



TCM Contract # 2021-426

445 Hamilton Avenue, 7th floor
White Plains, New York 10601 ♦ ☎ 914.428.4600

VERSION 7.0

SOFTWARE LICENSE AGREEMENT

THIS SOFTWARE LICENSE AGREEMENT is made as of the date set forth under RCS's signature below ("Effective Date") by and between RCS, with offices at 445 Hamilton Ave., 7th Floor, White Plains, NY ("RCS"), and, University of North Texas with offices at 1179 Union Circle, Suite 262, Denton, TX 76201 ("Licensee") (collectively, the "Parties").

WHEREAS, RCS is the owner of certain software and documentation (the "Software Products") identified on the attached Software Products Schedule (the "Schedule") (this Software License Agreement and the Schedule are collectively identified as the "Agreement");

WHEREAS, LICENSEE desires to use such Software Products; and

WHEREAS, RCS desires to grant to Licensee and Licensee desires to obtain from RCS a non-exclusive license to use the Software Products solely in accordance with the terms and on the conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the promises and agreements set forth herein, the parties, each intending to be legally bound hereby, do promise and agree as follows.

I. Definitions

A. **"Term"** is defined in the Schedule.

B. **"License Fees"** are defined in the Schedule.

C. **"Enhancements"** are defined as changes to Software Products, as originally delivered, which improve their operation or provide new capabilities. Licensee is under no obligation to accept such Enhancements and may decline to install such Enhancements in its sole discretion. Licensee further agrees that the enhanced versions of Software Products do not constitute a product different from Software Products, unless designated as such by RCS.

D. **"Program Errors"** are defined as any aspect of Software Products which differs materially from the functional capabilities set forth in the applicable operations manual and/or documentation furnished with Software Products.

E. **"Software Support"** shall consist of telephone consultation with Licensee's employees to assist in proper use of Software Products. It shall also include telephone assistance in diagnosing and solving operational problems, recommending when system hardware maintenance is required, and assistance in identifying software errors claimed to exist. RCS reserves the right to bill extra for such support if it exceeds two (2) hours monthly on a consistent basis (other than for software support required to rectify actual RCS software errors).

II. License Grant

Subject to the terms and on the conditions set forth in the Agreement between the Parties, RCS grants to the Licensee a non-exclusive license to use the Software Products on the computer system(s) identified in the Schedule for the Term. RCS will furnish the Software Products in machine-readable code form, and provide documentation containing the detailed specifications for operation and use of the Software Products.

III. License Fees and Payment

A. In consideration of the license granted herein, Licensee shall pay the License Fees or other consideration for the Software Products as set forth in the Schedule.

B. Licensee shall be responsible for paying all (i) sales, use, excise, value-added, or other tax or governmental charges imposed on the licensing or use of the Software Products hereunder, (ii) any installation charges, and (iii) any import or export duties or like charges. There shall be added to the License Fees amounts equal to any sales or use taxes levied or based on the License Fees.

IV. Rights of Licensee

The Software Products shall be used exclusively by the Licensee and its employees only on a single computer system (or multiple computer systems, if they are so identified in the Schedule), and only for the benefit of the radio station(s) or business entity(ies) identified in the Schedule, provided they are owned or majority controlled by Licensee. Licensee may change the call letters of the station(s) or name of the business entity (ies) identified in the Schedule without executing a new Schedule, provided ownership of the station(s) and/or business entity (ies) does not change and RCS is notified in writing in advance of such change.

V. Title to Software Products

A. The Software Products are proprietary to and constitute the confidential data and trade secret information of RCS. Title and ownership rights to the Software Products shall remain with RCS. Licensee agrees to maintain the confidential nature of Software and related materials provided for Licensee's own internal use under this Agreement.

B. Licensee agrees that any Enhancements to Software Products suggested or requested by Licensee, or by RCS, whether or not reimbursed by Licensee, and whether or not developed by or in conjunction with Licensee's employees or agents, shall be the exclusive property of RCS.

VI. Restricted Use

A. Licensee shall not allow others to use or have access to the Software Products, either directly or indirectly. Licensee shall not make or allow others to make copies or reproductions of the Software Products in any form, and shall not permit any other person or party to, directly or indirectly, sublicense, sell, rent, lease, time-share, lend, donate, distribute or otherwise transfer the Software Products to any other organization or individual, in whole or in part. Licensee shall not, nor shall it permit anyone else to, directly or indirectly, reverse engineer, decompile, disassemble, alter, or in any other way derive the source code from the Software Products.

