

This License Agreement is for **Memory Training: An Educational Program for People with Age Related Memory Concerns** and it is for educational use in an educational or non-profit setting. If you would like to license this Work, please print out two (2) copies of this document, complete, sign, and return both copies of the document via mail, fax or via email as a pdf to our office at:

UCLA Center on Aging
10945 Le Conte Avenue
Suite 3119, Box 95680
Los Angeles, CA 90095-6980

If you are interested in a corporate license to use this software please contact our office at the above address and we will provide you with a quote.

or

via email to: CWalling@mednet.ucla.edu

or

via fax to: 310-825-3910

For questions please call: 310-794-0676

Both copies will be signed and one (1) copy will be returned to you for your records. We will then prepare and send an invoice to you for the fee associated with the license.

The Memory Training Curriculum will then be mailed to you unless you indicate otherwise.

NON-EXCLUSIVE LICENSE AGREEMENT

This Exclusive License Agreement and the attached **Appendix A** (collectively, the “**Agreement**”) is made and is effective this _____ day of _____ (the “**Effective Date**”) between THE REGENTS OF THE UNIVERSITY OF CALIFORNIA (“**The Regents**”), a California corporation having its corporate offices located at 1111 Franklin Street, Oakland, California 94607-5200, acting through The Office of Intellectual Property and Industry Sponsored Research of the University of California, Los Angeles, located at 11000 Kinross Avenue, Suite 200, Los Angeles, CA 90095-1406, and _____ (“**Licensee**”), a _____ corporation having a principal place of business at _____.

RECITALS

WHEREAS, [a] certain work of authorship, generally characterized as

“**Memory Training: An Educational Program for People with Age Related Memory Concerns**” (UCLA Case No. 2011-065) (the “**Work**”) was made in the course of research at the University of California, Los Angeles by Dr. Gary Small (**the Author**), and is claimed in Regents’ Copyright Rights, as defined below;

WHEREAS, **Author** is an employee of The Regents and as such is obligated to assign his right, title and interest in and to the Work to The Regents;

WHEREAS, The Regents wish that the Regents' technology be developed and utilized to the fullest extent so that the benefits can be enjoyed by the general public.

The parties agree as follows:

1. DEFINITIONS

- 1.1 “**Field of Use**” means Education.
- 1.2 “**License**” has the meaning set forth in Paragraph 2.1 of this Agreement.
- 1.3 “**Licensed Product**” means any work or a derivative covered by Regents' Copyright Rights or whose use, manufacture, performance, production, reproduction, display, distribution, or sale would, absent the license granted under this Agreement, constitute an infringement, inducement of infringement, or contributory infringement, of any work covered within Regents' Copyright Rights. If the Licensed Product is a component of another product or work, such product or work is deemed to be the Licensed Product for purposes of this Agreement.
- 1.4 “**Regents' Copyright Rights**” means The Regents’ interest in any of the works listed in Appendix A attached to this Agreement and assigned to The Regents (UCLA Case No. **2011-065**); and any **Derivative Work(s)** created therefrom; all of which will be automatically incorporated in and added to Appendix A and made a part of this Agreement.
- 1.5 “**Derivative Work(s)**” means any revision, enhancement, modification, translation, abridgement, condensation, or expansion created by Licensee that is based upon the Work or a portion thereof

that would be a copyright infringement if prepared without the authorization of the copyright owners of the Work or portion thereof.

2. GRANT

- 2.1. Subject to the limitations set forth in this Agreement, The Regents hereby grants to Licensee a non-exclusive license (the "License") under Regents' Copyright Rights, in jurisdictions where Regents' Copyright Rights exist, to use, produce, reproduce, display, and distribute the Licensed Products in the Field of Use to the extent permitted by law. The Licensee will not use, produce, reproduce, display, distribute, or perform the Licensed Products outside the Field of Use.
- 2.2. Licensee shall not make derivative works of the Licensed Products.
- 2.3. The License is subject to all the applicable provisions of any license to the United States Government executed by The Regents and is subject to any overriding obligations to the United States Federal Government under 35 U.S.C. §§200-212 and applicable governmental implementing regulations. The license to the US Government provides in OMB Circular A-110 at Paragraph 36(a) a royalty-free, non-exclusive, irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so.
- 2.4. The Regents expressly reserves the right to: (a) use Regents' Copyright Rights and associated technology for educational and research purposes, clinical research, and research sponsored by commercial entities (b) to publicly disclose research results, and (c) allow other non-profit research institutions to use Regents' Copyright Rights and associated technology for the same purposes as (a) and (b).
- 2.5. Sublicenses are not allowed under this license.
- 2.6. The Licensee will use reasonable care in protecting the Licensed Products from disclosure to third parties, using at least to the degree of care it exercises in protecting its own proprietary information.
- 2.7. The Agreement will terminate immediately if Licensee files a claim including in any way the assertion that any portion of Regents' Copyright Rights is invalid or unenforceable where the filing is by Licensee, a third party on behalf of Licensee, or a third party at the written urging of, or with the assistance of, the Licensee.

