenforceable, this Agreement will remain in effect with the provision omitted, unless omission would frustrate the intent of the parties, in which case this Agreement will immediately terminate. This Agreement may be modified, replaced or rescinded only in writing and signed by a duly authorized representative of each party. This Agreement shall be construed under and governed by the laws of the State of **[**California**]**, without regard to conflict of law provisions, and will be litigated exclusively in the federal or state courts of **[**Santa Clara County, California**]**, USA.
8. This Agreement sets out all terms agreed between the parties on the subject matter, and supersedes all prior or contemporaneous oral or written communications, proposals, representations and warranties and prevails over any conflicting or additional terms of any quote, purchase order, acknowledgment, or other communication between the parties relating to its subject matter during the term of this Agreement.

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| **Licensor:** | **Licensee:** |
| Address: | Address: |
| Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Print Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Print Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
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| Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

 **EXHIBIT A**

**Description of Software:**

**Evaluation Period: X** months from the date of this Agreement.

**Approved Uses:**

* …
* …
* …
* …

**Teams:** The Parties shall agree in writing (including via e-mail) details of the teams that will be receiving the Software and Feedback.