

Licence for academic (non-profit) institutions to use eeFit

Terms of agreement

Article 1 - Definitions

For the purpose of this Agreement, when the following expressions commence with a capital letter, they shall have the following meaning:

“Agreement” means this license agreement and its annexes.

“Software” means the software eeFit owned by the CEA, in its Source Code and possibly in its Object Code form and, where applicable, its documentation, "as is" when the Licensee accepts the Agreement.

“Licensee” means the Software user(s) having accepted the Agreement.

“Object Code” means the Software in machine-readable, compiled and/or executable form including, but not limited to and, byte code form.

“Source Code” means the Software in human readable form normally used to make modifications to it including, but not limited to, comments and procedural code such as job control language and scripts to control compilation and installation.

“Software Documentation” means the Software information, being technical information used or, useful in, or relating to the design, development, use or maintenance of any version of the Software.⁰³

“CEA” means the Commissariat à l’Energie Atomique et aux Energies Alternatives, a French state-owned research entity with a scientific, technical or industrial activity duly organized under the laws of France and having its registered office located Bâtiment Le Ponant D – 25, rue Leblanc – 75015 Paris (France) – and declared at the Paris Register of Commerce and Trade (“Registre du Commerce et des Sociétés de Paris”) under the following registration number: RCS PARIS B 775 685 019.

“Software Owners” means the CEA, as owner of the Software.

“Related Module” means a set of sources files including their documentation that, without modification to the Software Source Code, enables supplementary functions or services in addition to those offered by the Software.

“Parties” mean the Licensee, the CEA.

Excepted the expression “Parties”, all the above expressions may be used both in singular and plural form.

Article 2 - Purpose

The purpose of the Agreement is the grant by the Software Owners to the Licensee of a free non-exclusive, non-transferable and worldwide license on the Software as set forth in Article 5 hereinafter for the whole term of the protection granted by the rights over this Software.

For the purpose of the present conditions, the Licensee shall only refer to CEA for any matters arising out of the execution of this agreement, especially when authorizations are required. This shall be without prejudice to the rights over the Software, which is owned by the CEA.

The CEA’s contact point is:

Michel Vivaudou
Institut de Biologie Structurale
71 Avenue des Martyrs, CS 10090
38044 Grenoble Cedex 9 – FRANCE
email: eefit@ibs.fr

Article 3 - Acceptation

3.1 The Licensee shall be deemed as having accepted the terms and conditions of this Agreement, including its Appendix regarding Related Module, upon the occurrence of the first of the following events:

- 1) loading the Software by any or all means, notably, by downloading from a remote server, or by loading from a physical medium;
- 2) the first time the Licensee exercises any of rights granted hereunder.

3.2 One copy of the Agreement, containing a notice relating to the characteristics of the Software, to the limited warranty, and to the fact that its use is restricted to academic non-profit institution has been provided to the Licensee prior to its acceptance as set forth in Article 3.1 hereinabove, and the Licensee hereby acknowledges that it has read and understood it.

Article 4 – Effective date and term

4.1 Effective date

The Agreement shall become effective on the date when it is accepted by the Licensee as set forth in Article 3.1.

4.2 Term

The Agreement shall remain in force for the entire legal term of protection of the economic rights over the Software, without prejudice to provisions of clause 6.2 regarding the moral rights of the authors.

Article 5 – Scope of the granted rights

Provided that the Licensee is an academic (non-profit) institution, the Software Owners hereby grants to it the following rights over the Software. These rights, that the Licensee accepts, are granted for any or all use, and for the term of the Agreement, on the basis of the terms and conditions set forth hereinafter.

5.1 Right of use

5.1.1 The Licensee shall not use the Software for any purpose (research or otherwise) that is supported by a “for profit” organisation without CEA’s prior written authorization.

5.1.2 The Licensee is authorized to use the Software, without any limitation as to its fields of application, with it being hereinafter specified that this comprises:

- a) permanent or temporary reproduction of all or part of the Software by any or all means and in any or all form.
- b) loading, displaying, running, or storing the Software on any or all medium.
- c) entitlement to observe, study or test its operation so as to determine the ideas and principles behind any or all constituent elements of said Software. This shall apply when the Licensee carries out any or all loading, displaying, running, transmission or storage operation as regards the Software, that it is entitled to carry out hereunder.

5.1.3 Except as expressly authorized above, Licensee shall not: a) copy, in whole or in part, Software or Software Documentation except for the needs of its installation; or b) sublicense, sell, or create derivative works of the Software.

5.2 Distribution

The Licensee shall not disclose in any form the Software to third parties without CEA’s prior authorization.

If the Licensee receives a request to furnish all or any portion of the Software to any third party, it shall not fulfil such a request and shall refer it in writing to the CEA at the following address:

Michel Vivaudou
Institut de Biologie Structurale
71 Avenue des Martyrs, CS 10090

38044 Grenoble Cedex 9 – FRANCE
email: eeFit@ibs.fr

No obligation to accept is charged to the CEA

Article 6 – Duties of the Licensee

6.1 Bug reports

Licensee shall reports, to its best effort, any bugs related to the use of the Software.

Reports of bugs shall be made at the following address:

Michel Vivaudou
Institut de Biologie Structurale
71 Avenue des Martyrs, CS 10090
38044 Grenoble Cedex 9 – FRANCE
email: eeFit@ibs.fr

6.2 Credits

The Licensee agrees that any reports or publications of results obtained with the Software will acknowledge its use by citation of the following article:

Vivaudou M. eeFit : A Microsoft Excel-embedded program for interactive analysis and fitting of experimental dose-response data. *Biotechniques (2019) in Press*

Article 7 – Intellectual property

7.1 Software intellectual property

The CEA owns the economic rights over the Software. Any or all use of the Software is subject to compliance with the present terms and conditions under which the Software Owners have elected to distribute their work.

