

Dated _____ 2004

(1) SURREY UNIVERSITY

and

(2) The Academic Institute

SOFTWARE LICENCE AGREEMENT

THIS AGREEMENT is made the day of 2004

BETWEEN:

- (1) **SURREY UNIVERSITY**, a not-for-profit organisation, of Guildford, Surrey GU2 7XH ("the University") and
- (2) Name and address of the "Academic Institution"

RECITALS

The University has developed a piece of software known as "The IBA Data Furnace v6.5" ("DataFurnace") for the purpose of analysing ion beam analysis (Rutherford backscattering and related elastic and inelastic ion scattering) data, as specified in the paper presented at the Ion Beam Analysis Conference (IBA-14) in Dresden, July 1999.

The Academic Institution wishes to use the DataFurnace Software to analyse ion beam analysis data collected on its accelerator for teaching and research purposes only.

NOW IT IS AGREED as follows:

1. DEFINITIONS

In this Agreement, the following expressions have the following meanings:

- 1.1 "the Software" means the "The IBA Data Furnace v6.5" ("DataFurnace") for the purpose of analysing ion beam analysis (Rutherford backscattering and related elastic and inelastic ion scattering) data, as specified in the paper presented at the Ion Beam Analysis Conference (IBA-14) in Dresden, July 1999 and any documentation relating to that work;
- 1.2 "Intellectual Property Rights" means patents, trademarks, servicemarks, registered designs, copyrights, design rights, know-how, confidential information, sui generis rights to data or databases, applications for any of the above, and any other similar rights recognised from time to time in any country;
- 1.3 "the Licence" means the licence granted by the University in clause 3.1 below;
- 1.4 "Accelerator" means (the named accelerator)
- 1.5 "Users" means students and academic and non academic employees and scientific collaborators of the Academic Institution.
- 1.6 "Responsible Person" (see clause 3.2) means (named person)
- 1.7 "Initial period" (see clause 2) means 4 years

1.8 “Licence fee” (see clause 5) means 2000 pounds sterling.

2. DURATION

This Agreement will begin on delivery of the software and will continue for an initial period defined in clause 1.7. It may be extended for a fee to be agreed which will not exceed the initial fee. If no fee is paid then support of the software will terminate, but the other terms of the Agreement will remain in force until Termination (see Clause 9).

3. LICENCE

3.1 Subject to the terms, conditions and limitations set forth in this Agreement, the University hereby grants to the Academic Institution and the Academic Institution hereby accepts for the Software a non-exclusive and non-transferable licence to use the Software by its Users to analyse ion beam analysis data collected on its Accelerator for teaching and academic research purposes only.

3.2 Multiple copies of this Software may be made for distribution to Users provided that the Academic Institution;

3.2.1 appoints a responsible person to keep an accurate list of such copies to whom they have been given; and

3.2.2 does not permit the software to be used for analysing data not collected on its Accelerator; and

3.2.3. provides the University on a annual basis a copy of the list it has created under Clause 3.2.

3.3 Should the Academic Institution wish to use the Software for commercial purposes a new licence agreement between the Academic Institution and the University will be required.

3.4 The Academic Institution acknowledges that it is licensed to use the Software only in accordance with the express terms of this Agreement and not further or in any other way, and the Academic Institution warrants that it will ensure that the Users use the Software only as expressly permitted by this Agreement.

3.5 The Licence will begin on the delivery of the Software to the Academic Institution and will continue until this Agreement is terminated or expires.

4. THE ACADEMIC INSTITUTION'S OBLIGATIONS

The Academic Institution will:

- 4.1 At all times conduct its business in a manner that will reflect favourably on the Software and on the good name and reputation of the University;
- 4.2 Not alter, obscure, remove, interfere with or add to any of the trademarks, trade names, markings or notices affixed to or contained in the Software;
- 4.3 Acknowledge the University appropriately in all publications of results obtained with the software, the reference used should be along the lines of “The results included within this research have been analysed using the University of Surrey’s IBA DataFurnace v6.5, as described in the paper presented at the Ion Beam Analysis Conference (IBA-14) in Dresden, July 1999”. Any citation lists should include “N.P.Barradas, C.Jeynes, R.P.Webb, *Simulated annealing analysis of Rutherford backscattering data*, Appl.Phys.Lett. **71** (1997) 291-3”, and other works as indicated in the program output.

5. PAYMENT

- 5.1 The Academic Institution will pay the University a licence fee defined in clause 1.8 plus any value added tax on the signature of this Agreement.

