

## LICENSE AGREEMENT

THIS AGREEMENT (the "Agreement"), dated as of the \_\_\_\_ day of \_\_\_\_\_ 2002 (the "Effective Date"), is entered into between CARNEGIE INSTITUTION OF WASHINGTON (hereinafter "CARNEGIE"), having a place of business at 1530 P Street, N.W., Washington, D.C. 20005 and \_\_\_\_\_, a \_\_\_\_\_ corporation ("LICENSEE"), having a place of business at \_\_\_\_\_.

### WITNESSETH

WHEREAS, CARNEGIE owns or has rights in a certain Database as specified in **Exhibit A** attached hereto and made a part hereof, and wishes to license said Database to LICENSEE on a non-exclusive basis;

WHEREAS, LICENSEE desires to obtain a non-exclusive license to said Database under CARNEGIE'S rights in such Database, for LICENSEE's internal use only;

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants set forth below, the parties agree as follows:

### ARTICLES

#### 1. DEFINITIONS

For purposes of this Agreement, the terms defined in this Article 1, shall have the respective meanings set forth below:

- 1.1 "Documentation" means any files containing said Database and any written instructions and user manuals regarding the use of said Database owned or controlled by CARNEGIE.
- 1.2 "Internal Website" means a website not accessible over the World Wide Web, and only accessible on a restricted basis internally within LICENSEE's organization.

#### 2. LICENSE GRANTS

- 2.1 Internal Use Site License. Subject to the terms and conditions of this Agreement, CARNEGIE hereby grants to LICENSEE a non-exclusive, non-transferable license to use said Database solely for internal purposes for the time period specified in Section 6.1 of this Agreement ("License Period"). The Database may be made accessible by LICENSEE to its employees via an Internal Website, but shall not be accessible by or to third parties. Unless otherwise agreed by the parties in writing, LICENSEE may use and reproduce the Database only at LICENSEE's business locations on designated equipment owned and operated by Licensee.
- 2.2 Restrictions. Except as expressly authorized by this Agreement, LICENSEE shall not otherwise use, reproduce, distribute, perform, display, modify or

produce derivative works of said Database. The license granted herein is granted solely to LICENSEE, and not, by implication or otherwise, to any parent, subsidiary or affiliate of LICENSEE or any other third party. All rights not expressly granted to LICENSEE under this Agreement are reserved to CARNEGIE and its licensors. LICENSEE shall not, and shall not permit any third party, to modify, adapt, translate, prepare derivative works from, decompile, reverse engineer, disassemble or otherwise attempt to derive source code from the Database. LICENSEE shall not use the Database to provide service bureau, time-sharing, testing or other services to any third party. LICENSEE shall not make copies of the Database except as expressly authorized by this Agreement, provided that LICENSEE may make one (1) additional copy for backup and archival purposes. All copyright notices of CARNEGIE shall be reproduced on all copies of the Database.

- 2.3 Reservation of Rights. Notwithstanding anything to the contrary in this Agreement, the license granted to LICENSEE pursuant to this Agreement is subject to the reservation of the rights, if any, which may exist in favor of the United States Government pursuant to Title 35 United States Code Chapter 18 and the regulations promulgated thereunder.

### 3. FEES AND PAYMENT

- 3.1 License Fees. In consideration of the license granted to Licensee hereunder, Licensee shall pay to CARNEGIE a non-refundable license fee in the amount indicated on **Exhibit B** attached hereto and made a part of this Agreement.
- 3.2 Payment and Taxes. Licensee shall pay license fees specified in **Exhibit B** hereto, if any, net thirty (30) days from the date of CARNEGIE'S invoice for such fees. Any payments due under this Agreement which are not paid when due shall bear interest at an annual rate of eighteen percent (18%) or the maximum rate permitted by applicable law, whichever is less. LICENSEE shall pay all taxes (including, without limitation, sales, use, value-added and similar taxes) payable based on use of the Database.

#### 4. OWNERSHIP

Title in and full ownership of the Database and any and all materials relating thereto supplied to LICENSEE by CARNEGIE, including all intellectual property rights therein, shall remain in CARNEGIE and its licensors. LICENSEE shall have no ownership in any versions of the Database. Except as otherwise expressly provided in this Agreement, no license or rights in the Database, or in other intellectual property provided to LICENSEE by CARNEGIE under this Agreement are given to LICENSEE under this Agreement, either expressly or by implication, estoppel or otherwise.

#### 5. CONFIDENTIALITY

- 5.1 Confidential Information. “Confidential Information” means proprietary or non-public information of either party of any kind whatsoever which is disclosed under this Agreement and marked or otherwise identified in writing as “confidential.” The parties agree and acknowledge that the Database constitutes Confidential Information of CARNEGIE. Each party shall maintain in confidence the Confidential Information of the other party, and shall not disclose, use or grant the use of the other party’s Confidential Information except on a need-to-know basis to its directors, officers and employees. Upon the expiration or earlier termination of this Agreement, each party shall return to the other party all tangible items regarding the Confidential Information of the other party and all copies thereof.
- 5.2 Exceptions. Confidential Information of a party shall not include such information as the other party can establish by written documentation (a) to have been publicly known prior to disclosure of such information by such party to the other party; (b) to have become publicly known, without fault on the part of the other party, subsequent to disclosure of such information by such party to the other party; (c) to have been disclosed to the other party at any time on an unrestricted basis from a source unrelated to such party and not under a duty of confidentiality to such party; (d) to have been otherwise rightfully known by the other party prior to disclosure of such information by such party to the other party; or, (e) to have been independently developed by employees or others acting on behalf of the other party without access to or use of such information.
- 5.3 Injunctive Relief. Each party acknowledges that, because of the unique nature of this Agreement and the obligations of each party to maintain the confidentiality of the Confidential Information of the other party on the terms and subject to the conditions of this Agreement, monetary damages will be an inadequate remedy for the breach of a its non-disclosure and non-use obligations under this Agreement, and that, as a result, the party shall be entitled to obtain injunctive and other equitable relief to protect the confidential nature of its Confidential Information to the extent allowed by applicable law.

## **6. TERMINATION**

- 6.1 Term. This Agreement shall take effect as of the Effective Date, and, unless terminated sooner in accordance with the provisions of this Article 6, shall continue in effect for a period of one (1) year. Thereafter, this Agreement shall automatically continue in effect unless terminated by either party upon at least thirty (30) days written notice prior to the end of the initial one (1) year term or any one (1) year renewal thereof.
- 6.2 Termination by LICENSEE. LICENSEE may terminate this Agreement, in its sole discretion, upon at least thirty (30) days prior written notice to CARNEGIE.
- 6.3 Termination by CARNEGIE. CARNEGIE may terminate this Agreement upon or after the breach of any material provision of this Agreement by LICENSEE if LICENSEE has not cured such breach within thirty (30) days after receipt of written notice thereof by CARNEGIE, or upon LICENSEE'S insolvency.
- 6.4 Effect of Expiration or Termination. Expiration or termination of this Agreement shall not relieve the parties of any obligation accruing prior to such expiration or termination, and the provisions of Articles 1, 2.1-2.3, 3, 4, 5 6.4, 7, 8 and 9 shall survive the expiration or termination of this Agreement.

## **7. WAIVER OF WARRANTIES AND LIMITATION OF LIABILITY**

- 7.1 Waiver Of Warranties. THE DATABASE IS PROVIDED "AS IS", AND CARNEGIE EXPRESSLY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES REGARDING THE SAME, INCLUDING USE THEREOF, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF NONINFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR ANY WARRANTY THAT THE LICENSE GRANTED HEREUNDER COMPRISE ALL THE RIGHTS AND LICENSES NECESSARY OR DESIRABLE TO USE THE DATABASE FOR THE PURPOSES AUTHORIZED BY THIS AGREEMENT.
- 7.2 Limited Liability. IN NO EVENT SHALL CARNEGIE BE LIABLE TO LICENSEE FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT OR WITH RESPECT TO ANY CLAIM, DEMAND, ACTION OR OTHER PROCEEDING RELATING TO THIS AGREEMENT HOWEVER CAUSED, AND ON ANY THEORY OF LIABILITY (INCLUDING NEGLIGENCE) AND WHETHER OR NOT CARNEGIE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL CARNEGIE'S LIABILITY OWING TO LICENSEE WITH RESPECT TO ANY CLAIM, DEMAND, ACTION OR OTHER PROCEEDING

RELATING TO THIS AGREEMENT EXCEED THE SUMS, IF ANY,  
ACTUALLY PAID BY LICENSEE TO CARNEGIE PURSUANT TO THIS  
AGREEMENT.

## 8. INDEMNIFICATION

LICENSEE shall indemnify and hold harmless CARNEGIE, its officers, agents and employees from any and all liability, including claims, demands, losses, costs, damages, and expenses of every kind and description (including death), or damages to persons or property, and intellectual property infringement, arising out of, in connection with or occurring during the course of this Agreement or thereafter, where such liability is founded upon or grows out of the acts or omissions of any of the officers, employees or agents of LICENSEE. LICENSEE'S obligation to indemnify CARNEGIE under this provision is subject to CARNEGIE giving LICENSEE prompt written notice of any such claims, all reasonable assistance needed to defend the case and sole control over the defense of the case, including the decision to settle.

## 9. MISCELLANEOUS

9.1 Notices. Any consent or notice required or permitted to be given or made under this Agreement by one party to the other party shall be in writing and delivered to the other party at its address indicated below, or to such other address as the addressee shall have last furnished in writing to the addressor. Any such consent or notice shall be effective upon receipt by the addressee.

If to CARNEGIE, for technical matters:

Dr. Sue Rhee

If to LICENSEE, for technical matters:

If to CARNEGIE, for all other matters:

John Lively  
Director of Administration and Finance  
Carnegie Institution of Washington  
1530 P Street, N.W.  
Washington, D.C. 20005

If to LICENSEE, for all other matters:

- 9.2 Governing Law. This Agreement, shall be governed by and construed in accordance with the laws of the District of Columbia, without regard to the conflicts of law principles thereof, and shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods.
- 9.3 U.S. Export Laws and Regulations. Each party hereby acknowledges that the rights and obligations of this Agreement are subject to the laws and regulations of the United States relating to the export of products and technical information. Without limitation, each party shall comply with all such laws and regulations.
- 9.4 U.S. Government Restricted Rights. If the Database is used or acquired by or on behalf of any unit, division or agency of the United States Government, this provision applies. The Database is provided with RESTRICTED RIGHTS. The use, modification, reproduction, release, display, duplication or disclosure thereof by or on behalf of any unit, division or agency of the Government is subject to the restrictions set forth in the Rights in Technical Data—Non-commercial Items clause set forth in 48 CFR 252.227-7013.
- 9.5 Assignment. Licensee shall not assign its rights or delegate its duties under this Agreement to any other person or entity without the prior written consent of CARNEGIE, whether by agreement or by operation of law, and whether or not in connection with a Change of Control, which consent shall not be unreasonably withheld. Any attempted assignment or delegation in violation of this provision will be void. For the purposes of this Agreement, the term "Change of Control" means: any reorganization, consolidation or merger (or similar transaction or series of transactions) of the licensee with or into one or more corporations or entities in which the holders of the licensee's outstanding shares immediately before such transaction or series of related transactions do not, immediately after such transaction or series of related transactions, retain equity ownership representing a majority of the voting power of the surviving entity (or its parent if the surviving entity is wholly owned by such parent) of such transaction or series of related transactions .
- 9.6 Waivers and Amendments. No change, modification, extension, termination or waiver of this Agreement, or any of the provisions herein contained, shall be valid unless made in writing and signed by duly authorized representatives of the parties hereto.
- 9.7 Entire Agreement. This Agreement embodies the entire understanding between the parties and supersedes any prior understanding and agreements between and

among them respecting the subject matter hereof. There are no representations, agreements, arrangements or understandings, oral or written, between the parties hereto relating to the subject matter of this Agreement which are not fully expressed herein.

- 9.8 Severability. Any of the provisions of this Agreement which are determined to be invalid or unenforceable in any jurisdiction shall be ineffective to the extent of such invalidity or unenforceability in such jurisdiction, without rendering invalid or unenforceable the remaining provisions hereof and without affecting the validity or enforceability of any of the terms of this Agreement in any other jurisdiction.
- 9.9 Waiver. The waiver by either party hereto of any right hereunder or the failure to perform or of a breach by the other party shall not be deemed a waiver of any other right hereunder or of any other breach or failure by said other party whether of a similar nature or otherwise.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

**CARNEGIE INSTITUTION OF  
WASHINGTON**

\_\_\_\_\_  
Name: John Lively  
Title: Director of Administration and \_\_\_\_  
Finance

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



## **EXHIBIT A**

### **DESCRIPTION OF LICENSED DATABASE**

The licensed Database consists of a metabolic pathway database for Arabidopsis known as “Aracyc”. The Aracyc database shall be provided as a set of data files, each of which will be marked “Confidential - For Authorized Use Only Pursuant To License Agreement With The Carnegie Institution Of Washington”.

## **EXHIBIT B**

### **FEEES**

Licensee fees include a payment of \$10,000 per year, beginning with the effective date of this Agreement and annually on the anniversary date thereof for a single user identified in writing to CARNEGIE. The fee for each additional user is \$250 per annum, each such additional user to be identified in writing to CARNEGIE.