

# RESEARCH USE LICENSE AGREEMENT

Carnegie Mellon University – LICENSEE

This Agreement (hereinafter "this Agreement") is made and entered into this \_\_\_ day of \_\_\_\_\_, 2002 ("Effective Date") by and between Carnegie Mellon University (hereinafter "CMU"), a Pennsylvania non-profit corporation, having a place of business at 5000 Forbes Avenue, Pittsburgh, Pennsylvania 15213 and \_\_\_\_\_ (hereinafter "LICENSEE"), a corporation duly organized and existing under the laws of \_\_\_\_\_ and having a place of business at \_\_\_\_\_.

Witnesseth

**Whereas**, CMU owns certain rights in certain technology relating to Monte Carlo Method for NMR Resonance Assignments also known as as Monte (referred to in the remainder of this document as System) and is interested in licensing same;

**Whereas**, LICENSEE desires to acquire rights in and to the technology upon the terms and conditions herein set forth;

**Now Therefore**, in consideration of the mutual covenants contained herein and intending to be legally bound hereby, the parties agree as follows:

## Section 1

### DELIVERY AND EVALUATION

1. CMU shall deliver to LICENSEE, one copy of the System, in object form, sufficient to allow operation of the system by LICENSEE for research and educational purposes only. A valid email address should be provided for the purpose of providing a license key:

**Email address:** \_\_\_\_\_

2. LICENSEE and its consultants under appropriate non-disclosure agreements committing consultants to compliance with the provisions of this Agreement, shall replicate the System so as to enable LICENSEE to evaluate the System and to conduct further research and development.

3. LICENSEE agrees that the System shall not be used as the basis of a commercial software or hardware product and that the same shall not be rewritten in another computer language or otherwise adapted to circumvent the need for obtaining a license from CMU for the use of the System other than as specified by this Agreement.

4. CMU reserves the right to inspect LICENSEE's use of the System for the purpose of verifying LICENSEE's compliance with this Agreement.

5. LICENSEE agrees that it shall obtain prior written approval from CMU before using the System in conjunction with commercially-funded educational research so that CMU can grant such sponsor any necessary or desired license to the System.

6. LICENSEE acknowledges that the title to the System (including copyright) shall remain with CMU and that any copies of the System or portions thereof made by LICENSEE in accordance with the rights granted hereunder shall include a CMU copyright notice thereon. The notice shall be affixed to all copies or portions thereof in such a manner and location as to give reasonable notice of CMU's claim of copyright and shall be in the following format: "Copyright 2002 Carnegie Mellon University. All rights reserved." or "© 2002 CMU All Rights Reserved." LICENSEE shall at all times hereafter protect the System, and all related documentation, if any, from transfer using measures at least as strong as those

used by LICENSEE in protecting its own proprietary software.

7. LICENSEE accepts the above materials on an "AS IS" basis. Accordingly, CMU shall not be required to load the System onto LICENSEE's machines, test for proper operation, perform any debugging, make any corrections, provide maintenance, provide any updates, or assist in the understanding or use of the System. The System is part of a research program, and CMU does not represent that it is free from errors or bugs or suitable for any particular tasks.

## **Section 2**

### **PROPRIETARY PROTECTION**

1. The System is furnished to LICENSEE for the sole purpose of enabling LICENSEE to evaluate the System and to conduct further research and development at its facilities. LICENSEE shall use the System and the documentation solely for such purpose, and shall not, without the prior written approval of CMU, either allow any subsidiary or third party to use, or itself use, the System or such documentation for any other purpose or for the benefit of any subsidiary or third party.

2. This Agreement conveys to LICENSEE only a limited right to use, fully revocable in accordance with the provisions of this Agreement. LICENSEE shall not assert any right, title, or interest in or to the System or any pertinent documentation.

3. CMU hereby represents that the System contains know-how, copyrights, and substantial trade secrets of CMU (including without limitation algorithms, methods, and structure and design elements); such trade secrets have been entrusted to LICENSEE for use only as expressly authorized under this Agreement. LICENSEE agrees to hold all of CMU's trade secrets in confidence, and not disclose them to third parties. LICENSEE will not copy, decompile, reverse engineer, or "unlock" (as the term is generally used in the industry) the System.

4. CMU claims and reserves to itself all rights and benefits afforded under U.S. copyright law and all international copyright conventions in the System and any pertinent documentation as restricted, unpublished works.

5. LICENSEE shall devote its best efforts, consistent with the practices and procedures under which it protects its own most valuable proprietary information and materials, to protect the System and any pertinent documentation and associated trade secrets against any unauthorized disclosure or unlawful use or copying.

6. LICENSEE shall make no hard copies of the System's computer code or the pertinent documentation without the express written consent of CMU. The LICENSEE is permitted to make hard copies of the instruction manual.

7. Upon termination of the Agreement, or LICENSEE's permanent cessation of use of the System, LICENSEE shall return to CMU the System and any pertinent documentation and return to CMU or destroy any notes or other information relating to the System.

