

GCTOOL COMMERCIAL SOFTWARE LICENSE AGREEMENT

This Agreement, is made between The University of Chicago as operator of Argonne National Laboratory under Contract No. W-31-109-ENG-38 ("Licensor") with the U.S. Department of Energy ("DOE"), and the undersigned licensee ("Licensee").

1. Definitions. The following definitions apply herein:

- (a) "Licensed Program" means computer software in object code generally referred to as "GCTool Version 2.0"
- (b) "Licensed Copy" means a duplication of all or some portion of the Licensed Program that is either (a) furnished by Licensor or (b) made by Licensee in accordance with this Agreement.
- (c) "User Limitation" means maximum number of Licensed Copies for which License Fee has been paid, to be used by employees (but not affiliates, consultants or contractors) of Licensee. If Licensee Fee for Site License has been paid, then an unlimited number of copies may be used by employees at the site specified beneath Licensee's signature below.
- (d) "License Fee" is a payment calculated in accordance with Exhibit A - Price List, attached hereto and incorporated herein.

2. License Grant

(a) Subject to the terms and conditions hereof, Licensor hereby grants and Licensee accepts, a non-exclusive right and license to use and copy Licensed Program, subject to the User Limitation. Licensee shall not have the right to relicense, sell, transfer or assign the Licensed Program. Licensee shall not permit the Licensed Program to be used by parties outside Licensee's organization.

(b) The right and license in (a) above is subject to the following limited license granted by Licensor to the U.S. Government:

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3. Duplication by Licensee

Licensee shall not duplicate Licensed Program without the prior written consent of Licensor except as expressly provided herein and for the purpose of creating a reasonable number of back-up copies. At Licensor's request, Licensee will provide Licensor with a listing of the number of Licensed Copies of Licensed Program currently in possession or control by Licensee. All copyright notices, disclaimers, notices of Government sponsorship and license rights, and other identifications must also be duplicated when duplicating the Licensed Program.

4. Effective Date

The right and license granted herein shall commence on the date the Licensed Program is electronically delivered ("Effective Date"). Licensor shall make the Licensed Program available for electronic delivery promptly following receipt by Licensor of this Agreement signed on behalf of Licensee. Magnetic media will be shipped at Licensee's expense upon written request.

5. Maintenance and Support

All installation of the Licensed Program for use by Licensee will be by and at the sole expense of Licensee. Licensor has no duty at any time to provide technical support, or to debug, maintain, customize, or enhance the Licensed Program. However, Licensor may, at its sole discretion, offer future enhancements or Licensor controlled upgrade versions to Licensee without cost or at a price that will be determined on a case-by-case basis.

6. Termination

The rights and licenses granted herein shall continue in perpetuity, conditioned upon Licensee's receipt of the License Fee within forty-five (45) days after the Effective Date; failure to pay the License Fee within forty-five (45) days of the Effective Date will terminate this Agreement. This Agreement is also subject to termination by Licensor if Licensee becomes insolvent, declares bankruptcy, or a receiver or trustee is appointed for Licensee. In addition, either party may terminate this Agreement with written notice upon the occurrence of a default or breach by the other party in any of its obligations under this Agreement, provided such default or breach continues for more than thirty (30) days after receipt by such other party of notice; provided, however, there shall be no such cure period with respect to any breach of Licensee's obligation under Section 9 hereto. Upon termination of this Agreement under this Section 6, Licensee agrees to cease using the Licensed Program and to return all Licensed Copies of the Licensed Program to Licensor, or to certify to Licensor that it has destroyed all such Licensed Copies.

7. Limited Warranty

(a) Licensor warrants for forty-five (45) days after shipment that any recording media by which a Licensed Program is furnished is free of manufacturing defects and damage provided that the media has been properly installed by Licensee. Licensee does not warrant that any Licensed Program will meet Licensee's requirements nor will be error free. Notwithstanding Licensor's receipt of the License Fee as provided in Section 6 above, as Licensee's sole and exclusive remedy for breach of the warranty herein, Licensor will provide a suitable replacement media containing the Licensed Program.

(b) EXCEPT AS PROVIDED ABOVE, NEITHER THE UNITED STATES, NOR THE UNITED STATES DEPARTMENT OF ENERGY, NOR THE UNIVERSITY OF CHICAGO, NOR ARGONNE NATIONAL LABORATORY, NOR ANY OF THEIR EMPLOYEES, MAKES ANY WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, OR ASSUMES ANY LEGAL LIABILITY OR RESPONSIBILITY FOR THE ACCURACY, COMPLETENESS OR USEFULNESS OF ANY INFORMATION, APPARATUS, PRODUCT OR PROCESS DISCLOSED FOR ANY PURPOSE (WHETHER OR NOT KNOWN, OR HAVING REASON TO KNOW, HAVING BEEN ADVISED, OR OTHERWISE IN FACT AWARE OF ANY SUCH PURPOSE) OR THAT ITS USE WOULD NOT INFRINGE PRIVATELY OWNED RIGHTS. IN ADDITION, SAID PARTIES EXPRESSLY DISCLAIM ANY WARRANTY OR REPRESENTATION TO ANY PERSON OTHER THAN LICENSEE WITH RESPECT TO THE LICENSED PROGRAM, OR ANY PORTION THEREOF.

(c) IN NO EVENT WILL SAID PARTIES BE LIABLE FOR ANY INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES RESULTING FROM EXERCISE OF THIS AGREEMENT OR LICENSEE'S USE OF THE LICENSED PROGRAM. THE PARTIES ACKNOWLEDGE THAT THE LICENSE FEE REFLECTS AN AGREED ALLOCATION OF RISK BETWEEN THE PARTIES AND THE LIMITATION OF LIABILITY SPECIFIED HEREIN.

