

Agrmt No.

EMSL SOFTWARE USER AGREEMENT

This is an agreement between BATTELLE MEMORIAL INSTITUTE, on behalf of the U.S. Department of Energy, through its Contract No. DE-AC06-76RL 01830, located in Richland, Washington, (hereinafter called "BMI"), and \_\_\_\_\_, located in \_\_\_\_\_, (hereinafter called USER).

WHEREAS BMI has rights to a software system (known as "QBank", Version 2.6), a resource allocation management program for parallel computers, (hereinafter, along with associated documentation and all other software furnished by BMI, referred to as "the SOFTWARE"), developed at the Pacific Northwest National Laboratory operated by BMI under Contract Number DE-AC06-76RL 01830 for the U.S. Department of Energy; and

WHEREAS USER desires to use the SOFTWARE for scientific purposes.

NOW THEREFORE, in consideration of mutual covenants contained herein, the parties hereto represent and agree as follows:

1. USE OF THE SOFTWARE

BMI agrees to provide one copy of the SOFTWARE to USER for an unlimited use period subject to termination provisions contained in section 7 below.

2. PROPERTY RIGHTS

(a) It shall be within BMI's sole discretion whether or not to enter into this Agreement with a prospective USER.

(b) USER shall take any reasonable action requested by BMI to protect BMI's rights, and to protect the SOFTWARE from unauthorized disclosure.

(c) USER shall keep the SOFTWARE free and clear of all claims, liens and encumbrances.

(d) USER shall immediately give notice to BMI of any knowledge it has concerning any infringement of BMI's rights, whether by USER's own employees or any other third party.

(e) USER has the right to utilize the SOFTWARE in the development of its application programs for its own internal use only.

3. RESTRICTIONS ON USE

(a) USER understands that the SOFTWARE is valuable to BMI and its licensors. USER shall use the SOFTWARE for its own internal operations on computers identified in Attachment A, and shall provide access to its customers who agree to be bound hereunder. All additional entities given access to the SOFTWARE shall be provided a copy of the Software User Agreement and shall agree to comply with all obligations therein. USER shall not directly or indirectly sell, give, offer, or transfer the SOFTWARE or any part thereof to any party outside this Agreement.

(b) USER shall not permit anyone else to copy the SOFTWARE without the prior written consent of BMI and/or its licensors. USER shall not reverse compile, or reverse assemble the SOFTWARE in whole or in part. Source code is available only on approved special request, and if provided to USER, USER agrees that it will not provide such source code or its associated object code in any form to any third party without BMI's express written consent.

(c) USER's right to possess and use the SOFTWARE shall not be assigned, licensed, or transferred to a successor, affiliate, or any other person, firm, corporation, or organization without the prior written consent of BMI. Any such assignment, license, or transfer without such consent shall be void.

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(d) In publicizing results obtained either in part or in full from use of the unmodified SOFTWARE, USER shall place in a conspicuous location on all copies of the document containing the results, the following acknowledgment or citation;

Acknowledgement:

Molecular Science Computing Facility, "QBank, A Resource Allocation Management Package for Parallel Computers, Version 2.6" (1998), Pacific Northwest National Laboratory, Richland, Washington 99352-0999, USA.

Citation:

Jackson, S. M.; "QBank, A Resource Allocation Management Package for Parallel Computers, Version 2.6" (1998), Pacific Northwest National Laboratory, Richland, Washington 99352-0999, USA.

(e) In publicizing results obtained either in part or in full from use of a modified version of the SOFTWARE, USER shall place in a conspicuous location on all copies of the document containing the results, the following acknowledgment or citation;

Acknowledgement:

Molecular Science Computing Facility, A modified version of "QBank, A Resource Allocation Management Package for Parallel Computers, Version 2.6" (1998), Pacific Northwest National Laboratory, Richland, Washington 99352-0999, USA.

Citation:

Jackson, S. M.; A modified version of "QBank, A Resource Allocation Management Package for Parallel Computers, Version 2.6" (1998), Pacific Northwest National Laboratory, Richland, Washington 99352-0999, USA.

