

SOFTWARE USER LICENSE AGREEMENT

This Agreement, effective on the date of the last duly authorized signature hereto, is by and between Vanderbilt University ("Vanderbilt"), located in Nashville, Tennessee, and "Licensee" (as identified at the end of this Agreement).

NOW, THEREFORE, in consideration of the agreement of the respective Parties hereto, and for the faithful performance of this Agreement, it is hereby agreed as follows:

ARTICLE I - DEFINITIONS

- 1.1 "Vanderbilt" and "Licensee" shall have the meanings set forth above, and each may be referred to herein as a "Party" or, collectively, as "Parties" to this Agreement.
- 1.2 "Software" shall mean all technical information and data relating to the Vanderbilt developed "Procoder Observational Software", VU 0357.

ARTICLE II - GRANT OF LICENSE

- 2.1 Subject to the terms and conditions of this Agreement, and to the extent of its' rights, Vanderbilt hereby grants Licensee a paid-up, nontransferable, nonexclusive right to use the Software.
- 2.2 Except as expressly stated herein, Licensee shall have no right to copy, distribute, modify, transfer or resell the Software.

ARTICLE III - FEES and DUTIES

- 3.1 In consideration of the rights granted in this Agreement, Licensee agrees to pay Vanderbilt a nonrefundable, one-time up front "License Fee" of one thousand four hundred ninety nine dollars (\$ 1,499.00) per single copy of the Software; or nine hundred ninety nine dollars (\$ 999.00) per single copy of the Software when ordering in quantity of two (2) to five (5) copies of the Software; or seven hundred ninety nine dollars (\$799.00) per single copy of the Software when ordering in quantities of six (6) or more copies of the Software.
- 3.2 Within thirty (30) days of receipt by Vanderbilt of the payment of the License Fee set forth in Paragraph 3.1, and two (2) signed copies of this Agreement by Licensee with all the required Licensee information filled in at the end of this Agreement by Licensee, including the number of copies of the Software being purchased and the total dollar amount enclosed, Vanderbilt shall make available to Licensee the Software by allowing the Software to be activated via the internet using Licensee's registered e-mail and assigned customer identification number. Vanderbilt shall also return one (1) copy of the Agreement, signed by Vanderbilt, to Licensee.

ARTICLE IV - STATEMENTS, REPORTS AND PAYMENTS

- 4.1 All fees payable by Licensee hereunder shall be paid to Vanderbilt at the address specified in Paragraph 8.1 hereof in United States of America dollars in the total amount provided for in Paragraph 3.1. Any taxes, assessments, or charges assessed or imposed by an entity or government, which Vanderbilt or Licensee, or any other party shall be required to pay with respect to such fee shall be borne by Licensee.

ARTICLE V - DURATION AND TERMINATION

- 5.1 If Licensee's rights under this Agreement are terminated for any reason, Licensee shall have no further rights as specified under ARTICLE II of this Agreement, and shall have no further right

to receive or possess the Software. Furthermore, Licensee shall immediately return to Vanderbilt, postage prepaid, all drawings, data, memoranda and information, in written or physical form, relating to the Software, whether prepared by Licensee or Vanderbilt, including all copies in Licensee's possession, or destroy such drawings, data, memoranda, information and copies and submit a certificate to Vanderbilt verifying said destruction.

- 5.2 Vanderbilt may terminate the right and license granted under this Agreement if Licensee, at any time:
 - (a) commits any material breach of this Agreement; or
 - (b) makes any false statement,

and fails to remedy or cure the above-identified breach of agreement or making of false statement, within thirty (30) days after Vanderbilt gives written notice to Licensee of the default, breach or false statement.

ARTICLE VI - CONFIDENTIALITY

- 6.1 To the extent the Software is provided to Licensee, Licensee agrees not to disassemble, decompile or otherwise reverse-engineer the Software. Licensee further agrees not to disclose the Software to third parties, except as provided for in Paragraphs 6.2 and 6.3 of this Agreement. Licensee agrees to use the Software, only to the extent necessary, for the enjoyment of Licensee's right and license granted under this Agreement.
- 6.2 Licensee shall limit access to the Software, and may disclose the Software to only those employees and contractors who require access for Licensee's enjoyment of its right and license under this Agreement. Licensee shall ensure that such employees and contractors are obligated to treat the Software as confidential under this Agreement. Licensee's obligations of nondisclosure under this Agreement shall continue for five (5) years after termination of Licensee's rights under this Agreement.
- 6.3 This Agreement does not restrict or impair the right of Licensee to use, disclose or otherwise deal with any part of technical information or data which:
 - (a) is or becomes generally available to the public through no wrongful act of Licensee;
 - (b) was in the possession of Licensee prior to the time the Software was acquired by Licensee, and was not acquired directly or indirectly from Vanderbilt or from others under an obligation of confidentiality;
 - (c) is independently made available to Licensee by a third party without the legal obligation of secrecy, provided the third party did not acquire it directly or indirectly from Vanderbilt; or
 - (d) is independently developed by Licensee through employees who did not have access to the Software.

