

**Dated** .....

**(1) The University of Surrey**

**and**

**(2)**

**SOFTWARE LICENCE AGREEMENT**

THIS AGREEMENT is made on the \_\_\_\_\_ day of \_\_\_\_\_ 2007

BETWEEN:

- (1) The University of Surrey, established by Royal Charter on the 9<sup>th</sup> September 1966, of Guildford, Surrey, GU2 7XH (UniS), and
- (2) [ ] ("Academic Institution").

RECITALS

- A) UniS has developed a new version of the Software (as hereinafter defined).
- B) The Academic Institution wishes to use the Software to analyse data collected on its Accelerator for teaching and research purposes only and UniS is prepared to licence same to the Academic Institution subject to and in accordance with the terms and conditions contained herein.

NOW IT IS HEREBY AGREED as follows:

1. DEFINITIONS

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

- "Accelerator" means (named accelerator) [ ]
- "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 other country;
- "Licence fee" means £2500 (Two Thousand Five Hundred Pounds Sterling);
- "LibCPIXE-df1" means a separate version (specially written and re-licensed by its authors for DataFurnace) of the LibCPIXE open source code: this code has been reported at the 2005 Ion Beam Analysis International Conference in Seville and the 2006 CAARI International Conference in Fort Worth, see also <http://cpixe.sourceforge.net>;
- "IBA DataFurnace Software Package" means an executable code known as "NDF" (including the LibCPIXE-df1 module) whose current version is V9, and a Visual Basic user interface known as "WiNDF" whose current version is V9.
- "the Software" means the IBA DataFurnace v9 Software Package used for the purpose of extracting depth profiles from ion beam

analysis spectra as described in Jeynes *et al*, J.Phys.D 36 (2003) R97-R126 and references therein; and Pascual-Izarra *et al*, Nucl.Instrum.Meth. B249: 780-783 (2006)

"Term"

means 4 years from the date hereof;

"Users"

means students and academic and non academic employees and scientific collaborators at the Academic Institution (see Clause 2.3); and

"Responsible User"

means person responsible for maintaining a list of Users as described in clause 2.3. This person, whose name will be advised to UniS, is appointed by the Academic Institution and is currently (named person).

## 2. LICENCE AND TERM

- 2.1. In consideration of the Licence Fee paid by the Academic Institution to UniS, UniS hereby grants to the Academic Institution a non-exclusive and non-transferable licence for the Term to use the Software by its Users to analyse ion beam analysis data collected on its Accelerator for internal teaching and academic research purposes only, except as specified in section 2.3.2. On expiration of the Term the Parties may agree to extend the Agreement for an additional fee, such fee to be agreed by Chris Jeynes, at the University of Surrey and the Academic Institution.
- 2.2. The Academic Institution has no right (and shall not permit any Third party) to copy, adapt, reverse engineer, decompile, disassemble, modify, adapt or make error corrections to the Software or Code.
- 2.3. Multiple copies of the Software may be distributed to Users provided that the Academic Institution;
  - 2.3.1. appoints a responsible person to keep an accurate list of such copies and to whom they have been given; and
  - 2.3.2. does not permit the Software to be used for analysing data not collected on its Accelerator, except that data not collected on its Accelerator may still be analysed using the Software for purposes of comparison to data collected on its Accelerator or in the framework of inter-comparison or benchmarking programs; and
  - 2.3.3. provides to UniS on an annual basis a copy of the list it has created under this Clause.
- 2.4. 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, (including without limitation for commercial purposes), and the Academic Institution warrants that it will ensure that the Users use the Software only as expressly permitted by this Agreement.
- 2.5. In the event that the Academic Institution wishes to use the Software for commercial purposes, a separate Agreement with UniS will be required and additional fees will be payable.

