**SOFTWARE LICENSE AND DISTRIBUTION AGREEMENT**

This Software License and Distribution Agreement (“**Agreement**”), dated as of 13th March 2019 (“**Effective Date**”), is made by and between Waters Technologies Corporation, a Delaware corporation, with its principal place of business at 34 Maple Street, Milford, Massachusetts 01757, U.S.A (“**Waters**”) and the Arizona Board of Regents (ABOR) on behalf of University of Arizona, with its contracting offices located at 888 N. Euclid Ave., Room 515 Tucson, AZ 85719, U.S.A (“**Distributor**”) . Each of Waters and Distributor herein may individually be referred to as a “**Party**” and collectively as the “**Parties**”.

WHEREAS, Waters is engaged in developing, marketing, selling and distributing certain software, including the Software (as defined herein);

WHEREAS, the Distributor wishes to acquire from Waters the right to license and distribute the Software; and

WHEREAS, the Distributor agrees to distribute the Software on and subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and understandings herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. Definitions.

Unless otherwise specifically provided herein, the following terms shall have the following meanings:

* 1. “**End User License Agreement**” shall mean the end user license agreement set out in Exhibit A attached hereto.
  2. “**Software**” shall mean the software set out in Exhibit B attached hereto, including any related documentation and manuals and any additional software and/or enhancements provided by Waters to the Distributor from time to time.
  3. “**Territory**” shall mean worldwide.

1. Grant.
   1. *Distribution Grant*. Waters hereby appoints the Distributor as its non-exclusive distributor of the Software in the Territory in accordance with the terms of this Agreement and the provisions of the End-User License Agreement.
   2. *License Grant*. Waters hereby grants to Distributor a non-exclusive, non-transferable and non-sublicensable (except as expressly set forth herein), fully paid-up, royalty free, and terminable license to (i) install and use the Software solely on the Distributor’s system for its internal use, and (ii) distribute, solely in object code form and without any additional fees, and solely with the Distributor’s UniDec software (the “**Distributor Software**”, including any updates or enhancements to such Distributor Software), copies of the Software to the Distributor’s end users to use to perform internal data processing in connection with liquid chromatography and mass spectrometry data produced with Waters’ instrumentation for non-commercial and commercial purposes; provided that the Distributor’s end users may only use the Software pursuant to the terms of the End User License Agreement.
   3. *Restrictions and Limitations*. The license grant to the Distributor shall not provide the Distributor with any access or license to the source code for the Software. The Distributor shall not, and shall require each end user to agree not to, modify, adapt, translate, reverse engineer, decompile, disassemble, or otherwise reduce the software to a human-perceivable form, or create derivative works of the Software, or any part thereof. The Parties hereby agree that any intellectual property rights related to the Software, and all right, title and interest in and to the Software, is and shall remain the property of Waters, and the Distributor shall not acquire any right, title or interest in or to the Software except for the rights and licenses granted under this Agreement. The Distributor shall reproduce and include Waters’ and any third-party manufacturer’s copyright notices on any copies of the Software. The Distributor shall not incur any liability on behalf of Waters or in any way pledge or purport to pledge Waters to make any contract binding upon Waters. Waters has no obligation to fix, update, supplement or support the Software.
   4. *End Users*. The Distributor shall require each end user of the Distributor Software to agree to a license agreement that fully incorporates the terms and conditions of the End User License Agreement, as may be amended from time to time by Waters in its sole discretion. The Distributor shall not make any representations or warranties to any person (including any end user) regarding the performance or functionality of the Software. The Distributor shall not hold itself out as an agent of Waters and shall not attempt to or negotiate any contractual arrangement as an agent of Waters, sign any agreement as if it is Waters, or commit any act or omission that otherwise binds or creates any contractual or other obligations to any third party.
   5. *Trademark License Grant*. Waters hereby grants to the Distributor a non-exclusive, revocable, personal license during the Term to use Waters’ trademarks, service marks and logos solely for the purpose of selling the Distributor Software in the Territory and the Distributor agrees that it shall not use Waters’ trademarks, service marks or logos in a way to suggest that the Distributor Software, components, and/or programs are provided by or are endorsed by Waters. The Distributor shall promptly bring to the attention of Waters any improper or wrongful use of Water’s trademarks, service marks or logos, or any third party claims of infringement against Waters’ trademarks, service marks or logos, which come to the notice of the Distributor. Except for the sale and distribution of the Distributor Software by and through its employees, agents and representatives, the Distributor shall not assign, sublicense, make available, or otherwise transfer any right to use, develop, or otherwise enjoy any of the trademarks, service marks, and logos owned by Waters without the express written consent of Waters.
   6. *Inspection of Books and Records*. The Distributor shall keep full, proper and up-to-date books of account and records showing all transactions relating to the Software and its distribution of the Software and allow a dully authorized representative of Waters, on reasonable notice, to have access to said books and records during normal business hours for the purpose of inspection.
   7. *Open Source Software*. To the extent that any of the Distributor Software is created using Open Source, the Distributor agrees that the Software shall not be, or become, part of any of the Distributor Software, and the Distributor shall not disclose, distribute, or reproduce the Software for submission to any Open Source community.
2. Regulations.

