

**CHEMSHELL PROGRAM SUITE  
LICENCE AGREEMENT  
(Academic Use – Royalty Payable)**

**THIS LICENCE AGREEMENT** is made **BETWEEN:**

1. **THE SCIENCE AND TECHNOLOGY FACILITIES COUNCIL, AS PART OF UNITED KINGDOM RESEARCH AND INNOVATION:** a Non-Departmental Public Body one of whose principal sites is at Daresbury Laboratory, Daresbury, Science and Innovation Campus, Daresbury, Warrington WA4 4AD; ("**STFC**") and

2. Enter Name:

whose administrative offices are at

Insert address

("the Licensee").

**BACKGROUND**

The Chemshell Software Suite comprises:

- a) software distributed in source and object code, that the Licensee may use for Academic Purposes in return for a licence fee payable to STFC, subject to the terms of clauses 2.1-2.3 of this Agreement; and
- b) software distributed in source code, that the Licensee may use, free of charge, subject to the terms of the GNU Licence.

**1. DEFINITIONS AND INTERPRETATION**

- 1.1 In this Agreement the following expressions have the meaning set opposite:

**Academic Purposes** research or teaching, carried out by any employee or registered student of the Licensee on the Licensee's premises;

**the Chemshell Software** the software distributed by STFC from time to time as part of the Chemshell Software Suite, except the GNU Software;

<b>the Chemshell Website</b>	the website with the URL <a href="http://www.chemshell.org">www.chemshell.org</a> and any website that from time to time replaces that website;
<b>a Derived Work</b>	any modification of, or enhancement or improvement to, any of the Chemshell Software and any software or other work developed or derived from any of the Chemshell Software;
<b>the GNU Licence</b>	the GNU Public Licence, a copy of which appears in the Appendix to this Agreement;
<b>the GNU Software</b>	the open source Libraries and Applications that are listed on the Chemshell Website from time to time as being subject to the terms of the GNU Licence;
<b>Harmful Element</b>	any virus, worm, time bomb, time lock, drop dead device, trap, access code or anything else that might disrupt, disable, harm or impede the operation of any information system, or that might corrupt, damage, destroy or render inaccessible any software, data or file on, or that may allow any unauthorised person to gain access to, any information system or any software, data or file on it;
<b>Intellectual Property Rights</b>	patents, trade marks, service marks, registered designs, copyrights, database rights, design rights, know-how, confidential information, applications for any of the above, and any similar right recognised from time to time in any jurisdiction, together with all rights of action in relation to the infringement of any of the above;
<b>the Licence Period</b>	the period beginning when the Licensee posts or faxes the completed and signed copy of this Agreement to STFC in accordance with clause 6.1, and ending on the termination of this Agreement under clause 6.2; and
<b>the Software</b>	the suite of programs known as Chemshell, comprising the GNU Software and the Chemshell Software.

## 2. LICENCE

### The Chemshell Software

- 2.1 STFC grants the Licensee an indefinite non-exclusive, non-transferable, licence to use, copy, modify, and enhance the Chemshell Software during the Licence Period on the terms and conditions of this Agreement provided that:

- 2.1.1 the Licensee may not distribute any of the Chemshell Software or any Derived Work based on any of the Chemshell Software to any third party, or share their use with any third party (whether free of charge or otherwise), and the Licensee may not sub-license the use of any of the Chemshell Software;
  - 2.1.2 the Licensee may not use the Chemshell Software on behalf of, or for the benefit of, anyone else (including, without limitation, using it to provide bureau, outsourcing or application services or facilities management services); and
  - 2.1.3 the Chemshell Software and any Derived Work may be used by the Licensee and its employees and registered students for Academic Purposes only.
- 2.2 If the Licensee wishes to use the Chemshell Software or any Derived Work in any way except for Academic Purposes, or wishes to distribute or make the Chemshell Software or any Derived Work, available to any third party for non-Academic Purposes, it must contact STFC to request a commercial licence. STFC may refuse to grant the Licensee a commercial licence. If STFC agrees to grant a commercial licence, that licence will be on such terms and conditions as STFC sees fit.
- 2.3 The licence granted in clause 2.1 relates only to the release of the Chemshell Software current at the date of this Agreement; the Licensee must acquire a new licence for any future version of the Chemshell Software.

#### **The GNU Software**

- 2.4 The GNU Software is supplied to the Licensee on the terms and conditions of the GNU Licence. By entering into this Agreement the Licensee agrees to comply with the terms of the GNU Licence in relation to the GNU Software.