The Software Owners undertake that the Software will remain ruled at least by this Agreement, for the duration set forth in Article 4.2.

7.2 Joint provisions

The Licensee undertakes not to directly or indirectly infringe the intellectual property rights of the Software Owners on the Software and to take, where applicable, vis-à-vis its staff, any and all measures required to ensure respect of the said intellectual property rights.

Article 8 – Related Services

8.1 Under no circumstances shall the Agreement oblige the Software Owners to provide technical assistance or maintenance services for the Software.

However, the Software Owners are entitled to offer this type of services. The terms and conditions of such technical assistance, and/or such maintenance, shall be set forth in a separate instrument. Only the Software Owners offering said maintenance and/or technical assistance services shall incur liability therefore.

8.2 Similarly, the Software Owners are entitled to offer to the Licensee, under their sole responsibility, a warranty, that shall only be binding upon itself, under terms and conditions that it is free to decide. Said warranty, and the financial terms and conditions of its application, shall be subject of a separate instrument executed between the Software Owners and the Licensee.

Article 9 – Warranty/Liability

9.1 The Licensee uses the Software at its own risks and shall be solely liable for damages of any kind caused by accident arising out of or in connection with the use or operation of the Software. Therefore, the Licensee shall not search either Software Owners 's liability or the liability of the Software Owners employees, and shall warrant them against any action, claim or request that would be brought against them because of all damages, liabilities and expenses in connection with an accident that would occurred during the use or operation of the Software.

9.2 The Licensee acknowledges that the scientific and technical state-of-the-art when the Software was distributed did not enable all possible uses to be tested and verified, nor for the presence of possible defects to be detected. In this respect, the Licensee's attention has been drawn to the risks associated with downloading, loading, using, modifying and/or developing and reproducing the Software which are reserved for experienced users.

The Licensee shall be responsible for verifying, by any or all means, the suitability of the product for its requirements, its good working order, and for ensuring that it shall not cause damage to either persons or properties.

9.3 The Software Owners hereby represent, in good faith, that they are entitled to grant all the rights over the Software (including in particular the rights set forth in Article 5).

9.4 The Licensee acknowledges that the Software is supplied "as is" by the Software Owners without any other express or tacit warranty, other than that provided for in Article 9.3 and, in particular, without any warranty as to its commercial value, its secured, safe, innovative or relevant nature.

Specifically, the Software Owners do not warrant that the Software is free from any error, that it will operate without interruption, that it will be compatible with the Licensee's own equipment and software configuration, nor that it will meet the Licensee's requirements.

9.4 The Software Owners do not either expressly or tacitly warrant that the Software does not infringe any third party intellectual property right relating to a patent, software or any other property right. Therefore, the Software Owners disclaim any and all liability

towards the Licensee arising out of any or all proceedings for infringement that may be instituted in respect of the use of the Software. The Software Owners disclaim any and all liability as regards the Licensee's use of the name of the Software. No warranty is given as regards the existence of prior rights over the name of the Software or as regards the existence of a trademark.

Article 10 - Termination

10.1 In the event of a breach by the Licensee of its obligations hereunder, the Software Owners may automatically terminate this Agreement thirty (30) days after notice has been sent to the Licensee and has remained ineffective.

10.2 In case of termination of the Agreement, the Licensee shall no longer be authorized to use the Software.

Article 11 - Miscellaneous

11.1 Excusable events

Neither Party shall be liable for any or all delay, or failure to perform the Agreement, that may be attributable to an event of force majeure, an act of God or an outside cause, such as defective functioning or interruptions of the electricity or telecommunications networks, network paralysis following a virus attack, intervention by government authorities, natural disasters, water damage, earthquakes, fire, explosions, strikes and labor unrest, war, etc.

11.2 New versions of EeFit

The terms and conditions of this Agreement only apply to the version of EeFit to which there were attached and/or before the download of which there were displayed. As a consequence, any new versions of EeFit may be subject to other terms and conditions. In particular, the grant of licenses by the Software Owners on these new versions may not be free of charge.

11.3 Any failure by either Party, on one or more occasions, to invoke one or more of the provisions hereof, shall under no circumstances be interpreted as being a waiver by the interested Party of its right to invoke said provision(s) subsequently.

11.4 The Agreement cancels and replaces any or all previous agreements, whether written or oral, between the Parties and having the same purpose, and constitutes the entirety of the agreement between said Parties concerning said purpose. No supplement or modification to the terms and conditions hereof shall be effective as between the Parties unless it is made in writing and signed by their duly authorized representatives.

11.5 In the event that one or more of the provisions hereof were to conflict with a current or future applicable act or legislative text, said act or legislative text shall prevail, and the Parties shall make the necessary amendments so as to comply with said act or legislative text. All other provisions shall remain effective. Similarly, invalidity of a provision of the

Agreement, for any reason whatsoever, shall not cause the Agreement as a whole to be invalid.

11.6 Language

The Agreement is drafted in both French and English and both versions are deemed authentic, but should a dispute arise about the interpretation of the Agreement the French version shall prevail as the reference.

Article 12 – Governing law and jurisdiction

12.1 The Agreement is governed by French law. The Parties agree to endeavour to seek an amicable solution to any disagreements or disputes that may arise during the performance of the Agreement.

12.2 Failing an amicable solution within two (2) months as from their occurrence, and unless emergency proceedings are necessary, the disagreements or disputes shall be referred to the Paris Courts having jurisdiction, by the more diligent Party.