

This draft is dated _____, and is solely for purposes of negotiation. No contract shall exist until a final, written agreement is signed by WiSys and an authorized representative of Licensee. This draft shall expire thirty (30) days after the above date.

NON-EXCLUSIVE LICENSE AGREEMENT

This Non-Exclusive License Agreement (“Agreement”) is made effective the ___ day of _____, ____ (the “Effective Date”), by and between the WiSys Technology Foundation, Inc. (“WiSys”), a nonstock, nonprofit Wisconsin corporation, and _____ (“Licensee”), a corporation organized and existing under the laws of _____.

WHEREAS, WiSys owns certain intellectual property rights to the inventions described in the “Licensed Patents” defined below, and WiSys is willing to grant a license to Licensee under any one or all of the Licensed Patents and Licensee desires a license under all of them.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth below, the parties covenant and agree as follows:

Section 1. Definitions.

For the purpose of this Agreement, the Appendix A definitions shall apply.

Section 2. Grant.

A. License.

WiSys hereby grants to Licensee a non-exclusive license under the Licensed Patents to make, use and sell Products in the Licensed Field and Licensed Territory.

B. License to WiSys.

(i) Licensee hereby grants to WiSys a nonexclusive, royalty-free, irrevocable, paid-up license, with the right to grant sublicenses to non-profit research institutions and governmental agencies, to practice and use “Improvements” for Non-Commercial Research Purposes. “Improvements” shall mean any patented modification of an invention described in the Licensed Patents that (1) would be infringed by the practice of an invention claimed in the Licensed Patents; or (2) if not for the license granted under this Agreement, would infringe one or more claims of the Licensed Patents.

(ii) In the event that Licensee discontinues the use or commercialization of the Licensed Patents or any Improvements provided for under this Agreement, Licensee hereby agrees to grant to WiSys an option to obtain a nonexclusive, royalty-bearing license, with the right to grant sublicenses, to practice and use said Improvements for commercial purposes. Licensee shall provide to WiSys written notice that Licensee intends to discontinue such use or commercialization immediately upon making such a decision. WiSys’s option with respect to each Improvement shall expire sixty (60) days after WiSys’s receipt of said written notice from Licensee. The failure of WiSys to timely exercise

its option under this paragraph shall be deemed a waiver of WiSys's option, but only with respect to the Improvement so disclosed.

Section 3. Development.

A. Licensee shall diligently develop, manufacture, market and sell Products in each Licensed Field and Licensed Territory throughout the term of this Agreement. Such activities shall include, without limitation, those activities listed in Licensee's "Development Plan" attached hereto as Appendix E. Licensee agrees that said Development Plan is reasonable and that it shall take all reasonable steps to meet the development program as set forth therein.

B. Beginning in calendar year 20__ and until the Date of First Commercial Sale, Licensee shall provide WiSys with a written Development Report summarizing Licensee's development activities since the last Development Report and any necessary adjustments to the Development Plan. Licensee agrees to provide each Development Report to WiSys on or before thirty (30) days from the end of each semi-annual period ending June 30 and December 31 for which a report is due, and shall set forth in each Development Report sufficient detail to enable WiSys to ascertain Licensee's progress toward the requirements of the Development Plan. WiSys reserves the right to audit Licensee's records relating to the development activities required hereunder. Such record keeping and audit procedures shall be subject to the procedures and restrictions set forth in Section 6 for auditing the financial records of Licensee.

C. Licensee agrees to and warrants that it has, or will obtain, the expertise necessary to independently evaluate the inventions of the Licensed Patents and to develop Products for sale in the commercial market and that it so intends to develop Products for the commercial market. Licensee acknowledges that any failure by Licensee to reasonably implement the Development Plan, or to make timely submission to WiSys of any Development Report, or the providing of any false information to WiSys regarding Licensee's development activities hereunder, shall be a material breach of this Agreement.

Section 4. Consideration.

A. License Fee.

Licensee agrees to pay to WiSys a license fee of _____, due on _____, _____.

