

UNAFOLD[®] 4.0
ACADEMIC/NON-PROFIT
NON-COMMERCIAL USE
SOFTWARE LICENSE AGREEMENT

THE TERMS AND CONDITIONS CONTAINED HEREIN CONSTITUTE A LEGAL AGREEMENT.

THIS AGREEMENT CONTAINS THE ENTIRE AGREEMENT BETWEEN YOU (“**YOU**” OR “**YOUR**”), A NOT-FOR-PROFIT COLLEGE OR UNIVERSITY, AND RENSSELAER POLYTECHNIC INSTITUTE, A UNIVERSITY ORGANIZED AS A NEW YORK NOT-FOR-PROFIT CORPORATION (“**RENSSELAER**”) WITH RESPECT TO THE TERMS AND CONDITIONS DESCRIBED HEREIN. READ THIS AGREEMENT CAREFULLY BEFORE YOU CLICK THE “I AGREE TO THE LICENSE TERMS” BUTTON. BY CLICKING ON THE “I AGREE TO THE LICENSE TERMS” BUTTON, THE PERSON ACCEPTING THIS AGREEMENT ACKNOWLEDGES THAT (1) HE OR SHE IS AUTHORIZED TO ENTER INTO THIS AGREEMENT FOR AND ON BEHALF OF YOU, AND IS DOING SO, AND (2) HE OR SHE HAS READ, UNDERSTANDS AND AGREES THAT YOU SHALL BE BOUND BY THESE TERMS AND CONDITIONS AND ALL MODIFICATIONS AND ADDITIONS PROVIDED FOR. IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, CLICK ON THE “RETURN” BUTTON AND INSTALLATION WILL TERMINATE. IF YOU ARE NOT AUTHORIZED TO ENTER INTO AND BIND YOUR INSTITUTION TO THIS AGREEMENT, CLICK ON THE “I AM NOT THE AUTHORIZED SIGNATORY” BUTTON.

You and Rensselaer are sometimes referred to in this Agreement as a “**Party**” and collectively, as the “**Parties**.”

Background: The *UNAFold*[®] programs are the work of Drs. Nicholas R. Markham and Michael Zuker. All intellectual property rights in the Software, including, without limitation, all copyright, patent rights and trademark rights, are owned by RENSSELAER POLYTECHNIC INSTITUTE, subject to the rights of Washington University described below. Except for the limited license rights to use the Software expressly granted in this Agreement, Rensselaer reserves all other rights to itself. Rensselaer has non-exclusively licensed mfold_util software code (“mfold_util”) from Washington University and has the right to sublicense mfold_util in conjunction with its UNAFOLD[®] software.

In consideration of the premises and mutual covenants set forth below, the Parties hereby agree as follows:

1. Definitions. As used in this Agreement, the following terms shall have the meanings set forth in this Section:

1.1 “Effective Date” means the date You enter into this Agreement with Rensselaer by clicking the “I Agree to the License Terms” button.

1.2 “Modify” or Modifications” means any changes or extensions introduced into the Software or otherwise based on or derived from the Software source statements. Modifications may include, but are not limited to, corrections of program errors, translations and stylistic restructuring of the Software, addition or deletion of functions or enhancement of existing functions of the Software, changes or additions required to integrate the Software into other applications or to allow the Software

to run under alternative operating systems or computer hardware configurations, and other adaptations of the Software.

1.3 “Site” means Your single street address listed on your application for this Software License at which You will maintain the computers onto which You load the Software and make it available for use by Authorized Users.

1.4 “Software” means the *UNAFold*® collection of programs, in version 4.x (current release is 4.0) in machine readable object code, source code, if licensed, or binaries, to run in Linux (32 bit or 64 bit) or Mac architectures, and subsequent error corrections and updates of version 4.x that may be supplied to You by Rensselaer, if any.

1.5 “WU” means Washington University, located in St. Louis, Missouri.

2. Your Representations and Warranties; Grant of Rights.

2.1 You hereby represent and warrant to Rensselaer as follows:

2.1.1 You are a not-for-profit college or university, or a research institution that is described under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and organized and existing under the laws of the jurisdiction of your formation;

2.1.2 The person entering into this Agreement on Your behalf is duly authorized to do so; and

2.1.3 Your acceptance and performance of this Agreement (i) have been authorized by all necessary corporate action of You and (ii) do not conflict with any agreement or instrument to which You are a party or are otherwise bound.

2.2 In reliance on the foregoing representations and warranties, and subject to payment of the License Fee (defined below) in accordance with Section 2.3 of this Agreement, Rensselaer hereby grants to You a limited, non-exclusive, non-transferable license for the Term (defined below) to install and use the Software, and if source code is licensed under Section 3.2, to compile the Software, at the Site for internal research purposes only (the “Purposes”), without the right to sublicense, and to make such copies of the Software as are necessary for use at the Site, subject to the limitations, terms and conditions of this Agreement. **No rights are granted under this Agreement to use the Software for any commercial purposes, including, without limitation, by incorporating any portion of the Software into any commercial product or using any portion of the Software in connection with the delivery of any service to a third party.** You are not permitted to use the Software in any manner not expressly authorized by this Agreement. This grant is limited to use on no more than three (3) personal computers located at the Site by no more than three (3) concurrent users, all of whom shall be employees of You (“Authorized Users”). **This license does not authorize Software use by third parties at the Site or by anyone not located at the Site via the Internet or any other means. You may not make the Software available to anyone but Authorized Users. You may not grant any sublicense to, or permit any third party to use the Software in whole or in part, including, without limitation, to members or affiliates of You.** If source code is licensed, You may make Modifications of the Software as are necessary (a) to further the Purposes, (b) to fix minor Software errors, (c) to enable proper Software

installation on Your authorized computers, and (d) to enable access to the Software by other computer programs used by You. No rights to make any other Modifications or derivative works of the Software whatsoever are granted. Please report errors and bugs and send all requests for Modifications to innovation@rpi.edu. Rensselaer shall not be required to fix any errors or bugs or make any Modifications.

