

NON EXCLUSIVE LICENSE AGREEMENT

THIS NON EXCLUSIVE AGREEMENT (the “Agreement”) is made and entered into as of the date of last signature of this Agreement, (“Effective Date”) by and between: The Washington University, a corporation established by special act of the Missouri General Assembly approved February 22, 1853 and acts amendatory thereto, having its principal offices at One Brookings Drive, St. Louis, Missouri 63130 (hereinafter referred to as "WU"); and _____, (hereinafter referred to as "Licensee"), each a “Party” or collectively the “Parties” of this Agreement.

SUMMARY OF TERMS

The terms set forth below shall apply to this Agreement, and shall be interpreted in accordance with **Schedule A-B** appended hereto. This Agreement includes and hereby expressly incorporates **Schedule A-B** appended hereto.

- Field: All uses, including, research and commercial applications
- Territory: Worldwide
- Term: 3 years
- License Issue Fee: \$5,000
- Annual License Fee:

Samples analyzed per year	Annual License Fee
0-500	\$5,000
501-1,000	\$10,000
1,001-2,000	\$15,000
2,001-3,000	\$20,000
3,001-5,000	\$30,000
Over 5000	Not licensed; Return to WU for negotiations

RECITALS

WHEREAS, WU, by virtue of its role as an educational institution, carries out scientific research through its faculty, staff, and students, and is committed to bringing the results of that research into widespread use;

WHEREAS, WU has developed intellectual property and related technical information, and is owner of certain intellectual property rights which can be applied to that field, and has the right to grant licenses to said intellectual property, subject to rights reserved to the United States Government under 35 U.S.C. § 200, *et seq.*, and regulations;

WHEREAS, Licensee desires to license said technical information, related data and intellectual property for its own use; and

WHEREAS, WU is willing and entitled to license technical information, related data and intellectual property to WU for the purpose mentioned above.

[The signature page follows]

The signatures of the undersigned indicate that they have read, understand, and agree with the terms of this Agreement, including its appended **Schedule A-B**, and have the authority to execute this Agreement on behalf of and to bind their represented party.

WASHINGTON UNIVERSITY

Licensee

Signature: _____

Signature: _____

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

SCHEDULE A

TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of the premises, covenants and agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. DEFINITIONS

- 1.1. **“Derivative Works”** means any work based upon or including aspects of Software.
- 1.2. **“Executable File”** means any machine-readable computer instructions. An Executable File is not human-readable, and is generated from Source Code by a computer.
- 1.3. **“Field”** means the field, as described in the Summary of Terms, in which Licensee is authorized to use the Software under this Agreement.
- 1.4. **“Licensed Product”** means any data, or database created by Licensee in the Field using Software or Derivative Works of Software. The Licensed Product shall not include Software or Derivative Works of Software.
- 1.5. **“Sample”** means any unique pair of sequence/reference comparison where a sequence of nucleic acids is compared to a reference using Software or Derivative Works of Software. The reference may be a single sequence or collection of sequences.
- 1.6. **“Software”** means the Executable File(s), Source Code and any documentation listed in Schedule B.
- 1.7. **“Source Code”** means any human-readable computer instructions provided to Licensee pursuant to this Agreement.
- 1.8. **“Supplemental IP”** means any additional intellectual property from third party vendors required for the Software to function and be utilized.

2. LICENSE GRANTS AND RESTRICTIONS

- 2.1 **Grant of License.** WU, subject to the limitations and conditions set forth herein, grants to Licensee a non-exclusive, non-transferable license to the Software, in the Field of Use and in the Territory for the Term of this Agreement, to use, copy and prepare Derivative Works of the Software to create Licensed Products, and for no other purpose. The license granted herein shall not include a license to any Supplemental IP.
- 2.2 **Reservation of Rights and Restrictions.** Nothing in this Agreement provides Licensee with any ownership rights of any kind to the Software. All ownership rights in the Software shall remain the sole and exclusive property of WU. No license or right is granted by WU, by implication or otherwise, to any intellectual property other than the Software. Other than the license expressly granted in Section 2.1 above, all rights in and to the Software are hereby reserved by WU. Licensee agrees not to practice or use the Software or do any act in respect thereof outside the scope of the licenses expressly granted above. Licensee further agrees that it will not do any act or thing which would in any way contest WU’s ownership in, or otherwise derogate from the

ownership by WU, of any rights in the Software. In furtherance of the foregoing but without limiting the generality thereof, Licensee agrees not to register or attempt to register any rights in the Software or to assist any third party to do so.