8. CMU's trade secrets shall not include information that LICENSEE can conclusively establish: (i) entered or subsequently enters the public domain without LICENSEE's breach of any obligation owed CMU; (ii) became known to LICENSEE prior to CMU's disclosure of such information to LICENSEE; (iii) became known to LICENSEE from a source other than CMU other than by the breach of an obligation of confidentiality owed to CMU; (iv) is disclosed by CMU to a third party without restrictions on its disclosure; or (v) is independently developed by LICENSEE.

9. LICENSEE may request a commercial, non-exclusive, non-transferable, limited term, royalty bearing license to make, have made, use, lease, sell, or otherwise dispose of products and/or services which embody some or all of the Technology and/or derivatives.

### Section 3

#### TERM OF AGREEMENT; TERMINATION

1. The term of this Agreement shall commence on the effective date of this Agreement and shall continue for a term of 10 years from the effective date hereof.
2. Any obligations that by their nature continue after the termination of this Agreement shall remain binding upon the parties.

### Section 4

#### LIMITATION OF REMEDIES

1. ANY INFORMATION, MATERIALS OR SERVICES FURNISHED BY CMU PURSUANT TO THIS AGREEMENT ARE ON AN "AS IS" BASIS. CMU MAKES NO WARRANTIES OF ANY KIND, EITHER EXPRESSED OR IMPLIED, AS TO ANY MATTER INCLUDING, BUT NOT LIMITED TO, WARRANTY OF FITNESS FOR PURPOSE, OR MERCHANTABILITY, EXCLUSIVITY OR RESULTS OBTAINED FROM USE OF ANY INTELLECTUAL PROPERTY PROVIDED UNDER THIS AGREEMENT, NOR SHALL EITHER PARTY HERETO BE LIABLE TO THE OTHER FOR INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES SUCH AS LOSS OF PROFITS OR INABILITY TO USE SAID INTELLECTUAL PROPERTY OR ANY APPLICATIONS THEREOF. CMU DOES NOT MAKE ANY WARRANTY OF ANY KIND WITH RESPECT TO FREEDOM FROM PATENT, TRADEMARK, OR COPYRIGHT INFRINGEMENT, OR THEFT OF TRADE SECRETS AND DOES NOT ASSUME ANY LIABILITY HEREUNDER FOR ANY INFRINGEMENT OF ANY PATENT, TRADEMARK OR COPYRIGHT ARISING FROM THE USE OF THE PROGRAM, INFORMATION, INTELLECTUAL PROPERTY, OR OTHER PROPERTY OR RIGHTS GRANTED OR PROVIDED BY IT HEREUNDER. LICENSEE AGREES THAT IT WILL NOT MAKE ANY WARRANTY ON BEHALF OF CMU, EXPRESSED OR IMPLIED, TO ANY ENTITY CONCERNING THE APPLICATION OF OR THE RESULTS TO BE OBTAINED WITH THE PROGRAM UNDER THIS AGREEMENT.
2. In no event shall CMU be liable to LICENSEE for any loss of profits, any incidental, special, exemplary, or consequential damages; or any claims or demands brought against CMU, even if CMU has been advised of the possibility of such damages.
3. LICENSEE agrees to defend, indemnify and hold harmless CMU, its trustees, officers, employees, and agents from all claims or demands made against them (and any related losses, expenses or attorney fees) arising out of or relating to LICENSEE's negligent use or willful misuse of or negligent conduct or willful misconduct regarding the Technology or its derivatives, including, but not limited to, any claims of product liability, personal injury, death, damage to property or violation of any laws or regulations.

### Section 5

#### NOTICES

Any notice required or permitted under this Agreement shall be sufficiently made or given on the date of mailing if in writing and sent to such party by registered or certified mail, postage prepaid, addressed to it at its address below, or as it shall designate by written notice given to the other party:

In the case of CMU:

Director  
Innovation Transfer Center  
Carnegie Mellon University  
5000 Forbes Avenue  
Pittsburgh, PA 15213

In the case of LICENSEE:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## Section 6

### MISCELLANEOUS

1. Neither party may assign or transfer its rights or obligations under this Agreement without the prior consent of the other party.
2. This Agreement shall be governed and construed in all respects in accordance with the substantive laws of the Commonwealth of Pennsylvania excepting its choice of law provisions.
3. All remedies available to either party for one or more breaches by the other party shall be cumulative and may be exercised separately or concurrently without waiver of any other remedies. The failure of either party to act on a breach of this Agreement by the other party shall not be deemed a waiver of said breach or a waiver of future breaches, unless such a waiver is in writing and is signed by the party against whom enforcement is sought.
4. This Agreement constitutes the entire agreement of the parties hereto and supercedes all prior representations, proposals, discussions, and communications, whether oral or in writing. This Agreement may be modified only by a writing signed by both parties.

IN WITNESS WHEREOF, both parties have caused this Agreement to be executed by their duly authorized representatives.

CMU

By: \_\_\_\_\_

Name: Susan Burkett

Title: Associate Provost

Date: \_\_\_\_\_, 2002

LICENSEE

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

***All communications and discussions are tentative until execution of a written agreement by both parties.***