2.3 You acknowledge that the Software is the exclusive property of Rensselaer and that Rensselaer has and shall retain at all times all ownership rights, including all trademarks, patent rights, if any, and copyrights in, and to the Software, and all subsequent releases and copies thereof regardless of the form or media. Upon ten (10) days written notice, Rensselaer or its designee may audit your use of the Software. You agree to cooperate with Rensselaer's audit and provide reasonable assistance and access to information. Any such audit shall not unreasonably interfere with your normal business operations. You shall pay to Rensselaer for Your use of the Software in excess of your license rights, as liquidated damages, within thirty (30) days of written notification a non-refundable amount of Thirty-Six Thousand Dollars (\$36,000). Notwithstanding such payment, if You wish to continue to use the Software in a manner that exceeds Your rights under this License, Rensselaer may also require You to purchase a commercial license for the Software subject to Rensselaer's standard terms and conditions therefor. If you do not pay the liquidated damages, then in addition to such other legal and equitable remedies available to it, Rensselaer may terminate Your license to the Software and/or this Agreement. Rensselaer shall not be responsible for any of Your costs incurred in cooperating with the audit.

2.4 You may not (a) distribute, publish, or otherwise transfer or allow to be transferred to third parties, the Software or copies thereof, in whole or in part, or (b) perform services for any third parties using the Software, including, without limitation, on a service bureau basis or with an online hosted service.

2.5 The license granted hereunder shall not include the right to use any other intellectual property or proprietary information or material of Rensselaer.

2.6 Rensselaer and its faculty, employees and students have no obligation to assist You in the use, correction, modification, or enhancement of the Software or to provide any Software error corrections, bug fixes, updates, upgrades, new versions, maintenance or support of any kind under this Agreement.

3. Payment.

3.1 **License Fees.** In addition to any separate fee you are required to pay if you elected to obtain the source code for the Software, You shall pay Rensselaer a non-refundable license fee in the amount of Four Hundred Dollars (\$400) (the "**License Fee**") prior to downloading the Software.

3.2 **Source Code Fee.** To obtain the source code for the Software and the right to exercise the source code license available under Section 3.1, in addition to the License Fee, You must also pay Rensselaer the source code fee in the amount to be determined prior to downloading the Software. Upon receipt of such payment, Rensselaer will provide you with one ("1") copy of the source code.

3.3 **Late Fees; Collection.** Late payments of any License Fees or other sums owed Rensselaer by You shall be subject to a late fee calculated at one and one-half percent (1 ½%) per month of the delinquent balance and shall begin accruing on the first day of delinquency. A payment shall be considered delinquent if not paid in full by its due date. You shall be deemed to have consented to the balance stated in any invoice therefor unless You object to the invoice in writing within that thirty (30) day period. You shall reimburse Rensselaer for all its reasonable attorney fees, and its costs and expenses, if Rensselaer engages legal counsel to assist in the collection of any amounts past due to Rensselaer pursuant to this Agreement, without regard to whether settlement is reached or formal proceedings are commenced to effect collection. Rensselaer shall be entitled to recover from You all such attorney fees, costs and expenses in any arbitration or legal proceedings related thereto, including any and all appeals of any arbitration award or court determination.

3.4 **Remedies.** If the License Fees and any late fees are not received when due, in addition to exercising such other rights and remedies as are available to Rensselaer under this Agreement, at law and in equity, the license granted under this Agreement shall automatically terminate without notice.

3.5 In partial consideration of the license rights granted hereunder, Licensee shall cite the following publications in any abstract, paper, or presentation referencing *UNAFold*® programs: “Markham, N. R. & Zuker, M. (2008) UNAFold: software for nucleic acid folding and hybridization. In Keith, J. M., editor, *Bioinformatics, Volume II. Structure, Functions and Applications*, number 453 in *Methods in Molecular Biology*, chapter 1, pages 3–31. Humana Press, Totowa, NJ.”

4. **Protection of Software.**

4.1 You shall respect and not remove, obliterate, or cancel from view any copyright, trademark, confidentiality or other proprietary notice, mark, or legend appearing on any of the Software or output generated by the Software, and shall reproduce and include same on each copy of the Software and any Modifications. You shall secure and protect all Software consistent with maintenance of Rensselaer’s and WU’s proprietary rights therein.

4.2 You shall maintain and place on any copy of the Software and any Modifications that You reproduce in accordance with the limitations in this Agreement, the following notice, or such other reasonable notice as Rensselaer shall from time to time require, on each copy of the Software and Modifications. Such notice shall be loaded in the computer memory for use, display, or reproduction and shall be embedded in program source code and object code, in the video screen display, and on the physical medium embodying the Software copy:

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5. **Warranties; Limitation of Liability.**

5.1 THIS SOFTWARE IS DELIVERED "AS IS." RENSSELAER AND WU MAKE NO WARRANTIES CONCERNING THE SOFTWARE COVERED BY THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY EXPRESS OR IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OF LACK OF VIRUSES, OR OF RESULTS, OF WORKMANLIKE EFFORT, AND OF LACK OF NEGLIGENCE. RENSSELAER AND WU MAKE NO WARRANTY OR REPRESENTATION AS TO THE VALIDITY OR SCOPE OF THE SOFTWARE OR ANY INTELLECTUAL PROPERTY RIGHT CONTAINED THEREIN, THAT THE SOFTWARE WILL BE ERROR FREE, FREE FROM AN INFRINGEMENT ON PATENTS, COPYRIGHTS OR OTHER INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES, OR THAT NO THIRD PARTIES ARE IN ANY WAY INFRINGING PATENT, COPYRIGHT OR OTHER INTELLECTUAL PROPERTY RIGHTS COVERED BY THIS AGREEMENT. NO AGENT OF RENSSELAER OR WU IS AUTHORIZED TO ALTER OR EXCEED THE WARRANTY OBLIGATIONS OF RENSSELAER OR WU AS SET FORTH IN THIS AGREEMENT.