- 2.3 Derivative Works.** Licensee will have the right to modify the Software solely for the purpose of maximizing the functionality of the Software for Licensee's sole benefit. Any Derivative Works will be owned by WU. Licensee will notify WU promptly of the creation of any Derivative Works, and will provide a copy of the Derivative Work and/or the source code that embodies that Derivative Work with such notification. WU hereby grants the Licensee rights to Derivative Works under the same rights granted to the Software in Section 2.1 Licensee understands and agrees that the WU's grant of rights to the Derivative Work do not supersede Licensee's obligation to protect the confidentiality of the Software, nor do WU's grant of rights to the Derivative Works in any way expand the license to the Software granted hereunder.

3. LICENSE FEE

- 3.1. License Issue Fee.** In consideration for the grant of rights set forth in Section 2.1 above, Licensee shall, following the Effective Date pay WU a License Issue Fee of \$5,000 within 15 days of Licensee's receipt of an invoice. This License Issue Fee will be fully creditable toward the applicable Annual License Fee as specified in the Summary of Terms, based on Licensee's analysis of Samples in the preceding calendar year.
- 3.2. Annual License Fee.** By the anniversary of Effective Date of each calendar year, Licensee shall provide WU with a written report specifying the number of Samples analyzed in the immediately preceding calendar year. Following receipt of such report from Licensee, WU shall issue an invoice to Licensee for applicable Annual License Fee. Licensee shall pay amounts due within forty-five (45) days of Licensee's receipt of an invoice. All dollar (\$) amounts referred to in this Agreement are expressed in United States dollars. All payments to WU shall be made in United States dollars by check or electronic transfer payable to "Washington University." All payments shall include or reference the WU Contract Number listed herein, to ensure accurate crediting to Licensee's account. Electronic transfers shall be made to a bank account designated in writing by WU, and all checks and the royalty report specifying the number of Samples analyzed shall be sent to:

Washington University
Office of Technology Management
Attn: Accounting Dept.
660 S. Euclid, Campus Box 8013
St Louis 63110

- 3.3.** Any amounts not paid by Licensee to WU when due shall accrue interest, from the date thirty (30) days after the balance is due at an interest rate of 1.5% per month or portion of a month.
- 3.4. Taxes.** WU shall have no liability for any sales, use, service, occupation, excise, gross receipts, income, property or other taxes or assessments ("Taxes"), whether levied upon Licensee, Licensee's property, or upon WU, in connection with the License Fee (except any taxes WU is required by law to collect from Licensee with respect to the License Fee, such as sales taxes). Payment of all such taxes shall be the responsibility of Licensee, and if Licensee is required to withhold any such Taxes, the License Fee shall be adjusted upward to take into consideration such withholding such that the net amount remitted to WU equals the License Fee otherwise payable had there been no such withholding.
- 3.5. Condition to Grant.** Licensee understands and acknowledges that payment of the License Fee is

a condition precedent to the grant of the license described herein, and that if Licensee fails to pay the License Fee when due, the license granted in this Agreement will terminate immediately

