

UCSC GENOME BROWSER INTERNAL USE LICENSE

The Regents of the University of California ("UC"), a California Constitutional Corporation, acting through its Office for Management of Intellectual Property, University of California, Santa Cruz, 1156 High Street, Santa Cruz, CA 95064 and _____ ("Licensee"), having a place of business at _____ agree as follows:

1. Background:

The Genome Bioinformatics Group at UCSC ("Laboratory"), has developed and is owner of the UCSC Genome Browser, as set forth on Exhibit A ("Licensed Product"). Howard Hughes Medical Institute ("HHMI") had an ownership in the Licensed Work and assigned that interest to UC, subject to a paid-up, non-exclusive, irrevocable license to use the Licensed Work for HHMI's research purposes. Licensee desires to obtain the Licensed Work to be installed on a single computer of Licensee.

2. Definitions: The following definitions apply herein:

- (a) "**Copyright**" means as described in the "Copyright Law of the United States of America" and related laws contained in Title 17 of the United States Code.
- (b) "**Licensee**" entity who is accepting this Agreement and completing the Licensee Information section.
- (c) "**Licensed Products**" means the "*UCSC Genome Browser*" (the "**Work**" and/or "**License Work**"), which was made in the course of research at the University of California, Santa Cruz and is claimed in The Regents' Copyright Rights, and is generally referred to as "UCSC Genome Browser".
- (d) "**Derivative Work(s)**" means any changes, revision, enhancement, modification, translation, abridgement, condensation, or expansion created by Licensee that is based upon the Work or a portion thereof that would be a copyright infringement if prepared without the authorization of the copyright owners of the Work, or portion thereof.
- (e) "**User Limitations**" means the way the Work can be used by the user, as set forth in section 3.
- (f) "**License Fee**" means the non-refundable license fee as specified on Exhibit A of this Agreement.
- (g) "**Small Business**" is an organization meeting the criteria of the Small Business Administration as a "Small Business Concern" (see <http://www.sba.gov/size/>); fewer than 500 employees and less than \$6m in annual revenue.
- (h) "**Patents**" means as described and governed by Title 37 – United States Code of Federal Regulations Patents, Trademarks, and Copyrights and the laws and regulations of the World Intellectual Property Organization pertaining to Patent Cooperation Treaty (PCT)
- (i) "**Site**" A specified geographic location residing in a single building or contiguous set of laboratories sharing the same physical address and under common management.
- (j) "**Non-Profit**" organization is an educational institutions or government agency.

3. Limited License Grant:

Subject to the limitations set forth in this Internal Use License (“Agreement”) and upon payment of the license fee as set forth herein, UC hereby grants to Licensee, and Licensee accepts, a non-exclusive, non-commercial, nontransferable, internal use license and right to use as follows:

- (a) Install and operate the Licensed Work on one or more computers for use by Licensee personnel under the following license_____ (example: NP, SB, RB) as specified in Exhibit A; and
 - (b) Licensee shall not have the right to create Derivative Works of the Licensed Products;
 - (c) Licensee shall not have the right to sublicense, sell, transfer, or assign the Licensed Products;
 - (d) Licensee shall not permit the Licensed Products to be used by another party;
 - (e) Licensee shall not alter the Licensed Products without the prior written consent of Licensor, other than to add its own instructions to the Licensed Products as long as the added instructions do not alter any of the existing text of the Licensed Products;
 - (f) If translations of the Licensed Products are needed, please contact Licensor before translating;
 - (g) Receive updates of Licensed Work as may be designated from time to time for general public release by the Laboratory.
- Licensee shall not sublicense, loan, lease, or otherwise transfer the Licensed Work (other than to Affiliate(s) of Licensee) for use beyond the terms of this Agreement, and shall not permit access to the Licensed Work over a remote connection, such as the internet or WAN, for use by anyone other than Licensee or its Affiliates personnel provided however, Licensee or its Affiliates personnel working from a home location, or traveling, may access the Licensed Work.
 - Licensee acknowledges that the Laboratory is involved in further development work involving the Licensed Work, and therefore Licensee agrees not to assert or allege infringement, by UC or UC personnel or by any organization licensing through UC the Licensed Work in its present or any UC-modified form for that organization’s internal use, in any patent rights Licensee may develop in modifications permitted under this Agreement.
 - Use of the Licensed Work shall be used solely for the internal business purposes of Licensee, and shall not be used as a commercial product or service nor be used in an external service bureau or time sharing arrangement with users who are not licensed by UC. Licensee shall not undertake or allow the production of Works, services or data for third parties beyond the allowable use permitted herein.
 - Licensee will use reasonable care in keeping the Licensed Products confidential; using at least the same degree of care you exercise in protecting your own proprietary information of a similar nature but at a minimum reasonable care. You shall comply with all applicable federal and state laws regarding the confidentiality of health information, including the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) at all times.
 - All copies shall include the copyright notice as provided with the Licensed Work, and shall be subject to the terms of this Agreement.