5.2 EXCEPT TO THE EXTENT PROHIBITED BY LAW, YOU ASSUME ALL LIABILITY FOR DAMAGES THAT MAY ARISE FROM THE USE OF THE SOFTWARE. NEITHER RENSSELAER NOR WU WILL BE LIABLE TO YOU OR TO ANY THIRD PARTY FOR ANY LOSS, CLAIM OR DEMAND MADE BY YOU OR MADE AGAINST YOU BY ANY THIRD PARTY, INCLUDING CLAIMS MADE AGAINST YOU DUE TO OR ARISING FROM YOUR USE OF THE SOFTWARE. IN NO EVENT SHALL RENSSELAER OR WU BE RESPONSIBLE TO YOU OR ANY THIRD PARTY FOR ANY LOSS OF PROFIT, INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF THIS AGREEMENT OR THE LICENSING OR USE OF THE SOFTWARE. THE MAXIMUM LIABILITY OF RENSSELAER AND WU TO ANY PERSON, FIRM OR CORPORATION WHATSOEVER ARISING OUT OF, OR IN CONNECTION WITH YOUR USE OF THE SOFTWARE SHALL IN NO CASE EXCEED THE ACTUAL FEES PAID TO RENSSELAER BY YOU.

6. Indemnification.

6.1 You shall at all times during the term of this Agreement and thereafter indemnify, defend, and hold Rensselaer and WU, and their trustees, directors, officers, employees and affiliates, harmless against all claims, proceedings, demands and liabilities of any kind whatsoever, including legal expenses and reasonable attorney fees, with regard to claims arising out of: (a) the death of, or injury to, any person or persons; (b) any damage to property arising out of Your use of the Software; and (c) or resulting from, the exercise or practice of the license granted to You hereunder.

7. Confidential Information.

7.1 Confidential Information Defined. The term "**Confidential Information**" means (a) the Software, (b) any documentation, instruction and training manuals, diagrams, flow charts, and business processes, and (c) all other information disclosed by Rensselaer to You; provided, however, that to be considered Confidential Information under this Agreement, information disclosed in writing or in electronic or other tangible form must bear a "secret," "confidential," or other similar designation, or if communicated orally, be followed with a written memorandum delivered to You within thirty (30) days of the disclosure describing the information disclosed and the circumstances of disclosure and asserting a claim of confidentiality with respect thereto. You acknowledge that the Confidential Information is the

sole and exclusive property of Rensselaer and that the Confidential Information contains the valuable property and trade secrets of Rensselaer. You shall not disclose any of Your or any third party's confidential or proprietary information to Rensselaer in connection with this Agreement.

7.2 Duty of Security. You shall maintain the Confidential Information in a safe, secure place to which only Your authorized employees with a need to know the Confidential Information to fulfill the Purposes are permitted access. You shall maintain the Confidential Information in confidence, employing measures of security reasonable under the circumstances, but in no event less stringent than the measures You employ to protect your own most valuable trade secrets and not use the Confidential Information except to fulfill the Purposes. The Confidential Information may be disclosed only to those employees of You who have a reasonable need to know to fulfill the Purposes, in light of their duties as employees and only if such employees are warned of the confidential nature of the Confidential Information. You will be responsible for the consequences of any injury resulting from disclosure of the Confidential Information by You or third parties to whom You allow access to the Confidential Information.

7.3 Exclusions. The obligations of Article 6 shall not apply to information that:

7.3.1 is, at the time of disclosure, in the public domain or that, after disclosure, falls into the public domain through no fault or neglect of You;

7.3.2 is lawfully disclosed to You by a third party who is under no obligation of secrecy or confidentiality with respect to the information; and

7.3.3 information that You can demonstrate, through written contemporaneously dated documents in Your files, was either in Your possession or independently developed by You by persons without access to the Confidential Information prior to the Effective Date.

7.4 Burden of Proof. You shall bear the burden of providing sufficient evidence that information disclosed either falls outside the definition of Confidential Information and/or that such disclosed information is covered by one or more of the exceptions set forth in Section 7.3.

8. Term and Termination.

8.1

Rensselaer may terminate this Agreement upon written notice to You if You are in material breach of this Agreement and fail to cure such breach within five (5) days of a written demand for performance.

8.2 Upon termination of this Agreement:

8.2.1 You shall immediately pay to Rensselaer any unpaid License Fee and accrued late fees in full, without deduction or set-off;

8.2.2 You shall discontinue all use of the Software;

8.2.3 You shall immediately remove the Software from all computers at the Site and from all hard drives and media in Your possession;

8.2.4 You shall certify in writing to Rensselaer within thirty (30) days from the termination or expiration of this Agreement that You have complied with this Section; and

8.2.5 You shall return to Rensselaer within thirty (30) days from the termination of this Agreement upon written notice all Confidential Information, including, without limitation, materials, samples, documents, notes and other materials that embody or disclose Confidential Information, including all copies of any of the foregoing You made or permitted others to make.

9. Export Controls.

9.1 You understand and acknowledge that the transfer of certain commodities and technical data is subject to United States laws and regulations controlling the export of certain commodities and technical data, including, without limitation, all Export Administration Regulations of the United States Department of Commerce. These laws and regulations, among other things, prohibit or require a license for the export of certain types of technical data to certain specified countries. You hereby agree and give Rensselaer written assurance that You will comply with all United States laws and regulations controlling the export of commodities and technical data, that You will be solely responsible for any violation of such by You, and that You will defend, indemnify and hold Rensselaer and its employees, officers and agents harmless in the event of any legal action of any nature occasioned by such violation.

10. Notices.

10.1 Except as otherwise expressly provided in this Agreement, all notices and other communications in connection with this Agreement shall be in writing and shall be sent by postage prepaid certified mail return receipt requested, overnight delivery service or fax to Rensselaer at the address set forth below, and to You, at the email address you provided to Rensselaer with Your application for this license, or to such other addresses as may be designated by either Party by like notice:

To Rensselaer:

Rensselaer Polytechnic Institute
Office of Intellectual Property, Technology Transfer and New Ventures
110 Eighth Street
Troy, New York 12180
Attn: Director
innovation@rpi.edu

11. General Provisions.

11.1 This Agreement shall be governed by, construed and enforced exclusively in accordance with the laws of New York State without reference to any of its conflict of laws rules. Any action brought regarding or arising out of this Agreement shall be in the United States District Court, Northern District of New York (Albany), or New York State Supreme Court, Rensselaer or Albany County.

