

DATED [.....]

(1) OXFORD UNIVERSITY

-and-

(2) [

]

SOFTWARE LICENCE AGREEMENT

for the

HOMA 2 CALCULATOR: API

THIS AGREEMENT dated (the "Effective Date") is made BETWEEN:

The Chancellor, Masters and Scholars of the University of Oxford whose administrative offices are at the University Offices, Wellington Square, Oxford OX1 2JD, England (the "Licensor"); and

[.....]

a company registered in

[.....]

under number [.....]

and whose registered office is at

[.....] (the "Licensee").

BACKGROUND

The Licensor wishes to license the Licensed Technology for non-commercial purposes and the Licensee wishes to acquire a licence to the Licensed Technology, on the terms of this agreement.

AGREEMENT

1. INTERPRETATION

1.1 Words and expressions used in this agreement have the meaning set out in schedule 1 of this agreement.

2. GRANT OF LICENCE

2.1 The Licensor grants to the Licensee a non-exclusive licence to use the Licensed Technology for the Purpose in the Territory through the grant of End User Sub-licences in the Field. The Licensee shall procure that all End User Sub-licences comply with the provisions of this agreement. For the avoidance of doubt the Licensed Technology is for use by health care professionals to assist in the assessment of beta cell function and insulin sensitivity. It may be of assistance in the management of dysglycaemia or Type 2 diabetes but is not a replacement for formal medical assessment and not intended for use by patients unless in consultation with their trained medical adviser.

3. PERMITTED USE OF THE SOFTWARE

3.1 The Licence permits the Licensee to use the Licensed Technology for the Purpose.

3.2 The Licensee will ensure that:

3.2.1 the term "HOMA 2 Calculator © Oxford University" appears prominently on the monitor screen when the Software is being used.

3.3 The use of the Software shall be restricted to the Field and no other use of the Software by the Licensee is permitted without the prior written consent of the Licensor, which consent may be withheld by the Licensor at its sole discretion.

- 3.4 The Licensee may make any copies of the Software as are reasonably necessary for operational security and lawful use. Such copies and the media on which they are stored shall be the property of the Licensor.
- 3.5 Except to the extent permitted by law, the Licensee shall not decompile, reverse engineer, disassemble or otherwise derive the source code of the Software nor permit any third party to do so.
- 3.6 Save as otherwise provided, the Licensee shall not, and shall not permit any third party to, copy, make error corrections to or otherwise modify or adapt the Software nor create derivative works based upon the Software. Further, the Licensee shall not permit any part of the Software to be combined with or become incorporated in any other computer programs which, for the avoidance of doubt, shall include the incorporation of the Licensed Technology within the Licensee's proprietary software or software which is available for use to the Licensee under a separate licence ("Embedded Licensed Technology"), where the Licensee intends to make available for download from a publicly accessible website
- 3.7 The Licensee shall effect and maintain adequate security measures to safeguard the Software for access to or use by unauthorised persons and ensure that the Software and all copies are kept under its control and shall notify the Licensor immediately on becoming aware of any unauthorised use of the Software by any person.
- 3.8 The Licensee shall permit the Licensor or its authorised representative or agent to inspect, audit and have access to any premises and equipment where the Software has been downloaded to ensure that the Licensee is complying with its obligations under this Agreement.

4. INFRINGEMENT

- 4.1 Each party will notify the other in writing of any misappropriation or infringement of any Intellectual Property Rights in the Licensed Technology of which the party becomes aware.

5. DURATION AND TERMINATION

- 5.1 The Licence shall commence on the Effective Date and shall continue until this Agreement is terminated under this clause 5.
- 5.2 This Agreement may be terminated at any time by the Licensor serving written notice on the Licensee in the event that:
 - 5.2.1 the Licensee commits a material breach of this Agreement which is irremediable or, if remediable, which the Licensee fails to remedy within 30 days following written notice specifying the breach;
 - 5.2.2 the Licensee has a petition presented for its winding-up, or passes a resolution for voluntary winding-up otherwise than for the purposes of a bona fide amalgamation or reconstruction, or compounds with its creditors, or has a receiver or administrative receiver appointed of all or any part of its assets, or enters into any arrangements with creditors, or takes or suffers any similar action in consequent of debts including any other similar event or arrangement anywhere in the world.
- 5.3 On termination (for whatever reason) of this agreement, the Licensee shall immediately:

- 5.3.1 delete the Software from all equipment and return to the Licensee, or destroy at the Licensor's option, all other copies of the Software in its possession or control;
- 5.3.2 cease using the Licensed Technology (other than to satisfy contractual commitments existing as at the date of termination).
- 5.4 Termination shall be without prejudice to the rights or remedies of the Licensor accrued prior to, or accruing after, termination nor shall it affect any provision which is expressly or by implication intended to survive termination.

6. DELIVERY AND INSTALLATION

- 6.1 The Licensee shall obtain a copy of the Software by secure download from the website.
- 6.2 Installation instructions are provided on the Website and the Licensee shall be responsible for installing the Software.
- 6.3 In the event that the Licensee requests reasonable advice from the Licensor in connection with the installation of the Software the Licensor shall provide such advice by email free of charge to the Licensee for a period of four weeks from the date of this Licence.

