

**THE OHIO STATE UNIVERSITY BUCKEYE CORPUS OF SPEECH
CONTENT LICENSING AGREEMENT**

This License Agreement (the "Agreement") is made this _____ () day of _____, 20____, between The Ohio State University Research Foundation, located at 1960 Kenny Road, Columbus, Ohio 43210 ("Licensor") and _____, whose principal office address is _____ ("Licensee").

WHEREAS, Licensor is owner of the right, title, and interest in the unpublished proprietary data content and databases generally known as the The Ohio State University Buckeye Corpus of Speech, technology identification number 06076, as well as any documentation and specifications related to its use, development, implementation and architecture (hereinafter "the Content"); and

WHEREAS, Licensee desires to obtain the Content for its use; and

Now, therefore, in consideration of the foregoing and of the mutual covenants, terms and conditions contained herein, the parties agree as follows:

1. Definitions.

"Future Version" means a new version of the Content which provides major enhancements or significant new features.

"Maintenance Release" means a new release of the Content provided by Licensor to incorporate error corrections or enhance modestly the existing capabilities of the Content.

"Improvements" means custom modifications, enhancements, or changes to the Content, including interfaces required for Licensee's use of the Content.

"Confidential Information" means all information contained in or pertaining to the Content or the use thereof, which is provided by the Licensor to Licensee and which is not readily available to the general public.

"Fee" Any consideration paid to Licensor by Licensee for the delivery of the Content.

"Intellectual Property" means (i) all inventions and all patents, patent applications, and patent disclosures, (ii) all copyrightable works, all copyrights, and all applications and registrations, (iii) all trade secrets and

confidential business information (including ideas, research and development, know-how, formulas, compositions, technical data, and specifications), (iv) all trademarks, service marks, trade dress, logos, and trade names, and all goodwill associated therewith, and all applications, registrations, and renewals in connection therewith, and (v) all copies and tangible embodiments thereof (in whatever form or medium); together with remedies against infringements thereof, and rights to protection of interests therein under the laws of all jurisdictions including the right to sue for, collect damages, settle and release claims for past, present, and future infringement, including without limitation, the right to sue to enjoin infringement.

2. License Grant; Authorized Use.

(a) *Subject to the terms hereof, Licensor grants to Licensee, and Licensee accepts from Licensor, a non-exclusive, non-assignable, and non-transferable license to use the Content for educational and research purposes only, provided that the Licensor and authors of the Content are acknowledged in any publications reporting its use, and the name of the Licensor or any of its officers, employees, students, board members or trademarks are not used in any advertising, publication, or publicity pertaining to the use of the Content without specific written prior authorization.*

(b) *Licensee may augment the Content with supplemental annotations. Such annotations shall not constitute a derivative work or Improvement of the Content. Furthermore, these supplemental annotations may be distributed by the Licensee as long as the other provisions of this Agreement are satisfied, including but not limited to the prohibition on the creation of derivative works or the distribution of the Content by the Licensee.*

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(d) *Licensee shall not grant sublicenses hereunder.*

(e) *Licensee shall not modify, create derivative works, translate, reverse engineer or assemble, decompile or disassemble the Content. Furthermore, Licensee shall not manipulate the Content in any manner that compromises the Content as a historical record.*

(f) Licensee agrees that Content shall not be used as the basis for a commercial software or hardware product or service and that it shall not be rewritten or otherwise adapted to circumvent the need for obtaining a license from Licensor for uses not specified in this Agreement. In event that Licensee wishes to pursue product commercialization based wholly or partly on the Content, Licensor will consider licensing the Content for this purpose.

3. Title and Ownership. Licensor retains all title and interest in and to the Content, and all copies thereof, including all Intellectual Property rights. This license does not transfer any right, title, or interest in the Content or any Intellectual Property rights therein to Licensee except for the license as provided in this Agreement on the terms contained herein. Licensee is on notice that the Content is protected under the copyright laws. Copyright notices and other proprietary rights notices in the Content shall not be deleted or modified. If the Content has been developed by a third party that holds copyright or other proprietary rights to the Content, Licensee may be held responsible by such third party for any infringement of such rights by Licensee.