11.2 If any formal acts of registration or recordation of this Agreement are required under the laws of any governmental authority to which You are subject, or if You are required by any such law to take any other action as a result of this Agreement, You shall take all necessary steps to immediately undertake and fully comply with same and promptly furnish to Rensselaer proof of registration, recordation and/or compliance therewith.

11.3 Neither Party, absent written approval of the other, shall have any right to use any name, trade name, or trademark of the other, nor shall You have the right to use the name, trade name or trademark of WU.

11.4 Neither Party, absent written approval of the other, shall assign any rights under this Agreement to any third party.

11.5 Nothing contained in this Agreement shall require or permit Rensselaer or You to do any act inconsistent with the requirements of any United States law, regulation or executive order as the same may be in effect from time to time.

11.6 The following Sections and Articles shall survive the expiration or earlier termination of this Agreement: 2.3; 2.4; 3; 4.2; 5.1; 6; 8.2; 9; and 11.

10.7 This Agreement (a) contains the entire understanding between you and Rensselaer and supersedes all prior agreements with respect to the subject matter hereof, and (b) may only be amended by another writing expressly referring to this Agreement signed by both You and Rensselaer. This Agreement shall be binding upon and inure to the benefit of You and Rensselaer and their respective successors and permitted assigns.

10.8 WU and the WU indemnitees listed in Section 6.1 are third party beneficiaries with the right to enforce this Agreement.

[end of UNAFold® Software License version 11 12 2020]

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1.5 “WU” means Washington University, located in St. Louis, Missouri.

2. Grant of Rights.

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2.2 You acknowledge that the Software is the exclusive property of Rensselaer and that Rensselaer has and shall retain at all times all ownership rights, including all trademarks, patent rights, if any, and copyrights in, and to the Software, and all subsequent releases and copies thereof regardless of the form or media. Upon ten (10) days written notice, Rensselaer or its designee may audit your use of the Software. You agree to cooperate with Rensselaer’s audit and provide reasonable assistance and access to information. Any such audit shall not unreasonably interfere with your normal business operations. You shall pay to Rensselaer for Your use of the Software in excess of your license rights, as liquidated damages, within thirty (30) days of written notification a non-refundable amount of Thirty-Six Thousand Dollars (\$36,000). If you do not pay, then in addition to such other legal and equitable remedies

available to it, Rensselaer may terminate Your license to the Software and/or this Agreement. Rensselaer shall not be responsible for any of Your costs incurred in cooperating with the audit.

2.3 You may not (a) distribute, publish, or otherwise transfer or allow to be transferred to third parties, the Software or copies thereof, in whole or in part, or (b) perform services for any third parties using the Software, including, without limitation, on a service bureau basis or with an online hosted service.

2.4 The license granted hereunder shall not include the right to use any other intellectual property or proprietary information or material of Rensselaer.

2.5 Rensselaer and its faculty, employees and students have no obligation to assist You in the use, correction, modification, or enhancement of the Software or to provide any Software error corrections, bug fixes, updates, upgrades, new versions, maintenance or support of any kind under this Agreement.

3. **Payment.**

3.1 **License Fees.** In addition to any separate fee you are required to pay if you elected to obtain the source code for the Software, You shall pay Rensselaer a non-refundable license fee in the amount of Nine Thousand Dollars (\$9,000) (the “**License Fee**”) prior to downloading the Software, and each year thereafter in accordance with Section 8.1 prior to the commencement of any Renewal Term.

3.2 **Source Code Fee.** To obtain the source code for the Software and the right to exercise the source code license available under Section 3.1, in addition to the License Fee, You must also pay Rensselaer the source code fee in the amount to be determined prior to downloading the Software. Upon receipt of such payment, Rensselaer will provide you with one (“1”) copy of the source code.

3.3 **Late Fees; Collection.** Late payments of any License Fees or other sums owed Rensselaer by You shall be subject to a late fee calculated at one and one-half percent (1 ½%) per month of the delinquent balance and shall begin accruing on the first day of delinquency. A payment shall be considered delinquent if not paid in full by its due date. You shall be deemed to have consented to the balance stated in any invoice therefor unless You object to the invoice in writing within that thirty (30) day period. You shall reimburse Rensselaer for all its reasonable attorney fees, and its costs and expenses, if Rensselaer engages legal counsel to assist in the collection of any amounts past due to Rensselaer pursuant to this Agreement, without regard to whether settlement is reached or formal proceedings are commenced to effect collection. Rensselaer shall be entitled to recover from You all such attorney fees, costs and expenses in any arbitration or legal proceedings related thereto, including any and all appeals of any arbitration award or court determination.

3.4 **Remedies.** If the License Fees and any late fees are not received when due, in addition to exercising such other rights and remedies as are available to Rensselaer under this Agreement, at law and in equity, the license granted under this Agreement shall automatically terminate without notice.

3.5 In partial consideration of the license rights granted hereunder, Licensee shall cite the following publications in any abstract, paper, or presentation referencing *UNAFold*[®] programs: “Markham, N. R. & Zuker, M. (2008) UNAFold: software for nucleic acid folding and hybridization. In Keith, J. M., editor, *Bioinformatics, Volume II. Structure, Functions and Applications*, number 453 in *Methods in Molecular Biology*, chapter 1, pages 3–31. Humana Press, Totowa, NJ.”

4. **Protection of Software.**

4.1 You shall respect and not remove, obliterate, or cancel from view any copyright, trademark, confidentiality or other proprietary notice, mark, or legend appearing on any of the Software or output generated by the Software, and shall reproduce and include same on each copy of the Software. You shall secure and protect all Software to the extent that You protect Your own software but shall use no less than reasonable effort to protect Rensselaer’s proprietary rights therein.

