

RESEARCH AND EDUCATIONAL PURPOSES SOFTWARE LICENSE AGREEMENT

This Agreement is made and entered into this _____ day of _____, 20____, (the "Effective Date") by and between Children's Medical Center Corporation, a corporation duly organized and existing under the laws of the Commonwealth of Massachusetts and having a principal office at 300 Longwood Avenue Boston, MA 02115 (hereinafter referred to as "CMCC") and _____ a corporation duly organized and existing under the laws of _____ and having a principal office at _____ (hereinafter referred to as "LICENSEE").

WHEREAS, CMCC is the owner of certain right, title and interest in the computer program entitled "Relnet" and related documentation, if any, described in CMCC Case No. 769 and U.S. patent application Serial No. 09/430,450 by Atul J. Butte and Isaac S. Kohane as existing on August 3, 1999 (hereinafter referred to as "the Program") and wishes to have this Program utilized in the public interest;

WHEREAS, LICENSEE warrants that it is a non-profit institution and wishes to obtain a nonexclusive and fully paid-up license to use the Program upon the terms and conditions hereinafter set forth;

WHEREAS, LICENSEE wishes to obtain and CMCC agrees to grant a license for research and educational purposes only, with CMCC retaining all ownership rights in the Program, including, but not limited to, patent rights, copyrights and licensing rights therein, and further intends that no license, expressed or implied, for use other than herein set out shall be transferred hereby.

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants, terms and conditions herein contained, the parties agree as follows:

1. LICENSE

1.1 CMCC hereby grants to LICENSEE nonexclusive rights to use the Program for research and educational purposes only, without any rights whatsoever to distribute; and LICENSEE shall restrict the use of the Program to its own personnel for use only on the computers at the following location:

Location: _____

Site Coordinator: _____

Phone: _____

E-mail: _____

(hereinafter called "RIGHTS GRANTED").

1.2 The license granted herein shall not be construed to confer any rights upon LICENSEE by implication, estoppel, or otherwise except as specifically set forth herein.

1.3 LICENSEE agrees that the Program shall not be used as the basis of a commercial software or hardware product and that the same shall not be rewritten in another computer language or otherwise adapted to circumvent the need for obtaining a license from CMCC for use of the Program other than as specified by this Agreement.

1.4 CMCC reserves the right to inspect LICENSEE's use of the Program for the purpose of verifying LICENSEE's compliance with this Agreement.

1.5 LICENSEE agrees that it shall obtain prior written approval from CMCC before using the Program in conjunction with commercially-funded educational research and provide CMCC information it requests for evaluation purposes.

2. LICENSE ISSUE FEE

In consideration of the RIGHTS GRANTED herein, LICENSEE agrees to pay to CMCC upon execution of the Agreement the sum of 0 Dollars (\$0.0) which shall be the sole sum payable by LICENSEE hereunder for RIGHTS GRANTED to the Program. If requested by CMCC, LICENSEE shall also provide the appropriate blank tapes or disks necessary for reproducing the Program and an express mailing service, such as Federal Express, account number for delivery of the Program.

3. DELIVERY OF MATERIALS

3.1 Upon execution of the Agreement, and payment by LICENSEE of the License Issue Fee in accordance with Paragraph 2 hereof, CMCC shall deliver to LICENSEE one (1) copy of the Program, and accompanying documentation, if any.

3.2 LICENSEE acknowledges that title and all rights to the Program (including copyright), and any patents thereof, shall remain with CMCC and that any copies of the Program or portions thereof made by LICENSEE in accordance with the RIGHTS GRANTED hereunder shall include a CMCC copyright notice thereon. The notice shall be affixed to all copies or portions thereof in such manner and location as to give reasonable notice of CMCC's claim of copyright and shall be in the following format: "Copyright 1998-2002 CMCC. All rights reserved." or "© 1998-2002 CMCC All Rights Reserved." LICENSEE shall at all times hereafter protect the Program, and all related documentation, if any, from transfer using measures at least as strong as those used by LICENSEE in protecting its own proprietary software. LICENSEE shall restrict transfer to a licensed computer at Location under the authority of Site Coordinator, and only for uses permitted by Agreement.

3.3 LICENSEE accepts the above materials on an "AS IS" basis. Accordingly, CMCC shall not be required to load the Program onto LICENSEE's machines, test for proper operation, perform any debugging, make any corrections, provide maintenance, provide any updates, or assist in the understanding or use of the Program. The Program is a research program, and CMCC does not represent that it is free of errors or bugs or suitable for any particular tasks.

4. WARRANTIES

LICENSEE AGREES THAT THE RIGHTS GRANTED HEREUNDER ARE MADE AVAILABLE WITHOUT WARRANTY OF ANY KIND EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND FURTHER INCLUDING NO WARRANTY AS TO CONFORMITY WITH WHATEVER USER MANUALS OR OTHER LITERATURE MAY BE ISSUED FROM TIME TO TIME. NOTHING IN THIS AGREEMENT SHALL BE CONSTRUED AS A REPRESENTATION MADE OR WARRANTY GIVEN BY CMCC THAT THE PRACTICE BY LICENSEE OF THE LICENSE GRANTED HEREUNDER

SHALL NOT INFRINGE THE PATENT RIGHTS, COPYRIGHTS, OR OTHER INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY. AS A CONDITION OF THIS LICENSE, LICENSEE AGREES THAT IN NO EVENT SHALL CMCC, ITS TRUSTEES, DIRECTORS, OFFICERS, EMPLOYEES, AGENTS AND ASSOCIATES BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING ECONOMIC DAMAGE OR INJURY TO PROPERTY AND LOST PROFITS, REGARDLESS OF WHETHER CMCC SHALL BE ADVISED, SHALL HAVE OTHER REASON TO KNOW, OR IN FACT SHALL KNOW OF THE POSSIBILITY. This provision will survive termination of this Agreement.

5. LIMITATION OF LIABILITY

LICENSEE shall indemnify, defend and hold harmless CMCC, its corporate affiliates, current or future directors, trustees, officers, faculty, medical and professional staff, employees, students and agents and their respective successors, heirs and assigns (the "Indemnitees"), against any liability, damage, loss or expense (including reasonable attorney's fees and expenses of litigation) incurred by or imposed upon the Indemnitees or any one of them in connection with any claims, suits, actions, demands or judgments arising out of any theory of product liability (including, but not limited to, actions in the form of tort, warranty, or strict liability) concerning any product, process or service made, used or sold pursuant to any right or license granted under this Agreement. LICENSEE shall give CMCC notice of any actions against them in connection with this license. This provision will survive termination of this Agreement.

6. NON-USE OF NAMES

LICENSEE shall not use the Program title or the names or trademarks of CMCC, or any affiliate thereof, nor any adaptation thereof, nor the names or departments of any of their employees, in any advertising, promotional or sales literature without prior written consent obtained from CMCC in each case, except that LICENSEE shall give appropriate credits in professional journals and publications. The provision will survive termination of this Agreement.

7. TERMINATION

This license shall terminate immediately without any further action upon any breach by LICENSEE. Upon termination for any reason, LICENSEE shall provide CMCC with written assurance that the original and all copies of the Program, including partial copies in modifications, have been destroyed, except that, upon prior written authorization from CMCC, LICENSEE may retain a copy for archive purposes. Breach includes, without limitation, the following:

- a) Distribution of the Program to third parties
- b) Use of Program as a basis for a commercial software product
- c) Rewriting Program in an another computer language for distribution to third party beneficiaries and/or for a commercial software product

8. NOTICES

Any notice required or permitted under this Agreement shall be sufficiently made or given on the date of mailing if in writing and sent to such party by registered or certified mail, postage prepaid, addressed to it at its address below, or as it shall designate by written notice given to the other party:

In the case of CMCC:

Chief, Intellectual Property Office
Children's Hospital Boston
300 Longwood Avenue
Boston, MA 02115

In the case of LICENSEE:

9. MISCELLANEOUS

9.1 This Agreement shall be construed, governed, interpreted and applied in accordance with the internal laws of the Commonwealth of Massachusetts, U.S.A.

9.2 The parties hereto acknowledge that this Agreement sets forth the entire Agreement and understanding of the parties hereto as to the subject matter hereof, and shall not be subject to any change or modification except by the execution of a written instrument subscribed to by the parties hereto. This Agreement supersedes any and all provisions on the face and reverse side of any Purchase Order or any attachment thereto inconsistent with or in addition to the provisions hereof.

9.3 The provisions of this Agreement are severable, and in the event that any provisions of this Agreement shall be determined to be invalid or unenforceable under any controlling body of the law, such invalidity or unenforceability shall not in any way affect the validity or enforceability of the remaining provisions hereof.

9.4 The failure of either party to assert a right hereunder or to insist upon compliance with any term or condition of this Agreement shall not constitute a waiver of that right or excuse a similar subsequent failure to perform any such term or condition by the other party.

9.5 LICENSEE agrees that there shall be no third party beneficiaries of this Agreement.

9.6 LICENSEE agrees to provide CMCC with notifications of publications.

9.7 LICENSEE hereby gives written assurance that it will comply with all United States export control laws and regulations controlling the export of certain commodities and technical data, including without limitation all Export Administration Regulations of the United States Department of Commerce. Among other things, these laws and regulations prohibit or require a license for the export of certain types of commodities and technical data to specified countries.

IN WITNESS WHEREOF, the parties have duly executed this Agreement the day and year set forth below.

CMCC

LICENSEE

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

Instructions for obtaining the Relnet software:

*Please have a duly authorized official of your institute sign and date **two copies** of this agreement. Fax a copy to the fax number below. Please send the signed originals to our office (address see below). Once we receive the faxed copy the technology will be sent to the site coordinator's e-mail address written above:*

Chief, Intellectual Property Office

Children's Hospital Boston

300 Longwood Avenue

Boston, MA 02115

Phone: 617-355-7050

Fax: 617-232-7485