6. INTELLECTUAL PROPERTY RIGHTS

- 6.1 All Intellectual Property Rights in the Software will belong, as between the parties to this Agreement, to the University, and all copies of the Software in the Academic Institution's possession, custody or control or that of its Users will (to the extent that they are not exhausted by proper use) be returned to the University, or otherwise disposed of by the Academic Institution, as the University may from time to time direct on or following the termination of this Agreement.
- 6.2 The Academic Institution will notify the University immediately if the Academic Institution becomes aware of any unauthorised use of the Software, or of any of the Intellectual Property Rights in any of the above, and the Academic Institution will assist the University in taking steps to defend the University’s rights in the same.
- 6.3 The Academic Institution will, at the University's request, do all such acts reasonably requested by the University to assist the University to capture, enjoy, enforce or defend the Intellectual Property Rights in the Software.
- 6.4 The provisions of this Clause 6 will survive the termination of this Agreement and continue indefinitely.

7. CONFIDENTIALITY

- 7.1 The Academic Institution will not divulge or communicate to any person, except with the written consent of the University or as permitted within the terms of this Agreement, the Software, or any information concerning it and the Academic Institution will use its best endeavours to prevent the unauthorised publication or disclosure of any of the same.
- 7.2 The Academic Institution will ensure that its Users are aware of and comply with the confidentiality and non-disclosure provisions contained above and the Academic Institution will indemnify the University against any loss or damage which the University may sustain or incur as a result of any breach of the same.
- 7.3 If the Academic Institution becomes aware of any breach of confidence by any of the Academic Institution's Users, it will promptly notify the University and will give the University all reasonable assistance in connection with any proceedings which the University may institute against any of those Users.
- 7.4 The provisions of this Clause 7 will survive the termination of this Agreement and continue indefinitely but the restrictions contained in Clause 7.1 will cease to apply to any information which comes into the public domain, unless it does so through the unauthorised disclosure of the Academic Institution, or its Users.

8. RESERVATION OF RIGHTS

The University reserves the following:

- 8.1 The right to exploit the Software anywhere in the world by such means as it may think fit including, without limitation, by the granting of other licences;
- 8.2 The right to dispose of the Intellectual Property Rights in the Software as it sees fit.

9. TERMINATION

- 9.1 Notwithstanding anything else contained in this Agreement, this Agreement may be terminated by the University immediately on giving notice in writing to the Academic Institution if:
 - 9.1.1 the Academic Institution sells, assigns, parts with or ceases to carry on its business, or that part of its business relating to ion beam analysis.
 - 9.1.2 the Academic Institution commits any material or persistent breach of any term of this Agreement and, in the case of a breach capable of being remedied, fails to remedy that breach within 14 days after receipt of a request to do so;

9.1.3 the Academic Institution is unable to perform its obligations for 30 days or more; or

9.1.4 the Academic Institution has a receiver or administrative receiver appointed of it or over any part of its undertaking or assets, or passes a resolution for winding up, or a court of competent jurisdiction makes an order to that effect, or if the Academic Institution enters into any voluntary arrangement with its creditors or becomes subject to an administration order, or any event which has the same or any similar effect as any of the above occurs in any jurisdiction.

9.2 The Academic Institution will not be entitled to any compensation or indemnity (whether for loss of rights, goodwill or otherwise) as a result of the termination of this Agreement.

10. EFFECT OF TERMINATION

10.1 On the termination of this Agreement:

10.1.1 all rights and obligations of the parties under this Agreement will automatically terminate except for those rights of action which have accrued before termination and any obligations which expressly, or by implication, are intended to come into or to continue in force on or after termination; and

10.1.2 all copies of the Software in the Academic Institution's possession, custody or control or that of its Users will (to the extent that they are not exhausted by proper use) be returned to the University, or otherwise disposed of by the Academic Institution, as the University may direct.

11. INDEMNITIES

The Academic Institution will indemnify the University and keep the University fully and effectively indemnified on demand from and against any and all losses, claims, damages, costs, charges, expenses, liabilities, demands, proceedings and actions which the University may sustain or incur or which may be brought or established against the University by any person and which in any case arises out of or in relation to, or by reason of:

11.1 any breach by the Academic Institution of its obligations under this Agreement;

11.2 any act or omission of the Academic Institution, of any of the Academic Institution's Users;

11.3 the provisions of this clause 11 shall survive the term or termination of this Agreement for whatever reason.