4.2 You shall maintain and place on any copy of the Software that you reproduce, the following notice, or such other reasonable notice as Rensselaer shall from time to time require, on each copy of the Software. Such notice shall be loaded in the computer memory for use, display, or reproduction and shall be embedded in program source code and object code, in the video screen display, and on the physical medium embodying the Software copy:

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5. **Warranties; Limitation of Liability.**

5.1 THIS SOFTWARE IS DELIVERED “AS IS.” RENSSELAER DOES NOT MAKE ANY WARRANTIES CONCERNING THE SOFTWARE COVERED BY THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY EXPRESS OR IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. RENSSELAER MAKES NO WARRANTY OR REPRESENTATION AS TO THE VALIDITY OR SCOPE OF THE SOFTWARE OR ANY INTELLECTUAL PROPERTY RIGHT CONTAINED THEREIN, THAT THE SOFTWARE WILL BE ERROR FREE, FREE FROM AN INFRINGEMENT ON PATENTS, COPYRIGHTS OR OTHER INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES, OR THAT NO THIRD PARTIES ARE INFRINGING PATENT, COPYRIGHT OR OTHER INTELLECTUAL PROPERTY RIGHTS COVERED BY THIS AGREEMENT. NO AGENT OF RENSSELAER IS AUTHORIZED TO ALTER OR EXCEED THE WARRANTY OBLIGATIONS OF RENSSELAER SET FORTH IN THIS AGREEMENT.

5.2 EXCEPT TO THE EXTENT PROHIBITED BY LAW, YOU ASSUME ALL LIABILITY FOR DAMAGES THAT MAY ARISE FROM THE USE OF THE SOFTWARE. NEITHER RENSSELAER NOR WU WILL BE LIABLE TO YOU OR TO ANY THIRD PARTY FOR ANY LOSS, CLAIM OR DEMAND MADE BY YOU OR MADE AGAINST YOU BY ANY THIRD PARTY, INCLUDING CLAIMS MADE AGAINST YOU DUE TO OR ARISING FROM YOUR USE OF THE

SOFTWARE. IN NO EVENT SHALL RENSSELAER OR WU BE RESPONSIBLE TO YOU OR ANY THIRD PARTY FOR ANY LOSS OF PROFIT, INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF THIS AGREEMENT OR THE LICENSING OR USE OF THE SOFTWARE. THE MAXIMUM LIABILITY OF RENSSELAER AND WU TO ANY PERSON, FIRM OR CORPORATION WHATSOEVER ARISING OUT OF, OR IN CONNECTION WITH YOUR USE OF THE SOFTWARE SHALL IN NO CASE EXCEED THE ACTUAL FEES PAID TO RENSSELAER BY YOU.

6. **Indemnification.**

6.1 You shall at all times during the Term and thereafter indemnify, defend, and hold Rensselaer, and its trustees, directors, officers, employees and affiliates, harmless against all claims, proceedings, demands and liabilities of any kind whatsoever, including legal expenses and reasonable attorney fees, with regard to claims arising out of (a) the death of, or injury to, any person or persons; (b) any damage to property arising out of Your use of the Software; and (c) or resulting from, the exercise or practice of the license granted to You hereunder.

7. **Confidential Information.**

7.1 Confidential Information Defined. The term “**Confidential Information**” means (a) the Software, (b) any documentation, instruction and training manuals, diagrams, flow charts, and business processes, and (c) all other information disclosed by Rensselaer to You; provided, however, that to be considered Confidential Information under this Agreement, information disclosed in writing or in electronic or other tangible form must bear a “secret,” “confidential,” or other similar designation, or if communicated orally, be followed with a written memorandum delivered to You within thirty (30) days of the disclosure describing the information disclosed and the circumstances of disclosure and asserting a claim of confidentiality with respect thereto. You acknowledge that the Confidential Information is the sole and exclusive property of Rensselaer and that the Confidential Information contains the valuable property and trade secrets of Rensselaer. You shall not disclose any of Your or any third party’s confidential or proprietary information to Rensselaer in connection with this Agreement.

7.2 Duty of Security. You shall maintain the Confidential Information in a safe, secure place to which only Your authorized employees with a need to know the Confidential Information to fulfill the Purposes are permitted access. You shall maintain the Confidential Information in confidence, employing measures of security reasonable under the circumstances, but in no event less stringent than the measures You employ to protect your own most valuable trade secrets and not use the Confidential Information except to fulfill the Purposes. The Confidential Information may be disclosed only to those employees of You who have a reasonable need to know to fulfill the Purposes, in light of their duties as employees and only if such employees are warned of the confidential nature of the Confidential Information. You will be responsible for the consequences of any injury resulting from disclosure of the Confidential Information by You or third parties to whom You allow access to the Confidential Information.

7.3 Exclusions. The obligations of Article 7 shall not apply to information that:

7.3.1 is, at the time of disclosure, in the public domain or that, after disclosure, falls into the public domain through no fault or neglect of You;

7.3.2 is lawfully disclosed to You by a third party who is under no obligation of secrecy or confidentiality with respect to the information; or

7.3.3 information that You can demonstrate, through written contemporaneously dated documents in Your files, was either in Your possession or independently developed by You by persons without access to the Confidential Information prior to the Effective Date.

7.4 Burden of Proof. You shall bear the burden of providing sufficient evidence that information disclosed either falls outside the definition of Confidential Information and/or that such disclosed information is covered by one or more of the exceptions set forth in Section 7.3.

8. **Term and Termination.**

8.1 This Agreement and the rights licensed hereunder shall terminate on the first anniversary of the Effective Date (the "Initial Term"). You may renew this Agreement for up to three (3) additional one-year terms (each, a "Renewal Term"; the Initial Term and all Renewal Terms, collectively, the "Term") by giving Rensselaer written notice of your intent to renew this Agreement and paying to Rensselaer an additional amount equal to the License Fee at least thirty (30) days prior to the end of the Term then in effect.

8.2 Rensselaer may terminate this Agreement upon written notice to You if You are in material breach of this Agreement and fail to cure such breach within thirty (30) days of a written demand for performance.

8.3 Upon termination of this Agreement:

8.3.1 You shall immediately pay to Rensselaer any unpaid License Fee and accrued late fees in full, without deduction or set-off;

8.3.2 You shall discontinue all use of the Software;

8.3.3 You shall immediately remove the Software from all computers at the Site and from all hard drives and media in Your possession;

8.3.4 You shall certify in writing to Rensselaer within thirty (30) days from the termination or expiration of this Agreement that You have complied with this Section; and

8.3.5 You shall return to Rensselaer within thirty (30) days from the termination or expiration of this Agreement upon written notice all Confidential Information, including, without limitation, materials, samples, documents, notes and other materials that embody or disclose Confidential Information, including all copies of any of the foregoing You made or permitted others to make.

