

Licence and Support Agreement

Licensor Reference:

Licensee Reference:

THIS AGREEMENT is made on

BETWEEN

(1) (National Affiliated Center) and
(2)
of (Licensee)

BACKGROUND

Licensor owns or otherwise has the right to grant licences in respect of certain database and software products and Licensor and Licensee have agreed that, in respect of the Products defined in the Schedule, Licensor will grant such a licence to Licensee, and will provide Support, on the terms of this Agreement.

AGREED TERMS

1. Definitions

1.1 Terms defined elsewhere in this Agreement (including in the Schedule) have the respective meanings given to them there.

1.2 In addition:

Academic Institution	means a not-for-profit or charitable organisation, supported by charitable or government funding, whose staff may freely publish the results of scientific research through the normal academic channels
Agreement	means this licence and support agreement including the Schedule
CCDC	means The Cambridge Crystallographic Data Centre (a company limited by guarantee and registered in England and Wales with company number 2155347, registered charity number 800579)
Databases	means all databases comprised in the Products, including data compilations and fragment libraries
Documentation	means any documentation (in any form), relating to any of the Products, that Licensor publishes or makes available to Licensee
Effective Date	means the date specified as such in the Schedule
Governmental Organisation	means a public body with executive powers, acting autonomously, answerable and funded in part by government
Industrial Organisation	means a commercial for-profit organisation
Licences	means the licences granted to Licensee in this Agreement

Period	means the period from the Effective Date until termination of this Agreement in accordance with its terms
Permitted Users	has the meaning given it in clause 4.2
Products	means the products specified as such in the Schedule and (where the context allows) the corresponding Documentation
Purchase Order	means a document or email message containing notification of an intention to purchase, specifying an agreed fee and extension to the Period of the Agreement
Schedule	means the schedule to this Agreement
Software	means all software comprised in the Products
Special Terms	means any terms specified as such in the Schedule
Superseded Agreements	means the agreements identified as such in the Schedule
Support	means maintenance and support in relation to the Products, as described or referred to in the clause under the heading "Support"
Use Limitations	in relation to each of the Products, means the limitations on use of it specified in the Schedule
Year	means a period of 12 months starting on the Effective Date or on an anniversary of the Effective Date; and First Year , Second Year etc shall be interpreted accordingly

2. **Period of Agreement and Termination for Convenience**

- 2.1 This Agreement is deemed to come into effect, or to have come into effect, on the Effective Date. The Period of the Agreement is specified in the attached Schedule. The Licensee may renew this Agreement for subsequent renewal Periods of one or more Years pursuant to Licensor's receipt of a Purchase Order, or letter/email to the same effect, or a replacement Schedule, before the end of the then-current Period. If no such instructions for renewal are received, then the Agreement will be deemed to have terminated.

3. **Grant of Licences**

- 3.1 Licensor hereby grants to Licensee, upon and subject to the terms and conditions of this Agreement:

- 3.1.1 a licence to use the Products; and
- 3.1.2 a licence to use the Documentation in support of Licensee's use of the corresponding Products.

- 3.2 The Licences are:

- 3.2.1 non-exclusive; and
- 3.2.2 specific to Licensee; therefore Licensee must not assign them in whole or in part or grant any sub-licence under them.

4. **Scope of Permitted Use of Products**

- 4.1 Licensee shall use the Products only within the scope of the Use Limitations, and not in any manner outside that scope.