4. CONFIDENTIALITY

- 4.1. Confidential Information.** For the term of this Agreement and for a period of ten (10) years thereafter, Licensee agrees to hold in confidence all Confidential Information disclosed under this Agreement. The term “Confidential Information” means (i) the Software, including, but not limited to, computer code (both Source Code and Executable File), designs, (ii) documentation, instruction and training manuals, diagrams, flow charts, and business processes, whether or not identified as “proprietary,” “secret,” or “confidential” and (iii) all other information disclosed by WU to Licensee, which, if in writing or in electronic or other tangible form, bears a “secret,” “confidential,” or other similar designation or, if communicated orally, is followed up with a written memorandum describing the information so disclosed and the circumstances of disclosure and asserting a claim of confidentiality with respect thereto. Licensee acknowledges that the Confidential Information is the sole and exclusive property of WU.
- 4.2. Exclusions.** Confidential Information does not include information that (a) was known to Licensee prior to receipt from the WU as evidenced by the receiving party’s records; (b) is or becomes part of the public domain through no act by or on behalf of Licensee; (c) is lawfully received by the Licensee from a third party without any restrictions, and/or (d) comprises identical subject matter to that which had been originally and independently developed by Licensee personnel without knowledge or use of any Confidential Information as evidenced by Licensee records.
- 4.3. General Obligations.** Licensee agrees that during the term of this Agreement and for a period of six (6) years thereafter it will (a) refrain from disclosing any Confidential Information to third parties, (b) disclose Confidential Information to only those employees of Licensee necessary for the receiving party to use the Confidential Information in accordance with this Agreement and who are subject to restrictions on use and disclosure at least as restrictive as those set forth in this Agreement, (c) keep confidential the Confidential Information, and (d) except for use in accordance with the licenses which are expressly granted in this Agreement, refrain from using Confidential Information.
- 4.4. Judicial Procedures.** Licensee may, to the extent necessary, disclose Confidential Information in accordance with a judicial or other governmental order, provided that Licensee either (a) gives WU reasonable notice prior to such disclosure to allow the WU a reasonable opportunity to seek a protective order or equivalent, or (b) obtains written assurance from the applicable judicial or governmental entity that it will afford the Confidential Information the highest level of protection afforded under applicable law or regulation.

5. NO CONTEST

Licensee shall not itself challenge or contest nor cooperate with or furnish assistance to any person, firm, or corporation who challenges or contests the validity of the intellectual property rights of WU with respect to the Software or the Confidential Information or WU’s sole and exclusive right, title, and interest in and to the Software and Confidential Information.

6. REQUIRED NOTICES

- 6.1** Licensee shall not remove any copyright or patent notice or trade secret legend from any copy of the Software or other Confidential Information, and the Licensee shall not assert and shall not

represent to any third party that it has any ownership rights in, or the right to sell, transfer, assign or sub-license the Software.

7. COPYING.

7.1 Other than as expressly provided under this Agreement, Licensee shall not, under any circumstances, directly or indirectly, copy, modify, decompile, or reverse engineer all or any part of the Software.

8. TECHNICAL SUPPORT

8.1 The Parties understand and agree that WU has not agreed to provide any maintenance or support services with respect to the Software.

9. REPRESENTATIONS AND WARRANTIES

9.1 Authority. Each of WU and Licensee represents and warrants to the other of them that (a) this Agreement has been duly executed and delivered and constitutes a valid and binding agreement enforceable against such party in accordance with its terms, (b) no authorization or approval from any third party is required in connection with such party's execution, delivery, or performance of this Agreement, and (c) the execution, delivery, and performance of this Agreement does not violate the laws of any jurisdiction or the terms or conditions of any other agreement to which it is a party or by which it is otherwise bound.

9.2 Compliance with Laws. Licensee represents and warrants that it will (a) use the Software only to exploit the license rights granted in Section 2 in accordance with the provisions of this Agreement and with such laws, rules, regulations, government permissions and standards as may be applicable thereto in the Field of Use, and (b) otherwise comply with all laws, rules, regulations, government permissions and standards as may be applicable to Licensee with respect to the performance by Licensee of its obligations hereunder.

9.3 Warranties of Licensee Reports and Statements. Licensee warrants that all reports and/or statements provided by Licensee hereunder are true and correct and are certified true and correct by Licensee upon delivery to WU.