B. Distribution of the Software Products by the Licensee, including derivative modifications or extensions is expressly prohibited.

C. Licensee agrees to use its best efforts to ensure that unauthorized copies of the Software Products are not given to others by those in its employ or under its supervision, and to protect RCS's exclusive and proprietary interest in the Software Products.

VII. Non-Solicitation

Licensee agrees it will not, without prior written approval of RCS, solicit or hire any RCS employee, or induce, directly or indirectly, such employee to leave RCS's employment.

VIII. Obligations of RCS

A. During the Term, RCS will, without additional charge, make a reasonable attempt to correct any Program Errors in the Software Products discovered by Licensee.

B. During the Term, RCS at its discretion may offer Enhancements to the original Software Products at no additional charge, so long as all License Fees are paid and the Agreement remains in force.

C. During the Term, RCS shall provide Software Support to Licensee, so long as all License Fees are paid and the Agreement remains in force.

D. RCS will supply at no additional charge up to five (5) hours of telephonic assistance at Licensee's request during the initial installation of the Software Products, provided such assistance is requested within ninety (90) days of delivery of the Software Products. On-site installation assistance and operator training is available at the daily consulting rate set forth on the most recent RCS Rate Card, plus all out of pocket expenses.

IX. Disclaimer

RCS MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, AT LAW OR IN EQUITY, WITH RESPECT TO THE SOFTWARE PRODUCTS OR ANY RELATED PRODUCTS AND SERVICES WHICH ARE THE SUBJECT MATTER OF THIS AGREEMENT, AND HEREBY DISCLAIMS ALL OTHER REPRESENTATIONS AND WARRANTIES, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, CONDITIONS OR TERMS AS TO QUALITY, UNINTERRUPTED USE, TITLE AND/OR NONINFRINGEMENT, AND ANY WARRANTIES ARISING OUT OF COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE.

X. Limitation of Liability

A. RCS'S TOTAL CUMULATIVE LIABILITY TO LICENSEE FOR ANY REASON AND UPON ANY CAUSE OF ACTION WILL BE LIMITED TO 50% OF THE ANNUAL AMOUNT PAID TO RCS BY LICENSEE FOR THE USE OF THE SOFTWARE PRODUCTS.

B. LICENSEE'S SOLE REMEDY FOR BREACH OF THIS AGREEMENT IS THE CORRECTION OF THE SOFTWARE PRODUCTS OR THE REPLACEMENT THEREOF BY RCS, AT RCS'S OPTION AND EXPENSE, AND SUCH REMEDY IS IN LIEU OF ALL OBLIGATIONS OR LIABILITIES ON THE PART OF RCS FOR DAMAGES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, RCS AND ITS AFFILIATES SHALL NOT BE LIABLE UNDER ANY THEORY, WHETHER IN TORT, CONTRACT, STRICT LIABILITY, NEGLIGENCE OR OTHERWISE, FOR SPECIAL, INDIRECT, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES ARISING FROM USE OF THE SOFTWARE PRODUCTS, INCLUDING LOSS OF PROFIT OR BUSINESS OPPORTUNITY, LOSS OF DATA OR COST OF COVER, EVEN IF RCS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. RCS SHALL NOT BE LIABLE FOR ANY FAILURE TO PERFORM ITS OBLIGATIONS HEREUNDER RESULTING FROM THE ELEMENTS, BLACKOUTS, STRIKES, LOCKOUTS, TERRORISM, ACTS OF GOD OR OTHER CAUSES BEYOND THE REASONABLE CONTROL OF RCS, WHETHER SIMILAR OR DISSIMILAR.

XI. Term and Termination

A. In the event that (a) Licensee fails to timely pay the Licenses Fees, or (b) Licensee violates this Agreement, RCS may unilaterally terminate this Agreement on thirty (30) days prior written notice in the event that Licensee fails to cure such breach to the full satisfaction of RCS. In such event, RCS may seek to collect the unpaid balance of such License Fees and pursue any or all of its other remedies at law or in equity, in addition to terminating this Agreement.

B. Licensee may terminate this Agreement prior to the end of the Initial Term by transferring to another RCS product of equal or greater value. The parties agree that such termination may occur provided Licensee agrees to sign a new agreement for the other RCS product at a rate equal to or greater than the rate indicated in the Schedule, for a term equal to or greater in duration than the remainder of the Term of this Agreement. The agreement for the other RCS product will commence on the date this Agreement is terminated.

