University Corporation for Atmospheric Research

Software License Agreement for UCAR'S CDAAC SOFTWARE

Internal Research Use Only

("Agreement")

This Agreement is entered into as of August 1, 2016 (the "Effective Date") by and between the University Corporation for Atmospheric Research ("UCAR) having a mailing address of 3090 Center Green Drive, Boulder, Colorado 80301, and the National Institute for Space Research from the Brazilian Ministry of Science, Technology and Innovation (hereafter "INPE" or "Licensee"), a research corporation, having its mailing address at CP-515, Av. dos Astronautas, 1758, Jd. da Granja, 12227-010 São José dos Campos, SP, Brazil. UCAR and Licensee may be alternatively referred to as Party, individually, or Parties, collectively.

1. <u>Definitions:</u> The following terms have the following meanings in this Agreement:

    "Software" means the Cosmic Data Analysis and Archive Center ("CDAAC") software (partially in source code format and certain modules in object code format only) necessary to accept level 0 COSMIC 2 data (COSMIC payload and SOH data received from RTS) in near real-time, that processes the level 0 data to level 1a data (reformatted and cleaned level 0 data), that processes level 1a data to level 1b data (precise orbit and excess phase data), that processes level 1b data to level 2 data (geophysical profile data), that disseminates all data level products to users via LDM, archives all data in an automated fashion, and makes COSMIC data products available over the web with an interactive database. Technology also includes algorithm descriptions for precision orbit determination, atmospheric data inversion, and ionospheric data inversion. Technology does not, however, include any commercial software that requires a separate purchased license, such as Bernese GPS Software or Fortran 90 compiler, nor any freeware software products (Linux, Perl and Perl modules, UCAR/UNIDATA Local Data Manager (LDM), Postgres Database, and others), which may be made available, to the extent that UCAR is able, subject to the terms of those free software licenses.

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3. Additional License Terms.

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4. Term. Subject to the termination provisions of Section 14, the Term of the License granted in Section 2 shall be for a period of five (5) years.

5. Derivative Works. In partial consideration of the grant recited herein, Licensee agrees that, upon request by UCAR, Licensee will provide to UCAR any modifications, changes, alterations, improvements, or enhancements ("Derivative Works") created and/or generated by Licensee, which relate to or result from the Software or any associated documentation. Licensee must provide to UCAR, within six (6) months of its creation, a copy of any source and executable code of any Derivative Works. Consistent with the United States Copyright Laws, UCAR shall own all Derivative Works.

6. License Fee. Not Applicable; non-commercial research license only.

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10. <u>Liability Limitation.</u> UNDER NO CIRCUMSTANCES, INCLUDING NEGLIGENCE, SHALL UCAR BE LIABLE FOR ANY DAMAGES, WHETHER DIRECT, INCIDENTAL, SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES INCLUDING LOST REVENUE, PROFIT OR DATA, WHETHER IN AN ACTION IN CONTRACT OR TORT ARISING OUT OF OR RELATING TO THE USE OF OR INABILITY TO USE THE WORK, EVEN IF UCAR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

    <u>Export Law Assurances.</u> Licensee agrees to comply strictly with all U.S. export control laws and regulations

11. <u>No Support/Modifications</u>. The Software is provided without any support or maintenance, and without any obligation to provide modifications, improvements, enhancements, or updates of the Software. In the event that UCAR, at its sole discretion, does provide modifications, improvements, enhancements, or updates, the terms and conditions of this Agreement shall apply to such modifications, improvements, enhancements or updates. Further, UCAR shall not be obligated to provide any new versions or releases of the Software to Licensee unless agreed to in a separate writing between the parties.

12. <u>Indemnification and Hold Harmless</u>. Licensee shall defend, indemnify and hold harmless UCAR, its employees, officers, affiliates, subsidiaries, assignees, and sponsors from and against any and all claims of liability, loss or damage and expense, including reasonable attorney's fees, arising from or related to this agreement (or allegedly arising from or

related to this agreement). Licensee waives any and all claims against UCAR resulting from the use of the Software as set forth in this Agreement. Licensee warrants that it will not use the Software in a manner inconsistent with the requirements set forth in this Agreement.

13. <u>Renewal and Termination</u>. This Agreement may be renewed, extended or terminated upon written agreement between the parties. This Agreement shall automatically terminate in the event Licensee breaches Section 3 of this Agreement. UCAR may terminate this Agreement immediately upon Licensee's failure to remedy a breach of any other material term of this Agreement within ten (10) days of UCAR's written notice of such breach. In the event of termination, Licensee shall, at UCAR's option, return to UCAR the Software and any copies thereof; or destroy the Software, and any copies thereof, at UCAR's request, and provide UCAR with written certification of such destruction

Upon expiration or termination, as applicable, all rights granted under this Agreement shall terminate, and Licensee shall, at UCAR's discretion, either return or destroy all Software licensed hereunder and any related documentation. Termination of this Agreement shall not extinguish either party's rights or obligations under this Agreement that by their terms continue after the date of termination, including those obligations set forth in Sections 8, 9, 10 and 13 hereof.

