

# Software License Agreement

between

EML Research gGmbH, Schloss-Wolfsbrunnenweg 33, 69118 Heidelberg, Germany

- hereinafter referred to as "Licensor" -

and

.....  
.....

*full company/institution name, address*

- hereinafter referred to as "Licensee" -

EML Research gGmbH represents both EML Research gGmbH and the European Molecular Biology Laboratory, Meyerhofstrasse 1, 69117 Heidelberg, Germany in this agreement as both parties have developed parts of the software.

## § 1 Subject Matter of License Agreement

The subject matter of this Agreement is the Software

### SDA version 4.23

i.e., the latest version available and released for distribution prior to execution of this Agreement (hereinafter referred to as the "Software").

## § 2 Shipment

1.

Upon execution of the Agreement, the Software will be shipped electronically.

2.

Licensee will carry out the installation of the Software.

### **§ 3 License**

1.

Licensor grants Licensee the non-exclusive, indefinite right, not limited as to territory, to use the Software subject to the provisions set forth below.

2.

Licensee may use the Software only for its own non-commercial research at its own facilities, departments, or institutes. In particular, Licensee shall not allow any third party access to the Software for business or research purposes of third parties.

3.

Licensee shall reproduce the Software only to such extent that is required for the use of the Software in accordance with the terms of this Agreement. Licensee shall make the necessary number of backup copies required for safe operation based on the state of the art, provided, however, that they are marked as backup copies and – to the extent that is technically feasible – the copyright notice has been attached to them.

5.

Licensee will inform the Licensor about any modification made to the licensed software.

6.

Licensee shall not grant any sub-licenses to the Software or transfer the Software made available to it to any third party. Any use of the Software at a computer center, for the provision of outsourcing or application service, requires the express written consent of Licensor.

### **§ 4 Updates**

Upon request, Licensor shall supply Licensee with free updates of the major version of the Software acquired by Licensee. The major version is specified by the first digit in the version number. The provisions governing the Software shall apply to updates accordingly. The Licensor is under no obligation to make and release updates.

### **§ 5 License Fee**

1.

In consideration of the provision of the Software and the license grant, Licensee shall acquire the rights of use free of charge.

## **§ 6 Publicity and Exchange of Experience**

1.

On its own website, Licensor may identify research projects of Licensee in which the Software is used, and/or create links on its own website pointing to the website of Licensee's project or institute.

2.

In publications of Licensee reporting on research projects in which the Software is used, Licensee will properly cite by the following references and the version number of the licensed software:

Gabdoulline,R.R. and Wade,R.C. "Simulation of the Diffusional Association of Barnase and Barstar" Biophys. J. (1997) 72, 1917-1929.

Gabdoulline,R.R. and Wade,R.C. "Brownian Dynamics Simulation of Protein-Protein Encounter" Methods (1998) 3, 329-341.

## **§ 7 Duty to Inspect and Notify of Defects**

If Licensee is a business person, it shall promptly inspect the Software after receipt in accordance with § 377 German Trade Code and notify Licensor of any defects that are apparent during the inspection immediately after delivery, and of any hidden defects immediately after their discovery. Notice of defect shall be given in writing. Licensee shall describe the defect(s) in writing and as specifically as possible, to the extent that it may be reasonably expected to do so.

## **§ 8 Quality Defects and Defects of Title**

1.

Licensor grants the use of Software on an as-is basis. If Software should have defects or exhibit unexpected behavior, Licensor does not accept responsibility for removing those defects. Licensor also does not accept any responsibility for damages resulting from the use of Software.

## **§ 9 Liability**

1.

Under this Agreement and outside the contract, Licensor shall be liable to Licensee without restriction in case of willful wrongdoing or in the absence of a warranted quality or durability, for gross negligence only in the amount of the typical and foreseeable damages, and in other cases, only when a material duty (cardinal duty) has been violated, and in such cases, limited to compensation for the foreseeable and typical damages. In all other cases, Licensor does not assume any liability.

2.

The liability of Licensor for personal injury and under the Product Liability Act remains unaffected by the foregoing liability limitations and restrictions.

## **§ 10 Statute of Limitations for Claims of Licensee**

1.

Any claims of Licensee pursuant to § 8 and § 9 shall fall under the statute of limitations after 1 (one) year, unless provided otherwise in this Agreement (in particular § 10 par. 5).

2.

In case of quality defects and defects of title, the limitations period shall commence upon delivery of the Software, and in case of other claims for damages or reimbursement of wasted expenditure, at such time when Licensee becomes aware of the circumstances giving rise to the claim or should have become aware of in the absence of gross negligence.

3.

Paragraphs 1 and 2 apply accordingly to claims regarding a refund of the purchase price based on a rescission of contract or reduction of the purchase price, provided, however, that the statute of limitations period shall be no less than three (3)

months from the date that an effective notice regarding the rescission or reduction of purchase price has been given.

4.

In any event, the claims shall come under the statute of limitations no later than upon expiration of the maximum periods set forth in § 199 German Civil Code.

5.

Claims based on intentional wrongdoing or the grossly negligent conduct of Licensor, or on a violation of a guarantee given by Licensor or on malice, and claims based on personal injury (life, body, or health) or on the Product Liability Act, shall be subject to the statutory statute of limitations periods.

## **§ 11 Final Provisions**

1.

This Agreement is governed by the law of the Federal Republic of Germany. The application of the UN Convention on the Sale of Goods is excluded.

2.

The exclusive venue for all disputes arising from or in connection with this Agreement is Heidelberg, Germany, when the Licensee is a business person, a legal entity governed by public law, or a special fund governed by public law, or does not have a general place of jurisdiction within the Federal Republic of Germany.

3.

This Agreement contains any agreements made between the parties and supercedes any previous agreements. There are no oral collateral agreements. Modifications and amendments of this Agreement must be in writing to be effective. The same applies to a waiver of the mandatory written form requirement.

4.

If any provision of this Agreement is or should become invalid, or if the agreement is incomplete, its remaining terms and provisions shall remain in full force and effect. The invalid provision is deemed to have been replaced with such a provision that economically and validly most closely matches the meaning and purpose of the invalid provision. The same applies to a gap in this Agreement.

Heidelberg, this \_\_\_\_\_, this \_\_\_\_\_

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EML Research gGmbH

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*Full company/institution name of Licensee*