- 4.2 Licensee shall not permit or allow any person other than (a) its employees, its students, its contractors and visiting academic workers or (b) representatives of any regulatory authority to which Licensee is subject (together, **Permitted Users**) to access or use the Products. All access to and use of the Products by a Permitted User shall be deemed to be access to and use of them by Licensee. Licensee shall ensure that no Permitted User does anything that is inconsistent with Licensee's obligations under this Agreement.
- 4.3 Licensee shall use the Products only for its own internal business or research purposes and shall not use them on behalf of or for the benefit of any other person in any way whatsoever, unless as specified in any Special Terms in the Schedule to this Agreement.
- 4.4 Unless as specified in any Special Terms in the Schedule to this Agreement, Licensee shall not use the Products in any manner or for any purpose that will or may result in Licensee or any other person having no requirement, or a reduced requirement, for licences of the Products. In particular:
 - 4.4.1 Licensee shall not use any of the Products to provide a bureau service.
 - 4.4.2 Licensee may develop, for its own use only, software systems based on the Products or sub files derived from them, provided always that Licensee maintains a current licence for the Products. Should the Licence be terminated, then use of all software derived from the products must also cease unless written permission is granted by the CCDC. Licensee shall not without Licensor's prior written consent distribute or otherwise make available such systems or parts thereof to any other person.
 - 4.4.3 Licensee shall not without Licensor's prior written consent use the Products in or in connection with any consulting or joint project for or with any other person unless that other person also has a current licence (sufficient in scope for the intended use) of the applicable Products.
 - 4.4.4 Insofar as such distribution or making available will or may result in Licensee or any other person having no requirement, or a reduced requirement, for licences of the Products, Licensee shall ensure that data comprised in the Databases, or information derived from it, and the Databases themselves, or other parts of the Products, are not (whether separately or in combination with any other material) distributed or made available to persons outside of Licensee, whether online or in printed, photographic, computer-readable or other form, without Licensor's prior written consent. This restriction applies in particular to data compilations, educational aids, fragment libraries and software systems.
 - 4.4.5 If and to the extent that there is information comprised in the Databases or other parts of the Products that is not publicly available, Licensee shall keep such information confidential and shall not use it for any purpose other than exercise of its rights under the Licences.
- 4.5 Licensee shall make only such copies of the Products and Documentation as it reasonably needs for use of them in accordance with this Agreement.
- 4.6 Licensee may have a third party host installations of the Products on behalf of Licensee. Licensee shall ensure that any person who does this treats all information comprised in or pertaining to the Products in a manner consistent with the clause headed "Confidentiality"
- 4.7 Licensee shall not remove, obscure or alter any copyright, trade mark or other proprietary rights symbols or notices on, in or associated with the Products, and shall ensure that such symbols and notices are replicated on and in any whole or partial copies of the Products made by or for Licensee.
- 4.8 All rights not expressly granted to Licensee are reserved to Licensor. Without limiting the scope of the immediately preceding sentence, except to the extent that such acts may not lawfully be prohibited, Licensee shall not translate, disassemble, decompile or in any other manner reverse engineer any Software.
- 4.9 The ownership of all copyright, database rights, intellectual rights and other rights in the Products shall at all times remain the exclusive property of Licensor or the other licensors of Licensor. Subject to that, all rights in any results obtained from use of the Products by Licensee in accordance with this Agreement shall be the exclusive property of Licensee.

- 4.10 If Licensee is uncertain whether something it wishes to do may be inconsistent with this clause 4 then Licensee shall in writing so notify Licensor, and provide to Licensor such further details as Licensor may request. Licensor's opinion on the matter shall be final and binding on Licensee and Licensee shall not without Licensor's prior written consent do the thing which was the subject of its notification to Licensor.

5. **Changes to the Products**

- 5.1 Licensor reserves the right at any time to introduce major changes in the file and/or record structures of the Products, and to change the platforms supported by the Products, but will normally give at least six (6) months' prior notice of any such change.

6. **Materials and Facilities Provided**

- 6.1 To enable Licensee to exercise its rights under the Licences, Licensor will on or before the Effective Date provide Licensee with the materials and facilities detailed in the Schedule.
- 6.2 Where computer-readable files are to be supplied on physical media, they will be recorded by Licensor on standard commercial recording media. If Licensee receives such media in damaged condition then Licensor will replace them free of charge.

7. **Support and Maintenance**

Licensor shall during the Period provide the Licensee with any new updates and upgrades to the Products.

- 7.1 Licensor shall during the Period use its reasonable endeavours to provide to Licensee:
- 7.1.1 telephone, email or online assistance in the event that Licensee experiences problems or malfunctions with any of the Products. Such assistance will be rendered on business days (i.e. days other than Saturdays, Sundays or public holidays in England) between 9 am and 5 pm United Kingdom time, and may in Licensor's discretion be rendered outside these hours;
 - 7.1.2 fixes, patches or workarounds in order to correct, mitigate or eliminate the adverse effects of any errors in any of the Products that results in a failure of the Product to perform in accordance with the Licensor's published specifications. However Licensor shall have no obligation in relation to errors which result from the improper use or unauthorised modification of the Product, from a malfunction or problem with the Licensee's hardware or other software, or from any failure by Licensee to implement any fix, patch, workaround, update or upgrade to the Software issued by Licensor.
- 7.2 Licensee shall:
- 7.2.1 notify Licensor forthwith of any suspected malfunction, error or other problem relating to any of the Products and supply to Licensor such information as Licensor may reasonably require to meet its obligations in relation to Support;
 - 7.2.2 implement all fixes, patches, workarounds, updates or upgrades to the Software issued by Licensor forthwith upon receipt of them.