#### **The Software**

- 2.5 The Licensee will not tamper with, or remove, any copyright or other proprietary notice or any disclaimer that appears on or in any part of the Software, and will reproduce the same in all copies of any of the Software and in all Derived Works.

#### **Netlib Software**

- 2.6 The Licensee acknowledges that in order to use the Software it may need to acquire software from [www.netlib.org](http://www.netlib.org). It is the Licensee's responsibility to acquire that software on such terms as the owners of the Intellectual Property Rights in that software may impose from time to time. STFC is not responsible for any software that the Licensee acquires through [www.netlib.org](http://www.netlib.org) or any other repository.

### **3. LICENCE FEES**

- 3.1 The Licensee will pay STFC a one off licence fee of [£500] on the date of this Agreement.
- 3.2 The Licensee will settle each of STFC's invoices within 30 days after their date.

- 3.3 If the Licensee fails to pay amount by the due date for payment, the Licensee will, without prejudice to any other right or remedy available to STFC, pay interest on that amount and the costs of recovery in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.
- 3.4 The Licensee will reimburse STFC for all reasonable travel, subsistence and other expenses incurred by STFC's staff and contractors in providing any service to the Licensee in connection with the Software.
- 3.5 All fees, charges and expenses payable under this Agreement are exclusive of VAT. The Licensee will pay VAT, if applicable, in addition to the fees, charges and expenses payable under this Agreement.
- 3.6 No refund of any licence fee will be made on the expiry or the termination of this Agreement.

#### 4. **WARRANTIES AND LIABILITY**

- 4.1 STFC gives no warranty and makes no representation in relation to the Software or any assistance or advice that STFC may give in connection with the Software. **The Licensee, its employees and students use the Software and any Derived Work at their own risk.** The Licensee will indemnify STFC against any and all claims arising as a result of the Licensee having made any of the Software or any Derived Work available to any third party.
- 4.2 Before using any of the Software, the Licensee will check that the Software does not contain any Harmful Element. STFC does not warrant that the Software will run without interruption or be error free, or free from any Harmful Element. STFC is not obliged to provide any support or error correction service, assistance or advice in relation to the Software. If it does provide that sort of service, assistance or advice, subject to clause 4.7, STFC will not be liable for any loss or damage suffered by the Licensee as a result.
- 4.3 STFC will not be liable to the Licensee to the extent that any loss or damage is caused by the Licensee's failure to implement, or the Licensee's delay in implementing, any upgrade, update, new release, revision, version or modification of, or advice in relation to, the Software that would have remedied or mitigated the effects of any error, defect, bug or deficiency.
- 4.4 The Licensee acknowledges that proper use of the Software and any Derived Work is dependent on the Licensee, its employees and students exercising proper skill and care in inputting data and interpreting the output provided by the Software or that Derived Work. STFC will not be liable for the consequences of decisions taken by the Licensee or any other person on the basis of that output. STFC does not accept any responsibility for any use which may be made by the Licensee of that output, nor for any reliance which may be placed on that output, nor for advice or information given in connection with that output.
- 4.5 Subject to clause 4.7, STFC's liability or any breach of this Agreement, any negligence or arising in any other way out of the subject matter of this Agreement, will not extend to any incidental or consequential damages or

losses, or any loss of profits, loss of revenue, loss of data, loss of contracts or opportunity, whether direct or indirect, even if the Licensee has advised STFC of the possibility of those losses arising or if they were or were within STFC's contemplation.

- 4.6 Subject to clause 4.7, the aggregate liability of STFC for any and all breaches of this Agreement, any negligence or arising in any other way out of the subject matter of this Agreement will not exceed in total the licence fees paid by the Licensee to STFC under this Agreement.
- 4.7 Nothing in this Agreement (including without limitation the GNU Licence) limits or excludes STFC's liability for death or personal injury caused by its negligence or for any fraud, or for any sort of liability that, by law, cannot be limited or excluded.
- 4.8 In addition to the terms and conditions of the GNU Licence, the terms of this clause 4 apply as between STFC and the Licensee, and the validity of any part of this clause 4 will not be affected by any part of the GNU Licence being held to be invalid by any court.

