

Instructions for Ready-To-Sign Agreement

Stanford Docket S99-204, “Cluster™”, “TreeView™”, “ScanAlyze™” and Stanford Docket S00-019, “XCluster”

1. Decide which software programs your company would like to license from the above list (descriptions are available through the technology search on the OTL web site – <http://otl.stanford.edu>).
2. Please insert the following information into the agreement:
 - • Opening paragraph: today’s date, your company’s name, state of incorporation and primary address.
 - • Sections 2.1: the names of the software programs you wish to license.
 - • Section 5: the annual use fee. The annual use fee for each program is \$5,000. For example, if you elected to license Cluster™ and TreeView™ the total annual use fee would be \$10,000.
 - • Section 10.4: the appropriate contact information for Notices for your company.
3. Have the appropriate officer of the company sign duplicate copies of the agreement.
4. Return two signed copies of the agreement with a check for the license issue royalty due under section 5 to:

Office of Technology Licensing
1705 El Camino Real
Palo Alto, CA 94306-1106
Attention: Director
5. OTL will sign both agreements, keep one for OTL’s records and return the other original to the address and contact noted on the agreement. At the same time, OTL will generate an invoice for the first annual use fee. Once the payment of the initial annual use fee is received by OTL, the software titles that you have elected to license will be made available.
6. If you have any questions about completing the agreement, please contact (650) 723-0651. The favorable licensing royalties included in this Ready-To-Sign agreement apply only if no negotiation is required. If you would like to discuss changes to the Ready-To-Sign agreement there will be an increase in licensing royalties of \$1,000 upfront and \$1,000 per year for each software program included in the license agreement.

SOFTWARE LICENSE AGREEMENT

Effective as of _____ (“Effective Date”), THE BOARD OF TRUSTEES OF THE LELAND STANFORD JUNIOR UNIVERSITY, an institution of higher education having powers under the laws of the State of California (hereinafter “STANFORD”), and _____ a _____ corporation having a primary place of business at _____ (hereinafter “LICENSEE”), agree as follows:

1. BACKGROUND

- 1.1 Certain software, known as XCluster™, Cluster™, TreeView™ and ScanAlyze™, was developed at STANFORD with grant support from the National Institutes of Health.
- 1.2 STANFORD wishes to grant licenses to SOFTWARE, as hereinafter defined, in order that it become available for public use and benefit and LICENSEE wishes to acquire a license to use SOFTWARE pursuant to the terms of this agreement.
- 1.3 STANFORD has distributed SOFTWARE with no provision for support to certain organizations on a nonexclusive, nontransferable basis.
- 1.4 STANFORD has certain rights to the marks “XCluster™”, “Cluster™”, “TreeView™”, and “ScanAlyze™”, individually or collectively known as “Marks” based on STANFORD’s use of the marks to identify SOFTWARE.

2. DEFINITIONS

- 2.1 “SOFTWARE” means the object code in binary form listed in the table below and provided to LICENSEE pursuant to this Agreement.

Title(s):

- 2.2 “Licensed Field of Use” means internal research purposes only. SOFTWARE may not be transferred.

3. GRANT

- 3.1 STANFORD grants, and LICENSEE accepts a worldwide, nonexclusive license to use, copy, and modify SOFTWARE in the Licensed Field of Use.
- 3.2 LICENSEE acknowledges that SOFTWARE is a research tool still in the development stage and that it is being supplied “as is,” without any accompanying services or improvements from STANFORD.
- 3.3 LICENSEE agrees:
 - (a) To maintain the quality of SOFTWARE and otherwise to do such things as are reasonably necessary for the protection and maintenance of the Marks in connection with its use thereof;
 - (b) To affix an appropriate notice of copyright to all copyrightable materials licensed under Paragraph 3.1 hereof, and to do such things as are reasonable to protect and preserve STANFORD’s rights in such copyrights;
 - (c) To exercise due care in protecting SOFTWARE from disclosure to third parties, at least to the degree it exercises care in protecting its own proprietary information; and

(d) To take appropriate action with its employees and consultants to satisfy its obligation under this Agreement with respect to maintaining the above degree of protection for SOFTWARE.

However, LICENSEE shall have no confidentiality obligations with respect to any information if the same or similar information is or becomes within the public domain through no act of LICENSEE in breach of this Agreement, is independently developed by LICENSEE, or is received unrestricted from another source who was not under an obligation of confidentiality to STANFORD.

- 3.4 LICENSEE agrees that the object code is for internal use only and that LICENSEE will not distribute or transfer the object code outside of LICENSEE.

4. GOVERNMENT RIGHTS

STANFORD may distribute all of SOFTWARE, for such use or further distribution as may be reserved, required, or permitted by U.S. Government grants or any applicable law or regulation or contractual obligation of STANFORD relating thereto, and LICENSEE agrees to take all action necessary on its part as licensee of STANFORD to enable STANFORD to comply with such obligations. LICENSEE is not otherwise required by this Agreement to provide any services related to such distribution.