C. In the event of any termination under this Section XI, all copies of Software Products must be returned to RCS by Licensee and Licensee shall lose all rights to the Software Products from the date of such termination.

XII. Governing Law; Jurisdiction; Disputes

A. Governing Law, Jurisdiction. The laws of New York State (without giving effect to principles of conflicts of law), shall govern this Agreement. Each of the parties hereby consents to the exclusive jurisdiction of the State of New York at the exclusion of all other courts, with respect to any and all disputes or controversies between the parties.

B. Disputes. Disputes arising out of this Agreement will be settled by arbitration before the American Arbitration Association in Westchester or New York, New York, in accordance with its rules and procedures, and judgment upon the award rendered may be entered in the federal or state courts of New York located in the counties of New York and Westchester. The parties specifically submit to the jurisdiction of these courts for entry of judgment on the arbitration award. The fees for any such arbitration and its enforcement shall be paid either by the losing party or as determined within the discretion of the arbitrator(s) and the above-mentioned courts. However, RCS may seek redress to the courts without arbitration for all matters arising in equity, including an injunction

C. Injunctive Relief. It is understood and agreed that, notwithstanding any other provision of this Agreement, any breach of Sections IV, V, VI, and VII of this Agreement by Licensee may cause irreparable damage for which recovery of money damages would be inadequate, and that RCS will therefore be entitled to seek timely injunctive relief from any court of competent jurisdiction, without the requirement of posting a bond, to protect its rights under this Agreement, in addition to any and all remedies available at law.

D. Attorneys' Fees. If any action at law or in equity (including arbitration) is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, costs and necessary disbursements in addition to any other relief to which such party may be entitled.

XIII. Miscellaneous

A. Assignment. Licensee may not assign, transfer or delegate this Agreement, or any of its rights and obligations under this Agreement, whether by operation of law or merger or otherwise (and including any change in control of Licensee, which shall be deemed an assignment hereof), without the prior written consent of RCS, which consent may be granted or withheld by RCS in its sole discretion. Subject to the foregoing restrictions on assignment, this Agreement shall bind and inure to the benefit of and be enforceable by each of the Parties and their respective successors and permitted assigns.

B. Severability. If any provision of this Agreement is unenforceable or invalid under any applicable law or is so held by applicable court decision, such unenforceability or invalidity will not render this Agreement unenforceable or invalid as a whole, and such provision will be changed and interpreted so as to best accomplish the objectives of such unenforceable or invalid provision within the limits of applicable law or applicable court decisions.

C. Entire Agreement. This Agreement (defined as this Software License Agreement and the attached Schedule), and attached **Standard Addendum to agreement** constitute the entire agreement of the parties regarding its subject matter. This Agreement supersedes all prior or other contemporaneous understandings, agreements, representations, warranties or other communications between the parties, whether oral or written or express or implied, regarding the subject matter hereof.

D. Amendment; Waiver. This Agreement shall not be altered, amended or modified, except in writing executed by both parties. The failure of a party to enforce any provision of this Agreement shall not be construed to be a waiver of the right of such party to thereafter enforce that provision or any other provision or right.

IN WITNESS WHEREOF, the parties or their duly authorized representatives have executed and delivered this Agreement (defined as this Software License Agreement and the attached Schedule), as of the Effective Date.

LICENSOR:
RCS

LICENSEE:
University of North Texas

BY: _____
Print _____
TITLE _____

BY: _____
Print _____
TITL _____

DATE: 8/9/2021

DATE: 8/9/2021

Prepared by K. Tansey on July 27, 2021



445 Hamilton Avenue, 7th floor

White Plains, New York 10601 • (914) 428-4600 / (914) 428-5922 Fax

Version 7.0

Contract # _____

SOFTWARE PRODUCTS SCHEDULE

This Schedule describes the computer software products (“Software Products”) being licensed to Licensee (the party executing below) under the terms of the Software License Agreement. By executing this Schedule, Licensee agrees to the terms and conditions of the Software License Agreement, attached hereto and made a part hereof (collectively, the “Agreement”). This Agreement supersedes any previous agreement between the parties in relation to the Software Products.

A. DESCRIPTION OF SOFTWARE PRODUCTS

The Software Products being licensed herein are listed below.

