

NON-COMMERCIAL END USER LICENCE AGREEMENT

PLEASE READ THE FOLLOWING TERMS AND CONDITIONS BEFORE PROCEEDING. THE FOLLOWING ARE THE TERMS AND CONDITIONS UPON WHICH THE UNIVERSITY OF SHEFFIELD ("SHEFFIELD") IS PREPARED TO LICENCE THE USE OF THE CHU 9D ("THE PROGRAM") TO NON COMMERCIAL RESEARCH LED INSTITUTIONS AND REGISTERED STUDENTS THEREOF AND CONTAINS WARRANTY AND LIABILITY DISCLAIMERS. BY COMPLETING THE REGISTRATION FORM, YOU ("THE LICENSEE") AGREE TO BECOME BOUND BY THE TERMS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO BE BOUND BY THE TERMS AND CONDITIONS BELOW DO NOT COMPLETE THE REGISTRATION FORM. IF YOU ARE OUTSIDE THE CATEGORY OF LICENSEE TO WHICH THESE TERMS APPLY AND WISH TO USE THE PROGRAM PLEASE CONTACT KATHERINE STEVENS. THE ACCEPTANCE OF THESE TERMS AND CONDITIONS BY THE LICENSEE DOES NOT CREATE ANY OBLIGATION UPON THE UNIVERSITY TO PROVIDE THE LICENSEE WITH A COPY OF THE PROGRAM. YOUR LICENCE TO USE THE PROGRAM UPON THESE TERMS COMMENCES WHEN YOU RECEIVE A COPY OF THE PROGRAM.

THE UNIVERSITY RESERVES THE RIGHT TO REFUSE TO PROVIDE THE LICENSEE WITH A COPY OF THE PROGRAM AND TO WITHDRAW AND/OR AMEND THESE TERMS AND CONDITIONS AT ANY TIME AT ITS ABSOLUTE DISCRETION

1. GRANT OF LICENCE

Sheffield grants to the Licensee, a non-exclusive non-transferable licence to use the Program (in object code form only) and to display one copy of the Program on a single computer (i.e. with a single CPU) at a single location for research and teaching purposes. For the avoidance of doubt the Licensee shall not use the Program nor allow any third party to use the Program for consultancy work, commercial projects, sponsored research projects or for any purpose which results in commercial gain for the Licensee or any third party. The Licensee is granted no rights other than as expressly granted under this Agreement.

2. OWNERSHIP OF PROGRAM

The Licensee acknowledges that as between it and Sheffield the Program and all rights in and to the Program (including without limitation all copyright, patent rights and other intellectual property rights) are the exclusive property of Sheffield.

3. RESTRICTIONS

- 3.1 The Licensee may physically transfer the Program from one computer to another provided that the Program is deleted from the computer from the Program is transferred and therefore is installed only on a single computer at any one time.
- 3.2 The Licensee may not
 - 3.2.1 electronically transfer the Program from one computer to another over a network.
 - 3.2.2 make the Program available over a network or allow remote access to the Program.
 - 3.2.3 distribute copies of the Program or the accompanying written materials to any third party.
 - 3.2.4 modify, adapt, translate, reverse engineer, decompile, disassemble, or create derivative works based on the Program except to the extent permitted by and in accordance with applicable law.
 - 3.2.5 sub-licence or assign the benefit or burden of this Licence in whole or part, or allow the Program to become the subject of any charge, lien or encumbrance without the prior written consent of Sheffield.
- 3.3 The Licensee shall effect and maintain adequate security measures to safeguard the Program from access or use by an unauthorised user.

4. TERMINATION

- 4.1 This Agreement is effective until terminated. Sheffield may terminate this Agreement at any time on written notice to the Licensee if the Licensee:
- a) is in material or persistent breach of any of the terms of this Agreement and either that breach is incapable of remedy, or the Licensee fails to remedy that breach within 30 days after receiving written notice requiring it to remedy that breach; or
 - b) is unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986), or becomes insolvent, or is subject to an order or a resolution for its liquidation, administration, winding-up or dissolution (otherwise than for the purposes of a solvent amalgamation or reconstruction), or has an administrative or other receiver, manager, trustee, liquidator, administrator or similar officer appointed over all or any substantial part of its assets, or enters into or proposes any composition or arrangement with its creditors generally, or is subject to any analogous event or proceeding in any applicable jurisdiction.
- 4.2 Sheffield may terminate this Agreement at any time by giving the Licensee 30 days notice in writing.
- 4.3 Termination by Sheffield in accordance with the rights contained in this clause 4 shall be without prejudice to any other rights or remedies of either party accrued prior to termination.
- 4.4 On termination for any reason:
- a) all rights granted to the Licensee under this Agreement shall cease;
 - b) the Licensee shall cease all activities authorised by this Agreement;
 - c) the Licensee shall immediately destroy or return to Sheffield (at Sheffield's option) all copies of the Program and the accompanying written material then in its possession, custody or control and, in the case of destruction, certify to Sheffield that it has done so and delete all copies of the Program from any computer.