7. CORRECTIONS

- 7.1 The Licensor may from time to time make minor modifications to the Software or Corrections of a general nature available to the Licensee. However the Licensor:
 - 7.1.1 is not obliged to make any minor modifications to the Software or Corrections available to the Licensee; and
 - 7.1.2 is not obliged to notify the Licensee in the event that any minor modifications to the Software or Corrections are made available

8. LIMITATION OF LIABILITY

- 8.1 Except as provided above, the Licensed Technology is provided "as is" and without warranty of any kind, either express or implied, including, but not limited to, the implied warranties of merchantability and fitness for a particular purpose, non-infringement, or that the Software will operate error-free. The entire risk as to the quality and performance of the Software is with the Licensee and all warranties, conditions and undertakings and terms are excluded to the fullest extent permitted by law.
- 8.2 The Licensee agrees to indemnify the Licensor and hold the Licensor harmless from and against any and all claims, damages and liabilities asserted by third parties and arising from the licensing or use of the Licensed Technology by the Licensee and those deriving title through the Licensee, including End User Sub-licensees.
- 8.3 The Licensor makes no representation or warranty that advice given to the Licensee pursuant to this agreement by any employee, student, agent or appointee of the Licensor or of the University, or the use of any works, designs or information which they, the Licensor or the University provide in connection with this agreement, will not result in infringement of third-party rights.
- 8.4 The Licensee undertakes to make no claim against any employee, student, agent or appointee of the Licensor or of the University, being a claim which seeks to enforce against any of them any liability whatsoever in connection with this agreement or its subject-matter.

- 8.5 The liability of either party for any breach of this agreement, or arising in any other way out of the subject- matter of this agreement, will not extend to loss of business or profits or any incidental or consequential damages or losses.
- 8.6 In any event, the maximum liability of the Licensor to the Licensee under or otherwise in connection with this agreement or its subject-matter shall not exceed the return of all payments made by the Licensee under this agreement, together with interest on the balance of such moneys from time to time outstanding, accruing from day to day at the Barclays Bank Plc base rate from time to time in force, compounded annually as at 31 December.
- 8.7 If any sub-clause of this clause 8 is held to be invalid or unenforceable under any applicable statute or rule of law, then it shall be deemed to be omitted, and if as a result any party becomes liable for loss or damage which would otherwise have been excluded, then such liability shall be subject to the remaining sub-clauses of this clause 8.

9. FORCE MAJEURE

- 9.1 If the performance by either party of any of its obligations under this agreement shall be prevented by circumstances beyond its reasonable control, then such party shall be excused from performance of that obligation for the duration of the relevant event.

10. CONFIDENTIALITY

- 10.1 The Licensee shall treat as confidential and keep secret the existence and terms of this agreement all information contained or embodied in the Software and all other information disclosed to the Licensee by the Licensor or by the Author in connection with this agreement and shall not without the prior written consent of the Licensee use or disclose, whether directly or indirectly, such information to any other person save to those of its officers, employees, agents and contractors and End User Sub-licensees as is strictly necessary to carry out the purposes of this agreement, provided that:
- 10.1.1 the Licensee shall ensure such persons are made aware prior to disclosure the confidential nature of the information and ensure that they maintain in confidence the information to the same extent at least as the Licensee is bound under this agreement;
- 10.1.2 the Licensee shall promptly notify the Licensor if it becomes aware of any breach of confidence by any person to whom the Licensee discloses any such information and shall give the Licensor all reasonable assistance in connection with any action the Licensor may take against such persons.
- 10.2 The Licensee shall indemnify the Licensor against any loss or damage which the Licensor may suffer as a result of breach of confidence imposed by this clause 10.
- 10.3 The obligations set out in this Clause 10 shall remain unaffected by the expiry or termination of this agreement but shall not apply to any information which is or may come into the public domain otherwise than through unauthorised disclosure or was rightfully in the Licensee's possession prior to disclosure.

11. PUBLICATIONS AND ADVERTISING

- 11.1 The Licensee acknowledges and agrees that the Software constitutes proprietary information and intellectual property of the Licensor, whether or not the Software is or may be the subject of a valid copyright, patent or trademark.

- 11.2 The Licensee shall not publish any press release or promotional material relating to the Software without obtaining the prior written consent of the Licensor. Any such press releases or promotional material shall identify the Software as "HOMA 2 Calculator" and shall state that the Software is copyright material used under licence from the Licensor.
- 11.3 The Licensee may publish results obtained from, dependent on or arising out of the use of the Software provided that:
- 11.3.1 any such publication shall be accompanied by a statement describing the Software as "HOMA 2 Calculator", identifying the Software as the source of the results and stating that the Software is copyright material used under licence from the Licensor; and
- 11.3.2 the Licensee shall send a copy of any such publication of results to the Licensor.
- 11.4 The Licensee must not use the name of the Licensor, the University or the Author in any advertising, promotional or sales literature, without the Licensor's prior written approval.