## 5. **INTELLECTUAL PROPERTY RIGHTS AND ACKNOWLEDGEMENTS**

- 5.1 Nothing in this Agreement assigns or transfers any Intellectual Property Rights in any of the Software. Those rights are reserved to STFC or its licensors.
- 5.2 The Licensee will ensure that, if any of its employees or students publishes any article or other material resulting from, or relating to, a project or work undertaken with the assistance of any part of the Software, that publication will contain a proper acknowledgement by reference to:

[1] ChemShell, a Computational Chemistry Shell, see [www.chemshell.org](http://www.chemshell.org)

If the program has been locally modified, the nature of the modifications should be outlined. If the QM/MM implementation within ChemShell has been used to obtain the results, please provide a citation to the following publication

[2] "QUASI: A general purpose implementation of the QM/MM approach and its application to problems in catalysis"

P. Sherwood, A. H. de Vries, M. F. Guest, G. Schreckenbach, C. R. A. Catlow, S. A. French, A. A. Sokol, S. T. Bromley, W. Thiel, A. J. Turner, S. Billeter, F. Terstegen, S. Thiel, J. Kendrick, S. C. Rogers, J. Casci, M. Watson, F. King, E. Karlsen, M. Sjovoll, A. Fahmi, A. Schafer, Ch. Lennartz, J. Mol. Struct. (Theochem.) 2003, 632, 1.

mentioning, where appropriate the authors of the specific programs used.

## 6. **TERMINATION**

- 6.1 This Agreement will take effect and the Licence Period will start when a completed copy of this Agreement, signed on behalf of the Licensee, and the amount of the then current licence fee has been received, in cleared funds, by STFC at the address given for this purpose on the Chemshell Website at the time the Licensee downloads this form of Licence Agreement from that website.

- 6.2 This Agreement will terminate immediately and automatically if:
- 6.2.1 the Licensee is in breach of this Agreement; or
  - 6.2.2 the Licensee becomes insolvent, or if an order is made or a resolution is passed for its winding up (except voluntarily for the purpose of solvent amalgamation or reconstruction), or if an administrator, administrative receiver or receiver is appointed over the whole or any part of its assets, or if it makes any arrangement with its creditors.
- 6.3 The Licensee's right to use the Software will cease immediately on the termination of this Agreement, and the Licensee will destroy all copies of the Software that it or any of its employees or students holds.
- 6.4 Clauses 1, 2.1.3, 2.3, 2.4, 2.5, 2.6, 3, 4, 5, 6.3, 6.4 and 7 will survive the termination of this Agreement, and will continue indefinitely.

## 7. **GENERAL**

- 7.1 **Headings:** The headings in this Agreement are for ease of reference only; they do not affect its construction or interpretation.
- 7.2 **Assignment etc:** The Licensee may not assign or transfer this Agreement as a whole, or any of its rights or obligations under it, without first obtaining the written consent of STFC.
- 7.3 **Illegal/unenforceable provisions:** If the whole or any part of any provision of this Agreement is void or unenforceable in any jurisdiction, the other provisions of this Agreement, and the rest of the void or unenforceable provision, will continue in force in that jurisdiction, and the validity and enforceability of that provision in any other jurisdiction will not be affected.
- 7.4 **Waiver of rights:** If STFC fails to enforce, or delays in enforcing, an obligation of the Licensee, or fails to exercise, or delays in exercising, a right under this Agreement, that failure or delay will not affect its right to enforce that obligation or constitute a waiver of that right. Any waiver by STFC of any provision of this Agreement will not, unless expressly stated to the contrary, constitute a waiver of that provision on a future occasion.
- 7.5 **Entire agreement:** This Agreement constitutes the entire agreement between the parties relating to its subject matter. The Licensee acknowledges that it has not entered into this Agreement on the basis of any warranty, representation, statement, agreement or undertaking except those expressly set out in this Agreement. The Licensee waives any claim for breach of, or any right to rescind this Agreement in respect of, any representation which is not an express provision of this Agreement. However, this clause does not exclude any liability which STFC may have to the Licensee (or any right which the Licensee may have to rescind this Agreement) in respect of any fraudulent misrepresentation or fraudulent concealment before the signing of this Agreement.
- 7.6 **Amendments:** No variation of, or amendment to, this Agreement will be effective unless it is made in writing and signed by each party's representative.

- 7.7 **Third parties:** No one except a party to this Agreement has any right to prevent the amendment of this Agreement or its termination, and no one except a party to this Agreement may enforce any benefit conferred by this Agreement, unless this Agreement expressly provides otherwise.
- 7.8 **Governing law:** This Agreement is governed by, and is to be construed in accordance with, English law. The English Courts will have exclusive jurisdiction to deal with any dispute which has arisen or may arise out of or in connection with this Agreement, except that STFC may bring proceedings against the Licensee or for an injunction in any jurisdiction.