The Parties agree to adhere to all applicable United States laws, regulations and rules relating to the export of technical data and equipment, including, without limitation, the United States Foreign Corrupt Practices Act. At the Distributor’s expense, the Distributor shall obtain all necessary permits, licenses, approvals and authorizations, governmental or otherwise, to import or export the Software and shall pay all taxes and duties that are required to carry out the provisions of this Agreement. The Distributor shall not, directly or indirectly through resellers, freight forwarders, agents, representatives, or other persons, sell, export, re-export, import, transship, or otherwise provide any Software (a) to anyone in a country that is embargoed or otherwise sanctioned by the United States or the European Union, (b) to any person listed on any applicable prohibited persons list, or (c) for a military application or for research on, or the development, production, delivery, maintenance, or dissemination of: (i) chemical, biological, or nuclear weapons, unmanned air vehicles, or missiles, or (ii) nuclear explosive activities, unsafeguarded nuclear activities, or nuclear fuel cycle activities.

1. Confidential Information.

The receiving party shall hold in confidence all materials or information disclosed to it under this Agreement by the disclosing party in whatever form, which is clearly marked as “confidential” (the “**Confidential Information**”). For the avoidance of doubt, the Software is Waters’ Confidential Information. The receiving party shall take precautions to prevent any unauthorized disclosure or use of the Confidential Information by it or its affiliates, officers, directors, employees, consultants or agents consistent with the precautions used to protect its own confidential information, but in no event less than reasonable care. The confidentiality obligations hereunder shall not apply to any materials or information that is or becomes a part of the public domain through no act or omission of the receiving party, is disclosed to the receiving party by a third party without any breach of any confidentiality obligations, or which is independently developed by the receiving party without use of any Confidential Information, or is compelled disclosure by law or court order. The receiving party shall keep the Confidential Information in confidence during the Term and for a period of five (5) years after termination or expiration of the Agreement and shall not use the Confidential Information other than as permitted for the purposes of this Agreement.

1. Warranties.

**THE SOFTWARE IS PROVIDED “AS IS” AND WITHOUT ANY WARRANTY, EXPRESS OR IMPLIED, BY STATUTE OR OTHERWISE, INCLUDING WITHOUT LIMITATION THE WARRANTIES OF NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE AND MERCHANTABILITY.** **IN ADDITION, WATERS SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OF ANY KIND ARISING OUT OF OR IN CONNECTION WITH THE SOFTWARE OR THIS AGREEMENT.** In the event that the foregoing disclaimers are not effective under applicable law, Waters’ total liability under this Agreement shall not exceed the normal commercial value of the Software provided hereunder. The Parties acknowledge that the foregoing disclaimers reflect the nature of this transaction, and that the limitations in this paragraph or elsewhere in this Agreement reflect the Parties’ expressly agreed upon and reasonable allocation of the risks.