9.4 Additional Warranties of Licensee. Licensee represents and warrants that (a) it has obtained the insurance coverage required by Article 10 below, and (b) there is no pending litigation and no threatened claims against it that could impair its ability or capacity to perform and fulfill its duties and obligations under this Agreement.

9.5 Additional Warranties of WU. WU represents that (a) as of the Effective Date, it has received no notice of any third party claims against WU challenging WU's ownership or control of the Software; (b) it has obtained assignments from all WU inventors, which assign to WU all of their right, title and interest in and to the Software; and, to WU's knowledge, (c) the Software is an original work and does not contain any third party code (open source or otherwise).

10. DISCLAIMER and LIMITATION OF LIABILITIES

NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, EVERYTHING PROVIDED BY WU UNDER THIS AGREEMENT IS UNDERSTOOD TO BE EXPERIMENTAL IN NATURE, MAY HAVE DEFECTS, AND IS PROVIDED WITHOUT ANY WARRANTY OF ANY KIND, EXPRESSED OR IMPLIED, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY

PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF ANY THIRD-PARTY PATENT, TRADEMARK, COPYRIGHT OR ANY OTHER THIRD-PARTY RIGHT. WU MAKES NO WARRANTIES REGARDING THE QUALITY, ACCURACY, COMMERCIAL VIABILITY OR ANY OTHER ASPECT OF ITS PERFORMANCE PURSUANT TO THIS AGREEMENT OR REGARDING THE PERFORMANCE, VALIDITY, SAFETY, EFFICACY OR COMMERCIAL VIABILITY OF ANYTHING PROVIDED BY WU UNDER THIS AGREEMENT. IN NO EVENT SHALL WU OR LICENSEE BE LIABLE FOR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT, WHETHER IN BREACH OF CONTRACT, TORT OR OTHERWISE, EVEN IF THE PARTY IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT FOR THEIR RESPECTIVE INDEMNITY OBLIGATIONS, EACH OF WU'S AND LICENSEE'S AGGREGATE LIABILITY TO THE OTHER UNDER THIS AGREEMENT SHALL NOT EXCEED THE PAYMENTS MADE OR PAYMENTS DUE UNDER THIS AGREEMENT, RESPECTIVELY.

11. INDEMNIFICATION

- 11.1** Notwithstanding anything else in this Agreement, Licensee agrees to indemnify, reimburse and hold harmless WU, WU personnel, the principal investigator, WU's Affiliates, and each of their respective present trustees, faculty, staff, employees, students, directors, officers, agents, successors and assigns (altogether the "WU Indemnitees") from, for and against any and all judgments, settlements, losses, expenses, damages and/or liabilities (the "Losses") and any and all court costs, attorneys' fees, and expert witness fees and expenses ("Fees") that a WU Indemnatee may incur from any and all allegations, claims, suits, actions or proceedings (the "Claims") arising out of, relating to, or incidental to Licensee's breach of this Agreement or its use, commercialization, or other exploitation of the Software, whether by or through Licensee, and including all Claims for infringement, injury to business, personal injury and product liability, but excluding Losses, not Fees, to the extent they are adjudicated by a Court of competent jurisdiction to be caused by the gross negligence or willful misconduct of a WU Indemnatee.
- 11.2** Obligations set forth in this section shall survive termination of this Agreement, shall continue even after assignment of rights and responsibilities, and shall not be limited by any provision of this Agreement outside this section. A party seeking indemnification under this Agreement shall: (a) give the indemnifying party prompt written notice of the Claim; (b) cooperate with the indemnifying party, at the indemnifying party's expense, in connection with the defense and settlement of the Claim; and (c) not settle or compromise the Claim without the written consent of the indemnifying party, which shall not be unreasonably withheld. An indemnifying party may satisfy its duty to indemnify for Fees by accepting an irrevocable duty to defend the Claim on behalf of the Indemnitees without a reservation of rights, at which time the indemnifying party shall be entitled to conduct and direct the defense of Indemnitees against such Claim using attorneys of its own selection; for all other Claims, the Indemnatee shall be entitled to conduct and direct its own defense and that of other Indemnitees using attorneys of its own selection with Fees subject to the indemnifying party's ongoing obligation to indemnify for Fees.

