

## SOFTWARE LICENSE AGREEMENT

This Agreement, effective this \_\_\_\_\_ day of \_\_\_\_\_ is made by and between \_\_\_\_\_ (hereinafter referred to as "LICENSEE"), having a principal place of business at \_\_\_\_\_ and THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, a California corporation, having statewide administrative offices at 2200 University Avenue, Berkeley, California 94720, U.S.A. through its delegate, the University of California at San Francisco, having offices at Third and Parnassus Avenues, San Francisco, California 94143, U.S.A. (hereinafter referred to as "REGENTS").

### WITNESSETH:

WHEREAS, "CORMA" and "MARDIGRAS" are programs to carry out two-dimensional nuclear Overhauser effect spectral calculations for studies of molecular structure developed by the University of California, San Francisco, for research purposes; and

WHEREAS, LICENSEE desires a license to use for research purposes the computer programs known as CORMA and MARDIGRAS, and REGENTS is willing to grant such a license; and

NOW, THEREFORE, for and in consideration of the mutual covenants and undertakings hereinafter set forth, and other good and valuable consideration, it is agreed as follows:

#### 1. GRANT

1.1 REGENTS grants and the LICENSEE accepts, upon the terms and conditions hereinafter set forth, a non-exclusive, non-transferable license to use the program or series of pro-

grams known as CORMA and MARDIGRAS (hereinafter jointly referred to as the "PROGRAM") and such associated documentation as REGENTS reasonably has available for use of the PROGRAM. Any publication resulting from the use of this program should acknowledge the use of CORMA or MARDIGRAS in the research.

## 2. PROGRAM

2.1 REGENTS is providing the PROGRAM at LICENSEE's request solely as "research data" on an "as is, with all defects" basis, without maintenance, debugging, support or improvement.

2.2 The PROGRAM furnished hereunder shall consist of object code.

2.3 The associated PROGRAM documentation furnished hereunder shall consist of a computer file containing the description of the programming system and its commands.

2.4 The parties agree that any copyright in the PROGRAM and associated documentation furnished hereunder is owned by REGENTS; the LICENSEE shall take all reasonable precautions to preserve any REGENTS' copyright therein.

2.5 LICENSEE agrees that any changes or improvements made in the PROGRAM will be made available to REGENTS and that such improvements or changes may be used without restriction by REGENTS for any purpose whatsoever. REGENTS agree to acknowledge such improvements or changes in the body of the PROGRAM and documentation.

## 3. LICENSE RESTRICTIONS

3.1 The LICENSEE shall be entitled to use the PROGRAM only on the computer systems specified in paragraph 6. The LICENSEE may copy the PROGRAM as prudent for backup purposes, which copies are not to exceed two (2) in number at any time.

#### 4. TERM & ASSIGNMENT

4.1 This agreement shall become effective on the date that it is accepted by REGENTS and shall remain in effect until either REGENTS or LICENSEE choose to terminate it upon 30 days written notice to the other party or until three (3) years have elapsed from the effective date; provided, however, that unless the agreement is terminated by REGENTS on account of a material breach thereof by LICENSEE, LICENSEE shall be entitled to continue to use the PROGRAM or series of PROGRAMS in perpetuity without further payment to REGENTS.

4.2 The parties hereto agree that the LICENSE granted hereunder, and the licensed PROGRAM and documentation may not be assigned, sublicensed or otherwise transferred by the LICENSEE.

#### 5. TRANSFER FEE

5.1 LICENSEE agrees to pay in advance a transfer fee of \$4,000 for both CORMA and MARDIGRAS, or \$1500 if a license fee for CORMA has already been paid (profit-making organizations). All fees are waived for non-profit-making organizations. Payment in the form of a check should be made to "Regents, University of California" and mailed along with a completed form of this license agreement to Prof. Thomas L. James, Box 0446, University of California, San Francisco, CA 94143-0446, U.S.A.

#### 6. COMPUTER SYSTEMS

6.1 The parties hereto agree that the licensed PROGRAM shall be used by the LICENSEE on the following computer system(s). Identify the types of computer hardware, processor serial numbers, and physical locations:

Computer System

Serial Number

Location (**IP Address**)

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6.2 In no event shall the LICENSEE use, without prior written approval of REGENTS, the PROGRAM on any computer system on which the LICENSEE purchases or sells computer services. Any requests for use on "commercial" computers shall disclose the nature and degree of protection to be afforded the PROGRAM.

