

**MEMBERSHIP AGREEMENT AND SOFTWARE LICENSE AGREEMENT
WITH**

**FOR THE
ASSOCIATION FOR COMPUTER-ASSISTED SURVEYS**

THIS Membership Agreement and Software License Agreement ("Agreement") is effective this _____ day of _____, 200_, ("effective date") by and between THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, a California corporation having its principal place of business at 1111 Franklin Street, Oakland, CA 94607-5200 and acting through its Office of Technology Licensing at the University of California, Berkeley, 2150 Shattuck Avenue, Suite 510, Berkeley, CA 94704-1347 ("Licensor") and

having its principal office at _____

_____ ("Licensee").

WITNESSETH

WHEREAS, Professor J. Merrill Shanks at the University of California, Berkeley directs a continuing development and service program that has developed software and related techniques for computer-assisted surveys in cooperation with other individuals and organizations, both internally within Licensor's Berkeley Campus and externally, and

WHEREAS, this program is called the Computer-assisted Survey Methods (CSM) Program and is administered by Licensor's Associate Vice Chancellor for Information Services and Technology, University of California at Berkeley, and

WHEREAS, Licensor holds the copyright in the following CSM-based computer programs: Survey Documentation and Analysis (SDA), and all associated documentation, hereinafter referred to as "Licensed Material;" and

WHEREAS, Licensor desires to facilitate the continuing improvement and utilization of computer software and related materials for the collection and processing of survey-type data; and

WHEREAS, Licensor, through the CSM Program, has created an informal cooperative organization composed of Licensees of its Licensed Material as well as other interested individuals, called the Association for Computer-assisted Surveys; and

WHEREAS, Licensor desires to enhance and expand the activities of the Association by the inclusion of Licensee to the Association; and

WHEREAS, Licensee desires to become a member of the Association and to obtain from Licensor a license to use the Licensed Material and other Association-related services;

NOW THEREFORE, in consideration of the mutual covenants, conditions, and terms hereinafter set forth, the parties agree as follows:

PART I. LICENSE

A. License to Use Licensed Material

Licensor hereby grants to Licensee a non-transferable, non-exclusive license to use Licensed Material upon the terms and conditions set forth in this Agreement.

B. Title

1. All right, title and interest, including, but not limited to copyright and all copyright rights, in the Licensed Material is and shall at all times remain in Licensor.
2. Licensee has no right, title or interest therein, or thereto, except as expressly set forth in this Agreement.

C. Use Restricted to Internal Purposes

1. Licensee shall restrict the use of Licensed Material for its own internal purposes, and for purposes of evaluation and comment to Licensor. Licensee may use the Licensed Material to prepare reports or other publications but may under no circumstances transfer, distribute, or allow others to use any portion of the Licensed Material.
2. Licensee shall not distribute, transfer or use any portion of Licensed Material outside Licensee's organization. If Licensee's membership is a Federated Membership, as defined in Attachment A, Licensee shall not permit subsidiary organizations in the federation to distribute any copies of Licensed Material outside of their respective organizations.

D. Enhancements and Derivative Works

Licensee may not enhance, modify, correct, update, make any changes to or prepare any derivative works based upon the Licensed Material.

PART II. RESPONSIBILITIES

A. Responsibilities of Licensor

All technical responsibility of the Licensor pertinent to this License shall be carried out through Licensor's CSM Program. Licensor for the term of this Agreement shall:

1. Continue the development of software for computer-assisted survey data collection and processing. Licensor will provide Licensee six months' notice should Licensor's development be discontinued.

2. Maintain all CSM systems on specific hardware and operating systems that are designated as CSM-supported environments. These supported environments may be changed by Licensor as necessary. Licensor will provide Licensee with a minimum six (6) months notice should support be discontinued.
3. Facilitate the exchange of techniques and instruments for data collection and processing.
4. Provide routine technical consultation by telephone, telefax and electronic or postal mail to Licensees using Licensed Materials.
5. Provide technical and administrative support for training workshops that are held for Association members on an (approximately) annual basis.
6. Provide additional services on a recharge basis as CSM staff time and project scheduling permits. Such services include, but are not limited to, ports of CSM systems to hardware and operating systems that are not designated as CSM-supported environments, implementation of user-specific enhancements, on-site training at member organizations, and Q language instrument design.

