

CE SITE LICENSE AGREEMENT

THIS AGREEMENT ("Agreement") is made by and between

having a principal place of business at

("LICENSEE") and The Regents of the University of California, a California corporation having its statewide administrative offices at 1111 Franklin Street, 12th Floor, Oakland, California 94607-5200 ("UNIVERSITY"), represented by its San Diego campus having an address at University of California, San Diego, Technology Transfer Office, Mailcode 0910, 9500 Gilman Drive, La Jolla, California 92093-0910 ("UCSD").

This Agreement is effective on the date of the last signature herein executing this Agreement ("Effective Date").

RECITALS

WHEREAS, certain software, entitled "CE-Combinatorial Extension, Algorithms and Computer Programs for Comparing the 3-dimensional Structures of Protein Molecules" and specifically docketed as SD2001-816 was developed in the course of research at UCSD by Dr. Philip Bourne and associates ("Authors") and is covered by University's Copyrights (as defined below);

WHEREAS, LICENSEE desires to obtain a license to copy and install this software on multiple computers located at the Site(s) specified in Appendix A hereof; and

WHEREAS, UNIVERSITY is willing to grant LICENSEE certain non-exclusive rights to copy and install this software on multiple computers located at the Site(s) specified in Appendix A.

NOW THEREFORE, the parties hereby agree as follows:

ARTICLE 1. DEFINITIONS.

The terms, as defined herein, shall have the same meanings in both their singular and plural forms.

- 1.1 "Documentation" means information relating to the Licensed Software and found at the internet website having the address, <ftp://ftp.sdsc.edu/pub/sdsc/biology/CE/src/>
- 1.2 "Field" means analysis of macromolecular sequences.
- 1.3 "Licensed Software" means the computer entitled "CE-Combinatorial Extension, Algorithms and Computer Programs for Comparing the 3-dimensional Structures of Protein Molecules" and specifically docketed as SD2001-816, and found at the internet website having the address , <ftp://ftp.sdsc.edu/pub/sdsc/biology/CE/src/>
- 1.4 "Site(s)" means the physical address(es) where Licensed Software will be used by LICENSEE as specified in Appendix A hereof.
- 1.5 "Term" means the period of time beginning on the Effective Date and ending on the date five (5) years from the Effective Date.
- 1.6 "University's Copyrights" means all of UNIVERSITY's interest in the copyrights, domestic and foreign, subsisting in the source code and object code of Licensed Software, and the Documentation.

ARTICLE 2. GRANT.

- 2.1 **License to Copy Software.** Subject to the limitations set forth in this Agreement, UNIVERSITY hereby grants LICENSEE a non-exclusive, non-transferable license under University's Copyrights to install the Licensed Software in the Field, on all computer systems now or in the future owned or leased by LICENSEE and located at the Site(s) and for the Term, and to use the Documentation in the Field and for the Term.
- 2.2 **Right to Copy Software.** LICENSEE may copy the Licensed Software, in whole or in part, to the extent necessary to exercise the foregoing license, for LICENSEE's internal business use in testing, training, evaluation and disaster recovery purposes, and for backup and archival purposes. LICENSEE shall reproduce UNIVERSITY's copyright notices and other proprietary notices on all copies of the Licensed Software, and all copies shall be subject to all terms, conditions and obligations of this Agreement.
- 2.3 **Restrictions on Use.** The foregoing rights to copy and install the Licensed Software shall be subject to the following restrictions:
 - (a) LICENSEE shall not copy or allow copies of the Licensed Software to be made, except as specifically allowed under this Agreement;
 - (b) LICENSEE shall not install the Licensed Software in a single CPU or in a network, multiple CPU or multiple-user arrangement, except within the confines of the Site(s);
 - (c) LICENSEE shall not use the Licensed Software in a single CPU, in a network, multiple CPU or multiple-user arrangement or through the Internet, except within

the confines of the Site(s);