3. FEES

- 3.1. **Issue Fee.** In partial consideration for the License, Licensee will pay to The Regents a yearly, non-creditable, non-refundable license issue fee as determined by the table below which is due within 30 days of the Effective Date of this Agreement.
- 3.2. **Annual Fee.** Beginning on the first anniversary of the Effective Date of the Agreement, and each anniversary thereafter, Licensee will pay to the Regents a yearly license fee which will be invoiced by the Regents on an annual basis and which will be due within 30 days of the effective date of the anniversary of this Agreement. The Licensee's renewal fee will be determined according to the number of Licensee's user licenses in

effect at on each anniversary. The Regents reserve the right to change the licensing fees annually.

- 3.3. **Late Fee.** For fees not received by The Regents when due, Licensee must pay to The Regents a simple interest charge of ten percent (10%) per annum to be calculated from the date payment was due until it was actually received by The Regents

FEE SCHEDULE

Type of Institution	Cost
0-100	\$1000
101-500	\$1500
501-1000	\$2500
1001-5000	\$5000
Over 5000	Please contact kfibiger@research.ucla.edu in the UCLA Office of Intellectual Property

My use will be: _____; therefore, I will be invoiced _____ by the Regents.

4. LIFE OF THE AGREEMENT

- 4.1 Unless otherwise terminated by operation of law or by acts of the parties in accordance with the terms of this Agreement, this Agreement is in force from the Effective Date recited on page one and remains in effect for **one (1)** Year.
- 4.2 This Agreement will automatically renew unless the agreement is terminated by The Regents or by the Licensee
- 4.3 Upon termination of this Agreement, Licensee will have no further right to use, reproduce, display, distribute, or perform the Licensed Products.
- 4.4 Any expiration or termination of this Agreement will not affect the rights and obligations set forth in the following Articles:

Article 1 DEFINITIONS;
Article 16 USE OF NAMES AND TRADEMARKS;
Article 10 LIMITED WARRANTY;
Article 11 INDEMNIFICATION;
Article 12 LIMITATION OF LIABILITY;
Article 16 FAILURE TO PERFORM;
Article 17 GOVERNING LAWS;

5. COPYRIGHT MARKING

- 5.1 Licensee must mark all Licensed Products with the following mark © 2010 The Regents of the University of California. All Rights Reserved. DO NOT COPY.

6. USE OF NAMES AND TRADEMARKS

- 6.1 Licensee will not use any name, trade name, trademark or other designation of The Regents' or its employees (including contraction, abbreviation or simulation of any of the foregoing) in advertising, publicity or other promotional activity. Unless required by law, Licensee is expressly prohibited from using the name "The Regents of the University of California" or the name of any campus of the University of California in advertising, publicity, or other promotional activity, without written permission of The Regents.

7. LIMITED WARRANTY

- 7.1 The Regents warrants that it has the lawful right to grant this license to Licensee.
- 7.2 This License and the associated Work are provided **WITHOUT WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER WARRANTY, EXPRESS OR IMPLIED. THE REGENTS MAKES NO REPRESENTATION OR WARRANTY THAT ANY LICENSED PRODUCT WILL NOT INFRINGE ANY PATENT, COPYRIGHT, OR OTHER PROPRIETARY RIGHT.**
- 7.3 Nothing in this Agreement will be construed as:
- 7.3.1 A warranty or representation by The Regents as to the validity or scope of any Regents' Patent, Trademark or Copyright Rights:
- 7.3.1.1 A warranty or representation that anything made, used, sold or otherwise disposed of under any license granted in this Agreement is or will be free from infringement of patents or copyrights of third parties.
- 7.3.1.2 Obligating The Regents to bring or prosecute actions or suits against third parties for copyright infringement.
- 7.3.1.3 Conferring by implication, estoppel or otherwise any license or rights under any copyrights of The Regents other than Regents' Copyright Rights as defined herein.
- 7.3.1.4 Obligating The Regents to furnish any know-how not provided in Regents' Copyright Rights.