14. <u>Relationship of the Parties</u>. In all matters relating to this Agreement, both parties will act as independent contractors. Neither party will represent that it has any authority to assume or create any obligation, express or implied, on behalf of the other party. Nothing in this Agreement shall be construed to be a partnership, agency or joint venture.

15. <u>Notice</u>. Any notice required or permitted to be given under this Agreement shall be in writing and shall be either transmitted by electronic mail or sent via pre-paid express over-night delivery, with verified receipt, at the address set forth below. Any such notice shall be deemed received on the day such notice is received.

For UCAR:	For Licensee:
Margaret M. McClellan, Esq. 3090 Center Green Drive Boulder, CO 80301	Joaquim Eduardo Rezende Costa Av. Dos Astronautas, 1758 Jd. Granja - São José dos Campos - SP CEP 12.227-010
Voice: 303-497-8875 Fax: 303-497-8501	Voice: +55 (12) 3208-7191 Fax:

16. <u>Controlling Law and Severability</u>. This Agreement shall be governed by the laws of the State of Colorado and shall be adjudicated by competent courts in the State of Colorado, notwithstanding any conflicts of laws provisions. If for any reason a court of competent jurisdiction finds any provision, or portion thereof, to be unenforceable, the remainder of this Agreement shall continue in full force and effect. This Agreement shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is hereby expressly excluded.

17. <u>Waiver</u>. The express waiver by either party of any provision, condition or requirement of this Agreement shall not constitute a waiver of any future obligation to comply with such provision, condition or requirement nor shall a waiver of one provision, condition or requirement constitute a waiver of the remaining provisions, conditions, or requirements. Any delay or omission by either party to exercise any right or remedy under this Agreement shall not be construed to be a waiver of any such right or remedy, or a waiver of any other available right or remedy hereunder. All rights of either party under this Agreement shall be cumulative and may be exercised separately or concurrently.

18. <u>Facsimile Signatures</u>. The parties acknowledge that facsimile signatures are fully binding and constitute a legal method of executing this Agreement.

19. <u>Order of Precedence</u>. Any conflict between the terms of this Agreement and any Purchase Order or other terms shall be resolved in favor of the terms of this Agreement.

20. <u>Assignment</u>. Any transfer, assignment or other conveyance, or attempt thereof, of the rights, duties and/or privileges under this Agreement by Licensee shall immediately terminate this Agreement.

21. <u>Attorneys' Fees</u>. In the event that Licensee breaches any of the terms and conditions of this Agreement, or UCAR must proceed against Licensee to enforce the terms of this Agreement, UCAR shall be entitled to all legal and equitable damages, including reasonable attorney's fees and costs.

22. <u>Complete Agreement</u>. This Agreement constitutes the entire agreement between the parties with respect to the use of the Software and supersedes all prior or contemporaneous understandings regarding such subject matter. No amendment to or modification of this Agreement will be binding unless in a writing and signed by UCAR.

23. <u>Confidential and/or Proprietary Information</u>. Licensee acknowledges that the Software and Derivative Works (including, but not limited to, any associated documentation) are confidential and/or proprietary to UCAR. All confidential, proprietary and copyright notices shall be retained intact on any of the permitted copies. Such notices shall be

displayed on any documents, media, printouts, and visualization or on any other electronic or tangible expressions associated with, related to, or derived from the Software.
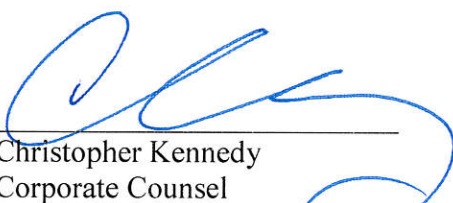
Licensee shall retain the confidentiality of the Software and Derivative Works and shall not use or share such material or other confidential information of UCAR with any third party, except as expressly permitted by the terms of this Agreement. The term of confidentiality shall extend beyond the expiration and/or termination date of this Agreement or any extension thereof, for a period of ten (10) years; however, it is understood that this Agreement shall impose no obligations of confidentiality on the Licensee where such confidential information (a) is or becomes a matter of public knowledge through no fault of the Licensee; (b) is rightfully received by the Licensee from a third party without a duty of confidentiality; (c) is independently developed by the Licensee, as demonstrated by written evidence; (d) is disclosed under operation of law; provided that Licensee provides UCAR prompt written notice of the legal order requiring disclosure and cooperates with UCAR to protect the information to the full extent permitted by law and discloses only so much as is necessary to comply with such order.

Accepted by:

By execution hereof, the signer hereby certifies that signer is duly authorized to execute this on behalf of Licensee:

University Corporation for Atmospheric Research

National Institute for Space Research

Christopher Kennedy
Corporate Counsel
Date: 09/27/2016

Oswaldo Duarte Miranda
Deputy Director
Date: July, 07, 2016