Date: 6/9/08
To: Jim Byrned
Company: University of Delaware
# Pages: 1
From: Janet Lobles

Comments:
HIBBITT, KARLSSON & SORENSEN, INC.

SOFTWARE LICENSE AGREEMENT FOR ACADEMIC INSTITUTES

Hibbit, Karlsson & Sorensen, Inc., a Rhode Island corporation with principal offices at 1080 Main Street, Pawtucket, Rhode Island 02860 USA ("HKS"), and the Institute hereby agree as follows:

1. Definitions

Terms used herein shall have the following definitions:

INSTITUTE: UNIVERSITY OF DELAWARE

LICENSE AGREEMENT IDENTIFIER: OSUDEL

DESIGNATED FACILITY: The identification of premises, specified in a License Supplement, at which Institute has employees and Institute will use HKS Programs.

DESIGNATED USER: The person identified in a License Supplement who has accepted the responsibility for ensuring that all usage of the HKS Programs at the Designated Facility complies with the terms of this Software License Agreement.

HKS PROGRAM: One of the computer programs specified in a License Supplement and furnished by HKS to Institute under the terms of this Software License Agreement, including the HKS documentation for such program.

LICENSE SUPPLEMENT: A supplement to this Software License Agreement specifying each Designated Facility together with its Designated User and each HKS Program to be licensed hereunder for use at that Designated Facility, or modifying the terms of a previous License Supplement. A License Supplement may be in the form of Exhibit A to this Agreement or a purchase order issued by Institute and containing the information in Exhibit A or incorporating such information by reference. A License Supplement may not modify the terms of this Software License Agreement.

2. Delivery and Documentation

HKS agrees to provide executable versions of each HKS Program specified in a License Supplement. The HKS Programs shall conform to the specifications in the applicable HKS Program manuals.

Whenever the HKS Programs include modules which may be rebuilt to incorporate subroutines supplied by the Institute, HKS also agrees to provide binary versions of those modules of the HKS Programs to which user subroutines may be added, together with materials adequate for Institute's properly qualified personnel to build executable versions that include Institute's user subroutines.

Institute shall install the HKS Programs in accordance with documentation and materials furnished by HKS.

HKS shall provide Institute with the number of copies of the manuals for the HKS Programs specified in HKS's price list. Institute may purchase additional manuals at HKS standard prices for such manuals.

Revised June 25, 1998
3. License

HKS hereby grants to Institute and Institute accepts from HKS a non-transferable and non-exclusive license to use the HKS Programs specified in a License Supplement in accordance with this Agreement and the applicable License Supplement during the term specified in Section 5. Institute acknowledges and agrees that neither this Agreement nor any License Supplement grants Institute any title or rights of ownership in any HKS Program or any right to use, copy, transfer or disclose all or any portion of any HKS Program except as expressly provided in this Agreement and the applicable License Supplement.

4. Restrictions on Use

Each HKS Program may be used only by Institute's employees or students while they are at the Designated Facility.

An HKS Program shall only be used at any time at a Designated Facility, either (i) on uniquely identified computer processors, and/or (ii) by no more than a maximum number of simultaneous users, and/or (iii) on no more computer processors on a network than the maximum processing capacity measured by the maximum number of simultaneous usage tokens.

Each HKS Program shall be used by Institute only for Institute's internal purposes and in no event shall Institute make all or any part of any HKS Program available to any third person as part of a data services operation or otherwise.

All use of any HKS Program shall be under the direct supervision and control of a Designated User. Institute hereby asserts that each Designated User is fully cognizant of the terms and conditions of this Agreement, and has the authority to exercise such supervision and control.

Institute shall not reverse compile, disassemble, or otherwise reverse engineer any HKS Program, or allow anyone else to do so. Institute agrees not to remove or destroy any proprietary markings or legends placed upon or contained within any HKS Program.

Any use of any HKS Program for a commercial purpose or to produce calculations having commercial value, including any project or calculation of a type performed in the normal course of a business or practice, is prohibited except during any period of not less than one month's duration during which Institute shall pay non-discounted license fees to HKS according to HKS's then current Price List.

5. Term

The license granted under this Agreement shall commence for each HKS Program on the date of shipment of that HKS Program. Unless earlier terminated as provided in Section 13, the term of this license shall continue for one (1) year after the date of shipment. It may be extended for an additional one year period commencing on each anniversary of the date of shipment by Institute's pre-payment of the appropriate license fees at least thirty (30) days in advance of the expiration date of the license. At each such renewal HKS shall provide the then current version of each HKS Program.

Any HKS Program shall be deemed accepted by the Institute fifteen (15) days after shipment unless Institute notifies HKS in writing within that period that the installation was unsuccessful due to specific problems with that HKS Program. Upon resolution of the specific problems the HKS Program shall be deemed accepted.
6. Charges

Institute agrees to pay to HKS all charges and fees specified in each License Supplement in full prior to any shipment of any HKS Program. Whenever a new License Supplement modifies the terms of a previous License Supplement during the term of this Agreement, the corresponding change in the annual license fee, pro-rated to the time period from the date of the modification to the next anniversary of the date of acceptance, shall be paid in full prior to shipment of the HKS Programs corresponding to that new License Supplement.

