

PRODUCT LICENSE AGREEMENT

PLEASE CAREFULLY READ THE FOLLOWING AGREEMENT. BY CLICKING ON THE "I ACCEPT" BUTTON AT THE END OF THIS AGREEMENT, YOU INDICATE YOUR ACCEPTANCE OF ITS TERMS AND CONDITIONS AND AGREE TO BE BOUND AS SET FORTH HEREIN. YOU REPRESENT AND WARRANT THAT YOU HAVE THE REQUISITE AUTHORITY AND LEGAL CAPACITY TO BIND YOUR INSTITUTION TO THIS AGREEMENT. IF YOU DO NOT AGREE WITH THE TERMS AND CONDITIONS OF THIS AGREEMENT, CLICK "I REJECT" AT THE BOTTOM OF THIS AGREEMENT.

This Product License Agreement (the "Agreement") by and between UNIVERSITY OF TENNESSEE RESEARCH FOUNDATION, a non-profit corporation organized and existing under the laws of the State of Tennessee, and having a place of business at 600 Henley Street, UT Conference Center Suite 211, Knoxville, Tennessee 37996 ("UTRF"), and you and your institution ("Licensee") constitutes a legally binding agreement and governs Licensee's use of the Product (as defined below).

1. Definitions.

1.1 "License Fee" means the non-refundable fee paid by Licensee in U.S. dollars as set forth in the official distribution website for the license granted in accordance with the terms and conditions set forth in this Agreement. Licensee is responsible for any and all taxes.

1.2 "Product" means the material developed and produced by the Crystals Center, Center for Materials Processing, College of Engineering at UT and owned or controlled by the University of Tennessee Research Foundation.

1.3 "UT" means the University of Tennessee, a public higher education institution and agency of the State of Tennessee.

2. Product License; Restrictions.

2.1 License. Subject to the terms and conditions of this Agreement and payment of the License Fee, UTRF hereby grants to Licensee, and Licensee hereby accepts, a limited, non-transferable, non-exclusive right and license for research purposes only and to use the Product subject to the restrictions set forth in this Agreement and for the term of the Agreement. Other than the rights in and to the Product granted to Licensee hereunder, Licensee acquires no rights in the Product, including patents, copyrights, trademarks and trade secrets, if any, embodied therein. Licensee agrees to protect the Product in a manner consistent with the maintenance of UTRF's rights therein and to take reasonable action by instruction or agreement with others who are permitted access to the Product to satisfy Licensees obligations hereunder. Licensee agrees

the Product provided hereunder shall be used for non-commercial research only. Licensee shall not use the Product as drugs, food additives, cosmetic, household chemicals, or in research involving any of the foregoing, or in research involving animals.

2.2 Restrictions on Use. Licensee will not use the Product for any commercial purposes and agrees to comply with all local, state, and federal laws, rules, and regulations applicable to the use of the Product in the Licensees research including, but not limited to, laws governing the use of hazardous or radioactive materials, protecting the environment, and the care of laboratory animals. Licensee shall not do or attempt to do any of the following: (i) disassemble or reverse engineer the Product or any part thereof; (ii) utilize the Product in any human or human testing or use; (iii) sublicense, rent, lease, lend, export or otherwise transfer the Product to any third party or to use in any country where prohibited by applicable law (iv) remove or permit to be removed any labeling required by applicable U.S. law or other proprietary, confidential, or copyright notices, markings, or legends, including but not limited to notices required by Export Control laws. Licensee shall only use the Product in accordance with applicable federal, state and local laws and regulations. Licensee agrees and acknowledges that the Product is for basic research use only.

3. **Disclaimers**

3.1 Disclaimer. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, UTRF DOES NOT MAKE AND EXPRESSLY DISCLAIMS ALL WARRANTIES WITH RESPECT TO THE PRODUCT, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, REGARDLESS OF WHETHER UTRF KNOWS OR HAD REASON TO KNOW OF LICENSEE'S PARTICULAR NEEDS.