9. **Export Controls.**

9.1 You understand and acknowledge that the transfer of certain commodities and technical data is subject to United States laws and regulations controlling the export of certain commodities and technical data, including, without limitation, all Export Administration Regulations of the United States Department of Commerce. These laws and regulations, among other things, prohibit or require a license for the export of certain types of technical data to certain specified countries. You hereby agree and give Rensselaer written assurance that You will comply with all United States laws and regulations controlling the export of commodities and technical data, that You will be solely responsible for any violation of such by You, and that You will defend, indemnify and hold Rensselaer and its employees, officers and agents harmless in the event of any legal action of any nature occasioned by such violation.

10. Notices.

10.1 Except as otherwise expressly provided in this Agreement, all notices and other communications in connection with this Agreement shall be in writing and shall be sent by postage prepaid certified mail return receipt requested, overnight delivery service or fax to Rensselaer at the address set forth below, and to You, at the email address you provided to Rensselaer with Your application for this license, or to such other addresses as may be designated by either Party by like notice:

To Rensselaer:

Rensselaer Polytechnic Institute
Office of Intellectual Property, Technology Transfer and New Ventures
110 Eighth Street
Troy, New York 12180
Attn: Director
innovation@rpi.edu

11. General Provisions.

11.1 This Agreement shall be governed by, construed and enforced exclusively in accordance with the laws of New York State without reference to any of its conflict of laws rules. Any action brought regarding or arising out of this Agreement shall be in the United States District Court, Northern District of New York (Albany), or New York State Supreme Court, Rensselaer or Albany County.

11.2 If any formal acts of registration or recordation of this Agreement are required under the laws of any governmental authority to which You are subject, or if You are required by any such law to take any other action as a result of this Agreement, You shall take all necessary steps to immediately undertake and fully comply with same and promptly furnish to Rensselaer proof of registration, recordation and/or compliance therewith.

11.3 Neither Party, absent written approval of the other, shall have any right to use any name, trade name, or trademark of the other, nor shall You have the right to use the name, trade name or trademark of WU.

11.4 Neither Party, absent written approval of the other, shall assign any rights under this Agreement to any third party.

11.5 Nothing contained in this Agreement shall require or permit Rensselaer or You to do any act inconsistent with the requirements of any United States law, regulation or executive order as the same may be in effect from time to time.

11.6 The following Sections and Articles shall survive the expiration or earlier termination of this Agreement: 2.3; 2.4; 3; 4.2; 5.1; 6; 8.2; 9; and 11.

11.7 This Agreement (a) contains the entire understanding between You and Rensselaer and supersedes all prior agreements with respect to the subject matter hereof, and (b) may only be amended by another writing expressly referring to this Agreement signed by both You and Rensselaer. This Agreement shall be binding upon and inure to the benefit of You and Rensselaer and their respective successors and permitted assigns.

11.8 WU and the WU indemnitees listed in Section 6.1 are third party beneficiaries with the right to enforce this Agreement.

[end of UNAFold® Software Annual License version 11 29 2020]

UNAFOLD® 4.0
PERPETUAL
SOFTWARE LICENSE AGREEMENT

THE TERMS AND CONDITIONS CONTAINED HEREIN CONSTITUTE A LEGAL AGREEMENT.

THIS AGREEMENT CONTAINS THE ENTIRE AGREEMENT BETWEEN YOU (“**YOU**” OR “**YOUR**”) AND RENSSELAER POLYTECHNIC INSTITUTE, A NEW YORK NOT-FOR-PROFIT CORPORATION (“RENSSELAER”) WITH RESPECT TO THE TERMS AND CONDITIONS DESCRIBED HEREIN. READ THIS AGREEMENT CAREFULLY BEFORE YOU CLICK THE “I AGREE TO THE LICENSE TERMS” BUTTON. BY CLICKING ON THE “I AGREE TO THE LICENSE TERMS” BUTTON, YOU ACKNOWLEDGE THAT (1) YOU ARE AUTHORIZED TO ENTER INTO THIS AGREEMENT FOR AND ON BEHALF OF YOUR COMPANY, AND ARE DOING SO, AND (2) YOU HAVE READ AND UNDERSTAND AND AGREE THAT YOU AND THE COMPANY SHALL BE BOUND BY THESE TERMS AND CONDITIONS AND ALL MODIFICATIONS AND ADDITIONS PROVIDED FOR. IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, CLICK ON THE “RETURN” BUTTON BELOW AND INSTALLATION WILL TERMINATE. IF YOU ARE NOT AUTHORIZED TO ENTER INTO AND BIND YOUR INSTITUTION TO THIS AGREEMENT, CLICK ON THE “I AM NOT THE AUTHORIZED SIGNATORY” BUTTON.

You and Rensselaer are sometimes referred to in this Agreement as a “**Party**” and collectively, as the “**Parties.**”

Background: The *UNAFold*® programs are the work of Drs. Nicholas R. Markham and Michael Zuker. All intellectual property rights in the Software, including, without limitation, all copyright, patent rights and trademark rights, are owned by RENSSELAER POLYTECHNIC INSTITUTE, subject to the rights of Washington University described below. Except for the limited license rights to use the Software expressly granted in this Agreement, Rensselaer reserves all other rights to itself. Rensselaer has non-exclusively licensed `mfold_util` software code (“`mfold_util`”) from Washington University and has the right to sublicense `mfold_util` in conjunction with its UNAFOLD® software.

In consideration of the premises and mutual covenants set forth below, the Parties hereby agree as follows:

1. **Definitions.** As used in this Agreement, the following terms shall have the meanings set forth in this Section:

1.1 “**Effective Date**” means the date You enter into this Agreement with Rensselaer by clicking the “I Agree to the License Terms” button.

1.2 “**Modify**” or “**Modifications**” means any changes or extensions introduced into the Software or otherwise based on or derived from the Software source statements. Modifications may include, but are not limited to, corrections of program errors, translations and stylistic restructuring of the Software, addition or deletion of functions or enhancement of existing functions of the Software, changes or additions required to integrate the Software into other applications or to allow the Software to run under alternative operating systems or computer hardware configurations, and other adaptations of the Software.