- (d) LICENSEE shall not allow third parties (except for independent contractors of LICENSEE and as permitted in Paragraph 2.5 below) to install the Licensed Software in a single CPU or in a network, or multiple CPU or multiple-user arrangement, regardless of whether such installation occurs inside or outside of the confines of the Site(s);
- (e) LICENSEE shall not allow third parties (except for independent contractors of LICENSEE and as permitted in Paragraph 2.5 below)) to use the Licensed Software in a single CPU, in a network, multiple CPU or multiple-user arrangement or through the Internet, regardless of whether such use occurs inside or outside of the confines of the Site(s);
- (f) LICENSEE shall not resell, lease, sublicense except as permitted in Paragraph 2.5 below or distribute the Licensed Software to any third party;
- (g) LICENSEE shall not use the Licensed Software through the Internet except between one or more Site(s); and
- (h) LICENSEE may modify or alter the Licensed Software, but only to the extent necessary to make the Licensed Software operate on LICENSEE's computers at the Site(s), and the restrictions of Paragraphs 2.3(a) through 2.3(g) hereof shall apply to the Licensed Software as modified or altered by LICENSEE.

2.4 **Right to Copy Documentation.** LICENSEE may copy the Documentation to the extent necessary to exercise the foregoing license. Licensee shall reproduce UNIVERSITY's copyright notices and other proprietary notices on all copies of the Documentation, and all copies shall be subject to all terms, conditions and obligations of this Agreement.

2.5 **Right to Grant Sublicenses.** The license and right granted in Paragraphs 2.1 and 2.2 includes the right of LICENSEE to grant sublicenses to a third party, who is a service provider to LICENSEE performing certain information technology operations and management services and related ancillary services for LICENSEE pursuant to an arrangement or agreement commonly known in the industry as an outsourcing agreement; provided, however, that such sublicenses shall be in writing and limited to the installation and copying of the Licensed Software by such service provider as is necessary for continued operation and management of LICENSEE's computers running Licensed Software at the Site(s) and during the Term.

2.6 **Right to Change or Add Site(s).** LICENSEE may change the location of any Site or add additional Site(s) during the Term by written notice to UNIVERSITY made pursuant to Paragraph 10.1 hereof and submission of the necessary additional Site License Fee per Paragraph 6.1 herein. Upon the effective of date such notice:

- (a) the Site as used in this Agreement shall thereafter be defined as the location provided in such notice and the former location shall cease to be defined as the Site;
- (b) LICENSEE shall cease using the Licensed Software and Documentation at the

former location of the Site; and

- (c) LICENSEE shall remove all copies of the Licensed Software and Documentation from all computer systems at the former location of the Site.

ARTICLE 3. OWNERSHIP OF LICENSED SOFTWARE.

- 3.1 **Ownership.** LICENSEE acknowledges that the Licensed Software and the Documentation, and all copies thereof made by LICENSEE under this Agreement, are the exclusive property of UNIVERSITY and title to the Software and Documentation provided under this Agreement and all copies thereof made by LICENSEE shall not be further transferred except UNIVERSITY. LICENSEE further acknowledges that LICENSEE has no rights in the Licensed Software except those expressly granted by this Agreement.
- 3.2 **Notices.** LICENSEE shall not remove, alter, cover or distort any copyright notice, trademark or other proprietary rights notice placed by UNIVERSITY in or on the Licensed Software or Documentation.

ARTICLE 4. DELIVERY OF MASTER COPY.

- 4.1 **Licensed Software and Documentation.** LICENSEE may download the Licensed Software and Documentation from UNIVERSITY's internet website having the address, <ftp://ftp.sdsc.edu/pub/sdsc/biology/CE/src/>.
- 4.2 **Expenses.** LICENSEE shall bear the additional expenses of copying and distributing the Licensed Software and its accompanying Documentation for its use within the Site.

ARTICLE 5. INSTALLATION AND SUPPORT.