3.2 Express Disclaimer of Liability. THE PRODUCT IS PROVIDED "AS IS" AND WITHOUT WARRANTY OR REPRESENTATION OF ANY KIND, EXPRESS OR IMPLIED, AS TO THE TITLE, THE DESIGN, FITNESS, CONDITION, CAPACITY, QUALITY, OR ANY OTHER MATTER CONCERNING THE PRODUCT. WITHOUT LIMITING THE FOREGOING, THIS AGREEMENT IS MADE WITHOUT ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WHICH ARE HEREBY EXPRESSLY DISCLAIMED, OR THAT SUCH POSSESSION, USE, OR OPERATION OF THE PRODUCT MAY INFRINGE INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY. LICENSEE EXPRESSLY ACKNOWLEDGE THAT THE PRODUCT SHALL BE USED FOR BASIC RESEARCH PURPOSES ONLY. LICENSEE IS FULLY AWARE OF THE PRODUCT AND ASSUMES ALL RISKS RELATING TO THE USE AND OPERATION OF THE PRODUCT. NEITHER UTRF NOR UT SHALL HAVE ANY LIABILITY FOR CONSEQUENTIAL, EXEMPLARY, INDIRECT, SPECIAL OR INCIDENTAL DAMAGES WHETHER BASED ON CONTRACT, TORT OR ANY OTHER LEGAL THEORY, ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE INABILITY TO USE THE PRODUCT, NOR SHALL UTRF BE LIABLE FOR ANY LOSS OF

DATA OR LOST PROFITS, EVEN IF UTRF IS APPRISED OF THE LIKELIHOOD OF SUCH DAMAGES OCCURRING. UTRF'S TOTAL LIABILITY UNDER THIS AGREEMENT FOR ANY REASON SHALL NOT EXCEED THE AMOUNT OF THE LICENSE FEES PAID UNDER THIS AGREEMENT. LICENSEE ACKNOWLEDGES AND AGREES THAT LICENSING THE PRODUCT FOR THE LICENSE FEES UNDER THIS AGREEMENT REFLECTS THE ALLOCATION OF RISKS EXPRESSED BY (BUT NOT LIMITED TO) THE ABOVE LIMITATIONS OF LIABILITY. MODIFICATION OF SUCH ALLOCATION WOULD AFFECT THE LICENSE FEES CHARGED BY UTRF, AND IN CONSIDERATION OF UTRF CHARGING THE LICENSE FEES, LICENSEE AGREES TO SUCH ALLOCATION OF RISKS.

4. Indemnification

Licensee shall defend, indemnify and hold UTRF and UT and its officers, trustees, faculty, staff, employees, students, agents and their respective successors or assigns ("Indemnified Parties") harmless from and against all claims or lawsuits for personal injury (including death), property damage, and any other losses or claims of any nature, liabilities and expenses (including reasonable attorneys' fees) made against the Indemnified Parties resulting directly or indirectly from the use or possession of the Product by Licensee and with respect to all matters in this Agreement.

5. Assignment.

Licensee shall not assign or transfer this Agreement or the Product, or any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of UTRF. UTRF may assign its rights or obligations hereunder without consent or notice to Licensee. This Agreement shall inure to the benefit of and bind successors and permitted assigns of UTRF and Licensee.

6. Term; Termination.

This Agreement shall become effective on the date Licensee places its order for the Product and the Terms of this Agreement shall remain in effect for the life of the Product. Product will not be shipped until the Licensee has paid in full for the Product.

7. Survival.

Sections 3, 4, 5, and 8 of this Agreement shall survive the expiration or termination of this Agreement.

8. General Provisions.

8.1 Notices. All notices required or permitted relating to a claim or breach of this Agreement shall be in writing and sent to: (i) if to the Licensee: the address provided by Licensee when ordering the Product; and (ii) if to UTRF: Attn: Vice President, 600 Henley Street, Conference Center Suite 211 Knoxville, Tennessee 37996. UTRF may substitute its address from time to time by written notice to the other and shall be deemed validly given upon documented delivery.