8. **Confidentiality**

- 8.1 Each party agrees to keep confidential the terms of this Agreement and all information obtained from the other under or in connection with this Agreement, to respect the other's proprietary rights therein, to use it exclusively for the purposes of or as contemplated by this Agreement, and to disclose it only to those of its Permitted Users and others (if any) to whom and to the extent that such disclosure is reasonably necessary for the purposes of this Agreement. Without limiting the scope of information to which this clause applies, all information comprised in the Products shall be deemed to be information obtained by Licensee from Licensor.

8.2 This clause shall not apply to information which: (i) is trivial or obvious; or (ii) prior to receipt thereof from one party was in the possession of the other and at its free disposal; or (iii) is subsequently disclosed to the recipient party without any obligations of confidence by a third party who has not derived it directly or indirectly from the other party; or (iv) is or becomes generally available to the public through no act or default of the recipient party.

8.3 Each party shall procure that all its Permitted Users and others (if any) who have access to any information of the other to which this clause applies shall be made aware of and shall comply with these obligations.

8.4 The parties' obligations under this clause shall survive any termination of this Agreement and continue in force without limit in time.

9. Financial

9.1 Licensee shall pay Licensor the amounts detailed in the Schedule and on any subsequent Purchase Orders, and shall pay them when due as stated in the Schedule.

9.2 All sums becoming due to Licensor under this Agreement: (i) are, unless otherwise expressly stated, exclusive of any Value Added Tax, which Licensee shall pay in addition if Licensor is obliged by law to charge it; and (ii) shall be paid by Licensee in full without any set-off, withholding or other deduction whatsoever (and in the case that any deduction or withholding is required by law Licensee shall gross up the amount due to Licensor such that, after the deduction or withholding has been made, Licensor still receives the full amount due to it).

10. Termination for Cause

10.1 Licensor may terminate this Agreement by giving to Licensee written notice of termination having immediate effect if:

10.1.1 (a) Licensee commits a material breach of this Agreement which in Licensor's opinion cannot be remedied, or (b) Licensee commits a material breach of this Agreement which in Licensor's opinion can be remedied but Licensee fails to remedy such breach within 30 days of being given a notice by Licensor identifying the breach and requiring it to be remedied. Without limiting the scope of this clause, a breach by Licensee of any of the clauses under the headings "Scope of Permitted Use of Products" or "Confidentiality", or a breach by Licensee of its payment obligations, shall be deemed a material breach of this Agreement; or

10.1.2 (a) Licensee adopts a resolution for its winding-up (other than for a solvent reconstruction) or has a receiver or administrative receiver appointed in respect of any part of its assets or undertaking, or is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986, or makes or attempts to make any composition or arrangement with its creditors, or (b) any event analogous under any jurisdiction to any of those just mentioned occurs in relation to Licensee.

11. Consequences of Termination

11.1 The Licences shall forthwith and automatically terminate on any termination of this Agreement. On termination of the Licences, Licensee shall return to Licensor or destroy the copy or copies of all Products and related Documentation supplied to Licensee under this Agreement, and any backup or other copies of and any modifications made to the whole or any part of the Products that are in the possession of or under the control of Licensee, and shall delete every part of the Products from Licensee's storage facilities.

11.2 Licensee shall if requested by Licensor promptly provide to Licensor written confirmation that it has complied with its obligations in this clause.

12. Liability

12.1 **Intellectual Property.** Licensor warrants that so far as it is aware (having made no special enquiry) the use of the Products in accordance with the Licences will not infringe the copyright or other intellectual property

rights of any person. If such use of any Product infringes any such rights then Licensor shall as soon as reasonably practicable at its option and cost:

12.1.1 alter that Product; and/or

12.1.2 obtain such licence(s) as may be necessary;

so that the use of that Product in accordance with the Licences shall so far as Licensor is then aware not thereafter infringe the copyright or other intellectual property rights of any person. However, if so to alter such Products or obtain such licences is or would be, in Licensor's sole opinion, uneconomic then Licensor may instead terminate this Agreement by written notice to Licensee having immediate effect, and upon terms that Licensee shall be entitled to a refund of such proportion of any in-advance fee paid by Licensee under this Agreement as relates to the period falling after termination.