### 3. THE ACADEMIC INSTITUTION'S OBLIGATIONS

The Academic Institution undertakes and agrees with UniS that it will at all times during the continuance of the Agreement, observe and perform the terms and conditions set out in this Agreement and in particular undertakes warrants and represents that it shall:

- 3.1 At all times conduct its business in a manner that will reflect favourably on the Software and on the good name and reputation of UniS;
- 3.2 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;
- 3.3 Cite papers in peer reviewed publications as specified in the Software output
- 3.4 Acknowledge authors of the Software appropriately, and make reference to the website [www.surreyibc.ac.uk/ndf] in all other publications of results obtained with the Software and in any manuals produced in relation to the Software;

### 4. FEE

The Academic Institution shall pay UniS the Licence Fee plus applicable VAT upon signature of this Agreement.

### 5. INTELLECTUAL PROPERTY RIGHTS

- 5.1. All Intellectual Property Rights in and to the Software shall belong, as between the Parties to this Agreement, to UniS.
- 5.2. 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 UniS, or otherwise disposed of by the Academic Institution, as UniS may from time to time direct on or following the termination of this Agreement.
- 5.3. The Academic Institution will notify UniS 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 UniS in taking steps to defend UniS's rights in the same.
- 5.4. 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.
- 5.5. The provisions of this Clause 5 will survive the termination of this Agreement and continue indefinitely.

## 6. CONFIDENTIALITY

- 6.1. The Academic Institution will not divulge or communicate to any person, except with the written consent of UniS 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.
- 6.2. 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.
- 6.3. 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.
- 6.4. The provisions of this Clause 6 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.

## 7. RESERVATION OF RIGHTS

The University reserves the following:

- 7.1. 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;
- 7.2. The right to dispose of the Intellectual Property Rights in the Software as it sees fit.

## 8. TERMINATION

- 8.1. 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:
  - 8.1.1. 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;
  - 8.1.2. 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;
  - 8.1.3. the Academic Institution is unable to perform its obligations for 30 days or more; or

8.1.4. 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.

8.2. 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.

## 9. EFFECT OF TERMINATION

9.1. On the termination of this Agreement:

9.1.1. 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

9.1.2. 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 UniS, or otherwise disposed of by the Academic Institution, as UniS may direct.

## 10. INDEMNITIES

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

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

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

10.3. the provisions of this clause 10 shall survive the term or termination of this Agreement for whatever reason.

## 11. WARRANTIES AND LIABILITY

11.1. The Software is capable of being used to extract depth profiles from ion beam analysis data (as specified in the Definitions) and UniS will make every reasonable effort to correct any errors that may exist and upgrade the functionality to conform more closely to that specified by the release of

subsequent versions. As soon as they are complete these new versions will be made available for all licensees should they be required.

- 11.2. The Academic Institution acknowledges that the Software may have certain defects and that UniS does not warrant that the Software will be error free and that these errors may remain uncorrected.
- 11.3. 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.
- 11.4. Notwithstanding anything else contained in this Agreement but subject to clause 11.5 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.
- 11.5. The University does not exclude liability for death or personal injury caused by the University's negligence.
- 11.6. 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.
- 11.7. The remedy given in Clause 11.1 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.
- 11.8. The indemnities granted in this clause 11 shall survive the term or termination of this Agreement for whatever reason.

## 12. FORCE MAJEURE

Subject to clause 8.1.3 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.

## 13. NOTICES

- 13.1. 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 should be sent by first class pre-paid letter (or international equivalent), or by fax and will be deemed to have been

served, if by post, 7 working days 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.

#### 14. GENERAL

- 14.1. 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.
- 14.2. 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.
- 14.3. 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.
- 14.4. 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.
- 14.5. 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.
- 14.6. 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.
- 14.7. This Agreement shall be governed by and construed in accordance with English law and the parties hereby submit to the exclusive jurisdiction of the English courts.



Signed by:  
Duly authorised  
for and on behalf of  
University of Surrey

---

---

Signed by:  
Duly authorised  
for and on behalf of the Academic Institution  
[    ]

---

---