**SIGNED** for and on behalf of the Licensee:

Name:

Position:

Signature:

Date:

## **THE APPENDIX**

### **GNU General Public Licence**

Version 2, June 1991

Copyright (C) 1989, 1991 Free Software Foundation, Inc. 51 Franklin St, Fifth Floor, Boston, MA 02110-1301 USA

Everyone is permitted to copy and distribute verbatim copies of this license document, but changing it is not allowed.

0. This License applies to any program or other work which contains a notice placed by the copyright holder saying it may be distributed under the terms of this General Public License. The "Program", below, refers to any such program or work, and a "work based on the Program" means either the Program or any derivative work under copyright law: that is to say, a work containing the Program or a portion of it, either verbatim or with modifications and/or translated into another language. (Hereinafter, translation is included without limitation in the term "modification".) Each licensee is addressed as "you".

Activities other than copying, distribution and modification are not covered by this License; they are outside its scope. The act of running the Program is not restricted, and the output from the Program is covered only if its contents constitute a work based on the Program (independent of having been made by running the Program). Whether that is true depends on what the Program does.

1. You may copy and distribute verbatim copies of the Program's source code as you receive it, in any medium, provided that you conspicuously and appropriately publish on each copy an appropriate copyright notice and disclaimer of warranty; keep intact all the notices that refer to this License and to the absence of any warranty; and give any other recipients of the Program a copy of this License along with the Program.

You may charge a fee for the physical act of transferring a copy, and you may at your option offer warranty protection in exchange for a fee.

2. You may modify your copy or copies of the Program or any portion of it, thus forming a work based on the Program, and copy and distribute such modifications or work under the terms of Section 1 above, provided that you also meet all of these conditions:

a) You must cause the modified files to carry prominent notices stating that you changed the files and the date of any change.

b) You must cause any work that you distribute or publish, that in whole or in part contains or is derived from the Program or any part thereof, to be licensed as a whole at no charge to all third parties under the terms of this License.

c) If the modified program normally reads commands interactively when run, you must cause it, when started running for such interactive use in the most ordinary way, to print or display an announcement including an appropriate copyright notice and a notice that there is no warranty (or else, saying that you provide a warranty) and that users may redistribute the program under these conditions, and telling the user how to view a copy of this License. (Exception: if the Program itself is



interactive but does not normally print such an announcement, your work based on the Program is not required to print an announcement.)

These requirements apply to the modified work as a whole. If identifiable sections of that work are not derived from the Program, and can be reasonably considered independent and separate works in themselves, then this License, and its terms, do not apply to those sections when you distribute them as separate works. But when you distribute the same sections as part of a whole which is a work based on the Program, the distribution of the whole must be on the terms of this License, whose permissions for other licensees extend to the entire whole, and thus to each and every part regardless of who wrote it.

Thus, it is not the intent of this section to claim rights or contest your rights to work written entirely by you; rather, the intent is to exercise the right to control the distribution of derivative or collective works based on the Program.

In addition, mere aggregation of another work not based on the Program with the Program (or with a work based on the Program) on a volume of a storage or distribution medium does not bring the other work under the scope of this License.

3. You may copy and distribute the Program (or a work based on it, under Section 2) in object code or executable form under the terms of Sections 1 and 2 above provided that you also do one of the following:

a) Accompany it with the complete corresponding machine-readable source code, which must be distributed under the terms of Sections 1 and 2 above on a medium customarily used for software interchange; or,

b) Accompany it with a written offer, valid for at least three years, to give any third party, for a charge no more than your cost of physically performing source distribution, a complete machine-readable copy of the corresponding source code, to be distributed under the terms of Sections 1 and 2 above on a medium customarily used for software interchange; or,

c) Accompany it with the information you received as to the offer to distribute corresponding source code. (This alternative is allowed only for noncommercial distribution and only if you received the program in object code or executable form with such an offer, in accord with Subsection b above.)

The source code for a work means the preferred form of the work for making modifications to it. For an executable work, complete source code means all the source code for all modules it contains, plus any associated interface definition files, plus the scripts used to control compilation and installation of the executable. However, as a special exception, the source code distributed need not include anything that is normally distributed (in either source or binary form) with the major components (compiler, kernel, and so on) of the operating system on which the executable runs, unless that component itself accompanies the executable.

If distribution of executable or object code is made by offering access to copy from a designated place, then offering equivalent access to copy the source code from the same place counts as distribution of the source code, even though third parties are not compelled to copy the source along with the object code.

4. You may not copy, modify, sublicense, or distribute the Program except as expressly provided under this License. Any attempt otherwise to copy, modify, sublicense or distribute the Program is void, and will automatically terminate your rights under this License. However, parties who have received copies, or rights, from you under this License will not have their licenses terminated so long as such parties remain in full compliance.

