**Loan Agreement**

Smith College ~ **[Name of Department]**

The Trustees of Smith College through the **[Name of Department]**, (hereafter referred to as the College) agrees to lend to **[borrower’s name]**, (hereafter referred to as the Borrower) the department’s **[name of equipment]** (hereafter referred to as Equipment).

In consideration of the value of the loan, the Borrower agrees to the following terms and conditions.

1) No Warranty of Fitness. THE BORROWER acknowledges that the Equipment is not new, and understands and agrees that the College makes no warrantee or statement of any kind as to the condition, fitness, suitability to any purpose, soundness, safety, usefulness, compliance with any federal, state, or local law, rule or regulation, or any other statement about the Equipment or its use. THE BORROWER acknowledges that said Equipment may have been modified from manufacturer’s original design, whether by intent or not, and that they should not and will not rely on knowledge of similar products in evaluating said Equipment.

THE BORROWER accepts the Equipment, in its present condition, without qualification.

2) Indemnity Agreement. To the fullest extent permitted by Law, the BORROWER will defend, indemnify and hold harmless the Trustees of Smith College, including its current and former trustees, officers, directors, employees, volunteers, agents and assigns from and against claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of, or from the use of the loaned Equipment and with respect to the performance of its operations or services, or any act, omission, claim or loss of any of its employees, agents, volunteers, participants, guests or any other party they are responsible for, in connection with the Equipment, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge or reduce other rights or obligations of indemnity that would otherwise exist in the absence of this agreement.

3) Insurance Requirements.

The following insurance is required with these minimum limits of liability:

1) General Liability - $1,000,000 CSL per occurrence / aggregate

2) Workers Compensation - Statutory

3) Employers Liability - $1,000,000

 4) Property Insurance for the replacement value of the Equipment.

THE BORROWER must and will provide proof of insurance through the issuance of a certificate of insurance showing the above coverages and limits specified. If THE BORROWER carries higher liability limits, such limits must and will be shown on the certificate. The College has the right to demand a certified copy of any insurance policy. Certificates must be filed with the College before THE BORROWER will be sent (or can take possession of) the Equipment.

THE BORROWER is required to, and will add the College to its General Liability and Employers Liability insurance policies with the following wording "The Trustees of Smith College, including its current and former trustees, officers, directors, employees, agents, and assigns is added to this policy as additional insured."

This insurance requirement shall not be construed as limiting in any way the extent to which THE BORROWER may be held responsible for the payment of damages to any persons resulting from its operations or the activities of any person or persons for whom it is liable.

The Property Insurance must cover the property for “all risks of physical loss or damage”. THE BORROWER agrees that it will replace any lost or damaged equipment or software without deduction for any wear or tear, new for old. If the Equipment is no longer replaceable due to obsolesce, THE BORROWER agrees that they will replace the Equipment with the current equivalent of the Equipment or better.

4) Duration of the Loan Agreement. The Equipment will be loaned to THE BORROWER on or about **[loan date]** and returned to the College not later than **[return date]**. It is understood and agreed that THE BORROWER assumes all responsibility for all costs associated with shipping the Equipment to and from its campus.

THE BORROWER agrees that the College may request the return of the Equipment at any time, for any reason or no reason, with seven days (one week) notice, and that THE BORROWER will return all of the Equipment promptly (within seven days, or one week).

If the Equipment is not returned by the date stipulated above, or the Equipment is not returned promptly upon request, THE BORROWER agrees that they will reimburse the College for any expense that the College may incur in securing substitute equipment, whether by rental or purchase, and still be obligated to return the loaned Equipment.

The College reserves the right to extend any loan period to THE BORROWER at its discretion. If THE BORROWER foresees that it will need an extension of the Equipment Loan, it must apply to the Chair of the Department of Computer Science for said extension in writing not less than thirty (30) days before the Agreement Termination Date.

5) Licensing. THE BORROWER agrees that it will not violate any licensing terms, copyright agreements or any other restrictions on the use of the Equipment or software that the Equipment or software manufacturers may have imposes. THE BORROWER acknowledges and agrees that it is responsible to know and understand all terms of use, and that it will indemnify, defend and hold harmless the College for any violation of such terms, regardless of whether it is insured for such claims or not.

6) Condition of the Equipment. THE BORROWER agrees that it will return the Equipment in the same condition that it was in when it left the College, ordinary wear and tear not excepted. If THE BORROWER needs to repair or replace any equipment during the course of its use, it will do so at its own expense, and will be obligated to return the Equipment to the College at the end of the agreement. If the College determines that the Equipment is not in the same or better condition that it was when it left the College, it may repair or replace any piece or part of the Equipment and THE BORROWER will pay the cost upon receipt of a bone fide invoice.

7. Entire Agreement. This Agreement constitutes the entire agreement and there are no oral or other representations regarding the subject of this Agreement that are binding on either party. All changes to this Agreement must by in writing, signed by both parties.

8. Notice. All communication regarding the subject of this Loan Agreement (the Equipment) shall be between:

 **[Name of person who either 1) signed contract or 2) will administer/manage contract]**

 Smith College

 **[Name of Department]**

Northampton, MA 01063

**[Phone]**

**[Fax]**

**[Email]**

**[Name of THE BORROWER]**

**[Street]**

**[City, State, ZIP]**

**[Phone]**

**[Fax]**

 **[Email]**

9. Severability. The terms of this Agreement are severable such that if any term or provision is declared by a court of competent jurisdiction to be illegal, void, or unenforceable, the remainder of the provisions shall continue to be valid and enforceable.

10) Assignment. THE BORROWER may not assign this Agreement (or lend or lease or give the Equipment) to any other party without the prior written consent of the College.

11. Choice of Laws / Jurisdiction. The laws of the Commonwealth of Massachusetts shall govern the validity, construction and effect of this Agreement. All lawsuits arising out of this agreement, wherever derived, shall be resolved in Hampshire County in the Commonwealth of Massachusetts.

The individuals signing below hereby represent and warrant that they are duly authorized to execute and deliver this Agreement on behalf of themselves or their organization and that this Agreement is binding upon each party in accordance with its terms.

BORROWER The Trustees of Smith College

By \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Name\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Title\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_