B. Royalty.

In addition to the Section 4A license fee, Licensee agrees to pay to WiSys as "earned royalties" a royalty calculated as a percentage of the Selling Price of Products in accordance with the terms and conditions of this Agreement. The royalty is deemed earned as of the earlier of the date the Product is actually sold, leased or otherwise transferred for consideration, the date an invoice is sent by Licensee, or the date a Product is transferred to a third party for any promotional reasons. The royalty shall remain fixed while this Agreement is in effect at a rate of _____ percent (____ %) of the Selling Price of Products.

C. Minimum Royalty.

Licensee further agrees to pay to WiSys a minimum royalty of _____ per calendar year or part thereof during which this Agreement is in effect, the first of such minimum royalty payments shall be due for calendar year _____, against which any earned royalty paid for the same calendar year will be credited. The minimum royalty for a given year shall be due at the time payments are due for the calendar quarter ending on December 31. It is understood that the minimum royalties will apply on a calendar year basis, and that sales of Products requiring the payment of earned royalties made during a prior or subsequent calendar year shall have no effect on the annual minimum royalty due WiSys for any other given calendar year.

D. Patent Fees and Costs.

(i) Licensee also agrees to reimburse WiSys for [____ percent (___%) of] all reasonable costs incurred by WiSys in filing, prosecuting and maintaining the Licensed Patents. With respect to those costs invoiced to WiSys prior to the Effective Date, Licensee shall pay to WiSys \$ _____ within thirty (30) days of Licensee's execution of this Agreement. With respect to those costs invoiced to WiSys after the Effective Date, Licensee shall pay to WiSys such costs within thirty (30) days of receiving an invoice from WiSys.

(ii) WiSys is not obligated to make or maintain any foreign filing of the Licensed Patents. If Licensee desires WiSys to make or maintain such foreign filings, Licensee must notify WiSys in writing three (3) months prior to the expiration of the deadline for making such foreign filings, indicating those countries in which Licensee desires WiSys to pursue foreign patent protection. Any country for which WiSys files for such patent protection at Licensee's request shall be included in the Licensed Territory under this Agreement. WiSys reserves the right to file a patent application, at its own expense, in any countries not requested by Licensee pursuant to this Section 4D. Licensee acknowledges that if the United States Government (through any of its agencies or otherwise) has funded research, during the course of or under which any of the inventions of the Licensed Patents were conceived or made, the United States Government is entitled, as a right, under the provisions of 35 U.S.C. § 200-212 and applicable regulations of Chapter 37 of the Code of Federal Regulations, to make and maintain foreign filings in those countries not selected by Licensee and/or WiSys.

(iii) WiSys will prosecute all national applications it files at Licensee's request pursuant to this Section 4D until WiSys determines that continued prosecution is unlikely to result in the issuance of a patent in that country. If WiSys decides to abandon prosecution or maintenance of any patent or patent application under the Licensed Patents in a country in which Licensee has requested WiSys to make and maintain such filing, WiSys shall provide Licensee notice of WiSys's intent to abandon such application.

E. Accounting; Payments.

(i) Amounts owing to WiSys under Section 4B shall be paid on a quarterly basis, with such amounts due and received by WiSys on or before the thirtieth (30th) day following the end of the calendar quarter ending on March 31, June 30, September 30 or December 31 in which such amounts were earned. The balance of any royalty and non-royalty amounts owed to WiSys under this Agreement which remain unpaid more than thirty (30) days after they are due to WiSys shall accrue

interest until paid at the rate of the lesser of one percent (1%) per month or the maximum amount allowed under applicable law. However, in no event shall this interest provision be construed as a grant of permission for any payment delays.

(ii) Except as otherwise directed, all amounts owing to WiSys under this Agreement shall be paid in U.S. dollars to WiSys at the address provided in Section 16(a) or paid via wire transfer if agreed upon. All royalties owing with respect to Selling Prices and other fees stated in currencies other than U.S. dollars shall be converted at the rate shown in the Federal Reserve Noon Valuation - Value of Foreign Currencies on the day preceding the payment. WiSys is exempt from paying income taxes under U.S. law. Therefore, all payments due under this Agreement shall be made without deduction for taxes, assessments, or other charges of any kind which may be imposed on WiSys by any government outside of the United States or any political subdivision of such government with respect to any amounts payable to WiSys pursuant to this Agreement. All such taxes, assessments, or other charges that may reduce WiSys's net royalties, such as bank transfer fees, shall be assumed by Licensee.