5. ROYALTIES

In consideration of the license granted herein, and beginning on the Effective Date of this Agreement and each anniversary thereafter, LICENSEE shall pay to STANFORD a non-refundable, noncreditable license annual use fee of _____ . Said payment to STANFORD shall be in U.S. Dollars and shall be net of all non-U.S. taxes.

6. NEGATION OF WARRANTIES

- 6.1 Nothing in this Agreement shall be construed as:

- (a) A warranty or representation that anything made, used, sold, or otherwise disposed of under any license granted in this Agreement is or will be free from infringement of patents, copyrights, and trademarks of third parties;
- (b) Conferring rights to use in advertising, publicity, or otherwise any trademark or the name of “STANFORD”; or
- (c) Granting by implication, estoppel, or otherwise any licenses or rights under patents of STANFORD.

6.2 Except as expressly set forth in this Agreement, STANFORD MAKES NO REPRESENTATIONS AND EXTENDS NO WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED. THERE ARE NO EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR THAT THE USE OF THE SOFTWARE WILL NOT INFRINGE ANY PATENT,

COPYRIGHT, OR TRADEMARK, OR OTHER RIGHTS OR ANY OTHER EXPRESS OR IMPLIED WARRANTIES.

7. INDEMNITY

- 7.1 LICENSEE agrees to indemnify, hold harmless, and defend STANFORD and Stanford Hospitals and Clinics and their respective trustees, officers, employees, students, and agents against any and all claims for death, illness, personal injury, property damage, and improper business practices arising out of the use of SOFTWARE by LICENSEE.
- 7.2 STANFORD shall not be liable for any indirect, special, consequential, or other damages whatsoever, whether grounded in tort (including negligence), strict liability, contract, or otherwise.
- 7.3 LICENSEE shall at all times comply, through insurance or self-insurance, with all statutory workers' compensation and employers' liability requirements covering any and all employees with respect to activities performed under this Agreement.

8. STANFORD NAMES AND MARKS

Except as provided for within this Agreement with respect to Marks, LICENSEE agrees not to identify STANFORD in any promotional advertising or other promotional materials to be disseminated to the public or any portion thereof or to use the name of any nonconsenting STANFORD faculty member, employee, or student, or any trademark, service mark, trade name, or symbol of STANFORD, Stanford Hospitals and Clinics, or that is associated with any of them, without STANFORD's prior written consent.

9. TERMINATION

- 9.1 This Agreement may be terminated by LICENSEE upon thirty (30) days written notice to STANFORD.
- 9.2 This Agreement may be terminated by STANFORD if after at least thirty (30) days written notice by STANFORD as to the nature of noncompliance to any terms of this Agreement, LICENSEE is still in noncompliance.
- 9.3 Surviving any termination are:
 - (a) The provisions of Articles 6, 7 and 8; and
 - (b) Any cause of action or claim of LICENSEE or STANFORD, accrued or to accrue, because of any breach or default by the other party.
- 9.4 Concurrent with termination by either LICENSEE or STANFORD, LICENSEE agrees to return, or destroy, all copies of SOFTWARE in its possession.

10. MISCELLANEOUS

- 10.1 Export: LICENSEE warrants that LICENSEE will not export or re-export, directly or indirectly, to any country except when such export or re-export is authorized in full compliance with the laws and regulations of the United States of America.
- 10.2 Assignment: This Agreement may not be assigned.

10.3 Arbitration: Any controversy arising under or related to this Agreement, and any disputed claim by either party against the other under this Agreement excluding any dispute relating to the copyright validity or infringement arising under this Agreement, shall be settled by arbitration in accordance with the Licensing Agreement Arbitration Rules of the American Arbitration Association.

10.4 Notices: All notices shall be deemed to have been fully given when done in writing and deposited in the United States mail, registered or certified, and addressed as follows:

To STANFORD: Office of Technology Licensing
Stanford University
1705 El Camino Real
Palo Alto, CA 94306-1106
Attention: Director

To LICENSEE: _____

Attention: _____

Either party may change its address upon written notice to the other party.

- 10.5 Waivers: None of the terms, covenants, and conditions of this Agreement can be waived except by the written consent of the party waiving compliance.
- 10.6 Applicable Law: This Agreement shall be construed, interpreted, and applied in accordance with the laws of the State of California.
- 10.7 Electronic Copy: The parties to this document agree that a copy of the original signature (including an electronic copy) may be used for any and all purposes for which the original signature may have been used. The parties further waive any right to challenge the admissibility or authenticity of this document in a court of law based solely on the absence of an original signature.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate originals by their duly authorized officers or representatives.

THE BOARD OF TRUSTEES OF THE LELAND STANFORD JUNIOR UNIVERSITY

Signature _____
Name _____
Title _____
Date _____

LICENSEE
Signature _____
Name _____
Title _____
Date _____