1.3 “Site” means Your single street address listed on your application for this Software License at which You will maintain the computers onto which You load the Software and make it available for use by Authorized Users.

1.4 “Software” means the UNAFold® collection of programs, in version 4.x (current release is 4.0) in machine readable object code, source code, if licensed, or binaries, to run in Linux (32 bit or 64 bit) or Mac architectures, and subsequent error corrections and updates of version 4.x that may be supplied to You by Rensselaer, if any.

1.5 “WU” means Washington University, located in St. Louis, Missouri.

2. Grant of Rights.

2.1 Subject to payment of the License Fee (defined below) in accordance with Section 3 of this Agreement, Rensselaer hereby grants to You a limited, perpetual, non-exclusive, non-transferable license to install and use the Software, and if source code is licensed, to compile the Software, at the Site for research and product development purposes only (the “Purposes”), without the right to sublicense, and to make such copies of the Software as are necessary for use at the Site, subject to the limitations, terms and conditions of this Agreement. You are not permitted to use the Software in any manner not expressly authorized by this Agreement. This grant is limited to use on no more than five (5) personal computers located at the Site by no more than five (5) concurrent users, all of whom shall be employees of You (“Authorized Users”). ***This license does not authorize Software use by third parties at the Site or by anyone not located at the Site via the Internet or any other means. You may not make the Software available to anyone but Authorized Users. You may not grant any sublicense to, or permit any third party to use the Software in whole or in part, including, without limitation, to members or affiliates of You.*** No rights to make any Modifications or derivative works of the Software whatsoever are granted. If source code is licensed, You may make Modifications of the Software as are necessary (a) to further the Purposes, (b) to fix minor Software errors, (c) to enable proper Software installation on Your authorized computers, and (d) to enable access to the Software by other computer programs used by You. Please report errors and bugs and send all requests for Modifications to innovation@rpi.edu. Rensselaer shall not be required to fix any errors or bugs or make any Modifications.

2.2 You acknowledge that the Software is the exclusive property of Rensselaer and that Rensselaer has and shall retain at all times all ownership rights, including all trademarks, patent rights, if any, and copyrights in, and to the Software, and all subsequent releases and copies thereof regardless of the form or media. Upon ten (10) days written notice, Rensselaer or its designee may audit your use of the Software. You agree to cooperate with Rensselaer’s audit and provide reasonable assistance and access to information. Any such audit shall not unreasonably interfere with your normal business operations. You shall pay to Rensselaer for Your use of the Software in excess of your license rights, as liquidated damages, within thirty (30) days of written notification a non-refundable amount of Thirty-Six Thousand Dollars (\$36,000). If you do not pay, then in addition to such other legal and equitable remedies available to it, Rensselaer may terminate Your license to the Software and/or this Agreement. Rensselaer shall not be responsible for any of Your costs incurred in cooperating with the audit.

2.3 You may not (a) distribute, publish, or otherwise transfer or allow to be transferred to third parties, the Software or copies thereof, in whole or in part, or (b) perform services for any third parties using the Software, including, without limitation, on a service bureau basis or with an online hosted service.

2.4 The license granted hereunder shall not include the right to use any other intellectual property or proprietary information or material of Rensselaer.

2.5 Rensselaer and its faculty, employees and students have no obligation to assist You in the use, correction, modification, or enhancement of the Software or to provide any Software error corrections, bug fixes, updates, upgrades, new versions, maintenance or support of any kind under this Agreement.

3. **Payment.**

3.1 **License Fees.** In addition to any separate fee you are required to pay if you elected to obtain the source code for the Software, You shall pay Rensselaer a non-refundable license fee in the amount of Thirty-Six Thousand Dollars (\$36,000) (the "License Fee"), in three installments as follows:

3.1.1. Eighteen Thousand Dollars (\$18,000), prior to downloading the Software;

3.1.2. Nine Thousand Dollars (\$9,000) by the first anniversary of the Effective Date; and

3.1.3. Nine Thousand Dollars (\$9,000) by the second anniversary of the Effective Date.

3.2 **Source Code Fee.** To obtain the source code for the Software and the right to exercise the source code license available under Section 3.1, in addition to the License Fee, You must also pay Rensselaer the source code fee in the amount to be determined prior to downloading the Software. Upon receipt of such payment, Rensselaer will provide you with one ("1") copy of the source code.

3.3 **Late Fees; Collection.** Late payments of any License Fees or other sums owed Rensselaer by You shall be subject to a late fee calculated at one and one-half percent (1 ½%) per month of the delinquent balance and shall begin accruing on the first day of delinquency. A payment shall be considered delinquent if not paid in full by its due date. You shall be deemed to have consented to the balance stated in any invoice therefor unless You object to the invoice in writing within that thirty (30) day period. You shall reimburse Rensselaer for all its reasonable attorney fees, and its costs and expenses, if Rensselaer engages legal counsel to assist in the collection of any amounts past due to Rensselaer pursuant to this Agreement, without regard to whether settlement is reached or formal proceedings are commenced to effect collection. Rensselaer shall be entitled to recover from You all such attorney fees, costs and expenses in any arbitration or legal proceedings related thereto, including any and all appeals of any arbitration award or court determination.

3.4 **Remedies.** If the License Fees and any late fees are not received when due, in addition to exercising such other rights and remedies as are available to Rensselaer under this

Agreement, at law and in equity, the license granted under this Agreement shall automatically terminate without notice.

3.5 In partial consideration of the license rights granted hereunder, Licensee shall cite the following publications in any abstract, paper, or presentation referencing *UNAFold*[®] programs: “Markham, N. R. & Zuker, M. (2008) UNAFold: software for nucleic acid folding and hybridization. In Keith, J. M., editor, *Bioinformatics, Volume II. Structure, Functions and Applications*, number 453 in *Methods in Molecular Biology*, chapter 1, pages 3–31. Humana Press, Totowa, NJ.”

4. **Protection of Software.**

4.1 You shall respect and not remove, obliterate, or cancel from view any copyright, trademark, confidentiality or other proprietary notice, mark, or legend appearing on any of the Software or output generated by the Software, and shall reproduce and include same on each copy of the Software. You shall secure and protect all Software to the extent that You protect Your own software but shall use no less than reasonable effort to protect Rensselaer’s proprietary rights therein.