12. INSURANCE

- 12.1** Throughout the Term of this Agreement and for a period of five (5) years thereafter, Licensee shall either obtain and maintain comprehensive general liability and product liability insurance, with carrier(s) having at least A.M. Best ratings/class sizes of A/VII and in the following minimum annual limits: \$2,000,000 per occurrence and \$5,000,000 in the aggregate, or, provided that Licensee has at least \$500,000,000 in total annual revenue, Licensee shall be self-insured, to

provide sufficient coverage for the indemnified risks above.

- 12.2** Licensee will provide WU with a certificate of insurance within thirty (30) days of WU's request. Licensee will use commercially reasonable efforts to notify WU in writing at least thirty (30) days prior to cancellation or material change in coverage. The specified minimum insurance coverage and limits do not constitute a limitation on Licensee's liability or obligation to indemnify or defend under this Agreement.

13. TERM AND TERMINATION

- 13.1 Term.** This Agreement shall become effective on the Effective Date and shall continue in effect between WU and Licensee, for the Term described in Summary of Terms or until terminated by either Party as provided herein.

- 13.2 Termination for Cause.** WU may terminate this Agreement and the license granted herein if Licensee fails to adhere to the payment schedule set in Section 3.1, or breaches any of the material terms of this Agreement and fails to cure the breach, to the reasonable satisfaction of WU, within 90 days of the date on which Licensee receives notice of the breach.

- 13.3 Termination for Convenience.** Licensee shall have the right to terminate this Agreement, in its sole discretion, with or without cause, upon thirty (30) days prior written notice to WU. Licensee will forfeit remaining license period and any funds previously provided but will not be obligated to complete any remaining yearly payments, if any should remain in the license term.

- 13.4 Duties Upon Termination.** Upon termination of this Agreement for any reason, all license rights granted to Licensee under Section 2 shall terminate. Licensee agrees to, promptly upon the earlier termination of this Agreement, deliver to WU all Software and Confidential Information in each instance in the format in which it exists at the time of the earlier termination of this Agreement. The expiration or earlier termination of this Agreement shall not relieve Licensee of its obligation to account for and make payment to WU of any amount due hereunder including, without limitation, under Section 3.

14. GENERAL PROVISIONS

- 14.1 Import/Export Controls.** In performing their respective obligations under the Agreement, the Parties will comply with United States export control and asset control laws, regulations, and orders, as they may be amended from time to time, applicable to the export or re-export of goods or services, including software, processes, or technical data. Such regulations include without limitation the Export Administration Regulations ("EAR"), International Traffic in Arms Regulations ("ITAR"), and regulations and orders administered by the Treasury Department's Office of Foreign Assets Control (collectively, "Export Control Laws"). WU is not transferring any information or material outside of the United States under this Agreement and is providing no representation regarding the export control status or classification of any information or materials provided hereunder.

- 14.2 Entire Agreement; Amendment.** This Agreement embodies the entire understanding of the parties and supersedes all other past and present communications and agreements relating to the subject matter. No amendment or modification of this Agreement shall be valid unless made in writing and signed by authorized representatives of both parties.

- 14.3 Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Missouri, without regard to its rules or procedures involving conflicts of laws.

14.4 Survival. Each provision of this Agreement that would by its nature or terms survive, shall survive any termination or expiration of this Agreement, regardless of the cause. Such provisions include, without limitation, Sections 4, 9, 10, 11, and 12.

14.5 Notices. Notices pursuant to this Agreement shall be to the following contacts and are effective when sent if sent by a commercial carrier's overnight delivery service or when received if sent otherwise:

For Washington University:

For Licensee

Office of Technology Management
660 S. Euclid Ave., CB 8013
St. Louis, MO 63110
Attn: Director

Attn:

14.6 Assignment. This Agreement is binding upon and inures to the benefit of the Parties and their successors, but this Agreement may not be assigned by either party without the prior written consent of the other party.