1. Liability.

The Distributor agrees to be responsible for their own wrongdoing, negligence and/or reckless acts or omissions in the performance of their duties hereunder and shall be financially and legally responsible for all of their expenses, liabilities, and attorney fees resulting from or attributable to any such acts or omissions. Neither Party shall have an obligation to indemnify the other party hereunder. The terms of this paragraph shall survive expiration or termination of this Agreement.

1. Term.

This Agreement shall take effect on the Effective Date and shall continue in force until and unless terminated by either Party giving to the other Party not less than thirty (30) days’ prior written notice.

1. Miscellaneous.
   1. *Notices.* All notices, requests, demands and other communications to be given under this Agreement shall be in writing and shall be deemed to have been duly given if delivered by hand, sent by facsimile or other means of electronic communication with confirmation, sent by a nationally recognized overnight delivery service, or certified mail return receipt requested, to:

If to Waters: If to the Distributor:

Attention: Martin Lunt Attention: Michael Marty

Micromass UK Limited Department of Chemistry and Biochemistry

Stamford Avenue University of Arizona

Altrincham Road Tuscon, AZ 85721

Wilmslow Marvel Hall 542

SK9 4AX U.S.A

United Kingdom

With a copy to: With a copy to:

Attention: Legal Department Attention: Director

Micromass UK Limited Contracting & Preaward Services

Stamford Avenue 888 N. Euclid Ave., Room 515

Altrincham Road Tucson, Arizona 85719, U.S.A.

Wilmslow Email: [Contracting@email.arizona.edu](mailto:Contracting@email.arizona.edu)

SK9 4AX

United Kingdom

* 1. *Entire Agreement*. This Agreement and its exhibits constitutes the entire agreement between the Parties and supersedes any prior expression of intent or agreement of the Parties with respect to the subject matter hereof. No representation, promise, inducement or statement of intention has been made by either Party that is not embodied in this Agreement or in the documents referred to in this Agreement, and neither Party shall be bound by or liable for any alleged representation, promise, inducement or statement of intention not set forth in this Agreement. No agreements altering or supplementing the terms shall be made except by a written document signed by the duly authorized representatives of the Parties.
  2. *Severability.* If any term or provision of this Agreement shall be determined to be invalid or unenforceable to any extent or in any application, then the remainder of this Agreement, and of such term or provision except to such extent or in such application shall not be affected thereby and each and every term and provision of this Agreement shall be enforced to the fullest extent and in the broadest application permitted by law.
  3. *Binding Effect.* This Agreement shall be binding upon and inure to the benefit of the respective Parties and their respective heirs, successors and assigns.
  4. *Third Party Beneficiaries.* The Parties agree that no person or entity other than the Parties hereto is or shall be entitled to bring any action to enforce any provision of this Agreement against any of the Parties hereto.
  5. *No Waiver*. The waiver by either of the Parties hereto of a breach of this Agreement shall not be construed as a waiver of any subsequent breach of a similar nature.
  6. *Independent Contractors.* This Agreement shall not be construed to create between the Institution, on the one hand, and Waters, on the other hand, the relationship of principal and agent, joint-venturers, co-partners, employer and employee, franchiser and franchisee or any other similar relationship, the existence of which is expressly denied by each Party. Any person employed bya Party to perform hereunder shall not be deemed to be an employee of the other Party and suppliers, subcontractors, agents or representatives of a Party shall not be, or represent themselves to be, officers, employees, agents or representatives of the other Party and shall not bind, or attempt to bind, the other Party to any agreement, liability or obligation of any nature.
  7. *No Assignment.* This Agreement shall not be assigned in whole or in part by Distributor without the prior written consent of Waters; such consent shall not be unreasonably withheld. Any attempted assignment without Waters’ prior written permission shall be null and void. This Agreement shall bind and inure to the benefit of the Parties and their respective successors and permitted assigns.
  8. *Conflict of Interest.* This Agreement is subject to the provisions of Arizona Revised Statute §38-511 regarding conflict of interest on the part of individuals negotiating contracts on behalf of the State of Arizona.
  9. *Compliance.* The Distributor agrees to be bound by applicable state and federal rules governing Equal Employment Opportunity, and Non-Discrimination.
  10. *Execution and Counterparts.* This Agreement may be executed and delivered by facsimile or electronic PDF format and may be executed by the Parties in one or more counterparts, each of which when executed shall be deemed to be an original, but all of which when taken together shall constitute one and the same instrument.