(iii) A full accounting showing how any amounts owing to WiSys under Section 4B have been calculated shall be submitted to WiSys on the date of each such payment. For royalties, such accounting shall be on a per-country and product line, model or tradename basis and shall be summarized on the form shown in Appendix C of this Agreement. Such accounting shall include completing the quarterly royalty forecast section of Appendix C. In the event no payment is owed to WiSys, a statement setting forth that fact shall be supplied to WiSys.

Section 5. Certain Warranties.

A. WiSys warrants that except as otherwise provided under Section 14 of this Agreement with respect to U.S. Government interests, it is the owner of the Licensed Patents or otherwise has the right to grant the licenses granted to Licensee in this Agreement. However, nothing in this Agreement shall be construed as:

(i) a warranty or representation by WiSys as to the validity or scope of any of the Licensed Patents;

(ii) a warranty or representation that anything made, used, sold or otherwise disposed of under the license granted in this Agreement will or will not infringe patents of third parties; or

(iii) an obligation to furnish any know-how not provided in the Licensed Patents or any services other than those specified in this Agreement.

B. WISYS MAKES NO REPRESENTATIONS, EXTENDS NO WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, AND ASSUMES NO RESPONSIBILITIES WHATSOEVER WITH RESPECT TO THE USE, SALE, OR OTHER DISPOSITION BY LICENSEE OR ITS VENDEES OR OTHER TRANSFEREES OF PRODUCTS INCORPORATING OR MADE BY USE OF INVENTIONS LICENSED UNDER THIS AGREEMENT.

C. Licensee represents and warrants that Products produced under the license granted herein shall be manufactured substantially in the United States as required by 35 U.S.C § 204 and applicable regulations of Chapter 37 of the Code of Federal Regulations.

Section 6. Recordkeeping.

A. Licensee shall keep books and records sufficient to verify the accuracy and completeness of Licensee's accounting referred to above, including without limitation inventory, purchase and invoice records relating to the Products or their manufacture. In addition, Licensee shall maintain documentation evidencing that Licensee is in fact pursuing the development of Products as required herein. Such documentation may include, but is not limited to, invoices for studies advancing the development of Products, laboratory notebooks, internal job cost records, and filings made to the Internal Revenue Department to obtain tax credit, if available, for research and development of Products. Such books and records shall be preserved for a period not less than six (6) years after they are created during and after the term of this Agreement.

B. Licensee shall take all steps necessary so that WiSys may within thirty (30) days of its request review and copy all the books and records at a single U.S. location to allow WiSys to verify the accuracy of Licensee's royalty reports and Development Reports. Such review may be performed by any employee of WiSys as well as by any attorney or registered CPA designated by WiSys, upon reasonable notice and during regular business hours.

C. If a royalty payment deficiency is determined, Licensee shall pay the royalty deficiency outstanding within thirty (30) days of receiving written notice thereof, plus interest on outstanding amounts as described in Section 4E(i).

D. If a royalty payment deficiency for a calendar year exceeds the lesser of five percent (5%) of the royalties paid for that year or Fifty Thousand Dollars (\$50,000), then Licensee shall be responsible for paying WiSys's out-of-pocket expenses incurred with respect to such review.

Section 7. Term and Termination.

A. The term of this Agreement and the license(s) granted hereunder shall begin on the Effective Date and continue until this Agreement is terminated as provided herein or until the earlier of the date that no Licensed Patent remains an enforceable patent or the payment of earned royalties under Section 4B, once begun, ceases for more than four (4) calendar quarters.

B. Licensee may terminate this Agreement at any time by giving at least ninety (90) days written and unambiguous notice of such termination to WiSys. Such a notice shall be accompanied by a statement of the reasons for termination.

C. WiSys may terminate this Agreement by giving Licensee at least ninety (90) days written notice if the Date of First Commercial Sale does not occur on or before _____, 20__.