B. Responsibilities of Licensee

1. Licensee shall acknowledge the use of Licensed Material in the preparation of any reports or publications that refer to the CSM Program at the University of California by including the following legend at an appropriate location in such report or publication:

(Some of) The data collected (and/or statistical results) which are used in this report (publication) were produced using computer programs made available through the Computer-assisted Survey Methods Program (CSM), University of California, Berkeley. Neither the CSM staff nor the University of California bear any responsibility for the results or conclusions presented here.
2. Licensee is encouraged to recommend to Licensor new priorities for software development which maximize the operation and/or methodological benefit to Licensees. (1) Original ideas and/or recommendations submitted by Licensee shall be treated as proprietary to Licensee until such time as they are incorporated into Licensor's operating software and documentation made available to all Licensees. (2) Licensor reserves the right to accept or reject technical requests and recommendations for software development.

PART III. ASSOCIATION FOR COMPUTER-ASSISTED SURVEYS

A. Association for Computer-Assisted Surveys

It is understood that the Association is an informal organization of Licensees and other organizations that are interested in the continuing development and support of computer-based procedures for the collection, documentation, and processing of survey-type data, and the informal exchange of technical information among participating organizations.

Members' annual fees provide essential funding for the continuing development and support of Licensed Materials. In addition, technical services to members are provided at additional charges to the organization involved.

Attachment A describes the different types of membership in the Association. Depending on which category of membership a given Licensee adopts, that organization may install Licensor-supported software for use on their own (Licensee's) computers or may use some of those programs on Licensor's computers.

B. Membership

The first, and primary, benefit of membership in the Association involves access to the Licensor's software and documentation, including periodic enhancements or major revisions of that software.

In addition to that access, members of the Association may take advantage of routine technical consultation from the Licensor's staff, and member organizations are periodically asked for their advice and requests concerning additional capabilities that should be added to the next release of Association-supported software.

C. Fees

1. In return for the benefits of Association membership (including CSM services as well as the use of Licensed Material), Licensee shall pay an annual fee to Licensor in accordance with the applicable fee category set forth in Attachment A. The fee for the initial twelve-month period is derived from the level of anticipated usage in category ___ and amounts to \$_____.00.
2. Licensor may revise the fee schedule in Attachment A for subsequent fee periods beyond the initial period. Licensor's decision to so revise the fee schedule will be at its sole discretion and when necessary to cover changes in total Association-related costs.
3. Fee payments shall be by check payable to Licensor and forwarded to the address shown in Part IV(J). Fee payments must be submitted with an executed copy of this Agreement and each annual anniversary date thereafter.

PART IV. GENERAL

A. Term and Renewal Options

1. The term of this Agreement shall commence on the effective date, unless terminated by the operation of law or by acts of the parties in accordance with the terms of this Agreement, will remain in effect for _____ year(s) from that date. Licensee may continue this Agreement for additional one-year periods by payment of the annual fee applicable at the time of each renewal, as provided in Part III of this Agreement.
2. If Licensee maintains this Agreement in effect without termination or cancellation for three consecutive years, Licensee may continue this Agreement and its internal use of Licensed Material at no additional fee for as long as the Regents own the copyright in Licensed Materials, but Licensee relinquishes all rights, benefits and privileges of membership in the Association including CSM staff consultation and technical assistance.

3. Within thirty days after expiration or termination of this Agreement for any reason, Licensee will return Licensed Material to Licensor and will delete files of Licensed Material from all computers in which it has been installed.

B. Indemnification

Licensee will indemnify, hold harmless, and defend Licensor, its officers, employees, and agents; the sponsor(s) of the research that led to the development of Licensed Material; and the authors of Licensed Material and their employers against any and all claims, suits, losses, damages, costs, fees, and expenses resulting from or arising out of Licensee's exercise of this license.

C. Exclusion of Warranties

1. Licensor represents to Licensee that it has the lawful right to grant this license.
2. LICENSED MATERIAL IS PROVIDED TO LICENSEE ON AN "AS IS" BASIS. EXCEPT AS EXPRESSLY SET FORTH IN THIS ARTICLE, LICENSOR MAKES NO REPRESENTATIONS AND EXTENDS NO WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR THAT THE USE OF THE LICENSED MATERIAL WILL NOT INFRINGE ANY COPYRIGHT, PATENT, TRADEMARK, OR OTHER RIGHTS.

D. Limitation of Liability

IN NO EVENT SHALL REGENTS BE LIABLE FOR ANY INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES RESULTING FROM THE EXERCISE OF THIS LICENSE OR THE USE OF THIS SOFTWARE AND ITS DOCUMENTATION.

E. Documentation/Object Code

Licensor will deliver to Licensee applicable object code (in executable form) and related user documentation for the Licensed Material. Source code will not be provided.

F. Default

If Licensee fails to pay the required fee provided for herein within thirty (30) days after written notice that the same is overdue and payable, or if Licensee fails to observe, keep or perform any other provisions of this Agreement, Licensor shall have the right to terminate this Agreement.

G. California Law

This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to its conflicts of law provisions.

H. Modification

Any modification to this Agreement must be in writing and duly executed on behalf of both parties.

I. Assignment

This Agreement may not be assigned by Licensee without the prior written consent of Licensor.

J. Notices

All notices between the parties under this Agreement shall be sent to the following:

For Licensor: Computer-assisted Survey Methods Program
 358 Barrows Hall #3820
 University of California
 Berkeley, California 94720-3820

For Licensee: _____

K. Entire Agreement

This document contains the entire Agreement between the parties and supersedes all prior written or oral agreements with respect to the subject matter hereof. The provisions of this Agreement are severable, and in the event that any provision of this Agreement shall be determined to be invalid or unenforceable under any controlling body of law, such invalidity or enforceability shall not in any way affect the validity or enforceability of the remaining provisions hereof.

L. Precedence of this Agreement

The terms and conditions of this Agreement take precedence over any terms added during the course of payment. The only added terms that are permissible are those regarding the transmission of payment.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement of this first day and year written above.

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA
(Licensor)

By _____
Curt Theisen

Title Associate Director, Office of Technology Licensing

Date _____

(Licensee)

Signature _____

Printed Name _____

Title _____

Date _____

ATTACHMENT A--FEE SCHEDULE

October 1, 2008

Annual fees for Association membership and software utilization are defined for several different types of memberships and levels of utilizations. Fees for each membership category are presented below in three separate sections. For all types of membership, changes in the level of aggregate utilization of Licensed Materials during the designated period shall be reported to Licensor, and the fee for subsequent periods shall be modified to reflect that change.

Membership Categories and Rates for CASES Users:

The appropriate fee for each category of membership in this section is based upon the estimated number of person hours in which individuals within the Licensee's organization will use Licensed Materials based on the CASES system at any terminal or workstation. For each of these membership categories, usage of Licensed Materials from the SDA system are permitted but not counted in determining the level of utilization.

Membership Categories and Rates for SDA Users (without CASES):

Membership categories in this section are intended for organizations that use SDA but do not make any use of CASES. For these membership categories, the appropriate fee is based on the extent to which Licensee uses Licensed Materials from the SDA system, either on the Licensor's computers or their own.

Federated Memberships:

This type of membership permits several organizations to pay reduced annual fees by creating a "federated" membership in the Association. In this arrangement, only one organization is a direct member of the Association, and that organization handles all requests for assistance from users in the other subsidiary organizations.

Membership Fees Based on Utilization of CASES (SDA use permitted, but not counted)

- Category A -** For users whose utilization of Licensed Materials is limited to one personal computer (PC) at a time.
\$1,300/yr
for each PC
- Category B -** For yearly utilization up to 2,000 person hours.
\$3,400/yr
- Category C -** For yearly utilization greater than 2,000 hours but less than 4,000 hours.
\$5,600/yr
- Category D -** For yearly utilization greater than 4,000 hours but less than 8,000 hours.
\$8,900/yr
- Category E -** For yearly utilization greater than 8,000 hours but less than 16,000 hours.
\$12,400/yr
- Category F -** For yearly utilization greater than 16,000 hours but less than 32,000 hours.
\$16,400/yr
- Category G -** For yearly utilization greater than 32,000 hours but less than 64,000 hours.
\$21,400/yr
- Category H -** For yearly utilization greater than 64,000 hours but less than 256,000 hours.
\$25,900/yr
- Category I -** For yearly utilization greater than 256,000 hours but less than 1000,000 hours.
\$40,600/yr
- Category J -** For yearly utilization greater than 1,000,000 hours but less than 4,000,000 hours.
\$77,900/yr
- Category K -** For any level of yearly utilization beyond 4,000,000 hours.
\$118,500/yr

Membership Fees based on Utilization of SDA Only (Without CASES)

- Category L -** For organizations that do not obtain any Licensed software, but use Licensor's Web site and other services on a recharge basis
\$800/yr
- Category M -** Discontinued
- Category N -** For utilization of SDA software on Licensee's computers and Web site up to 100,000 requests per year for any kind of SDA-supported procedures.
\$3,400/yr
- Category O -** For unlimited use of SDA software on Licensee's computers and Web site.
\$4,700/yr

Special Arrangements and Fees for Federated Membership in the Association

- Category P -** In Federated memberships, several cooperating organizations act as a single member of the Association, and rely on the staff members from one site to handle all end users within the Federated structure. The annual fee for Federated memberships is determined as follows:

The category for the organization with the highest level of utilization is used as the base fee (for which the minimum is Category C for CASES users, or Category N for members who only use SDA.) Additional fees are charged at one half the normal rate for each additional organization in the structure. Federated Agreements should be accompanied by a written statement which identifies the organization which will serve as headquarters for the Federated structure and all satellite organizations.