- 5.1 **Installation.** LICENSEE shall assume all responsibility and expense arising from or relating to the installation of the Licensed Software and Documentation at the Site(s). UNIVERSITY is not obligated under this Agreement to provide support to LICENSEE with respect such installation.
- 5.2 **Support.** LICENSEE shall assume all responsibility and expense for support arising from or relating to LICENSEE's use of the Licensed Software and Documentation. UNIVERSITY is not obligated under this Agreement to provide support to LICENSEE with respect to such use.

ARTICLE 6. CONSIDERATION.

- 6.1 **Site License Fee.** LICENSEE shall pay to UNIVERSITY a Site License Fee for each of the Site(s) listed in Appendix A, or hereafter added to Appendix A as provided for under Paragraph 2.6, according to the Site License Payment Schedule which is Appendix B of this Agreement. License Fees are net of any taxes imposed by foreign governments.

Such taxes should be added to the amounts given in Appendix B, if applicable.

- 6.2 **Payments.** All fees payable to UNIVERSITY under this Agreement shall be paid in United States dollars by check made payable to "The Regents of the University of California", referencing UNIVERSITY' taxpayer identification number, 95-6006144. These payments shall be sent to:

if by US Mail,

University of California, San Diego
Technology Transfer Office, Mailcode 0910
9500 Gilman Drive
La Jolla, CA 92093-0910
Attention: Director

if by courier,

University of California, San Diego
Technology Transfer Office
10300 N. Torrey Pines Rd.
1st Floor
La Jolla, CA 92037
Attention: Director
Fax: 858-534-7345
Phone: 858-534-5815

if by wire transfer, there is an additional fee of twenty-five US dollars (\$25.00).
Electronic Transfer of Fund Information is as follows:

UCSD receiving bank name: Bank of America
UCSD bank account number: 1233018188
UCSD bank routing (ABA) number: 0260-0959-3
UCSD bank account name: Regents of UC
UCSD bank ACH format code: CTX
UCSD bank address: Bank of America
P.O. Box 37025
San Francisco, CA 94137
Beneficiary: TTO-0910

Notify Technology Transfer Office of the transfer immediately by faxing a copy of the wire transfer receipt to Financial Manager at (858) 534-7345. Reference SD2001-816.

ARTICLE 7. LIMITED WARRANTY AND INDEMNIFICATION.

7.1 Limited Warranty.

- (a) UNIVERSITY warrants that it has the lawful right to grant this license.

- (b) The license granted herein, and the Licensed Software and Documentation provided herein, are provided "AS IS" and WITHOUT WARRANTY OF MERCHANTABILITY or WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE or any other warranty, express or implied. UNIVERSITY makes no representation or warranty that the Licensed Software or Documentation will not infringe any other patent, copyright or other proprietary rights.
- (c) In no event shall UNIVERSITY be liable to LICENSEE for any incidental, special or consequential damages resulting from LICENSEE's exercise of the license granted herein or the use of the Licensed Software or Documentation. In no event shall LICENSEE be liable to UNIVERSITY for any incidental, special or consequential damages resulting from UNIVERSITY's exercise of its rights under this Agreement.
- (d) Nothing in this Agreement shall be construed as:
 - (1) a warranty or representation by UNIVERSITY as to the validity or scope of any University's Copyrights;
 - (2) a warranty or representation that anything made, used, sold or otherwise disposed of under any license granted in this Agreement is or shall be free from infringement of patents or copyrights of third parties;
 - (3) an obligation to bring or prosecute actions or suits against third parties for copyright infringement;
 - (4) conferring by implication, estoppel or otherwise any license or rights under any copyrights of UNIVERSITY other than University's Copyrights as defined in this Agreement, regardless of whether those copyrights are dominant or subordinate to University's Copyrights; or
 - (5) an obligation to provide fixes or updates to Licensed Software.