Copyright © 2000 The Regents of the University of California - All Rights Reserved

- The Regents reserves all rights not expressly granted to you under this Agreement.

4. Fee:

Licensee shall pay UC a nonrefundable annual licensing fee, as determined by the matrix in Exhibit A (i.e.; expected number of users, plus any set-up fees).

Upon receipt of a Purchase Order, UC will submit an invoice for the annual fee, with payment terms of Net 30 days from the effective date of this Agreement. License fees shall be payable to "The Regents of the University of California" at the following address:

University of California, Santa Cruz
Office for Management of Intellectual Property
Genome Browser License fees
Attn: William Hale (GB)
1156 High Street
Santa Cruz, CA 95064

For electronic fund transfer, use the following information:

Bank of America
Concord, California, USA
Routing No.: 121000358
Account No.: 1233518190

Licensee shall be responsible for all taxes or other levies made against payment by any governmental authority. Licensee shall pay any bank transfer charges, such as wire transfer fees. UC Santa Cruz Tax ID is 94-1539563.

Licensee will report the number of users to the UC, on an annual basis, sixty days prior to the anniversary date of the license. Report to be emailed to: technology@ucsc.edu.

5. Effective Date:

This Agreement becomes effective the date this Agreement is fully executed by both parties ("Effective Date"). The Regents shall make the Licensed Products available for electronic delivery promptly following execution of this Agreement.

6. Support:

Licensor may, at its sole discretion, offer limited support, future enhancements or upgrade versions to Licensee without cost. Licensor may offer extended support to Licensee at a price that will be determined on a case-by-case basis.

7. Term and Termination:

The rights and licenses granted herein shall continue for an initial term of **one (1) year** commencing on the Effective Date. The Agreement may be renewed for successive terms by following the same aforementioned procedure. 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 7, Licensee agrees to cease using the Licensed Products and to destroy all such Licensed Copies. Any termination or expiration of this Agreement will not affect the rights and obligations set forth in Sections 7, 8, 9, and 10.

8. Limited Warranty:

The Regents warrants that it has the lawful right to grant this license to Licensee.

This License and the associated Work are provided WITHOUT WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER WARRANTY, EXPRESS OR IMPLIED. THE REGENTS MAKES NO REPRESENTATION OR WARRANTY THAT ANY LICENSED PRODUCTS WILL NOT INFRINGE ANY PATENT, COPYRIGHT, OR OTHER PROPRIETARY RIGHT.

Nothing in this Agreement will be construed as:

- A warranty or representation by The Regents as to the validity or scope of any Regents' Patent or Copyright Rights:
 - 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 or copyrights of third parties.
 - Obligorating The Regents to bring or prosecute actions or suits against third parties for copyright or patent infringement.
 - Conferring by implication, estoppel, or otherwise any license or rights under any intellectual property of The Regents other than Regents' Copyright Rights as defined herein.
 - Obligorating The Regents to furnish any know-how not provided in Regents' Copyright Rights.

THE REGENTS WILL NOT BE LIABLE FOR ANY LOST PROFITS, COSTS OF PROCURING SUBSTITUTE GOODS OR SERVICES, LOST BUSINESS, ENHANCED DAMAGES FOR INTELLECTUAL PROPERTY INFRINGEMENT OR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR OTHER SPECIAL DAMAGES RESULTING FROM THE EXERCISE OF THIS LICENSE OR THE USE OF THE WORK OR LICENSED PRODUCTS. THE REGENTS WILL NOT BE LIABLE FOR ANY CAUSES OF ACTION OF ANY KIND (INCLUDING TORT, CONTRACT, NEGLIGENCE, STRICT LIABILITY, AND BREACH OF WARRANTY) EVEN IF THE REGENTS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

9. Indemnity:

Licensee shall indemnify, defend with counsel acceptable to UC, and hold harmless The Regents of the University of California and the developers of the Licensed Work, their successors, agents, officers, and employees, either in their individual capacities or by reason of their relationship to UC (collectively, "UC Indemnitees"), with respect to any claim, liability, cost, damage, deficiency, loss, or obligation, of any kind or nature (including, without limitation, reasonable attorney's fees and other costs and expenses of defense) (collectively, "Claims"), including without limitation any cause of action relating to product liability, any incidental or consequential damage either direct or indirect, whether incurred, made or suffered by Licensee or any third party, in connection with, or in any way arising out of, the furnishing, performance, possession or use of the Licensed Work or in connection with the exercise of this Agreement. The previous sentence will not apply to any Claim that is determined with finality by a court of competent jurisdiction to result solely from the gross negligence or willful misconduct of a UC Indemnitee. This provision shall survive termination of this Agreement.