7. DELIVERY OF SOFTWARE

7.1 Upon acceptance of this Agreement by LICENSEE, REGENTS agrees to deliver one (1) copy of the PROGRAM and associated documentation as set forth in Paragraph 1 hereof to the LICENSEE.

7.2 The LICENSEE agrees to accept the PROGRAM as delivered, and it is understood that REGENTS will provide no maintenance, installation services, debugging, improvements or support of any kind, and REGENTS accept no liability for any damage to the PROGRAM and its backup copies.

7.3 The name, postal address, telephone number, and *bitnet*, *arpanet* or *telnet* address of the LICENSEE's primary user of the PROGRAM are

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8.           LIMITATION OF LIABILITY

8.1           REGENTS make no warranties, either expressed or implied, as to any matter whatsoever, including without limitation, the condition of the PROGRAM, merchantability, or fitness for any particular purpose. REGENTS shall not be liable for any direct, consequential, or other damages suffered by the Licensee or any others resulting from the use of the PROGRAM.

9.           TITLE

9.1           REGENTS reserve the right to grant any rights to the PROGRAM to other persons or entities upon such terms and conditions as REGENTS shall determine in their sole discretion.

9.2           The LICENSEE agrees not to alter, change, or remove from the PROGRAM any identification, including copyright and trademark notices, which indicate ownership thereof by REGENTS.

10.          USE RESTRICTIONS

10.1          The LICENSEE agrees that the PROGRAM shall be protected from all unauthorized use.

10.2 The LICENSEE agrees not to knowingly duplicate, provide, or otherwise make available the PROGRAM or any other material provided in support of the PROGRAM, including but not limited to documentation and the PROGRAM code, in any form, to any person, party, or entity without the prior written consent of REGENTS. Such prohibitions shall not apply to disclosure by the LICENSEE to its employees and consultants to the extent that such disclosure is reasonably necessary to the LICENSEE's use of the PROGRAM.

10.3 The LICENSEE is responsible to take appropriate action with respect to its employees and consultants, by agreement or otherwise, to satisfy its obligations under this Agreement with respect to use, copying, transference, protection, and security of the PROGRAM, and any other materials provided by REGENTS to the LICENSEE as a result of this Agreement.

10.4 It is agreed that the rights and privileges granted LICENSEE are each and all expressly conditioned upon the faithful performance by LICENSEE of every requirement herein contained, and that each of such conditions and requirements are specific license restrictions. Failure on the part of LICENSEE shall be adequate grounds for REGENTS to terminate license.

10.5 The LICENSEE agrees that the PROGRAM shall not be transferred to any computer facilities other than those specified in Paragraph 6 without the prior written consent of REGENTS.

10.6 The LICENSEE agrees that no reverse compilation will be performed in an endeavor to obtain source code.

## 11. EFFECT OF TERMINATION

11.1 Upon termination of this Agreement by either party, LICENSEE agrees to immediately discontinue all use of license PROGRAM and to return all documentation and all copies of the PROGRAM to REGENTS.

11.2 LICENSEE acknowledges that money damages alone are inadequate to compensate REGENTS for any breach by LICENSEE of this Agreement. Therefore, in the event of a breach or threatened breach of any provision of this Agreement by LICENSEE, REGENTS may, in addition to all other remedies, immediately obtain and enforce injunctive relief prohibiting the breach or compelling specific performance.

## 12. GOVERNING LAW

12.1 This Agreement shall be governed by the laws of the State of California as applied to contracts made and to be performed in California.

## 13. SEVERABILITY

13.1 Should any provisions of this Agreement be held unenforceable or in conflict with the law of any jurisdiction, then the validity of the remaining provisions shall not be affected by such a holding.

## 14. NOTICE

14.1 Any notice required by this Agreement shall be deemed to have been properly received when delivered in person or when mailed by registered first class mail to the addresses given below.

To REGENTS:

Prof. Thomas L. James  
Box 0446  
University of California  
San Francisco, CA 94143-0446  
U.S.A.

To LICENSEE:

15. HEADINGS

15.1 The headings herein are for reference purposes only and shall not constitute a part hereof or be deemed to limit or expand the scope of any provision or used to interpret construction of this agreement.

16. COMPLETE AGREEMENT

Alterations of or additions to this Agreement shall be made in writing and duly executed by a representative of both parties.

16.2 The Agreement cancels and supercedes all previous statements, verbal or written, concerning the dealing between the parties regarding the rights granted hereunder and represents the complete agreement between the parties with respect to those rights.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the dates given below.

Signature: \_\_\_\_\_ Signature: \_\_\_\_\_

For LICENSEE

For REGENTS

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