12.2 **Errors in Products.** Licensor does not warrant use of the Products will be uninterrupted or error free. However, this is without prejudice to Licensor's obligations to provide Support.

12.3 **Warranty Regarding Support.** Licensor warrants that it will provide Support with reasonable care and skill. Should it breach this warranty, it shall as soon as it is reasonably able, and at its own cost, rectify the results of the Support which was not provided in accordance with this warranty.

12.4 **Liability Generally**

12.4.1 This clause 12.4 prevails over all other provisions of this Agreement and states the entire liability of each party to the other under or in connection with this Agreement, whether in contract or in tort (including negligence) or otherwise.

12.4.2 Neither party excludes or limits its liability to the other in negligence in respect of death or personal injury or otherwise insofar as any exclusion or limitation of its liability is void, prohibited or unenforceable by applicable law. This clause 12.4.2 overrides all others in this Agreement.

12.4.3 Subject as expressly otherwise stated in this Agreement, Licensor gives no warranties and makes no representations in relation to the Products, the Support or otherwise in relation to this Agreement. Without limiting the scope of the immediately preceding sentence, any warranty as to quality or fitness for any particular purpose is hereby excluded.

12.4.4 Without limiting the scope of clause 12.4.3, the warranties given in clauses 12.1 and 12.3, relating respectively to intellectual property infringement and Support, are the only warranties given in relation thereto and, subject to clause 12.4.2, clauses 12.1 and 12.3 respectively state Licensor's entire liability, in contract in tort (including negligence) or otherwise, and Licensee's exclusive remedy in respect of breach of such warranties.

12.4.5 Subject to clause 12.4.2, Licensor shall not be liable to Licensee, in contract in tort (including negligence) or otherwise, for: (a) any loss of profit, business revenue, goodwill or anticipated savings; (b) any incidental or consequential loss; or (c) any special, exemplary or consequential damages.

12.4.6 Neither Licensor nor Licensee shall be deemed to be in breach of this Agreement, or otherwise liable to the other, by reason of any delay in performance, or non-performance, of any of its obligations to the extent that such delay or non-performance is caused by any event or circumstances beyond its reasonable control (**Force Majeure**). However the party affected by Force Majeure shall promptly notify the other party thereof in writing and shall use all reasonable endeavours to continue to perform its obligations under this Agreement.

13. **Termination of Superseded Agreements**

13.1 With effect from the Effective Date, the Superseded Agreements (and, to avoid doubt, all licences granted in them, including any that are expressed to be perpetual and/or irrevocable) are terminated and replaced by

this Agreement. Termination of the Superseded Agreements is without liability but without prejudice to any right of Licensee or any other party thereto that may have accrued before termination or that may arise on termination; and in particular is without prejudice to (and shall not terminate) any right of a party thereto to be paid any licence fee or other amount that should have been paid to it prior to termination.

14. **Assignment**

- 14.1 Licensors may at any time assign to any person all of its rights and obligations under this Agreement, and if it does so then this Agreement shall survive for the benefit of and shall bind Licensors's assignee.
- 14.2 Licensee shall not without Licensors's prior written consent assign any of Licensee's rights and obligations under this Agreement.