4.2 You shall maintain and place on any copy of the Software that you reproduce, the following notice, or such other reasonable notice as Rensselaer shall from time to time require, on each copy of the Software. Such notice shall be loaded in the computer memory for use, display, or reproduction and shall be embedded in program source code and object code, in the video screen display, and on the physical medium embodying the Software copy:

© 2017 Rensselaer Polytechnic Institute. All rights reserved.

© 2000 Washington University. All rights reserved.

5. **Warranties; Limitation of Liability.**

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TO ANY THIRD PARTY FOR ANY LOSS, CLAIM OR DEMAND MADE BY YOU OR MADE AGAINST YOU BY ANY THIRD PARTY, INCLUDING CLAIMS MADE AGAINST YOU DUE TO OR ARISING FROM YOUR USE OF THE SOFTWARE. IN NO EVENT SHALL RENSSELAER OR WU BE RESPONSIBLE TO YOU OR ANY THIRD PARTY FOR ANY LOSS OF PROFIT, INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF THIS AGREEMENT OR THE LICENSING OR USE OF THE SOFTWARE. THE MAXIMUM LIABILITY OF RENSSELAER AND WU TO ANY PERSON, FIRM OR CORPORATION WHATSOEVER ARISING OUT OF, OR IN CONNECTION WITH YOUR USE OF THE SOFTWARE SHALL IN NO CASE EXCEED THE ACTUAL FEES PAID TO RENSSELAER BY YOU.

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7. **Confidential Information.**

7.1 Confidential Information Defined. The term “**Confidential Information**” means (a) the Software, (b) any documentation, instruction and training manuals, diagrams, flow charts, and business processes, and (c) all other information disclosed by Rensselaer to You; provided, however, that to be considered Confidential Information under this Agreement, information disclosed in writing or in electronic or other tangible form must bear a “secret,” “confidential,” or other similar designation, or if communicated orally, be followed with a written memorandum delivered to You within thirty (30) days of the disclosure describing the information disclosed and the circumstances of disclosure and asserting a claim of confidentiality with respect thereto. You acknowledge that the Confidential Information is the sole and exclusive property of Rensselaer and that the Confidential Information contains the valuable property and trade secrets of Rensselaer. You shall not disclose any of Your or any third party’s confidential or proprietary information to Rensselaer in connection with this Agreement.

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7.3.2 is lawfully disclosed to You by a third party who is under no obligation of secrecy or confidentiality with respect to the information; or

7.3.3 information that You can demonstrate, through written contemporaneously dated documents in Your files, was either in Your possession or independently developed by You by persons without access to the Confidential Information prior to the Effective Date.

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8.2 Upon termination of this Agreement:

8.2.1 You shall immediately pay to Rensselaer all unpaid past, current and future installments of the License Fee and any accrued late fees in full, without deduction or set-off;

8.2.2 You shall discontinue all use of the Software;

8.2.3 You shall immediately remove all the Software from all computers at the Site and from all hard drives and media in Your possession;

8.2.4 You shall certify in writing to Rensselaer within thirty (30) days from the termination or expiration of this Agreement that You have complied with this Section; and

8.2.5 You shall return to Rensselaer within thirty (30) days from the termination or expiration of this Agreement upon written notice all Confidential Information, including, without limitation, materials, samples, documents, notes and other materials that embody or disclose Confidential Information, including all copies of any of the foregoing You made or permitted others to make.

9. **Export Controls.**

9.1 You understand and acknowledge that the transfer of certain commodities and technical data is subject to United States laws and regulations controlling the export of certain commodities and technical data, including, without limitation, all Export Administration Regulations of the United States Department of Commerce. These laws and regulations, among other things, prohibit or require a license for the export of certain types of technical data to

certain specified countries. You hereby agree and give Rensselaer written assurance that You will comply with all United States laws and regulations controlling the export of commodities and technical data, that You will be solely responsible for any violation of such by You, and that You will defend, indemnify and hold Rensselaer and its employees, officers and agents harmless in the event of any legal action of any nature occasioned by such violation.

10. Notices.

10.1 Except as otherwise expressly provided in this Agreement, all notices and other communications in connection with this Agreement shall be in writing and shall be sent by postage prepaid certified mail return receipt requested, overnight delivery service or fax to Rensselaer at the address set forth below, and to You, at the email address you provided to Rensselaer with Your application for this license, or to such other addresses as may be designated by either Party by like notice:

To Rensselaer:

Rensselaer Polytechnic Institute
Office of Intellectual Property, Technology Transfer and New Ventures
110 Eighth Street
Troy, New York 12180
Attn: Director
innovation@rpi.edu

11. General Provisions.

11.1 This Agreement shall be governed by, construed and enforced exclusively in accordance with the laws of New York State without reference to any of its conflict of laws rules. Any action brought regarding or arising out of this Agreement shall be in the United States District Court, Northern District of New York (Albany), or New York State Supreme Court, Rensselaer or Albany County.

11.2 If any formal acts of registration or recordation of this Agreement are required under the laws of any governmental authority to which You are subject, or if You are required by any such law to take any other action as a result of this Agreement, You shall take all necessary steps to immediately undertake and fully comply with same and promptly furnish to Rensselaer proof of registration, recordation and/or compliance therewith.

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11.4 Neither Party, absent written approval of the other, shall assign any rights under this Agreement to any third party.

11.5 Nothing contained in this Agreement shall require or permit Rensselaer or You to do any act inconsistent with the requirements of any United States law, regulation or executive order as the same may be in effect from time to time.

11.6 The following Sections and Articles shall survive the expiration or earlier termination of this Agreement: 2.3; 2.4; 3; 4.2; 5.1; 6; 8.2; 9; and 11.

11.7 This Agreement (a) contains the entire understanding between you and Rensselaer and supersedes all prior agreements with respect to the subject matter hereof, and (b) may only be amended by another writing expressly referring to this Agreement signed by both You and Rensselaer. This Agreement shall be binding upon and inure to the benefit of You and Rensselaer and their respective successors and permitted assigns.

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