SOFTWARE PRODUCT NAME	VER	STATION/ENTITY	CITY/STATE
RCS GSelector-Linker-Selector2Go	4	KNTU-FM	Denton, TX

B. STATIONS OR BUSINESS ENTITIES LICENSED

The non-exclusive, non-transferable, limited, revocable license granted herein is granted to the stations or business entities listed in Section A only, except as expressly provided pursuant to Sections IV and XIII of the Software License Agreement. The Software Products are RCS's exclusive and proprietary software and are subject to copyright and trade secret protection. The right to use the Software Products for additional co-located stations or business entities will be granted upon payment of proper additional fees.

C. INITIAL TERM AND INITIAL LICENSE FEE

The “Initial Term” shall be: thirty-six (36) months commencing on September 1st, 2021 and continue until 11:59pm on August 31st, 2024. The “Initial License Fee” for use of the Software Products and purchase of hardware during the Initial Term shall be paid as follows:

On September 1st, 2021, the first of three (3) annual payments of \$950.00 is due.

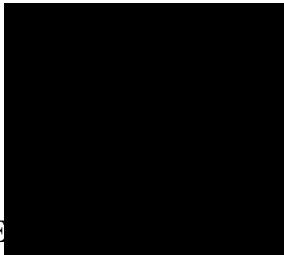
D. RENEWAL TERM(S) AND RENEWAL FEE(S)

The Agreement will not auto renew.

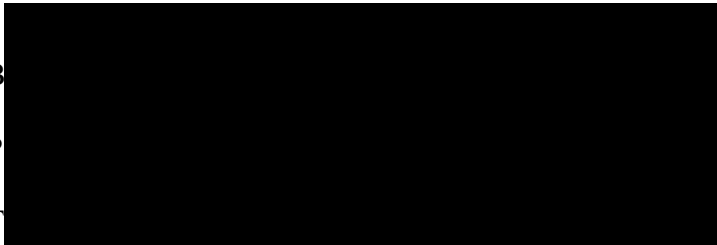
RCS reserves the right to increase the Renewal Fees. RCS shall provide notice of its intention to change fees prior to expiration of the Initial Term or any Renewal Term. Licensee may, at its option, elect to pay the new Renewal Fees or terminate this Agreement.

The parties have duly executed this Schedule, incorporating the Software License Agreement, on the date set forth below RCS's name.

LICENSOR:
RCS

BY:  _____
Print _____
TITLE _____
DATE: 8/9/2021

LICENSEE:
University of North Texas

B 
P _____
T _____
DATE: 8/9/2021

Prepared by K. Tansey on July 27, 2021

Site Information:	Billing Information:
Name (company or call letters): University of North Texas Call Letters: (KNTU-FM)	Name (company or call letters): University of North Texas System
Attention: Randal Smith	Attention: Shelley Pavero- Director of Purchasing & Accounts Payable
Address Line 1: 1179 Union Circle, Suite 262,	Address Line 1: 1112 Dallas Dr. Ste. 4000
Address Line 2:	Address Line 2:
City/State/Zip: Denton, TX 76201	City/State/Zip: Denton, TX 76205
Phone #: [REDACTED]	Phone #: 940-369-5500
E-Mail: [REDACTED]	E-Mail: Invoices@untsystem.edu

STANDARD ADDENDUM TO AGREEMENT

Contracts with the University of North Texas System and the University of North Texas (collectively, "UNT") are subject to the following terms and conditions, which are incorporated for all purposes into the Agreement to which they are attached. In the event of a conflict between the Agreement and this Addendum to Agreement, this Addendum shall govern. Any term or condition of the Agreement that is not superseded by a term or condition of this Addendum shall remain in full force and effect.

Payment. In accordance with Chapter 2251 of the Texas Gov't Code: (a) payment shall be made no later than thirty days following the later of (i) delivery of the goods or completion of the services and (ii) delivery of an invoice to UNT; and (b) interest, if any, on past due payments shall accrue and be paid at the maximum rate allowed by law. Vendor must be in good standing, not indebted to the State of Texas, and current on all taxes owed to the State of Texas for payment to occur. Invoices and any required supporting documents must be presented to: University of North Texas – Business Service Center, 1112 Dallas Dr. Ste. 4000, Denton, TX 76205.

Eligibility to Receive Payment. By entering into and performing under this Agreement, Vendor certifies that under Section 231.006 of the Texas Family Code and under Section 2155.004 of the Texas Gov't Code, it is not ineligible to receive the specified payment and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.