12. WARRANTIES AND LIABILITY

- 12.1 The Software v6.5 is capable of being used to analyse data (as stated in Clause 1.1) and the University will make every reasonable effort to correct any errors that may exist and upgrade the functionality to conform more closely to that specified in Clause 1.1 by the release of subsequent versions. As soon as they are complete these new versions of v6.5 will be made available for all licensees should they be required.
- 12.2 The Academic Institution acknowledges that the Software may have certain defects and that the University does not warrant that the Software will be error free and that these errors may remain uncorrected.
- 12.3 The express terms of this Agreement are in lieu of all warranties, conditions, terms, undertakings and obligations implied by statute, common law, custom, trade usage, course of dealing or otherwise including, without limitation, implied warranties as to quality or fitness for purpose, all of which are excluded to the fullest extent permitted by law.
- 12.4 Notwithstanding anything else contained in this Agreement but subject to clause 12.5 below the University will not be liable to the Academic Institution for loss (whether direct or indirect) of profits, business or anticipated savings, or for any indirect or consequential loss or damage whatsoever, even if the University has been advised of the possibility of that loss or damage arising, and whether arising from negligence, breach of contract or in any other way.
- 12.5 The University does not exclude liability for death or personal injury caused by the University's negligence.
- 12.6 The Software is capable of performing fault-free in the processing of date and date related data (including, but not limited to, calculating, comparing, and sequencing) by all hardware and software products delivered under this agreement individually and in combination, upon installation. Fault-free performance includes the manipulation of this data with dates prior to, through, and beyond January 1st 2000, and shall be transparent to the user. Hardware and software products, individually and in combination, shall successfully transition into the year 2000 with the correct system date without human intervention, including leap year calculations. Hardware and software products, individually and in combination, shall also provide correct results when moving forward or backward in time across the year 2000.
- 12.7 The University warrants that any hardware, software, and firmware product delivered under this contract shall be able to accurately process date data (including, but not limited to, calculating, comparing, and sequencing) from, into, and between the twentieth and twenty-first centuries, including leap year calculations, when used in accordance with the product

documentation provided by the University. The duration of this warranty and the remedies available to the Academic Institution for breach of this warranty shall be as defined in, and subject to, the terms and limitations of the University's warranties contained in this Agreement provided that notwithstanding any provision to the contrary in such warranty or warranties, the remedies available to the Academic Institution under this warranty shall include repair or replacement of any product whose non-compliance is discovered and made known to the University in writing at any time within the warranty period. Nothing in this warranty shall be construed to limit any rights or remedies the Academic Institution may otherwise have under this Agreement with respect to defects other than Year 2000 performance.

12.8 The remedy given in Clause 12.1 above is the Academic Institution's sole and exclusive remedy in relation to any error, defect or deficiency in the Software. The Academic Institution acknowledges that the Software has not been prepared to meet the Academic Institution's requirements and that it is, therefore, the responsibility of the Academic Institution to ensure that the Software is suitable for use as envisaged in clause 1.1 above.

12.9 The indemnities granted in this clause 12 shall survive the term or termination of this Agreement for whatever reason.

13. FORCE MAJEURE

Subject to clause 9.1.3 above, neither party will be liable for any delay in performing any of its obligations under this Agreement (except an obligation to pay) if that delay is caused by circumstances beyond its reasonable control and that party will be entitled (subject to giving the other party full particulars of the circumstances and using reasonable endeavours to resume full performance without delay) to a reasonable extension of time for the performance of those obligations.

14. NOTICES

All notices to be given under this Agreement must be in writing and sent to the address of the recipient set out in this Agreement or any other address which the recipient may designate by notice given in accordance with the provisions of this clause. Any such notice may be delivered personally, or sent by first class pre-paid letter, or by fax and will be deemed to have been served, if by hand, when delivered, if by post, 48 hours after posting, and if by fax, when despatched provided the sender's fax machine produces automatic confirmation of error free transmission to the fax number of the intended recipient.

15. GENERAL

- 15.1 This Agreement constitutes the entire understanding between the parties concerning the subject matter of this Agreement and the Academic Institution warrants to the University that, in entering into this Agreement, the Academic Institution has not relied on any warranty, representation or undertaking except those expressly set out in this Agreement and the Academic Institution waives any claim for any breach of any representation (unless made fraudulently) which is not specifically contained in this Agreement as a warranty.
- 15.2 No waiver or amendment of any provision of this Agreement will be effective unless made by a written instrument signed on behalf of both parties.
- 15.3 Each provision of this Agreement is to be construed separately and, even if the whole or any part of any provision proves to be illegal or unenforceable in any jurisdiction, the other provisions of this Agreement, and the remainder of the illegal or unenforceable provision, will continue in full force and effect in that jurisdiction, and the legality, validity and enforceability of that provision in any other jurisdiction will not be affected.
- 15.4 No forbearance, delay or indulgence by either party in enforcing the provisions of this Agreement will prejudice or restrict the rights of that party and no waiver of its rights will operate as a waiver of any subsequent breach. No right, power or remedy conferred by this Agreement or reserved for either party to this Agreement is exclusive of any other right, power or remedy available to that party and each such right, power or remedy is cumulative.
- 15.5 This Agreement will be governed by and construed in accordance with the laws of England and Wales and the parties submit to the jurisdiction of the courts of England and Wales.
- 15.6 The Academic Institution may not assign or otherwise transfer this Agreement or any of its rights and obligations under it, whether in whole or in part, without first obtaining the written consent of the University.
- 15.7 The headings to the clauses of this Agreement are for ease of reference only and do not affect the interpretation or construction of this Agreement.

Signed for and on behalf of the University by its duly authorised representative:

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