Institute agrees to pay to HKS non-discounted license fees according to HKS's then current Price List for any use of any HKS Program for a commercial purpose or to produce calculations having commercial value. Such payment shall be made not less than thirty (30) days after the commencement of such use and monthly thereafter until Institute notifies HKS in writing that such use has ceased.

HKS reserves the right to change its prices, including license fees, without notice.

7. Maintenance, Enhancement and Support

HKS Programs are furnished at Institute's request solely for Institute's "internal purposes" on an "as is, with all defects" basis, without maintenance, support, or improvements. During the term of this License Agreement, and on a regular basis, HKS will supply status reports which document all known deficiencies in HKS Programs. Institute may obtain a new release of any HKS Program upon request and upon payment of the fee for installation materials and documentation specified in HKS's Price List.

Institute may obtain assistance from HKS support personnel on a "time and materials" basis at HKS’s standard charges for short term consulting work, provided that Institute has authorized payment of all of HKS’s estimated costs for providing such assistance prior to any such activity.

Institute acknowledges that HKS may develop and market new or different computer programs which use all or a part of any HKS Program and which perform functions similar to or different from those performed by any HKS Program. Nothing contained in this Agreement shall give Institute any rights with respect to such new or different computer programs.

Any modification or attempted modification of any HKS Program or any failure of Institute to implement improvements and updates to any HKS Program as supplied by HKS shall void the obligations of HKS under this Section.

8. Non-Disclosure

For a period of ten (10) years from the last date that HKS delivers to Institute any HKS Program or any update or improvement thereto, Institute shall (i) keep confidential and utilize its best efforts to prevent unauthorized disclosure or use of any HKS Program and (ii) treat all HKS Programs with the same degree of care as it treats like information of its own which it does not want to be publicly disclosed or the subject of unauthorized access or use, and (iii) not make or permit to be made any more copies of any HKS Program than are necessary for the Institute's internal use of that HKS Program at the Designated Facility.

The obligations in this Section shall not extend to any part of any HKS Program which is now or hereafter publicly known by virtue of disclosures not attributable to Institute, its agents, employees, consultants, contractors, or any other person or entity under similar restriction not to make such disclosures.
9. Warranty

Upon installation each HKS Program will perform in accordance with the specifications in the applicable HKS Program manuals. Institute’s sole remedy for any defect in any HKS Program shall be to terminate this Agreement as to the defective HKS Program without further liability of Institute or HKS (except for Institute’s obligations under Sections 8 and 13(d)) in the event that HKS fails to cure such defect within 45 days after HKS has received written notice from Institute specifying the defect. Any modification or attempted modification of any HKS Program by Institute or any failure by Institute to implement any improvements or updates to any HKS Program as supplied by HKS shall void this warranty. HKS shall not be responsible for any defect in, or caused by, any subroutine added to any HKS Program by Institute.

Except as specifically provided in this Section, HKS makes no representation or warranty either express or implied as to any matter whatsoever, including, without limitation, the condition of any HKS Program, its merchantability, or its fitness for any particular purpose. Any other representations or warranties made by any person, including employees or representatives of HKS, which are inconsistent herewith shall be disregarded by Institute and shall not be binding upon HKS.

10. Infringement

If notified promptly in writing of any judicial action or other claim brought against Institute based on an allegation that Institute’s use of any HKS Program infringes a United States patent or copyright or any proprietary rights of a third party or constitutes a misuse or misappropriation of a trade secret, HKS will defend or resolve such action or claim at its expense and will pay the costs and damages awarded in any such action or the cost of settling such action or claim provided that HKS shall have sole control of the defense of any such action or claim and all negotiations for its settlement or compromise. In the event that a final injunction shall be obtained against Institute’s use of any HKS Program by reason of any such infringement, misuse or misappropriation, or in HKS’s opinion Institute’s use of any HKS Program is likely to become the subject of a claim of such infringement, misuse or misappropriation, HKS may at its option and expense either (i) procure for Institute the right to continue to use the HKS Program as contemplated by this Agreement or (ii) replace or modify the HKS Program to make its use hereunder non-infringing while being capable of performing the same functions.

If neither option is reasonably available to HKS, this Agreement may be terminated by HKS without further obligation or liability other than to refund pre-paid license fees on a pro rata basis.

HKS shall have no liability under this Section in the event of any modification or attempted modification of any HKS Program by Institute or any failure by Institute to implement any improvements or updates to any HKS Program as supplied by HKS, or for any claim of infringement based on Institute’s use or combination of any HKS Program with any software or device not supplied by HKS.