HHMI and its trustees, officers, employees, and agents (collectively, "HHMI Indemnitees"), will be indemnified, defended by counsel acceptable to HHMI, and held harmless by Licensee from and against any claim, liability, cost, expense, damage, deficiency, loss, or obligation, of any kind or nature (including, without

limitation, reasonable attorneys' fees and other costs and expenses of defense) (collectively, "HHMI Claims"), based upon, arising out of, or otherwise relating to this Agreement, including without limitation any cause of action relating to product liability. The previous sentence will not apply to any HHMI Claim that is determined with finality by a court of competent jurisdiction to result solely from the gross negligence or willful misconduct of an HHMI Indemnitee. Notwithstanding any other provision of this Agreement, Licensee's obligation to defend, indemnify and hold harmless the HHMI Indemnitees under this paragraph will not be subject to any limitation or exclusion of liability or damages or otherwise limited in any way. This provision shall survive termination of this Agreement.

10. Miscellaneous:

(a) This Agreement embodies the entire understanding of the parties and supersedes all previous communications, representations, or understandings, either oral or written, between the parties relating to the subject matter hereof. 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;

(b) Licensee will not use any name, trade name, trademark, or other designation of The Regents' or its employees (including contraction, abbreviation, or simulation of any of the foregoing) in advertising, publicity, or other promotional activity. Unless required by law, Licensee is expressly prohibited from using the name "The Regents of the University of California" or the name of any campus of the University of California in advertising, publicity, or other promotional activity without written permission of The Regents. Licensee acknowledges that under HHMI policy, Licensee may not use the name of HHMI or of any HHMI employee in a manner that reasonably could constitute an endorsement of a commercial product or service; but that use for other purposes, even if commercially motivated, is permitted provided that (1) the use is limited to accurately reporting factual events or occurrences, and (2) any reference to the name of HHMI or any HHMI employees in press releases or similar materials intended for public release is approved by HHMI in advance;

(c) THIS AGREEMENT IS TO BE INTERPRETED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, but the scope and validity of any copyright will be governed by the applicable laws of the country of the copyright registration;

(d) The headings of the several sections are inserted for convenience of reference only and are not intended to be a part of, or to affect the meaning or interpretation of, this Agreement;

(e) The waiver of any breach of any term of this Agreement does not waive any other breach of that or any other term;

(f) If any part of this Agreement is for any reason found to be unenforceable, all other parts nevertheless remain enforceable as long as a party's rights under this Agreement are not materially affected. In lieu of the unenforceable provision, the parties will substitute or add as part of this Agreement a provision that will be as similar as possible in economic and business objectives as was intended by the unenforceable provision;

(g) No provisions of this Agreement are intended or shall be construed to confer upon or give to any person or entity other than The Regents, HHMI, the HHMI Indemnitees and the Licensee any rights, remedies, or other benefits under, or by reason of, this Agreement;

(h) In performing their respective duties under this Agreement, each of the parties will be operating as an independent contractor. Nothing contained herein will in any way constitute any association, partnership, or joint venture between the parties hereto or be construed to evidence the intention of the parties to establish any such relationship. Neither party will have the power to bind the other party or incur obligations on the other party's behalf without the other party's prior written consent.

(i) HHMI is not a party to this Agreement and has no liability to any licensee or user of anything covered by this Agreement, but HHMI is an intended third-party beneficiary of this Agreement and certain of its provisions are for the benefit of HHMI and are enforceable by HHMI in its own name. This provision shall survive termination of this Agreement.

IN WITNESS WHEREOF, authorized representatives of the parties hereto have executed this Agreement.

THE REGENTS OF THE
UNIVERSITY OF CALIFORNIA

LICENSEE:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT A

UCSC GENOME BROWSER INTERNAL USE LICENSE

1. Description of the UCSC Genome Browser:

The UCSC Genome Browser is a web-based tool designed to display a selected portion of a specific genome at any scale, together with aligned tracks of annotation data. Data can be viewed graphically or in a text-based format. The tool also provides a mechanism for displaying custom annotation tracks based on formatted personal data files.