Tax Exempt. UNT is exempt from the payment of taxes and will provide necessary documentation confirming its tax exempt status.

Breach of Contract Claims Against UNT. Chapter 2260 of the Texas Gov't Code establishes a dispute resolution process for contracts involving goods, services, and certain types of projects. To the extent that Chapter 2260, Texas Gov't Code, is applicable to this Agreement and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260 and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, shall be used by the parties to attempt to resolve any claim for breach of contract against UNT that cannot be resolved in the ordinary course of business.

Governing Law and Venue. This Agreement shall be construed and enforced under and in accordance with the laws of the State of Texas. The Agreement is made and entered into, and is performable in whole or in part in Denton County, Texas, and venue for any suit filed against UNT shall be subject to the mandatory venue statute set forth in § 105.151 of the Texas Education Code.

No Excess Obligations. In the event this Agreement spans multiple fiscal years, UNT's continuing performance under this Agreement is contingent upon the appropriation of funds to fulfill the requirements of the contract by the Texas State Legislature. If the Legislature fails to appropriate or allot the necessary funds, or if such appropriation is reduced by the veto of the Governor or by any means provided in the appropriations act, UNT shall issue written notice to Vendor that UNT may terminate the Agreement without further duty or obligation.

Travel Expenses. Reasonable travel, meals, and lodging expenses shall be charged in accordance with and shall not exceed State of Texas travel, meal, and lodging reimbursement guidelines applicable to employees of the State of Texas.

Delivery. Delivery shall be FOB Destination.

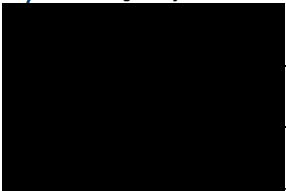
Insurance. UNT, as an agency of the State of Texas, is insured for general liability insurance under a self-insurance program covering its limits of liability. The parties agree that such self-insurance by UNT shall without further requirement, satisfy all insurance obligations of UNT under the Agreement.

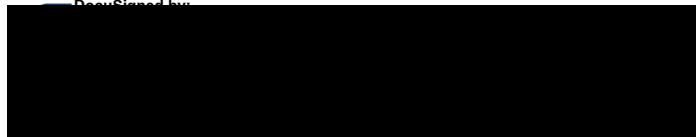
Public Information. UNT shall release information to the extent required by the Texas Public Information Act and other applicable law. If requested, Vendor shall make public information available to UNT in an electronic format. The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this contract and Vendor agrees that the contract can be terminated if Vendor knowingly or intentionally fails to comply with a requirement of that subchapter. Further, Vendor agrees (1) to preserve contracting information for the duration of the contract and according to UNT records retention requirements; (2) to promptly provide contracting information to UNT when requested; and (3) upon completion of the contract to provide, at no cost, all contracting information to UNT or to preserve all contracting information according to UNT's records retention requirements.

Required Posting of Contracts on Website. Vendor acknowledges and agrees that UNT is required by Section 2261.253 of the Texas Gov't Code to post each contract it enters into for the purchase of goods or services from a private vendor on its Internet website, including any terms and conditions otherwise marked confidential and/or proprietary.

Israel Non-Boycott Verification. If the Agreement is subject to Texas Gov't Code Section 2271.002, Vendor hereby represents, verifies, and warrants that it does not boycott Israel and will not boycott Israel during the term of the Agreement.

Limitations. UNT is subject to constitutional and statutory limitations on its ability to enter into certain terms and conditions of the Agreement, which may include those terms and conditions relating to: liens on UNT property; disclaimers and limitations of warranties; disclaimers and limitations of liability for damages; waivers, disclaimers, and limitations on legal rights, remedies, requirements, and processes; limitations of time in which to bring legal action; granting control of litigation or settlement to another party; liability for acts or omissions of third parties; payment of attorney's fees; dispute resolution; and indemnities. Terms and conditions relating to these limitations will not be binding on UNT, except to the extent not prohibited by the Constitution and the laws of the State of Texas.

VENDOR: RCS
DocuSigned by:
By: 
Name: _____
Title: _____
Date: 8/9/2021

UNIVERSITY OF NORTH TEXAS
DocuSigned by:
By: 
Title: _____
Date: 8/9/2021

Declaration of Procurement Method

The attached contract document has been issued as a result of either a sole source or proprietary justification approved by the University of North Texas System Procurement Department.

The approved justification form is on file with the UNT System Procurement Department records.