14.7 Construction. The recitals and preamble to this Agreement, if any, are hereby incorporated as an integral part of this Agreement as if restated herein in full. Headings are included for convenience and reference only and are not incorporated as an integral part of this Agreement. This Agreement may be executed in any number of counterparts each of which shall be deemed an original and as executed shall constitute one agreement, binding on both parties, even though both parties do not sign the same counterpart.

14.8 Relationship of the Parties. Each Party is an independent contractor and not a partner or agent of the other Party. This Agreement will not be interpreted or construed as creating or evidencing any partnership or agency between the Parties or as imposing any partnership or agency obligation or liability upon either Party. Further, neither Party is authorized to, and will not, enter into or incur any agreement, contract, commitment, obligation or liability in the name of or otherwise on behalf of the other Party.

14.9 Severability. If any provision in this Agreement is held invalid, illegal, or unenforceable in any respect, such holding shall not affect any other provisions of this Agreement, and this Agreement shall be construed as if it had never contained the invalid, illegal, or unenforceable provisions.

14.10 Remedies. The failure of either Party to insist upon or enforce strict performance by the other Party of any provision of this Agreement, or to exercise any right or remedy under this Agreement will not be interpreted or construed as a waiver or relinquishment of that Party's right to assert or rely upon any such provision, right or remedy in that or any other instance; rather, the same will be and remain in full force and effect. All rights and remedies under this Agreement are cumulative of every other such right or remedy and may be exercised concurrently or separately from time-to-time.

14.11 Use of Names. Neither Party may use the trademarks or name of the other Party or its employees for any commercial, advertisement, or promotional purposes without the prior written consent of an authorized corporate office of the other. If either Party is required by law, governmental regulation, or its own authorship or conflict of interest policies to disclose its relationship with the other Party, including, but not limited to, in SEC filings, scientific publications or grant submissions, it shall provide the other Party with a copy of the disclosure

- 14.12 Force Majeure.** Neither WU nor Licensee will be liable for failure of or delay in performing obligations set forth in this Agreement, and neither will be deemed in breach of its obligations, other than for payments due and owing hereunder, if such failure or delay is due to natural disasters or other causes reasonably beyond the control of a Party and reasonable notice of the delay is provided to the other Party.
- 14.13 WU Personnel.** Licensee agrees that for all WU faculty or staff members who serve Licensee in the capacity of consultant, officer, employee, board member, advisor, or otherwise through a personal relationship with Licensee (a “Consultant”) (i) such Consultant shall serve the Licensee in his or her individual capacity, as an independent contractor, and not as an agent, employee or representative of WU; (ii) WU exercises no authority or control over such Consultant while acting in such capacity; (iii) WU receives no benefit from such activity; (iv) neither Company nor the Consultant may use WU resources in the course of such service; (v) WU makes no representations or warranties regarding such service and otherwise assumes no liability or obligation in connection with any such work or service undertaken by such Consultant; and (vi) any breach, error, or omission by a Consultant acting in the capacity set forth in this paragraph shall not be imputed or otherwise attributed to WU, and shall not constitute a breach of this Agreement by WU.
- 14.14 Further Acts.** Each party shall, at the reasonable request of the other, execute and deliver to the other such instruments and/or documents and shall take such actions as may be required to more effectively carry out the terms of this Agreement.
- 14.15 Impact on Tax-Exempt Status.** The Parties agree (a) WU is exempt from federal income tax under Section 501(c) (3) of the Internal Revenue Code, (b) that maintenance of such exempt status is of critical importance to WU and to its members, and (c) that WU has entered into this Agreement with the expectation that there will be no adverse impact on its tax exempt status. As such, and if it becomes necessary, the parties agree to amend, modify or reform this Agreement as necessary (i) in order to ensure that there is no material adverse impact on WU’s tax exempt status, and (ii) in a manner that preserves the economic terms of the Agreement as such are set forth in this Agreement.

SCHEDULE B

The most recent publicly available version of VarScan2.
For the avoidance of doubt, this does not include any Supplemental IP.