#### 4. CONFIDENTIALITY

USER shall maintain the SOFTWARE in confidence. USER shall not divulge information relating to the SOFTWARE, with the exception of results derived from use of the SOFTWARE, to any third party or use such information for its own benefit without the prior written consent of BMI or make any copies of the SOFTWARE, except that a single copy and a backup copy can be made for installation on the "hard disk" of a single computer system connected, with the appropriate protection, to a network to ensure that the SOFTWARE cannot be accessed by anyone who is not legally bound to respect the confidentiality herein, provided that such copies reproduce the proprietary rights notices for the SOFTWARE. USER shall treat the SOFTWARE with the same degree of care as it accords to proprietary information in its possession but, in any event, not less than reasonable care. USER agrees not to divulge information concerning the performance (e.g., accuracy of results, computational speed, benchmarking) of the SOFTWARE without prior written consent of BMI.

#### 5. WARRANTIES

(a) Nothing in this Agreement shall be deemed to be a representation or warranty by BMI, its licensors, or the U.S. Government of the accuracy or usefulness for any purpose of the SOFTWARE, it being agreed that the SOFTWARE is provided on an "AS IS" basis without warranty. **BMI GRANTS NO WARRANTIES, EITHER EXPRESS OR IMPLIED, ON THE SOFTWARE OR ANY SERVICES PROVIDED OR PERFORMED, INCLUDING THOSE CONCERNING MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

(b) Neither BMI, nor its licensors nor the U.S. Government shall be liable to USER or any other person for any loss of profits, loss of use, interruption of business, or for any indirect, special, general, incidental, or consequential damages, of any kind in connection with or arising out of the furnishing, performance, or use of the

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SOFTWARE or services. No obligation or liability shall arise or flow out of BMI's rendering technical or other advice in connection with the SOFTWARE or services.

(c) BMI represents and warrants to USER that BMI has the right to enter into this Agreement and undertake the obligations herein.

6. REMEDIES

In the event that any unauthorized use of the SOFTWARE is made or threatened, BMI and/or its licensors may take appropriate action, in law or equity, to seek compensation or prevent such use. BMI's licensors are third party beneficiaries to this Agreement.

7. TERMINATION

This Agreement may be terminated at any time upon ninety (90) days' written notice by either party. Upon such termination, USER shall remove from the computers specified in Attachment A, and return or destroy, the original and all reproductions, including partial reproductions of the SOFTWARE and documentation, and so certify in writing to BMI. All copies of any documentation shall promptly be returned to BMI.

8. INVALIDITY

If any provision or provisions of this Agreement shall be held to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

9. EXPORTATION OF THE SOFTWARE

USER shall adhere to the export Laws and Regulations of USER's country. USER agrees to indemnify, defend and hold harmless BMI, its officers, agents and employees from all liability involving the violation of any export regulations, either directly or indirectly, by USER.

10. GOVERNING LAW

This Agreement will be construed in accordance with the Laws of the State of Washington of The United States of America and in the English language, and USER agrees that any action brought to enforce any provision or obligation hereunder shall be brought in a court of competent jurisdiction in the State of Washington.

11. ENTIRE AGREEMENT

The parties agree that the terms and conditions herein constitute the entire agreement between the parties and supersede all previous communications, proposals, representations, and agreement, whether oral or written, relating to the subject matter of this Agreement. The provisions of this Agreement are severable.

12. SIGNATURE

USER indicates acceptance of the terms of this Agreement by his or her signature below.

USER \_\_\_\_\_

SIGNED BY \_\_\_\_\_

PRINTED NAME \_\_\_\_\_

TITLE \_\_\_\_\_

DATE \_\_\_\_\_

BATTELLE MEMORIAL INSTITUTE

SIGNED BY \_\_\_\_\_

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PRINTED NAME \_\_\_\_\_

DATE \_\_\_\_\_

Attachment A

User Information Request Form for QBank

**(Please complete the following information.)**

1. Name of Site:

Primary Point of Contact:

(This is the party responsible for requesting SOFTWARE at the Site.)

Title:

Phone:

Fax:

email:

2. Primary SOFTWARE support at Site:

(This person is responsible for being the first line of support for SOFTWARE at your site. All issues regarding SOFTWARE will be forwarded to the SOFTWARE development team via this contact.)

Name:

Title:

Phone:

Fax:

email:

Mailing Address:

3. Primary system hardware/software configuration:

Vendor:

Model identification:

Number of processors:

Aggregate Memory size:

Aggregate Disk size:

Operating System and version:

Batch/Queue software used and version:

Scheduling software used and version:

Relational Database and version to be used with Qbank:

4. Do you require SOFTWARE source code? (yes/no)

5. Please describe the User community below (e.g., academic researchers, DOE Weapons, Commercial, etc.) and estimate the number of users on this computer system.

6. Please list all known EMSL collaborative projects which are being conducted on this computer system.

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