***[Signature Page Follows]***

The Parties represent, by the signatures below, that this Agreement has been executed by their duly authorized representatives as of the Effective Date.

|  |  |  |
| --- | --- | --- |
| ABOR for UNIVERSITY OF ARIZONA |  | WATERS TECHNOLOGIES CORPORATION |
|  |  |  |
| By: |  | By: |
|  |  |  |
| Title: |  | Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
|  |  |  |
| Date: |  | Date: |
|  |  |  |

Ref: EU18-0533

**EXHIBIT A**

**End User License Agreement**

**WARNING**: Waters owns the copyright to the software. It is unlawful to load this software onto a computer without our license. We are willing to license the software to you only on the condition that you accept all of the terms contained in this End User License Agreement. Please read this End User License Agreement carefully before installing the software. If you do not agree to these terms and conditions, we are unwilling to license the software to you.

End User is granted a non-exclusive, non-transferable and non-sublicensable, fully paid-up, royalty free, and terminable license to use the software to perform internal data processing in connection with liquid chromatography and mass spectrometry data produced with Waters’ instrumentation for non-commercial and commercial purposes. This license is personal to you (either an individual or single corporate entity) as the purchaser of a license and your use of the software and the license granted herein is for your benefit only. As a licensee of the software, you may load the software onto and use it on a single computer which is under your control and have one (1) copy of the software for backup and archival purposes only. If you wish to transfer the software from one computer to another, you must erase the software from the first hard drive before you install it onto a second hard drive. The software is protected by the copyright laws of the United States and international treaties. You shall not distribute, assign, rent, sublicense, lease, “timeshare,” or transfer the software. You shall not publish the results of any benchmark tests on the software. Any use of the software other than as expressly permitted by the license grant is strictly prohibited. Title and full ownership rights to the software remain with Waters and with the manufacturers of any third-party software included with the software. The software contains trade secrets of Waters and any third-party manufacturers and in order to protect them, you shall not copy, modify, adapt, translate, reverse engineer, decompile, disassemble, or otherwise reduce the software to a human-perceivable form, or create derivative works of the software. You agree upon termination to discontinue your use of the software and to destroy, or return to Waters, the software.

**THE SOFTWARE IS PROVIDED “AS IS” AND WITHOUT ANY WARRANTY, EXPRESS OR IMPLIED, BY STATUTE OR OTHERWISE, INCLUDING WITHOUT LIMITATION THE WARRANTIES OF NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE AND MERCHANTABILITY.** **IN ADDITION, WATERS SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OF ANY KIND ARISING OUT OF OR IN CONNECTION WITH THE SOFTWARE OR THIS AGREEMENT.** In the event that the foregoing disclaimers are not effective under applicable law, Waters’ total liability under this Agreement shall not exceed the normal commercial value of the software provided hereunder. The parties acknowledge that such limited liability is a reasonable allocation of the risks.

You agree to comply fully with all relevant export laws and regulations of the United States (“**Export Laws**”) to ensure that the software is (a) not exported directly or indirectly in violation of Export Laws and (b) not intended to be used for any purposes prohibited by the Export Laws. If you are a branch of the United States government, you shall have “restricted rights” to use, duplicate, or disclose the software as set forth in the Rights in Technical Data and Computer Software Federal Acquisition Regulations Supplement (DFARS).

**EXHIBIT B**

**Software**

Pursuant to this Agreement, Waters hereby licenses the following Software to the Distributor:

1. MassLynx Raw SDK

A library for interfacing Waters’ .RAW data files into users’ applications. The MassLynx Raw SDK allows third parties the ability to read MassLynx raw data files without the need to install MassLynx or any of its Application Managers. It is available in both 32- and 64-bit formats and is compatible with Microsoft Windows Operating Systems.