(d) Licensor is unaware of any third party intellectual property rights that the Licensed Program will infringe. Licensee's sole and exclusive remedy with respect to allegations or proof of infringement of third party intellectual property rights by the Licensed Program and/or its use by Licensee, regardless of any alleged negligent misrepresentation or any other alleged breach of this Agreement by Licensor, to the exclusion of all other remedies therefore will be for Licensor to refund to Licensee an amount equal to the License Fee.

8. Indemnity

Licensee indemnifies the U.S. Government, The University of Chicago, Argonne National Laboratory, and their trustees, officers, employees and agents, for all damages, costs, and expenses, including attorneys' fees, arising from personal injury or property damage to third parties occurring as a result use of the Licensed Program by Licensee, including but not limited to the making, using, selling, or exporting of products, processes, or services derived therefrom. This indemnification shall include, but not be limited to, indemnification for any product liability. Licensee's indemnification obligations arising hereunder shall apply irrespective as to whether such damages, costs and expenses arise or are alleged to arise, directly or indirectly, from the participation, whether

active or passive, or negligence, whether ordinary or gross, of such parties, their employees, agents, or other personnel.

9. Protection of Licensed Program

Except as expressly provided herein, Licensee receives no rights to and will not sell, assign, lease, market, transfer, encumber, or otherwise suffer to exist any lien or security interest on, or allow any third person, firm, corporation, other entity to use, copy, or reproduce in whole or in part in any manner the Licensed Program. Licensee shall use its best efforts to insure that no unauthorized copy, in whole or in part, in any form shall be made of the Licensed Program. Licensee shall not permit any user to modify, reverse-engineer or disassemble any part of the Licensed Program.

10. Taxes

Licensee will pay or reimburse all federal, state, local or other taxes, including but not limited to, sales, use, added value, or excise taxes, or amounts levied in lieu thereof, based on fees and charges payable under this Agreement or based on Licensee's use of the Licensed Program.

11. EXPORT

LICENSEE AGREES AND CERTIFIES THAT IT WILL NOT EXPORT OR RE-EXPORT, DIRECTLY OR INDIRECTLY, THE LICENSED PROGRAM CONTRARY TO THE LAWS AND REGULATIONS OF THE UNITED STATES OR ANY OTHER COUNTRY.

12. Assignment

Except as expressly provided herein, Licensee may not assign, sublicense, or otherwise transfer its rights, duties or obligations under this Agreement to any other party or entity, in whole or in part, without the prior written consent of Licensor.

13. Entire Agreement

This Agreement constitutes the entire agreement between the parties and supersedes all prior or contemporaneous agreements or representations, written or oral, concerning the subject matter of this Agreement. No modification or amendment to this Agreement will be valid or binding unless reduced to writing and duly executed by the party or parties to be bound thereby.

14. Notices

Notices to Licensee shall be sent to the address specified beneath Licensee's signature below and to Licensor to: Director, Office of Technology Transfer, Argonne National Laboratory, 9700 South Cass Avenue, Argonne IL 60439. Notice shall be deemed effective on the date of delivery if delivered by personal delivery (including overnight mail by private carrier) or on the date of mailing if delivered by certified mail.

15. Miscellaneous

(a) Nothing in this Agreement shall be construed as conferring any right to use in advertising, publicity, or other promotional activities any name, tradename, trademark, or other designation of any party hereto or of Argonne National Laboratory, The University of Chicago, the U.S. Department of Energy, the U.S. Government, or any employees thereof, and any contraction, abbreviation, or simulation of any of the foregoing.

(b) The headings of the several sections of this Agreement are included for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement.

(c) In the absence of applicable Federal law, this Agreement shall be interpreted and construed in accordance with the laws of the State of Illinois.

(d) The failure or forbearance by Licensor or Licensee to enforce any right or claim against the other party shall not be deemed to be a waiver by Licensor of a claim or right or claim hereunder. The waiver by Licensor or Licensee of a breach hereof shall not operate or be construed as a waiver of any subsequent breaches of the same or any other provision.

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(e) If any of the provisions of this Agreement are determined to be invalid or unenforceable, such invalidity or unenforceability will not invalidate or render unenforceable the remainder of the Agreement, but rather the entire agreement will be construed as if not containing the particular invalid or unenforceable provision or provisions, and the rights and obligations of the parties hereto shall be construed and enforced accordingly. The parties hereby acknowledge that if any provision of this Agreement is determined to be invalid and unenforceable, it is their desire and intention that such provision be reformed and construed in such a manner that it will, to the maximum extent practicable, be deemed valid and enforceable.

IN WITNESS WHEREOF, the parties have signed this Agreement on the dates indicated below, the later of such dates being the effective date of this Agreement.

LICENSEE

Company Name:

By _____
(Signature)

Name: _____
(Typed)

Title: _____

Date: _____

THE FOLLOWING INFORMATION MUST BE COMPLETED BY LICENSEE:

NOTICE NAME AND ADDRESS:

COMPLETE IF THIS IS A SITE LICENSE:

SITE:

**THE UNIVERSITY OF CHICAGO,
AS OPERATOR OF ARGONNE NATIONAL LABORATORY**

By: _____

Dennis E. Bugielski
Manager, Procurement Department

Date: _____

TO BE COMPLETED BY LICENSOR:

NUMBER OF COPIES: _____

LICENSE FEE PAID: _____

DATE RECEIVED: _____

SITE LICENSE: ___ YES ___ NO

IPA # _____

Exhibit A - Price List

License Fee for Site License:

\$23,000 U.S. Dollars

License Fees for 1 to 3 Licensed Copies:

Number of Licensed Copies	License Fee U.S. Dollars
1	\$ 8,000
2	\$ 15,000
3	\$ 20,000

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