8. INDEMNIFICATION

- 8.1 Licensee will indemnify, hold harmless and defend The Regents, The Regents' officers, employees, and agents, the sponsors of the research that led to the Work, the authors of the work and their respective employers from and against any and all liability, claims, suits, losses, damages, costs, fees and expenses resulting from or arising out of exercise of this Agreement. Indemnification includes but is not limited to products liability. If The Regents, in its sole discretion, believes that there will be a conflict of interest or it will not otherwise be adequately represented by counsel chosen by Licensee to defend The Regents, then The Regents may retain counsel of its choice to represent it, and Licensee will pay all expenses for such representation.

8.2 The Regents shall notify Licensee in writing of any claim or suit brought against The Regents in respect of which The Regents intends to invoke the provisions of this Article 11 (INDEMNIFICATION). Licensee shall keep The Regents informed on a current basis of its defense of any claims under this Article 11 (INDEMNIFICATION).

9. LIMITATION OF LIABILITY

9.1 **THE REGENTS WILL NOT BE LIABLE FOR ANY LOST PROFITS, COSTS OF PROCURING SUBSTITUTE GOODS OR SERVICES, LOST BUSINESS, ENHANCED DAMAGES FOR INTELLECTUAL PROPERTY INFRINGEMENT OR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR OTHER SPECIAL DAMAGES RESULTING FROM EXERCISE OF THIS LICENSE OR THE USE OF THE WORK OR LICENSED PRODUCTS. THE REGENTS WILL NOT BE LIABLE FOR ANY CAUSES OF ACTION OF ANY KIND (INCLUDING TORT, CONTRACT, NEGLIGENCE, STRICT LIABILITY AND BREACH OF WARRANTY) EVEN IF THE REGENTS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**

10. NOTICES

10.1 Any notice, progress report, royalty report or payment (except for Advanced Payments due under this Agreement) required to be given to either party must be sent to the respective address given below and is effective: (a) on the date of delivery if delivered in person, (b) five (5) days after mailing if mailed by first-class certified mail, postage paid, or (c) on the next business day if sent by overnight delivery. Either party may change its designated address by written notice.

For Licensee:

Attention: _____

For The Regents: The Regents of the University of California
University of California, Los Angeles
Office of Intellectual Property
11000 Kinross Avenue, Suite 200
Los Angeles, CA 90095-1406

Attention: Director
Ref: UC Case No. 2011-065

All Advanced Payments due under this Agreement shall be sent via wire transfer as follows:

UC Bank: Bank of America
1850 Gateway Boulevard
Concord, CA 94520

ABA (ACH) Routing Number: 121000358
Beneficiary Name: Regents of the University of California
Bank Account Name: OTT Depository Account
Bank Account Number: 12337-17062
SWIFT Code: B of A US6S

11. ASSIGNABILITY

- 11.1 This Agreement is binding upon and inures to the benefit of The Regents, its successors and assignees. But it is personal to Licensee and assignable by Licensee only with the prior written consent of The Regents. The consent of The Regents will not be required if the assignment is in conjunction with the transfer of all or substantially all of the business of Licensee to which this license relates.

12. WAIVER

- 12.1 The waiver of any breach of any term of this Agreement does not waive any other breach of that or any other term.

13. FAILURE TO PERFORM

- 13.1 If either party takes legal action against the other because of a failure of performance due under this Agreement, then the prevailing party is entitled to reasonable attorney's fees in addition to costs and necessary disbursements.

14. GOVERNING LAW

- 14.1 THIS AGREEMENT IS TO BE INTERPRETED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, but the scope and validity of any copyright will be governed by the applicable laws of the country of the copyright registration.

15. GOVERNMENT APPROVAL OR REGISTRATION

- 15.1 If this Agreement or any associated transaction is required by the law of any nation to be either approved or registered with any governmental agency, Licensee will assume all legal obligations to do so. Licensee will notify The Regents if it becomes aware that this Agreement is subject to a United States or foreign government reporting or approval requirement. Licensee will make all necessary filings and pay all costs including fees, penalties, and all other out-of-pocket costs associated with such reporting or approval process.