D. If Licensee at any time defaults in the timely payment of any monies due to WiSys or the timely submission to WiSys of any Development Report, fails to actively pursue the

Development Plan, or commits any breach of any other covenant herein contained, and Licensee fails to remedy any such breach or default within ninety (90) days after written notice thereof by WiSys, or if Licensee commits any act of bankruptcy, becomes insolvent, is unable to pay its debts as they become due, files a petition under any bankruptcy or insolvency act, or has any such petition filed against it which is not dismissed within sixty (60) days, or offers any component of the Licensed Patents to its creditors, WiSys may, at its option, terminate this Agreement immediately by giving notice of termination to Licensee.

E. Upon the termination of this Agreement, Licensee shall remain obligated to provide an accounting for and to pay royalties earned up to the date of the termination and any minimum royalties shall be prorated as of the date of termination by the number of days elapsed in the applicable calendar year as well as other amounts owed. Such accountings and payments shall be due within thirty (30) days of termination.

F. Waiver by either party of a single breach or default, or a succession of breaches or defaults, shall not deprive such party of any right to terminate this Agreement in the event of any subsequent breach or default.

Section 8. Assignability.

This Agreement may not be transferred or assigned by Licensee, whether pursuant to a change of control event or otherwise, without the prior written consent of WiSys.

Section 9. Contest of Validity.

A. Licensee must provide WiSys at least three (3) months prior written notice before filing any action that contests the validity of any Licensed Patent during the term of this Agreement.

B. In the event Licensee files any action contesting the validity of any Licensed Patent, Licensee shall pay a royalty rate of two (2) times the royalty rate specified in Section 4B of this Agreement for all Products sold during the pendency of such action. Moreover, should the outcome of such contest determine that any claim of a Licensed Patent challenged by Licensee is valid and would be infringed by a Product sold by Licensee if not for the license granted by this Agreement, Licensee shall thereafter, and for the remaining term of this Agreement, pay a royalty rate of three (3) times the royalty rate specified in Section 4B of this Agreement.

C. In the event that Licensee contests the validity of any Licensed Patent during the term of this Agreement, Licensee agrees to pay to WiSys all royalties due under the Agreement during the period of challenge. For the sake of clarity, Licensee shall not pay such amounts into any escrow or other account, but directly to WiSys, and such amounts shall not be refunded.

Section 10. Enforcement.

WiSys intends to protect the Licensed Patents against infringers or otherwise act to eliminate infringement when, in WiSys's sole judgment, such action may be necessary, proper, justified and makes reasonable business sense considering all factors. In the event that Licensee believes there is

infringement of any Licensed Patent under this Agreement which is to its substantial detriment, Licensee shall provide WiSys with notification and reasonable evidence of such infringement.

Section 11. Patent Marking.

Licensee shall mark all Products or Product packaging with the appropriate patent number reference in compliance with the requirements of U.S. law, 35 U.S.C. § 287.

Section 12. Product Liability; Conduct of Business.

A. Licensee shall, at all times during the term of this Agreement and thereafter, indemnify, defend and hold WiSys and the inventors of the Licensed Patents harmless against all claims and expenses, including legal expenses and reasonable attorneys fees, arising out of the death of or injury to any person or persons or out of any damage to property and against any other claim, proceeding, demand, expense and liability of any kind whatsoever resulting from the production, manufacture, sale, use, lease, consumption or advertisement of Products arising from any right or obligation of Licensee hereunder. WiSys at all times reserves the right to select and retain counsel of its own to defend WiSys's interests.

B. Licensee warrants that it now maintains and will continue to maintain liability insurance coverage appropriate to the risk involved in marketing the Products subject to this Agreement and that such insurance coverage lists WiSys and the inventors of the Licensed Patents as additional insureds. Upon WiSys's request, Licensee will present evidence to WiSys that such coverage is being maintained.

Section 13. Use of Names.

Licensee shall not use WiSys's name, the name of any inventor of inventions governed by this Agreement, or the name of the University of Wisconsin in sales promotion, advertising, or any other form of publicity without the prior written approval of the entity or person whose name is being used.

Section 14. United States Government Interests.

It is understood that if the United States Government (through any of its agencies or otherwise) has funded research, during the course of or under which any of the inventions of the Licensed Patents were conceived or made, the United States Government is entitled, as a right, under the provisions of 35 U.S.C. §§ 200-212 and applicable regulations of Chapter 37 of the Code of Federal Regulations, to a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced the invention of such Licensed Patents for governmental purposes. Any license granted under this Agreement to Licensee shall be subject to such right.