12. INTELLECTUAL PROPERTY RIGHTS

- 12.1 The Licensee acknowledges and agrees that no title to or ownership of the Licensed Technology is transferred to the Licensee by this agreement and that all Intellectual Property Rights in the Licensed Technology remain the property of the Licensor.

13. GENERAL

- 13.1 Clause headings are inserted in this Agreement for convenience only, and they shall not be taken into account in the interpretation of this Agreement.
- 13.2 Nothing in this Agreement shall create, imply or evidence any partnership or joint venture between the Licensor and the Licensee or the relationship between them of principal and agent.
- 13.3 This agreement constitutes the entire agreement between the parties with regard to the Licence. Specifically, but without limitation, this agreement does not impose or imply any obligation on the Licensor or the University to conduct development or consulting work: any arrangements for such work shall be the subject of a separate agreement between the University and the Licensee.
- 13.4 Any variation of this agreement shall be in writing and signed by authorised representatives for both parties.
- 13.5 The Licensee shall not assign or transfer any rights, duties or obligations under this agreement without the prior written approval of the Licensor.
- 13.6 The Licensor's representative for the purpose of receiving notices shall until further notice be: The Director, Research Services, University Offices, Wellington Square, Oxford OX1 2JD, England. All notices to be sent to the Licensee under this agreement should be sent, until further notice, to the Licensee's Contact and Address detailed in Schedule 2.
- 13.7 English Law shall govern this agreement. The English Courts shall have exclusive jurisdiction to deal with any dispute, which may arise out of or in connection with this agreement.

- 13.8 The parties to this agreement intend that by virtue of the Contracts (Rights of Third Parties) Act 1999 the University of Oxford and the persons referred to in Clause 8.3 shall be able to enforce Clause 8.3 as if they were a party to the agreement.
- 13.9 If any one or more clauses of this Agreement would result in the agreement being prohibited pursuant to any applicable competition or anti-trust laws, then it or they shall be omitted. The parties shall uphold the remainder of this agreement, and shall negotiate an amendment, which, as far as legally feasible, maintains the economic balance between the parties.

SCHEDULE 1 - DEFINITIONS (Clause 1)

Author means the authors of the Software identified in schedule 2 of this agreement.

Confidential Information means in relation to each party any materials, trade secrets or other information disclosed by that party to the other, including, without limitation:

- (a) the Licensed Technology, to the extent that it is not disclosed by the Application when published; and
- (b) this agreement.

Corrections means minor modifications and/or corrections to any part of the Software.

End User Sub-licence means a non-exclusive, non-transferable licence to use all or part of the Licensed Technology for Non Commercial Use entered into by the Licensee with an end user.

Field means for use by health care professionals to assist in the assessment of beta cell function and insulin sensitivity.

Intellectual Property Rights means any and all rights in inventions, patents, trade marks, service marks, copyright, database rights, moral rights, rights in designs, know-how, confidential information and all or any other intellectual or industrial property rights, whether or not registered or capable of registration.

Know-how means all confidential information, whether patentable or not, relating to the Software that has been communicated to the Licensee by the Licensor or the Author before the date of this agreement or is communicated to the Licensee by the Licensor or the Author under this agreement.

Licence means the licence granted by the Licensor to the Licensee under clause 2.1 of this agreement.

Licensed Technology means all the Licensor's Intellectual Property Rights in:

- (a) the Software;
- (b) the Know-how.

Licensee's Contact and Address means the address for the Licensee set out in schedule 2 of this agreement.

Non-Commercial Use means academic and research purposes and the purposes of clinical patient care, including the right for the University to use the Licensed Technology and the Licensee's Improvements as enabling technology in other research projects.

Purpose means the purpose set out in schedule 2 of this agreement.

Software means the software detailed in schedule 2 of this agreement.

Territory means the territory or territories set out in schedule 2 of this agreement,
University means the Chancellor, Masters and Scholars of the University of Oxford whose administrative offices are at the University Offices, Wellington Square, Oxford OX1 2JD.

Upgrade means a revised version of the Software, which revised version comprises collectively, one or more new software modules and which incorporates minor modifications and extensions to the performance specified on the Website.

Website means the website accessible at www.dtu.ox.ac.uk

SCHEDULE 2

Software:

Version 2.2.4 of the HOMA 2 Calculator software.

Author:

Members of the Licensor's Diabetes Trials Unit

Territory (clause 2.1):

[.....]

Purpose (clause 2.1):

[.....
.....]

Licensee's Contact and Address (clause 13.6):

[.....
.....
.....]

AS WITNESS the hands of authorised signatories for the parties on the date first mentioned above

SIGNED for and on behalf of

THE CHANCELLOR, MASTERS AND SCHOLARS OF THE UNIVERSITY OF OXFORD:

Name:

Position:

Signature:

SIGNED for and on behalf of

[.....]:

Name:

Position:

Signature: