

SOFTWARE EVALUATION AGREEMENT

THIS AGREEMENT is made on _____ 2003 by and between:

- (1) **UNIVERSITY COLLEGE LONDON**, a university incorporated in the United Kingdom by Royal Charter, whose address is Gower Street, London WC1E 6BT, United Kingdom (“UCL”);
- (2) _____, a _____ whose address is _____ (the “Licensee”).

WHEREAS:

- A. Dr Eric Fraga and co-workers within the Department of Chemical Engineering at UCL have developed the Software (as defined below).
- B. The Licensee is interested in evaluating and testing the Software at its own risk in accordance with the provisions of this Agreement.

NOW IT IS AGREED as follows:

1. Definitions

In this Agreement, the following words shall have the following meanings:

- | | |
|--------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Documentation | Shall mean the user guide to the Software and any other literature or data supplied with the same Software by UCL. |
| Evaluation Fee | Shall mean the fee to be paid by the Licensee to UCL as described in Schedule 1 Part B to this Agreement. |
| Evaluation Period | Shall mean the period of time, commencing on the date of this Agreement, during which the Licensee is permitted to use, evaluate and test the Software as described in Schedule 1 Part A to this Agreement. |
| Site | Shall mean _____ |
| Software | Shall mean the Jacaranda software to be licensed under this Agreement, more fully described in Schedule 1 Part A to this Agreement. |

2. Software Licence

- 2.1 In consideration of the Licensee paying the Evaluation Fee to UCL, UCL hereby grants the Licensee the non-exclusive right to use the Software for the purpose of internal evaluation only during the Evaluation Period at the Site and in accordance with the provisions of the Software Licence, except to the extent that such terms are varied by this Agreement.
- 2.2 The Licensee agrees and undertakes to use the Software and to undertake its evaluation for UCL without charge to UCL for the Evaluation Period.
- 2.3 The Licensee may at any time during the Evaluation Period, and must at the end of the Evaluation Period if the Parties do not agree to enter into a further software licence, uninstall the Software from its computer system and return to UCL all copies of the Software, together with all Documentation for the Software and all other material containing information concerning the Software which has either been supplied to it or of which it has become aware, whereupon the Licensee's obligations under this Agreement shall cease, other than those under clauses 4 and 7 of this Agreement which are expressed to continue after its termination.
- 2.4 For the avoidance of doubt, Documentation may not be provided by UCL to the Licensee under this Agreement.

3. Licensee's obligations

- 3.1 During the Evaluation Period the Licensee shall:
 - (a) install and keep the Software installed on its computer system in its offices and install upgrades to the Software as soon as they become available;
 - (b) produce quarterly written reports on the Software's performance addressing issues such as quality, content, functionality and marketability. In addition the reports shall identify any errors, bugs or shortcomings that limit the usability of the software;
 - (c) make those of its employees who are using the Software available for meetings and discussions with UCL from time to time;
 - (d) at the request of UCL, the licensee will procure that its staff provide, free of charge, references and information as to their practical experience of using the Software to potential and actual licensees nominated by UCL;
 - (e) comply with the terms of the Software Licence (except in so far as varied by this Agreement) and with the terms as to confidentiality set out in clause 4.

4. References to Licensee's use

UCL may state in any publicity and other promotional materials that the Licensee is a user of the Software during the existence of this Agreement. UCL shall use reasonable endeavours that any third party does not contact the Licensee to obtain a reference or any other information relating to the use of the Software by the Licensee. The Licensee is under no obligation to provide any reference or other information relating to the

Software if so contacted by a third party.

4. Confidentiality

- 4.1 During and after the Evaluation Period the Licensee shall treat the Software and all information concerning it which is either supplied to it or of which it becomes aware as confidential and accordingly shall not:
- (a) disclose any such information to any third party; or
 - (b) disclose any such information to any employee who has not acknowledged in writing the confidentiality of such information; or
 - (c) use any such information other than for the purpose of its own internal use, testing and evaluation of the Software except to the extent that such information is or becomes public knowledge other than through any fault of UCL and shall at the request of UCL and at its own cost take such proceedings as may be necessary to preserve the confidentiality of such information.

5. Non-competition

- 5.1 During the period of 12 months from the commencement of the Evaluation Period the Licensee undertakes not to supply, and/or develop on behalf of any third party or develop or supply to any third party, any product which competes whether directly or indirectly with the Software. Such products shall include any software which operates as a stand-alone product, or whether as part of, or integrated into, another software product, whether can only operate in conjunction with another product, whether another product is owned, licensed to or used by the Licensee.
- 5.2 This obligation shall not restrict the Licensee from itself undertaking internal research and development work in respect of such competing products but the Licensee shall not undertake any marketing or promotional activities in respect of the same prior to expiry of such period.
- 5.3 For the avoidance of doubt, the provisions of this Clause 5 shall survive the expiration of this Agreement and/or the Software Licence.