7.2 Indemnity.

- (a) LICENSEE shall indemnify, hold harmless and defend UNIVERSITY, its officers, employees, and agents; the sponsors of the research that led to the Licensed Software and Documentation; and the Authors and their employers against any and all claims, suits, actions, and proceedings ("Claims") arising out of the exercise of any right granted under this Agreement, including without limiting the generality of the foregoing against any damages, losses, liabilities, costs or expenses including reasonable attorney's fees whatsoever with respect to death or injury to person or to damage to property arising from or out of the possession, use or operation of Licensed Software and Documentation by LICENSEE.
- (b) UNIVERSITY shall promptly notify LICENSEE in writing of any claim or suit

brought against UNIVERSITY in respect of which UNIVERSITY intends to invoke the provisions of this Article. LICENSEE shall keep UNIVERSITY informed on a current basis of its defense of any claims under Paragraph 7.2(a) hereof.

ARTICLE 8. TERM AND TERMINATION.

8.1 **Term.** The license granted under this Agreement shall continue for the Term, unless sooner terminated by UNIVERSITY or LICENSEE in accordance with this Agreement.

8.2 **Termination.**

(a) **Termination by University.** If LICENSEE fails to perform or violates any material term of this Agreement, then UNIVERSITY may give written notice of default ("Notice of Default") to LICENSEE. If LICENSEE fails to cure the default within sixty (60) days of the effective date of Notice of Default, UNIVERSITY may terminate this Agreement and the license granted herein by a second written notice ("Notice of Termination") to LICENSEE. If a Notice of Termination is sent to LICENSEE, this Agreement and the license granted herein shall automatically terminate on the effective date of that notice. Termination shall not relieve LICENSEE of its obligation to pay any monies owing at the time of termination and shall not impair any accrued right of UNIVERSITY. These notices are subject to Paragraph 10.1 (Notices) hereof.

(b) **Termination by Licensee.** LICENSEE shall have the right at any time to terminate this Agreement and the license granted herein by giving notice in writing to UNIVERSITY. Notice of termination shall be subject to Paragraph 10.1 (Notices) hereof, and such termination of this Agreement and the license granted herein shall be effective thirty (30) days from the effective date of notice. Any termination under this paragraph shall not relieve LICENSEE of any obligation owed to UNIVERSITY or liability accrued in favor of UNIVERSITY under this Agreement prior to termination or rescind any payment made to UNIVERSITY or anything done by LICENSEE under this Agreement prior to the time termination becomes effective.

8.3 **Events upon Termination.** Upon termination of this Agreement and the license granted hereunder, LICENSEE shall:

- (a) immediately cease using the Licensed Software and Documentation;
- (b) immediately remove all copies of the Licensed Software and Documentation from all computer systems at the Site; and
- (c) within thirty (30) days of the date of such termination, return to UNIVERSITY the Licensed Software and Documentation and copies thereof then in LICENSEE's possession that are not on the computer systems at the Site.

8.4 **Survival.** Any termination of this Agreement shall not affect the rights and obligations set forth in the following paragraphs or Articles:

- (a) Paragraph 7.2 (Indemnity);
- (b) Paragraph 8.3 (Events upon Termination); and
- (c) Article 9 (USE OF NAMES AND TRADEMARKS).

ARTICLE 9. USE OF NAMES AND TRADEMARKS.

9.1 Nothing contained in this Agreement confers any right to use in advertising, publicity, or other promotional activities any name, trade name, trademark, or other designation of either party hereto (including contraction, abbreviation or simulation of any of the foregoing). Unless required by law, the use by LICENSEE of the name, "The Regents Of The University Of California" or the name of any campus of the University Of California, or the use by UNIVERSITY of the name of

is prohibited, without the express written consent of UNIVERSITY or LICENSEE, as the case may be.

9.2 UNIVERSITY may disclose to the Authors the terms and conditions of this Agreement upon their request. If such disclosure is made, UNIVERSITY shall request the Authors not disclose such terms and conditions to others.

9.3 UNIVERSITY may acknowledge the existence of this Agreement and the extent of the grant in Article 2 (GRANT) to third parties, but UNIVERSITY shall not disclose the financial terms of this Agreement to third parties, except where UNIVERSITY is required by law to do so, such as under the California Public Records Act.