15. **Miscellaneous**

- 15.1 **Acknowledgements in Publications.** In the event that in producing or contributing to any publication (including in a peer reviewed journal or at a conference) Licensee makes use of any of the Products, Licensee shall ensure that there shall be included in or with the publication, with reasonable prominence, an acknowledgement in the form and manner from time to time specified or referred to in the Schedule.
- 15.2 **Entire Agreement and Amendments.** This Agreement as written is the entire agreement and understanding between Licensors and Licensee concerning the subject-matter of this Agreement. All other terms and conditions, representations and warranties that might otherwise be implied by law, trade custom, course of dealing or otherwise, are hereby excluded to the fullest extent permitted by applicable law; and all terms and conditions in or referred to in any purchase order of Licensee, or otherwise referred to by Licensee, are excluded. No amendment to this Agreement shall have any effect unless it is made in writing and signed by the duly authorised representative of each of Licensors and Licensee. Licensors and Licensee contemplate that they may from time to time agree replacement or additional Schedules.
- 15.3 **Severability.** If any part of this Agreement is found to be void or unenforceable then that part shall be deemed severed from this Agreement and this Agreement shall remain in force without that severed part.
- 15.4 **Interpretation.** In this Agreement: (a) the word **person** shall include corporations and other entities; (b) words such as **in particular**, **including**, **e.g.** or **such as**, or other words indicating that examples falling within more general wording follow, shall be construed as without limitation to the corresponding more general wording; (c) references to the singular include the plural and vice versa; and (d) the headings are for convenience only and shall not affect interpretation.
- 15.5 **Notices.** Any notice to be given under or in connection with this Agreement shall be in writing (which includes email). Notices shall be deemed given only when actually received or, if received outside of the normal working hours of the recipient party, then at the commencement of the next period of normal working hours of that party.
- 15.6 **Consents.** In any case where the consent of Licensors is required under or in connection with this Agreement then such consent may be given, conditioned or withheld in Licensors's absolute discretion.
- 15.7 **Effect of Special Terms.** If and to the extent that any Special Terms are inconsistent with any other part of this Agreement, the Special Terms shall override that other part.
- #### 16. **Law and Jurisdiction**
- 16.1 This Agreement shall be governed and construed in accordance with English law and the courts of England shall have non-exclusive jurisdiction in respect of any dispute or claim that may arise out of or in connection with it.

AGREED BY NAC AND LICENSEE

For NAC

Signature:

Name:

Position:

For Licensee

Signature:

Name:

Position:

The Schedule follows and is separately signed.

Schedule

dated _____ to Licence and Support Agreement between the National Affiliated Centre (NAC) and (Licensee),

Licensor Reference

Licensee Reference

This is the first and only Schedule to the Agreement

1. Effective Date and Period

1.1 The **Effective Date** is 01/01/2015

1.1 The **Period** is from 01/01/2015 to 31/12/2015. This Period may be extended by mutual agreement by provision of a suitable Purchase Order or replacement Schedule.

2. Superseded Agreements

2.1 The corresponding Schedule in all prior agreements between the Licensor and Licensee, (including any predecessor organisations) concerning the Products listed below are hereby superseded.

3. Products and Use Limitations

3.1 The **Products** licensed to Licensee under this Agreement and the sites covered are the following:

CCDC Ref:

Maximum Number of permitted installations: 999

- CSD
- ConQuest
- PreQuest
- Mercury
- IsoStar
- Mogul
- WebCSD
- CSDS DASH
- SuperStar
- Solid Form module

WebCSD: Unlimited via IP range access and/or up to 6 username/password accesses per site (or maximum number of installations purchased per site, whichever is lower)

3.2 All **Products** include such fixes, patches, updates and upgrades as Licensor may from time to time during the Term make available to Licensee.

3.3 Where Licensee is entitled to use a Product at a Licensee site, such use includes the right for Permitted Users who normally work at that site to use such Product (for the sole benefit of Licensee, and otherwise in accordance with this Agreement) at or from home or when travelling.

4. Materials and Facilities to be Provided

4.1 In relation to the **CSD System**:

4.1.1 One copy of the following by download: CSD 3D Graphics Search System and any additional modules listed in 3.1 above. Distribution on a standard physical medium is available on request, and with a corresponding surcharge.

- 4.1.2 WebCSD and web accessible CSD tools and services. WebCSD can be accessed from any supported browser to server hosted by Licensor for Academic Institutions and Governmental Organisations.

5. **Contact Details etc in Relation to Support**

- 5.1 The Licensor contact details for Support requests are:

Email Support@ccdc.cam.ac.uk
Phone: +44-1223-336022

CCDC Support
12 Union Road
Cambridge
CB2 1EZ
UK

6. **Financial Details**

- 6.1 Organisation will pay fee as arranged with the National Affiliated Centre (NAC).

7. **Form of Acknowledgement**

The form of acknowledgement shall be that specified at

http://www.ccdc.cam.ac.uk/support/product_references

from time to time, or at such other URL as Licensor may from time to time inform Licensee.

8. **Special Terms**

Licensee warrants that it is an Academic Institution or a Governmental Organisation, and is not an Industrial Organisation. Licensee also confirms that none of the CCDC software will be used in conjunction with any commercial purposes without the express written permission of the CCDC.

AGREED BY NAC AND LICENSEE

For NAC

Signature:

Name:

Position:

For Licensee

Signature:

Name:

Position: