

**INTERNAL USE SITE LICENSE
GENOME BROWSER**

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 _____ [location] agree as follows:

1. Background. UC, acting through the Genome Bioinformatics Group at UCSC ("Laboratory"), has developed and is owner of the UCSC Genome Browser, as set forth on Exhibit A ("Licensed Work"). Howard Hughes Medical Institute (HHMI) had an ownership in the Licensed Work and assigned that interest to UC. Licensee desires to obtain the Licensed Work to be installed and operated on one or more computers at the Site, which is a single building or contiguous set of laboratories sharing the same physical address and under common management as specified on Exhibit B.

HHMI is not a party to this Agreement and has no liability to any licensee, sublicensee, 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.

2. Grant. Subject to the limitations set forth in this Internal Use Site License ("Agreement") and upon payment of the license fee as set forth herein, UC grants to Licensee, and Licensee accepts, a non-exclusive, nontransferable internal use site license as follows:

- (a) to install and operate the Licensed Work on one or more computers at the Site for use by Licensee personnel under the following license _____ as specified in Exhibit A; and
- (b) to modify the Licensed Work and/or combine the Licensed Work with other works, provided that the provisions of this Agreement take precedence over any licensing terms of such other works (such as any works under the General Public License);
- (c) to make copies of the Licensed Work in original or modified forms as needed at the Site;
- (d) to receive updates of Licensed Work as may be designated from time to time for general public release by the Laboratory.

All copies and modifications shall include the copyright notice as provided with the Licensed Work, and shall be subject to the terms of this Agreement.

Licensee shall not sublicense, loan, lease, or otherwise transfer the Licensed Work for use beyond the Site, and shall not permit access to the Licensed Work over a remote connection, such as the internet or WAN, for use by anyone, including but not limited to Licensee personnel or third parties not at the Site; provided however, Licensee personnel assigned to the Site but working from a home location, or traveling, may access the Licensed Work at the Site.

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

All right, title, and interest in and to the Licensed Work shall at all times remain with UC.

3. Fee. Licensee shall pay UC a nonrefundable annual licensing fee of US\$ _____ as indicated on Exhibit A. Payment of the first annual fee shall be made by Licensee upon execution of this Agreement, by check made payable to "The Regents of the University of California" and sent to:

University of California, Santa Cruz
Planning & Budget
1156 High Street
Santa Cruz, CA 95064
Attn: Peggy Halsey

Subsequent nonrefundable annual payments shall be due on or before each anniversary of the date of execution of this Agreement. 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.

4. Delivery. Upon receipt of payment and executed license, UC will deliver to Licensee's Technical Contact one copy of the Licensed Work. UC will make the Technical Contact aware of any updates or extensions to the Licensed Work that are made available for public release.

5. Disclaimer. Licensed Work is a research product and is being provided as a courtesy to Licensee "as is", without any accompanying services from UC. UC MAKES NO REPRESENTATIONS AND EXTENDS NO WARRANTIES OF ANY KIND, EITHER EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, THAT THE USE OF THE LICENSED WORK WILL BE UNINTERRUPTED, OR THAT THE USE OF THE LICENSED WORK WILL NOT INFRINGE ANY PATENT, COPYRIGHT, TRADEMARK OR OTHER RIGHTS. IN NO EVENT WILL UC BE LIABLE FOR ANY INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES RESULTING FROM EXERCISE OF THE LICENSES GRANTED UNDER THIS AGREEMENT OR THE USE OF THE LICENSED WORK BY LICENSEE.

6. Indemnification. 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.

The Howard Hughes Medical Institute ("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, "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 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. This provision shall survive termination of this Agreement.

7. Term and Termination. Provided Licensee shall pay the annual license fee specified herein, the term of this Agreement shall be for the life of the last to expire copyright covering the Licensed Work unless terminated by either party as set forth herein.

Licensee may terminate this Agreement at any time by providing thirty (30) days written notice to UC.

UC may terminate this Agreement if Licensee is in material breach of this Agreement and has not cured such breach within thirty (30) days after Licensee's receipt of written notice of such breach. In the event of termination of this Agreement, Licensee shall immediately cease use of the Licensed Work and return the Licensed Work to UC or provide verification of its destruction, including any copies or modifications. Any termination or expiration of this Agreement will not affect the rights and obligations set forth in Sections 5, 6, 7, and 8.

8. General. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

This Agreement contains the entire Agreement between the parties and supersedes all prior written or oral agreements with respect to the subject matter hereof.

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

This Agreement may be modified only by written amendment that references this Agreement and is signed by authorized representatives of both parties. This Agreement may be assigned by Licensee to a successor in interest to all or substantially all of Licensee's assets upon written notice to UC.

The failure of either party to assert a right hereunder or to insist upon compliance with any term or condition of this Agreement will not constitute a waiver of that right or excuse a similar subsequent failure to perform any such term or condition by the other party. None of the terms, covenants or conditions of this Agreement may be waived except by written consent of the party waiving the compliance.

This Agreement will be effective only if fully executed prior to December 31, 2006.

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
INTERNAL USE SITE LICENSE
GENOME BROWSER

A.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 (approximately 132,000 lines of code) 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).

A.2. Annual Licensing Fee Table (effective through December 31, 2006)

Each license is given a two-letter designation in parenthesis following the annual license fee. Place this designation at 2(a) of the Agreement and the associated amount in the blank at 3 of the Agreement.

A “Non-Profit” organization is an educational institutions or government agency. 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.

A “Small Business” is an organization meeting the criteria of the Small Business Administration as a “Small Business Concern” (see <http://www.sba.gov/size/>); generally fewer than 500 employees or less than \$6m in annual revenue.

A “Regular Business” is any organization that is not a Small Business or Non-Profit.

	Non-Profit	Small Business	Regular Business
Site License	\$0 (NS)	\$10,000 (SS)	\$20,000 (RS)

Multiple Site license for three (3) or more Sites in a single organization: 20% discount from the above fee schedule, reflecting lower license transaction costs at UC.

Company-wide 50 user license	\$0 (NL)	\$25,000 (SL)	\$50,000 (RL)
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Permits use of the Licensed Work on a single Licensee controlled server, which may be accessed by up to 50 Licensee employees concurrently from any number of Company Sites.

Company-wide unlimited license	\$0 (NU)	\$50,000 (SU)	\$100,000 (RU)
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Permits use of the Licensed Work on multiple Licensee-controlled servers, which may be accessed by an unlimited number of Licensee employees.

Versioning 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. UC understands, however, that some organizations will feel the need to request adjustments in the language or substance of the Agreement. UC is willing to discuss particular terms and conditions, but does not represent that UC will be willing or able to make the requested changes. However, the minimum additional license fee for such a negotiated agreement is **\$2500**, regardless of the outcome of the discussion.

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. A Small Business or Regular Business taking the unlimited license is entitled if request is made to one full day workshop within three (3) months of taking the license, at a mutually arranged date and location, conducted by members of the Genome Bioinformatics Group.

Exhibit B
INTERNAL USE SITE LICENSE
GENOME BROWSER

B.1. Site description: _____
(name of employee, unit, laboratory or department)

Site address:

B.2 Technical Contact:

Name _____

Email _____

Fax _____

Telephone _____

B.3. Licensed Work will be installed on the following type of Unix system:

Vendor _____

Machine type _____

Machine model _____

OS _____

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

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

_____ Private _____ Public _____ Other (explain)

_____ UC _____ Government _____ Commercial _____ Other (explain)