Section 15. Miscellaneous.

This Agreement shall be governed by and construed in all respects in accordance with the laws of the State of Wisconsin. If any provisions of this Agreement are or shall come into conflict with the laws or regulations of any jurisdiction or any governmental entity having jurisdiction over the parties or this

Agreement, those provisions shall be deemed automatically deleted, if such deletion is allowed by relevant law, and the remaining terms and conditions of this Agreement shall remain in full force and effect. If such a deletion is not so allowed or if such a deletion leaves terms thereby made clearly illogical or inappropriate in effect, the parties agree to substitute new terms as similar in effect to the present terms of this Agreement as may be allowed under the applicable laws and regulations. The parties hereto are independent contractors and not joint venturers or partners.

Section 16. Notices.

Any notice required to be given pursuant to the provisions of this Agreement shall be in writing and shall be deemed to have been given at the earlier of the time when actually received as a consequence of any effective method of delivery, including but not limited to hand delivery, transmission by telecopier, or delivery by a professional courier service or the time when sent by certified or registered mail addressed to the party for whom intended at the address below or at such changed address as the party shall have specified by written notice, provided that any notice of change of address shall be effective only upon actual receipt.

- (a) WiSys Technology Foundation, Inc.
Attn: Contracts Manager
614 Walnut Street
Madison, Wisconsin 53726
- (b) Licensee _____
Attn: _____

Section 17. Integration.

This Agreement constitutes the full understanding between the parties with reference to the subject matter hereof, and no statements or agreements by or between the parties, whether orally or in writing, except as provided for elsewhere in this Section 17, made prior to or at the signing hereof, shall vary or modify the written terms of this Agreement. Neither party shall claim any amendment, modification, or release from any provisions of this Agreement by mutual agreement, acknowledgment, or otherwise, unless such mutual agreement is in writing, signed by the other party, and specifically states that it is an amendment to this Agreement.

Section 18. Confidentiality.

A. The parties hereto agree to keep any information identified as confidential by the disclosing party, confidential using methods at least as stringent as each party uses to protect its own confidential information. "Confidential Information" shall include the terms of this Agreement, Licensee's Development Plan and Development Reports, Royalty Reports and forecasts, the Licensed Patents and all information concerning them and any other information marked confidential or accompanied by correspondence indicating such information is exchanged in confidence between the

parties. Except as may be authorized in advance in writing by WiSys, Licensee shall only grant access to WiSys's Confidential Information to its employees involved in research relating to the Licensed Patents. Licensee shall require all such employees to be bound by terms of confidentiality no less restrictive than those set forth in this Section 18. Licensee shall not use any Confidential Information to WiSys's detriment, including, but not limited to, claiming priority to the Licensed Patents in any patent prosecution. The confidentiality and use obligations set forth above apply to all or any part of the Confidential Information disclosed hereunder except to the extent that:

- (i) Licensee or WiSys can show by written record that it possessed the information prior to its receipt from the other party;
- (ii) the information was already available to the public or became so through no fault of the Licensee or WiSys;
- (iii) the information is subsequently disclosed to Licensee or WiSys by a third party that has the right to disclose it free of any obligations of confidentiality;
- (iv) the information is required by law, rule, regulation or judicial process to be disclosed; or
- (v) five (5) years have elapsed from the expiration of this Agreement.

Section 19. Authority.

The persons signing on behalf of WiSys and Licensee hereby warrant and represent that they have authority to execute this Agreement on behalf of the party for whom they have signed.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement on the dates indicated below.

WISYS TECHNOLOGY FOUNDATION, INC.

By: _____ Date: _____,
Maliyakal E. John, Managing Director

LICENSEE

By: _____ Date: _____,

Name and Title: _____

WiSys Ref: _____ - T_____

APPENDIX A

A. “Date of First Commercial Sale” shall mean the date when cumulative sales to the retail market of Products exceeds \$_____.

B. “Development Report” shall mean a written account of Licensee’s progress under the Development Plan having at least the information specified on Appendix D to this Agreement.