5. Services; Support; Customization.

5.1 Services. Any installation and training services related to the use of the Content by the Licensee shall be the subject of a separate agreement.

5.2 Support. For a period of ninety (90) days after the date of delivery of the Content, upon notification, Licensor will replace, reasonably promptly, any distribution media on which the Content is recorded which proves defective in materials or workmanship, at no additional charge (other than reasonable shipping and handling). At its sole discretion, Licensor will provide Licensee with Maintenance Releases to the Content licensed hereunder to the extent available in accordance with Licensor's release schedule. The maintenance and support services described herein will be applicable to the Content and Maintenance Releases licensed under this Agreement and does not include the licensing, or support of Future Versions, which must be licensed for additional Fees. The distinction between a Maintenance Release and a Future Version of the Content shall be at Licensor's sole discretion, consistent with the definitions in Section 1 and with Licensor's designation of Maintenance Releases and Future Versions. It may not be possible for Licensor to solve all problems or correct all errors.

5.3 Customization. If Licensee desires Improvements to the Content, Licensee must first request that Licensor make such Improvements. If Licensor desires to do the requested work, Licensor will do it and Licensee shall pay to Licensor Licensor's customary charge for such

work. If Licensor elects not to perform the work necessary to effect such Improvements, Licensee may contract with others to do so but the arrangement with the third party will be subject to Licensor's prior written approval, must be satisfactory in every respect to Licensor, must protect the confidentiality and proprietary nature of the Content, and must assign all Improvements to Licensor. Any Improvements incorporated into the Content, regardless who makes them, shall be owned exclusively by Licensor and shall be subject to this Agreement. Licensee hereby assigns, on a worldwide basis, all right, title, and interest in and to the Improvements and all Intellectual Property rights therein to Licensor, including the entire copyright interest therein together with all rights to bring suit, collect damages, and pursue all remedies for past infringement.

6. Confidentiality and Nondisclosure. Licensee acknowledges that the Content has been and will be acquired and/or developed by or for Licensor by means of substantial expense and effort, that such Content is a valuable proprietary asset of the Licensor, and that disclosure of any Confidential Information would cause substantial and irreparable injury to Licensor. Except in accordance herewith or written permission otherwise obtained from Licensor, Licensee agrees and warrants that Licensee and Licensee's employees, representatives and agents will never, either directly or indirectly, use or disclose any Confidential Information, either for their own benefit or for the benefit of anyone else. Licensee shall take all measures necessary or appropriate to protect confidentiality and to prevent disclosure and use except strictly for Licensee's internal business as provided herein.

7. Export Control. Licensee agrees to comply with all applicable laws and regulations. In particular, Licensee understands and acknowledges that the transfer of certain commodities and technical data is subject to United States laws and regulations controlling the export of such commodities and technical data, including but not limited to all Export Administration Regulations of the United States Department of Commerce. These laws and regulations prohibit or require a license for the export of certain types of technical data to certain specified countries. Licensee represents and warrants that it is not a national or resident of, or located in or under the control of, any country subject to such export controls. Licensee agrees to comply with all United States laws and regulations controlling the export of commodities and technical data, to be solely responsible for any violation of such laws and regulations by Licensee, and to defend and hold Licensor harmless if any legal action of any nature results from the violation.

8. Superior Rights. Licensee understands that the Content may have been developed under a funding agreement with the Government of the United States of

America and, if so, that the Government may have certain rights relative thereto. This Agreement is explicitly made subject to the Government's rights under any such agreement and any applicable law or regulation, if any. To the extent that there is a conflict between any such agreement, applicable law or regulation and this Agreement, the terms of such Government agreement, applicable law or regulation shall prevail.

9. Disclaimer of Warranties. LICENSOR MAKES NO WARRANTIES CONCERNING THE CONTENT, THE DOCUMENTATION, OR OTHER GOODS OR SERVICES PROVIDED UNDER THIS AGREEMENT, EXPRESS OR IMPLIED INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT. NO AGENT OF LICENSOR IS AUTHORIZED TO ALTER OR EXCEED THE WARRANTY OBLIGATIONS OF LICENSOR AS SET FORTH HEREIN. Any warranty made herein or imposed by law will be voided if Licensee uses or modifies the Content in any manner not consistent with the terms of this Agreement.

10. Limitation of Remedies. Licensor's entire liability and Licensee's exclusive remedy shall be, at Licensor's option, repair or replacement of distribution media as stated in Section 5.2, upon return of the defective media to the Licensor; provided Licensor receives written notice from Licensee during the warranty period of a breach of warranty. Any replacement distribution media will be warranted for the remainder of the original warranty period or thirty (30) days, whichever is longer.

11. Limitation of Liability. The remedies specified in Section 10 are Licensee's sole and exclusive remedies and will satisfy all of Licensor's liabilities, whether based on contract, negligence, tort, product liability, strict liability or otherwise. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF PROFITS) ARISING OUT OF ANY PERFORMANCE OF THIS AGREEMENT, OR IN FURTHERANCE OF THE PROVISIONS AND OBJECTIVES OF THIS AGREEMENT, WHETHER SUCH DAMAGES ARE BASED ON TORT, CONTRACT, OR ANY OTHER LEGAL THEORY AND WHETHER ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL LICENSOR'S CUMULATIVE LIABILITY HEREUNDER EXCEED THE AMOUNT OF THE FEE PAID BY LICENSEE TO LICENSOR. Licensee recognizes that the provisions of Sections 7 through 12 are a material factor in Licensor's determination of the distribution Fee and the cost of any services.

12. Security Interest; Recovery of Fees. Licensee grants to Licensor, and Licensor retains a security interest in the Content until all Fees and other costs have been paid in full. Licensee shall pay Licensor all expenses incurred by Licensor with respect to the collection of any outstanding amounts including reasonable attorney fees, collection costs, court costs, and similar expenses in any lawsuit or other action Licensor takes to enforce Licensee's payment obligations under the terms of this Agreement.

13. Termination.

13.1 Termination by Licensor.

(a) If Licensee or an employee of Licensee defaults in any obligations of confidentiality, Licensor may terminate this Agreement and the license granted herein upon written notice to Licensee, effective upon notice.

(b) If Licensee defaults in the performance of any of its other obligations under this Agreement (other than its obligations of confidentiality), Licensor may give written notice to Licensee of Licensor's intention to terminate this Agreement, and this Agreement and the license granted herein will terminate thirty (30) days after giving such notice unless, during the thirty (30) day period, the default has been cured to the reasonable satisfaction of Licensor.

(c) If a petition is filed by Licensee under any provision of any bankruptcy or insolvency law and is not dismissed within sixty (60) days, if the business of Licensee is placed in the possession of a receiver or any government or government agency, or if Licensee makes an assignment for the benefit of creditors, Licensor may terminate this Agreement and the license granted herein by giving written notice to Licensee, effective upon notice. Upon termination of this Agreement under this Section 13.1 by Licensor, the provisions of Section 14 shall apply.

13.2 Termination by Licensee. If Licensor defaults in the performance of any of Licensor's obligations under this Agreement, Licensee may give written notice of such default to Licensor. Licensor, at its option, shall have thirty (30) days following receipt of Licensee's notice to either correct such default, or if such default cannot reasonably be corrected within thirty (30) days, to present a plan to Licensee for correction of such default. If Licensor and Licensee cannot agree to such a plan within sixty (60) days of Licensee's notice of default, then either party may terminate this Agreement. Licensee may not unreasonably withhold consent to such a plan. Upon termination of this Agreement under this Section 13.2 by Licensee, the provisions of Section 14 shall apply.