6. Exclusion of warranties

- 6.1 The Licensee accepts and acknowledges that this Agreement does not set out any warranty in respect of the Software other than that save as expressly provided for in this Agreement and any condition or warranty implied by law as to the quality or fitness for purpose of the Software or as to any services provided hereunder in relation to the Software is hereby excluded to the fullest extent permitted by law. For the avoidance of doubt, UCL gives no warranty, in respect of:
- (a) Any failure of the Software to operate due to changes in the operating environment or in any operating system after the Commencement Date; or
 - (b) Any failure of the functions provided by the Software to meet the Licensee's requirements or those of any user or to operate in combination with any hardware or other software which may be selected for use by the Licensee or any user.

- 6.2 The Licensee acknowledges and accepts:
- (a) That during the Evaluation Period the Software is still under development and, will be for test and evaluation purposes only
 - (b) That UCL has not produced the Software to meet the Licensee's own specification or that of any user;
 - (c) That the Software cannot be tested in every possible combination and operating environment and that it is not possible to produce economically (if at all) computer programs known to be error free or which operate in an uninterrupted manner and that not all errors are necessarily capable of rectification.
- 6.3 UCL shall not be liable to the Licensee for any indirect or consequential loss, damage or expense of any kind whatsoever arising out of or in connection with the Software or this Agreement whether arising in contract, tort, negligence, breach of statutory duty or otherwise.
- 6.4 Subject always to clause 6.3, UCL's liability in contract, tort, negligence, breach of statutory duty or otherwise with respect to any claim arising in respect of its acts or omissions under or in connection with this Agreement shall be limited to the sums received by UCL at the date of the claim relating to such act or omission or UK£1,000,000 whichever is the lesser.

7. **Indemnity**

- 7.1 The Licensee shall indemnify and hold harmless UCL, its officers, employees, students and agents (the "Indemnitees") against all third party Claims which may be asserted against or suffered by any of the Indemnitees and which relate to the use of the Software by or on behalf of the Licensee or by any third party, including without limitation claims based on product liability laws.
- 7.2 For the purposes of this clause 7, "Claims" shall mean all demands, claims and liability (whether criminal or civil, in contract tort or otherwise) for losses, damages, legal costs and other expenses of any nature whatsoever.
- 7.3 For the avoidance of doubt the indemnity shall apply:
- (a) during and after the termination of this Agreement; and
 - (b) whether or not that the Software is used by the Licensee within or without this Agreement and/or for the Permitted Purposed ; and
 - (c) whether a third party uses the guidelines which are produced within our without this Agreement and/or are produced within our without the Permitted Purpose

8. **General**

- 8.1 The Licensee may not assign its rights and obligations under this Agreement.
- 8.2 This Agreement shall not be amended except in writing by duly authorised signatories of the Parties. In the event that any or any part of the terms, conditions or provisions

contained in this Agreement are determined by any competent authority to be invalid, unlawful or unenforceable to any extent such term, condition or provision shall to that extent be severed from the remaining terms, conditions and provisions which shall continue to be valid and enforceable to the fullest extent permitted.

8.3 This Agreement shall be governed by and construed in accordance with English law and shall be subject to the exclusive jurisdiction of the English courts.

AGREED by the parties through their authorised signatories:-

For and on behalf of
UNIVERSITY COLLEGE LONDON

For and on behalf of

Signed

Signed

print name

print name

Title

Title

Date

Date

Schedule 1

A. Description of the Software

Jacaranda is an object oriented framework written in Java. It provides a set of classes for solving problems in automated design, particularly for separation problems in chemical and bioprocessing industries. The classes can be grouped into the following categories:

- Automated design or process synthesis procedures.
- Tools for nonlinear optimization, including both NLP and MINLP formulations.
- A variety of tools, including a graphical user interface, for heat exchanger network synthesis.

The system provides a simple graphical interface which gives access to the full text based interface. Example input files for distillation sequence synthesis and heat exchanger network synthesis are provided as part of the documentation. The documentation also includes a user's guide which gives some detail on the implementation of new unit models. The documentation also provides references to journal articles which describe the underlying principles and methodologies.

B. The Evaluation Fee: Zero

C. The Evaluation Period: 12 Months