C. “Licensed Field” shall be limited to the field of _____.

D. “Licensed Patents” shall refer to and mean those patents and patent applications listed on Appendix B attached hereto in countries in the Licensed Territory, and any divisional, continuation (but not continuation-in-part) or reexamination application thereof and each patent that issues or reissues from any such application.

E. “Licensed Territory” shall be limited to the United States and those countries or regions for which Licensee has paid to WiSys the foreign filing fees as required under Section 4D above.

F. “Non-Commercial Research Purposes” shall mean the use of the inventions of the Licensed Patents and/or Improvements for academic research purposes or other not-for-profit or scholarly purposes not involving the use of the inventions of the Licensed Patents or Improvements to perform services for a fee or for the production or manufacture of products for sale to third parties.

G. “Products” shall refer to and mean any and all products that employ or are in any way produced by the practice of an invention claimed in the Licensed Patents or that would otherwise constitute infringement of any claims of the Licensed Patents.

H. “Selling Price” shall mean, in the case of Products that are sold or leased, the invoice price to the end user of Products (regardless of uncollectible accounts) less any shipping costs, allowances because of returned Products, or sales taxes. The “Selling Price” for a Product that is transferred to a third party for promotional purposes without charge or at a discount shall be the average invoice price to the end user of that type of Product during the applicable calendar quarter.

APPENDIX B
LICENSED PATENTS

REFERENCE NUMBER	COUNTRY	APPLICATION SERIAL NUMBER	FILING DATE	PATENT NUMBER
------------------	---------	---------------------------	-------------	---------------

Technology Title (Inventors...)

APPENDIX C

WISYS ROYALTY REPORT

Licensee: _____ Agreement No: _____
 Inventor: _____ P#: _____
 Period Covered: From: _____ Through: _____
 Prepared By: _____ Date: _____
 Approved By: _____ Date: _____

If license covers several major product lines, please prepare a separate report for each line. Then combine all product lines into a summary report.

Report Type: **Single Product Line Report:**
 Multiproduct Summary Report. Page 1 of _____ Pages
 Product Line Detail. Line: _____ Tradename: _____ Page: _____

Report Currency: **U. S. Dollars** **Other** _____

Country	Gross Sales	* Less: Allowances	Net Sales	Royalty Rate	Period Royalty Amount	
					This Year	Last Year
TOTAL:						

Total Royalty: _____ Conversion Rate: _____ Royalty in U.S. Dollars: \$ _____

The following royalty forecast is non-binding and for WiSys's internal planning purposes only:
 Royalty Forecast Under This Agreement: Next Quarter: _____ Q2: _____ Q3: _____ Q4: _____

* On a separate page, please indicate the reasons for returns or other adjustments if significant.
 Also note any unusual occurrences that affected royalty amounts during this period.
 To assist WiSys's forecasting, please comment on any significant expected trends in sales volume.

APPENDIX D

DEVELOPMENT REPORT

- A. Date development plan initiated and time period covered by this report.
- B. Development Report (4-8 paragraphs).
 - 1. Activities completed since last report including the object and parameters of the development, when initiated, when completed and the results.
 - 2. Activities currently under investigation, i.e., ongoing activities including object and parameters of such activities, when initiated, and projected date of completion.
- C. Future Development Activities (4-8 paragraphs).
 - 1. Activities to be undertaken before next report including, but not limited to, the type and object of any studies conducted and their projected starting and completion dates.
 - 2. Estimated total development time remaining before a product will be commercialized.
- D. Changes to Development Plan submitted to WiSys (2-4 paragraphs).
 - 1. Reasons for change.
 - 2. Variables that may cause additional changes.
- E. Items to be provided if applicable:
 - 1. Information relating to Product that has become publicly available, e.g., published articles, competing products, patents, etc.
 - 2. Development work being performed by third parties other than Licensee to include name of third party, reasons for use of third party, planned future uses of third parties including reasons why and type of work.
 - 3. Update of competitive information trends in industry, government compliance (if applicable) and market plan.

PLEASE SEND DEVELOPMENT REPORTS TO:

WiSys Technology Foundation, Inc.
Attn.: Contracts Manager
614 Walnut Street
P.O. Box 7365
Madison, WI 53707-7365

APPENDIX E

DEVELOPMENT PLAN

(To be provided by Licensee prior to Execution)