5. WARRANTY AND LIABILITY

- 5.1 Sheffield makes no representation and gives no warranty or undertaking with regard to the Program and accompanying written materials. All conditions warranties or other terms which might have effect between the parties or be implied or incorporated into this Licence or any collateral contract, whether by statute, common law or otherwise, are hereby excluded, including without limitation, the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose or the use of reasonable skill and care. Sheffield does not warrant that the use of the Program will be uninterrupted or error-free. The Licensee accepts responsibility for the selection of the Program to achieve its intended results. The entire risk as to the quality and performance of the Program is with the Licensee. Should the Program prove defective, the Licensee assumes the cost of all necessary servicing, repair or correction.
- 5.2 Except as expressly stated in clause 5.5
- a) Sheffield hereby excludes all liability for negligence.
 - b) Sheffield shall have no liability for any losses or damages which may be suffered by the Licensee (or any person claiming under or through the Licensee), whether the same are suffered directly or indirectly or are immediate or consequential, which fall within the following categories:
 - (i) special damage even though Sheffield was aware of the circumstances in which such special damage could arise;

- (ii) loss of profits, anticipated savings, business opportunity or goodwill; and
- (iii) loss of data;

c) The Licensee acknowledges that no representations were made prior to entering into this Agreement. The Licensee agrees that, in entering into this Agreement, it did not rely on any representations (whether written or oral) of any kind or of any person other than those expressly set out in this Agreement. The Licensee shall have no remedy in respect of any representation (whether written or oral) made to it on which it relied in entering into this Agreement and Sheffield shall have no liability otherwise than pursuant to the express terms of this Agreement.

5.5 The exclusions in this clause 5 shall apply to the fullest extent permissible at law, but Sheffield does not exclude liability for death or personal injury caused by the negligence of Sheffield its officers, employees, contractors or agents for fraud, breach of the obligations implied by section 12 Sale of Goods Act 1979 or section 2 Supply of Goods and Services Act 1982, or any other liability which may not be excluded by law.

5.6 Sheffield shall be under no obligation to provide further copies of the Program to the Licensee.

7. UPDATE AND MAINTENANCE POLICY

7.1 Sheffield accepts no responsibility for maintenance of the Program once delivered to the Licensee and is under no obligation to provide:

- a) Enhancements, updates and improvements to the Licensees version of the Program
- b) Written or telephone consultations
- c) Correction of errors and deficiencies
- d) Revised or additional supporting documentation

8 CONFIDENTIALITY

8.1 Each party shall, during the term of this Agreement and thereafter, keep confidential all, and shall not use for its own purposes nor without the prior written consent of the other disclose to any third party any, information of a confidential nature (including, without limitation, trade secrets and information of commercial value) which may become known to such party from the other party, unless such information is public knowledge or already known to such party at the time of disclosure, or subsequently becomes public knowledge other than by breach of this Agreement, or subsequently comes lawfully into the possession of such party from a third party.

The provisions of this Clause 8.1 shall remain in full force and effect notwithstanding termination of this Agreement for any reason.

9. GENERAL

9.1 Notices

Any notice to be given to under this Agreement shall be in writing and shall be sent by recorded delivery first class mail to (in the case of notices to the University) to the address of Sheffield University Enterprises Ltd, 217 Portobello, Sheffield S1 2DP and in the case of notices to the Licensee to the address completed on the Registration Form.

9.2 Complete Agreement

This Agreement supersedes and cancels all previous agreements and working arrangements whether oral or written, express or implied between the parties in respect of the licensing of the Program.

- 9.3 Variation
Any variation of any of the terms and conditions of this Agreement shall not be effective unless in writing signed by both parties (in the case of Sheffield being signed by a duly authorised representative of Company).
- 9.4 Headings
Clause and sub-clause headings are inserted in this Agreement for ease of reference only and accordingly neither the headings nor the layout form part of this Agreement for the purposes of interpretation or construction.
- 9.5 Waiver
No forbearance or delay by either party in enforcing its rights shall prejudice or restrict the rights of that party, and no waiver of any such rights or of any breach of any contractual terms shall be deemed to be a waiver of any other right or of any later breach.
- 9.6 Severability
If any provision of this Agreement is judged to be illegal or unenforceable, the continuation in full force and effect of the remainder of the provisions shall not be prejudiced.
- 9.7 Third Party Rights
No term of this Agreement is intended to confer a benefit on, or to be enforceable by, any person who is not a party to this Agreement.
- 9.5 Governing Law and Jurisdiction
The construction, validity and performance of this Agreement shall be governed in all respects by English law and the parties hereby agree to submit to the non-exclusive jurisdiction of the English Courts.
10. ACKNOWLEDGMENT
You acknowledge that you have read this Agreement, understand it and agree to be bound by its terms and conditions.