The Genome Browser package includes:

- A complete set of the cgi-bin files, HTML files, and database files needed to run a stock version of the Genome Browser.
- A complete set of source files required to build the Genome Browser, including .c and .h files, HTML files, makefiles, include files, libraries, database files, and instructions for building the Genome Browser from source.
- Installation instructions, including system requirements.
- A complete set of online user documentation (HTML format).

The Genome Browser package does NOT include:

- Source or executables for the Blat Search tool. These must be purchased under a separate license agreement from Jim Kent (jim_kent@pacbell.net).
- Genomic sequence or annotation data. These may be freely downloaded from the UCSC Genome Browser website (<http://genome.ucsc.edu/downloads.html>), with certain restrictions outlined in the README files accompanying the data. Data may also be downloaded from many other publicly available sources on the internet.
- The supporting software required to build, install and run the Genome Browser (C compilation environment, Apache server, MySQL).

2. Pricing:

Site needing assistance in setting up the UCSC Genome Browser, will require an additional set up fee. Similarly, a separate license will be required if there is a separate remit to address.

Non-Profit:

- Non-Profit institutions performing research or other services at a Site at which the Licensed Work is used under contract for one or more for-profit organizations, in which a for-profit organization has a proprietary interest in the findings, must request a Small Business license for each of such Site.
- Non-Profits will be assessed a service fee, not to exceed standard Set-up charge, if and when Non-profit requires assistance beyond fundamental guidance.

Non-Profit	(“NP”) Section 3(a)
(For Service fee, see Sect 1(i) under “Non-Profit”)	Standard license agreement

Small business:

Profit (Small business)	(“SB”) Section 3(a)		
One time only <u>Set-up charge</u> for each site: \$6,000.00 Annually per user: \$1,000.00	Standard license agreement	Minimum Users Annually: Five (5). However, if <u>Cancer Genomics Browser</u> is licensed at the same time, then minimum is Three (3)	*Report the number of users to: (technology@ucsc.edu) (Sixty (60) days prior to anniversary date of license)

[Example: Small Business with 5 users (\$6,000. + 5 × \$1,000 = \$11,000 for the 1st year) - Five thousand (\$5,000) each year thereafter unless company has more than 5 users]

Regular Business:

Profit (Regular Business > 500 employees)	(“RB”) Section 3(a)		
One time only <u>Set-up charge</u> for each Site: \$6,000.00 Annually per user: \$1,000.00	Standard license agreement \$6,000.00 + ((20)*\$1,000.00)= \$26,000.00 First Year ((20)*\$1,000.00)= \$20,000.00 Subsequent years	Minimum Users Annually: Twenty (20). However, if <u>Cancer Genomics Browser</u> is licensed at the same time, then minimum is Ten (10)	*Report the number of users to: (technology@ucsc.edu) (Sixty (60) days prior to anniversary date of license)

[Example: Regular Business with 20 users (\$6,000. + 20 × \$1,000 = \$26,000 for the 1st year) - Twenty thousand (\$20,000) each year thereafter unless company has more than 20 users]

An additional set-up charge or \$6,000.00 will apply to any additional Site needing assistance in setting up the UCSC Genome Browser.

Intent of the License:

This license Agreement has been designed to meet the needs of a wide range of potential recipients. The licensing fees presented above assume that the recipient is able to accept one of the alternative proposed forms of the license as is, without the need for further negotiation.

Instruction:

The Genome Bioinformatics Group at UCSC is willing to provide instruction to Small Business and Regular Business licensees upon request and as mutually determined as part of UCSC’s program of technology transfer. Instruction is available for up to ten (10) Laboratory hours of effort per year in the form of email and telephone communications on an “as available” basis.

EXHIBIT B

UCSC GENOMBROWSER INTERNAL USE LICENSE

B.1. * Site
description: _____
(See: Exhibit A) (e.g., Business and/or Division - Laboratory)

Site address: _____

B.2. Technical Contact:

Name _____

Email _____

Telephone _____

B.3. Estimated Number of Users at site: (____)

B.4. Licensee is (check all that apply):

Not-for-Profit (____) For Profit(____) Other (explain)

Private(____) Public(____) Other (explain)

UC(____) Government(____) Commercial(____) Other (explain)

(Note: Please copy Exhibit B sheet as needed for each location ("Site") using the UCSC Genome Browser)

UCSC GENOME BROWSER INTERNAL USE LICENSE: Contact the UCSC Office for Management of Intellectual Property, at technology@ucsc.edu, for questions concerning this Agreement.