11. Limitation of Liability

Institute expressly acknowledges that:

a. HKS shall not be liable for loss of profit, loss of business, or other financial loss which may be caused, directly or indirectly, by the inadequacy of any HKS Program for any purpose or use thereof or by any defect or deficiency therein.
b. HKS shall not have any liability with respect to any loss or damage related to or arising from: (i) any failure of any HKS Program to perform as specified herein except as and to the extent otherwise expressly provided herein; or (ii) any use or application of any HKS Program or the results or decisions made or obtained by users of the HKS program.

c. The total of HKS's liabilities to Institute for damages, if any, shall not exceed the amounts paid by Institute under this Agreement during the twelve (12) months preceding the assertion of Institute's claim.

d. No action, regardless of form, arising out of any transaction under this Agreement may be brought by HKS or Institute more than one year after the injured party has, or by the exercise of reasonable diligence should have had, knowledge of the occurrence which gives rise to such action.

12. Taxes

In addition to all other charges and fees specified in this Agreement, Institute agrees to pay (and to reimburse HKS if HKS pays) all federal, state, local taxes or other taxes (exclusive of business privilege or franchise taxes levied on HKS and taxes based on HKS's net income), including, but not limited to, sales, use, added value, or excise taxes, or amounts levied in lieu thereof, based on charges and fees payable under this Agreement or based on Institute's use of any HKS Program.

13. Termination

a. HKS shall have the right without further obligation or liability to Institute to terminate this Agreement and Institute's license hereunder as to any HKS Program (i) in any event upon thirty (30) days written notice or (ii) if Institute breaches any provision of this Agreement and fails to remedy such breach within thirty (30) days after written notice by HKS of such breach. HKS's termination of this Agreement and/or repossession of the HKS Program shall be without prejudice to any other remedies that HKS may lawfully have by virtue of Institute's breach.

b. Institute shall have the right to terminate this Agreement and Institute's license hereunder as to such HKS Program and fails to remedy such breach within thirty (30) days after written notice by Institute of such breach, or (ii) as of the end of any annual term as provided in Section 5 (Term) of this Agreement.

c. Institute's obligations under Sections 8 (Non-Disclosure) and Paragraph (d) of this Section and to pay all charges and fees accrued as of the date of any such termination shall survive any such termination.

d. Upon the termination of this Agreement as to any HKS Program, the license and all other rights granted to Institute as to that HKS Program hereunder shall immediately cease, and Institute shall immediately: (i) return that HKS Program to HKS including all documentation, manuals and copies in respect of that HKS Program; (ii) purge all copies of that HKS Program and any portions thereof from all CPU's and storage media and devices on which Institute has placed or allowed others to place that HKS Program; and (iii) give HKS a written certification that Institute has complied with its obligations under this Paragraph 13(d).
14. Government Contracting

If any HKS Program is used in connection with US or other government contracting or subcontracting, Institute shall ensure that no government entity shall acquire any rights of any nature in that HKS Program.

15. Export

Institute acknowledges that all HKS Programs are or may be subject to US export regulations. Institute shall comply with all such regulations and shall not export any HKS Program without Institute's first obtaining, at Institute's expense, any and all licenses and permits required under applicable regulations.

16. Acknowledgment

Institute agrees to provide suitable acknowledgment of HKS's provision of any HKS Program in all publications and reports which make reference to or use results generated with the HKS Program. Institute further agrees to forward one copy of any such report or publication to HKS provided that such report or publication is not private.

17. General Provisions

a. Neither party shall have the right to assign or otherwise transfer its rights or obligations under this Agreement except with the written consent of the other party provided, however, that a successor in interest by merger, by operation of law, assignment, purchase, or otherwise of the entire business of either party, shall acquire all interest of such party hereunder and further provided that HKS may elect to perform some services or duties, such as maintenance, enhancement and support, through a local representative who shall be entitled to invoice Institute for such services pursuant to this Agreement.

b. This Agreement shall be governed and construed in accordance with the laws of the State of Rhode Island.

c. This Agreement supersedes all proposals, oral or written, and all negotiations, conversations or discussions heretofore had between the parties related to this Agreement. Institute acknowledges that it has not been induced to enter into this Agreement by any representations or statements, oral or written, not expressly contained herein. The terms and conditions of this Agreement shall prevail, notwithstanding any variance with the terms and conditions of any order or other instrument submitted by Institute.

d. This Agreement supersedes any and all other Software License Agreements between the parties governing HKS Programs.

e. This Agreement shall not be deemed or construed to be modified, amended, rescinded, canceled or waived, in whole or in part, except by written amendment signed by the parties hereto.

f. The obligations of Institute under Sections 4 (Restrictions on Use), 8 (Non-Disclosure), and 15 (Export) hereof are of a special and unique character which gives them a peculiar value to HKS for which HKS cannot be reasonably or adequately compensated in damages or in the event Institute breaches such obligations. Therefore, HKS shall, in addition to other remedies which may be available, be entitled to injunctive and other equitable relief in the event of the breach or threatened breach of such obligations.
IN WITNESS WHEREOF, the parties have signed this Agreement on the dates indicated below, the later of such dates being the effective date of this Agreement.

INSTITUTE
By: [Signature]
Title: Vice President
Date: 7/30/98

HIBBITT, KARLSSON & SORENSEN, INC.
By: [Signature]
Title: Academic Service Administrator
Date: 9/23/98