13.3 Termination for Convenience. Either party may terminate this Agreement upon sixty (60) days prior written notice to the other party. Upon termination of this Agreement under this Section 13.3 by either party, the provisions of Section 14 shall apply.

14. Effect of Termination.

14.1 Upon termination of this Agreement, Licensee will (a) cease using the Content, and the Licensor Confidential Information; (b) return to Licensor at Licensee's expense, the Content (without making copies thereof), all materials (and all copies thereof) related to the Content, and the Licensor Confidential Information; (c) destroy or purge any electronic copies or media embodying the Content or Licensor Confidential Information; and (d) provide Licensor with written notification, signed by a duly authorized representative of Licensee guaranteeing Licensor that the Content, and the Confidential Information has been so removed from Licensee's possession and that no other copies of said materials exist in Licensee's possession.

14.2 Except as otherwise specifically provided in this Agreement, upon the effective date of termination, all other rights and obligations under this Agreement shall cease except the rights and obligations of either party with respect to any breach of this Agreement, and the rights and obligations under Sections 3, 6, 7, 8, 9, 10, 11, and 13 through 16.

15. Governing Law and Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio without giving effect to any choice or conflict of law provision. Any controversy or claim arising out of or relating to this Agreement shall be submitted to the Ohio Court of Claims.

16. Miscellaneous.

16.1 This Agreement (a) may be amended only by a writing signed by both parties, (b) is not assignable or delegable by Licensee, (b) contains the entire understanding between the parties regarding the subject matter hereof and supersedes any prior discussions or agreements concerning such subject matter, and (c) may be executed in one or more counterparts which together will constitute one document. Any Exhibit(s) may be amended by the parties executing new Exhibit(s) without affecting the remaining terms of this Agreement.

16.2 No delay in enforcement or extension of time or failure to exercise any right hereunder will be deemed to be a waiver of any right by either party. No waiver of any earlier breach of this Agreement will be construed as a waiver of a later breach.

16.3 Licensor hereby objects to and will not agree to any additional or conflicting terms contained in any of Licensee's past or future proposals, purchase orders or other communications.

16.4 Licensor will not be liable for failure to deliver or delays caused by acts of God, labor difficulties, transportation difficulties, laws, government regulations or requests, or any other cause beyond Licensor's control.

16.5 Licensee acknowledges that absent express written prior authorization from Licensor, the Content is not designed for and is not permitted to be used in connection with life support systems, human implantation, medical devices, nuclear facilities, nuclear systems or weapons, aviation, mass transit or any applications where failure or malfunction could lead to possible loss of life or catastrophic property damage.

16.6 If any part of this Agreement is found to be unenforceable by a court of competent jurisdiction, such part will be construed by limiting and enforcing it to the maximum extent compatible with the applicable law.

16.7 Notices required or permitted under this Agreement shall be in writing and sufficient if sent by any method of delivery showing written receipt of delivery by the receiving party and shall be effective upon delivery. Notices shall be given as follows:

If to Licensor:

Director
Office for Technology Licensing
The Ohio State University
1960 Kenny Road
Columbus, OH 43210
Telephone: (614) 292-1315
Facsimile: (614) 292-8907

If to Licensee:

[_____]

[_____]

Attention: _____

Telephone: _____

Facsimile: _____

16.8 In the event of a conflict between the provisions of any Exhibit and the provisions set forth in the body of this Agreement, the provisions of the body of this Agreement shall prevail unless the Exhibit specifically indicates that the provision in the Exhibit should control and such Exhibit is signed by both parties

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

LICENSEE

By: _____

Title: _____

Print Name: _____

Date: _____

LICENSOR

By: _____

Title: _____

Print Name: _____

Date: _____

INSTRUCTIONS

**Complete the opening section and section 16.7
Sign, date and fax to (614) 292 – 8907
Attention “Director”**