All other notices relating to the usage of the Product maybe provided by UTRF either via telephone or e-mail.

8.2. **Governing Law; Severability.** This Agreement is made in Knoxville, Tennessee, U.S.A., and shall be governed by and construed in accordance with the laws of Tennessee. The Parties agree to the exclusive jurisdiction of the courts of Tennessee, without giving effect to provisions thereof regarding conflict of laws. Each party hereto hereby submits to the exclusive jurisdiction of the United States District Court for the Eastern District of Tennessee and of any Tennessee state court sitting in Knoxville, Tennessee for the purposes of all legal proceedings arising out of or relating to this Agreement or the transactions contemplated hereby. Each party hereto irrevocably waives, to the fullest extent permitted by applicable law, any objection which it may now or hereafter have to the laying of the venue of any such proceeding brought in such a court and any claim that any such proceeding brought in such a court has been brought in an inconvenient forum. All agreements, clauses and covenants contained herein are severable, and in the event any of them shall be held to be unconstitutional, invalid, illegal, or unenforceable, the remainder of this Agreement shall be interpreted as if such unconstitutional, invalid, illegal or unenforceable agreements, clauses or covenants were not contained herein.

8.3. **Integration; Waiver; Modification.** The parties hereto acknowledge and agree that they have read this Agreement in its entirety and understand and agree to be bound by all of its terms and conditions, and further agree that this Agreement and any exhibits or schedules hereto constitute a complete and exclusive statement of the understanding between the parties with respect to the subject matter hereof, which supersede any and all other communications between the parties, whether written or oral. Any prior agreements, promises, negotiations or representations related to the subject matter hereof not expressly set forth in this Agreement, or any exhibits or schedules hereto, are of no force and effect. The failure by either party to exercise any right provided hereunder shall not be deemed a waiver of such right. This Agreement may be amended, modified or supplemented only by a writing signed by the parties to this Agreement. Such amendments, modifications or supplements shall be deemed as much a part of this Agreement as if so incorporated herein.

8.4. **Import/Export Restrictions.** Licensee shall comply with all export laws and restrictions and regulations of the United States or foreign agencies or authorities, and shall not export or re-export the Product in violation of any such restrictions, laws or regulations, or without all necessary approvals. This Product was exported from the United States in accordance with the Export Administration Regulations. Diversion contrary to U.S. law is prohibited. Neither the Product nor the underlying information or technology may be downloaded or otherwise exported, re-exported, or transferred (i) into any country subject to U.S. trade sanctions covering the Product, to individuals or entities controlled by such countries, or to nationals or residents of such countries other than nationals who are lawfully admitted permanent residents of countries not subject to such sanctions; (ii) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals and Blocked Persons, the U.S. Commerce Department's Denied Persons List, or the U.S. Commerce Department's Entity List. Licensee agrees to the foregoing and represents and warrants that it complies with these conditions; or (iii) to an end-user engaged in

activities related to weapons of mass destruction (nuclear, chemical, biological, and missile technology).

8.5. Independent Contractor. Nothing contained in this Agreement shall be construed to create a joint venture or partnership between the parties.

8.6. Force Majeure. Neither party hereto shall be liable for any failure or delay in performance of its obligations hereunder by reason of any event or circumstance beyond its reasonable control, including without limitation, acts of God, war, terrorism, riot, strike, labor disturbance, fire, explosion, flood, or shortage or failure of suppliers.

8.7 Licensee Outside the U.S. If Licensee is located outside the U.S., then the provisions of this Section 8.7 shall also apply: (i) The parties confirm that this Agreement and all related documentation is and will be in the English language; and (ii) Licensee is responsible for complying with any local laws in its jurisdiction which might impact its right to import, export or use the Product, and Licensee represents that it has complied with any applicable laws and regulations or registration procedures required by applicable law to make this Agreement enforceable.