5. You are not required to accept this License, since you have not signed it. However, nothing else grants you permission to modify or distribute the Program or its derivative works. These actions are prohibited by law if you do not accept this License. Therefore, by modifying or distributing the Program (or any work based on the Program), you indicate your acceptance of this License to do so, and all its terms and conditions for copying, distributing or modifying the Program or works based on it.

6. Each time you redistribute the Program (or any work based on the Program), the recipient automatically receives a license from the original licensor to copy, distribute or modify the Program subject to these terms and conditions. You may not impose any further restrictions on the recipients' exercise of the rights granted herein. You are not responsible for enforcing compliance by third parties to this License.

7. If, as a consequence of a court judgment or allegation of patent infringement or for any other reason (not limited to patent issues), conditions are imposed on you (whether by court order, agreement or otherwise) that contradict the conditions of this License, they do not excuse you from the conditions of this License. If you cannot distribute so as to satisfy simultaneously your obligations under this License and any other pertinent obligations, then as a consequence you may not distribute the Program at all. For example, if a patent license would not permit royalty-free redistribution of the Program by all those who receive copies directly or indirectly through you, then the only way you could satisfy both it and this License would be to refrain entirely from distribution of the Program.

If any portion of this section is held invalid or unenforceable under any particular circumstance, the balance of the section is intended to apply and the section as a whole is intended to apply in other circumstances.

It is not the purpose of this section to induce you to infringe any patents or other property right claims or to contest validity of any such claims; this section has the sole purpose of protecting the integrity of the free software distribution system, which is implemented by public license practices. Many people have made generous contributions to the wide range of software distributed through that system in reliance on consistent application of that system; it is up to the author/donor to decide if he or she is willing to distribute software through any other system and a licensee cannot impose that choice.

This section is intended to make thoroughly clear what is believed to be a consequence of the rest of this License.

8. If the distribution and/or use of the Program is restricted in certain countries either by patents or by copyrighted interfaces, the original copyright holder who places the Program under this License may add an explicit geographical distribution

limitation excluding those countries, so that distribution is permitted only in or among countries not thus excluded. In such case, this License incorporates the limitation as if written in the body of this License.

9. The Free Software Foundation may publish revised and/or new versions of the General Public License from time to time. Such new versions will be similar in spirit to the present version, but may differ in detail to address new problems or concerns. Each version is given a distinguishing version number. If the Program specifies a version number of this License which applies to it and "any later version", you have the option of following the terms and conditions either of that version or of any later version published by the Free Software Foundation. If the Program does not specify a version number of this License, you may choose any version ever published by the Free Software Foundation.

10. If you wish to incorporate parts of the Program into other free programs whose distribution conditions are different, write to the author to ask for permission. For software which is copyrighted by the Free Software Foundation, write to the Free Software Foundation; we sometimes make exceptions for this. Our decision will be guided by the two goals of preserving the free status of all derivatives of our free software and of promoting the sharing and reuse of software generally.

#### **NO WARRANTY**

11. BECAUSE THE PROGRAM IS LICENSED FREE OF CHARGE, THERE IS NO WARRANTY FOR THE PROGRAM, TO THE EXTENT PERMITTED BY APPLICABLE LAW. EXCEPT WHEN OTHERWISE STATED IN WRITING THE COPYRIGHT HOLDERS AND/OR OTHER PARTIES PROVIDE THE PROGRAM "AS IS" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF THE PROGRAM IS WITH YOU. SHOULD THE PROGRAM PROVE DEFECTIVE, YOU ASSUME THE COST OF ALL NECESSARY SERVICING, REPAIR OR CORRECTION.

12. IN NO EVENT UNLESS REQUIRED BY APPLICABLE LAW OR AGREED TO IN WRITING WILL ANY COPYRIGHT HOLDER, OR ANY OTHER PARTY WHO MAY MODIFY AND/OR REDISTRIBUTE THE PROGRAM AS PERMITTED ABOVE, BE LIABLE TO YOU FOR DAMAGES, INCLUDING ANY GENERAL, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE USE OR INABILITY TO USE THE PROGRAM (INCLUDING BUT NOT LIMITED TO LOSS OF DATA OR DATA BEING RENDERED INACCURATE OR LOSSES SUSTAINED BY YOU OR THIRD PARTIES OR A FAILURE OF THE PROGRAM TO OPERATE WITH ANY OTHER PROGRAMS), EVEN IF SUCH HOLDER OR OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.