16. COMPLIANCE WITH LAWS

- 16.1 Licensee will comply with all applicable international, national, state, regional, and local laws and regulations in performing its obligations hereunder and in its use, manufacture, offer for sale, sale or import of the Licensed Products, including, but not limited to,

obtaining and maintaining all necessary governmental approvals for the use and distribution of Licensed Products. Licensee will observe all applicable United States and foreign laws with respect to the transfer of Licensed Products and related technical data to foreign countries, including and without limitation, the International Traffic in Arms Regulations (ITAR) and the Export Administration Regulations. Licensee will distribute Licensed Products in compliance with all applicable government importation laws and regulations of a country into which Licensed Products are imported.

17. FORCE MAJEURE

- 17.1 Except for Licensee's obligation to make any payments to The Regents hereunder, the parties shall not be responsible for any failure to perform due to the occurrence of any events beyond their reasonable control that render their performance impossible or onerous, including, but not limited to: accidents (environment, toxic spill, etc.); acts of God; biological or nuclear incidents; casualties; earthquakes; fires; floods; governmental acts; orders or restrictions; inability to obtain suitable and sufficient labor, transportation, fuel and materials; local, national or state emergency; power failure and power outages; acts of terrorism; strike; and war.
- 17.2 Either party to this Agreement, however, will have the right to terminate this Agreement upon thirty (30) days' prior written notice if either party is unable to fulfill its obligations under this Agreement due to any of the causes specified in Paragraph 28.1 for a period of one (1) year.

18. MISCELLANEOUS

- 18.1 The headings of the several sections are inserted for convenience of reference only and are not intended to be a part of, or to affect the meaning or interpretation of, this Agreement.
- 18.2 This Agreement is not binding upon the parties until it has been signed below on behalf of each party, in which event it becomes effective as of the date recited on page one.
- 18.3 No amendment or modification of this Agreement will be valid or binding upon the parties unless made in writing and signed by each party.
- 18.4 This Agreement and Appendix A (REGENTS' COPYRIGHT RIGHTS) embodies the entire understanding of the parties and supersedes all previous communications, representations or understandings, either oral or written, between the parties relating to the subject matter hereof.
- 18.5 If any part of this Agreement is for any reason found to be unenforceable, all other parts nevertheless remain enforceable as long as a party's rights under this Agreement are not materially affected. In lieu of the unenforceable provision, the parties will substitute or add as part of this Agreement a provision that will be as similar as possible in economic and business objectives as was intended by the unenforceable provision.

- 18.6 No provisions of this Agreement are intended or shall be construed to confer upon or give to any person or entity other than The Regents and the Licensee any rights, remedies or other benefits under, or by reason of, this Agreement.
- 18.7 In performing their respective duties under this Agreement, each of the parties will be operating as an independent contractor. Nothing contained herein will in any way constitute any association, partnership, or joint venture between the parties hereto, or be construed to evidence the intention of the parties to establish any such relationship. Neither party will have the power to bind the other party or incur obligations on the other party's behalf without the other party's prior written consent.

19. COUNTERPARTS AND EXECUTION

- 19.1 This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Facsimile, Portable Document Format (PDF) or photocopied signatures of the Parties will have the same legal validity as original signatures.

Both The Regents and Licensee have executed this Agreement in duplicate originals by their authorized officers on the dates written below:

<p>_____</p> <p>By _____ <i>Signature</i></p> <p>Name: _____</p> <p>Title: _____</p> <p>Date: _____</p>	<p>THE REGENTS OF THE UNIVERSITY OF CALIFORNIA</p> <p>By _____ <i>Signature</i></p> <p>Name: <u>Emily Loughran</u></p> <p>Title: <u>Director of Licensing</u></p> <p>Date: _____</p>
---	---

APPENDIX A

REGENTS' COPYRIGHT RIGHTS

1. **UCLA COPYRIGHT CASE** “*Memory Training: An Educational Program for People with Age Related Memory Concerns*” (UCLA Case No. “2011-065”)

NON-EXCLUSIVE LICENSE

BETWEEN

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

AND

FOR

UC CASE NO. 2011-065