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ARTICLE 10. MISCELLANEOUS PROVISIONS.

- 10.1 **Notices.** Except as otherwise provided in this Agreement, any notice or payment required or permitted to be given under this Agreement shall be in writing and (i) delivered in person; (ii) transmitted by facsimile with a confirming copy delivered via an overnight courier service; (iii) deposited in the United States postal service postage fee paid, for mailing by first-class, registered or certified mail; or (iv) sent by an overnight courier service, addressed as follows:

If to LICENSEE: (Enter name and address)

Attention:

Phone:

Facsimile:

If to UNIVERSITY:

If by US Mail,

University of California, San Diego
Technology Transfer Office, Mailcode 0910
9500 Gilman Drive
La Jolla, CA 92093-0910
Attention: Assistant Vice Chancellor

if by courier or in person,

University of California, San Diego
Technology Transfer Office
10300 N. Torrey Pines Rd.
1st Floor
La Jolla, CA 92037
Attention: Assistant Vice Chancellor
Facsimile: 858-534-7345
Phone: 858-534-5815

or to such other address or individual as either party may specify from time to time by written notice given by such party.

- 10.2 **Assignability.** This Agreement may be assigned by UNIVERSITY, but is personal to LICENSEE and assignable by LICENSEE only with the written consent of UNIVERSITY.
- 10.3 **No Waiver.** No waiver by either party of any breach or default of any covenant or agreement set forth in this Agreement shall be deemed a waiver as to any subsequent and/or similar breach or default.
- 10.4 **Failure to Perform.** In the event of a failure of performance due under this Agreement and if it becomes necessary for either party to undertake legal action against the other on account thereof, then the prevailing party shall be entitled to reasonable attorney's fees in addition to costs and necessary disbursements.
- 10.5 **Binding on Successors.** This Agreement shall be binding on the successors and permitted assigns of the parties.
- 10.6 **Force Majeure.** A party to this Agreement may be excused from any performance required herein if such performance is rendered impossible or unfeasible due to any catastrophe or other major event beyond its reasonable control, including, without limitation, war, riot, and insurrection; laws, proclamations, edicts, ordinances, or regulations; strikes, lockouts, or other serious labor disputes; and floods, fires, explosions, or other natural disasters. When such events have abated, the non-performing party's obligations herein shall resume.
- 10.7 **Headings.** 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.
- 10.8 **Entire Agreement.** This Agreement 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.
- 10.9 **Amendments.** No amendment or modification of this Agreement shall be valid or binding on the parties unless made in writing and signed on behalf of each party.
- 10.10 **Severability.** In the event that any of the provisions contained in this Agreement is held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, and this Agreement shall be construed as if the invalid, illegal, or unenforceable provisions had never been contained in it.
- 10.11 **Counterparts.** 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.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in duplicate originals by their duly authorized representatives.

LICENSEE:

**THE REGENTS OF THE
UNIVERSITY OF CALIFORNIA:**

By _____
(Signature)

By _____
(Signature)

Name:

Jane C. Moores, Ph.D.

Title:

Assistant Vice Chancellor
Technology Transfer Office

Date _____

Date _____

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Appendix A

Site(s) of Installation of Licensed Software:

Site #1

Site #2

Site #3

Site #4

Appendix B

Site License Purchase Order

Agreement #: _____ (*UCSD use only*)

Licensee Name:

Licensee Address:

Number of Site(s) requested in Appendix A:

Option 1:

If licensing CE:

Choice of Payment Plan:	<u>paid-up 5 year license</u>
<i>(choose one)</i>	\$12,500 for 1 Site
	\$23,000 for 2 Sites
	\$35,000 for 3 Sites
	\$45,000 for 4+ Sites
	 <u>or, annual fee based</u>
	\$3,200/year for 1 Site
	\$6,250/year for 2 Sites
	\$9,150/year for 3 Sites
	\$12,000/year for 4+ Sites