ARTICLE VII - WARRANTY, LIABILITY AND INDEMNIFICATION

- 7.1 Vanderbilt warrants that it has the right to grant the license in ARTICLE II of this Agreement.
- 7.2 Vanderbilt makes no warranty, express or implied, as to the accuracy or utility of the Software and that the use of the Software will not infringe any United States or foreign patents or copyrights. The Software is made available hereunder to Licensee on an "AS-IS" basis. Licensee assumes all risk associated with the use of the Software.

EXCEPT FOR THE WARRANTIES EXPRESSLY PROVIDED HEREIN, ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE EXCLUDED HEREUNDER.

7.3 Vanderbilt, its agents, officers and employees shall not be liable for any loss, damage (including incidental, consequential and special), injury or other casualty of whatsoever kind, or by whomsoever caused, to the person or property of anyone, including Licensee and its affiliates, arising out of or resulting from the right and license granted to Licensee herein. Licensee agrees for itself and its successors, to indemnify and hold Vanderbilt harmless from and against all claims, demands, liabilities, suits or actions (including all reasonable expenses and attorney's fees incurred by or imposed on Vanderbilt for such loss, damage (including incidental, consequential and special), injury or other casualty.

ARTICLE VIII - GENERAL PROVISIONS

8.1 Any notice with respect to this Agreement shall be deemed given on the date when sent by facsimile transmission, with receipt of confirmation, or when mailed by registered mail addressed to the Party to be notified at its' address set forth below or such other address as is designated by writing:

For Statements, Notices, and Payments:

Vanderbilt University
Office of Technology Transfer
1207 17th Ave. South, Suite 105
Nashville, Tennessee 37212
(615) 343-4457 (615) 343-4419 Fax
Attn: Ms. Robin Forester
robin.forester@vanderbilt.edu

8.2 The waiver of a breach of this Agreement or the failure of Vanderbilt or Licensee to exercise any right under this Agreement shall in no event constitute a waiver as to any other breach, whether similar or dissimilar in nature, or prevent the exercise of any right under this Agreement.

ARTICLE IX - EXPORT CONTROL

9.1 Licensee shall abide by the export control laws and regulations of the United States Department of Commerce and other United States governmental regulations relating to the export of the Software.

ARTICLE X - ASSIGNMENT

10.1 Licensee shall not assign this Agreement or any right granted, or delegate any duties under this Agreement without the prior written consent of Vanderbilt. However, Licensee may assign this Agreement to a successor in substantially all of the business of the Licensee relating to the subject matter of this Agreement, and provide Vanderbilt written notice thereof.

ARTICLE XI - CONTROLLING LAW

11.1 This Agreement is made in Nashville, Tennessee, U.S.A., and shall be governed by and construed in accordance with the laws of Tennessee. The Parties agree to the exclusive jurisdiction of the courts of Tennessee, or the United States District Court for Tennessee.

ARTICLE XII - ENTIRE AGREEMENT

12.1 Each party warrants and represents that the execution and delivery of this Agreement, by Vanderbilt and Licensee, has not been induced by any promises, representations, warranties, or agreements other than those expressed herein. This Agreement embodies the entire understanding between Vanderbilt and Licensee with respect to the Software. This Agreement supersedes all previous undertakings, communications, and representations, either verbal or written, between Vanderbilt and Licensee with regard to the Software.

12.2 The index and headings used in this Agreement are for reference purposes only and shall not be used in the interpretation or construction of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the dates given below:

VANDERBILT UNIVERSITY:

By: _____
Christopher D. McKinney
Title: Director, Office of Technology Transfer
Date: _____

LICENSEE:

By: _____
(Signature)

(Please print signature)

Title: _____
Date: _____

Company Name: _____

Address: _____

Point of Contact: _____

E-mail: _____

Voice/Fax #'s: _____

Quantity: _____

Total \$ Amount Enclosed: _____