



End User License Agreement

This End User License Agreement (“EULA”) is a legal agreement between You and The Regents of the University of California (“University”), on behalf of its Santa Cruz campus (“UCSC”), for use of the Software accompanying (or delivered to You under) this EULA. “You” and “Your” means the individual or legal entity licensing Software under this EULA. University is only willing to license Software to You on the condition that You accept all of the terms in this EULA. By clicking “I Agree”, signing Appendix B, or installing or otherwise using or copying Software, You indicate that You agree to be bound by all of the terms of this EULA. If You do not agree to all of the terms of this EULA, University is not willing to license Software to You, and You may not install, use or copy Software.

1. Background

The Genome Bioinformatics Group at UCSC created and developed the UCSC Genome Browser, along with a portfolio of related software tools, altogether defined in Exhibit A as the “Software”. Howard Hughes Medical Institute (“HHMI”) once had an ownership interest in the UCSC Genome Browser, but has since assigned that interest to University, subject to a paid-up, non-exclusive, irrevocable license to use the UCSC Genome Browser for HHMI’s research purposes. The Software is protected by United States and international copyright laws.

2. License Grant

University may, at its sole discretion, grant You a Trial License, a Non-commercial License, a Commercial Seat License or an Enterprise License to the Software.

Trial License Terms (2.1) apply if You do not qualify for a Non-commercial License, and have not purchased or otherwise rightfully obtained a Commercial Seat License or Enterprise License for the Software. Trial License Terms also apply to any usage of a Software by You that is not covered under any other licenses You may have. Non-commercial License Terms (2.2) apply if You have a Non-commercial License. Commercial Seat License Terms (2.3) apply if You have a Commercial Seat License. Enterprise License Terms (2.4) apply if You have an Enterprise License. **General Terms (3) apply in all cases.**

2.1 Trial License Terms

University grants You a one-time, non-exclusive copyright license to use the Software for evaluation purposes only, in accordance with the terms and conditions set forth herein, for a period of fourteen (14) calendar days from the date You install or otherwise use or copy the Software (“Trial Period”). When the Trial Period ends, You must delete or destroy all copies of the Software unless You have by that time purchased or otherwise rightfully obtained a Commercial Seat License or Enterprise License for the relevant Software.

2.2 Non-commercial License Terms

If You are an Independent Researcher or part of a Nonprofit Organization, University grants You a non-exclusive copyright license to use the Software for internal research use only, in accordance with the terms and conditions set forth herein. This Non-commercial License does not provide You with any express or implied license (or other right) to use the Software for Commercial Purposes. If You desire to use the Software for Commercial Purposes, You agree, in advance of such use, to purchase a Commercial Seat License or Enterprise License from University.

2.3 Commercial Seat License Terms

If You have purchased a Commercial Seat License for a Software Product through the UCSC Genome Browser Store or Appendix B of this EULA, University grants You a non-exclusive copyright license to use that Software Product for Commercial Purposes during the Term of the Commercial Seat License, in accordance with the terms and conditions set forth herein, including any additional terms set forth in Appendix B. A Commercial Seat License is granted only on a per-employee basis within Your organization, and therefore must be purchased for every person employed by Your organization wishing to use the Software Product. A Commercial Seat License is not transferable to any other current employee(s) without written permission from University.

If You wish to use the Software Product under a Commercial Seat License as an employee, contractor or agent of an organization, Your use of the Software Product is expressly conditioned upon acceptance of this EULA by a person authorized to sign for and bind Your organization.

2.4 Enterprise License Terms

If Your organization has purchased an Enterprise License for a Software Product through Appendix B of this EULA, University grants Your organization a non-exclusive copyright license to use that Software Product for Commercial Purposes during the Term of the Enterprise License, in accordance with the terms and conditions set forth herein, including the additional terms set forth in Appendix B.

3. General Terms

3.1 Title

University shall own and retain all right, title and interest in and to all intellectual property rights related to the Software and all improvements thereto, however so created. University reserves all rights not expressly granted to You under this EULA.

3.2 Limitations

- (a) You shall not modify or create Derivative Works of the Software without prior written consent from University.
- (b) You shall not rent, lease, lend, sell, or transfer any portion of the Software, nor assign, sublicense or otherwise transfer any rights, duties or obligations You have under this EULA, to any other party without the prior written consent of University.
- (c) You shall not permit any other party to use the Software, except to the extent the other party is licensed by University to do so.
- (d) Any copy You make of the Software shall include the copyright notice "Copyright © 2000 The Regents of the University of California - All Rights Reserved"; and shall be subject to the terms of this EULA.
- (e) All licenses granted in this EULA are nontransferable, and You shall not use the Software as a commercial product or service, or in an external service agency.
- (f) University reserves the right to change the terms of this EULA in any future release of the Software.

3.3 Privacy

You shall comply with all applicable federal and state laws regarding the confidentiality of health information, including the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), at all times.

UCSC records Your Internet Protocol (IP) address when You successfully launch the Software.

3.4 Support

UCSC may, at its sole discretion, offer limited support, future enhancements or upgrade versions of the Software to You without cost, or extended support to You at a price to be determined on a case-by-case basis.

3.5 Audit

During the license Term for the Software and for a period of three (3) years after its expiration or termination, You will take reasonable steps to maintain complete and accurate records of Your use of the Software sufficient to verify compliance with this EULA. No more than once per twelve (12) month period, You will allow University the right to examine such records and any applicable systems and accounts, upon reasonable advanced notice, during Your normal business hours. If the audit discloses underpayment of License Fees, You will pay such License Fees plus the reasonable cost of the audit within thirty (30) days of receipt of written notice.

3.6 Term and Termination

This EULA shall remain effective until terminated or until the expiration of the applicable license Term. You may terminate the EULA at any time by ceasing use of or destroying all copies of the Software. This EULA will immediately terminate if You breach its terms, or if You fail to pay any portion of the applicable License Fees and You fail to cure that payment breach within thirty (30) days of notice. Upon termination of this EULA, You shall destroy all copies of Software in Your possession or control.

Any termination or expiration of this EULA will not affect the provisions set forth in Sections 3.7, 3.8, 3.9, and this Section 3.6.

3.7 Exclusions of Liability

The Software is licensed “AS-IS” without warranty of any kind, expressed or implied. Specifically, University makes no representation or warranty that Your use of Software will be free from infringement of any third party patent, copyright, trade secret or other intellectual property rights.

You and other users seeking information about personal medical or genetic conditions are urged to consult with a qualified physician. The Software is not intended to be a substitute for professional medical advice, diagnosis, or treatment.

University will in no event be liable for the following, regardless of the theory of liability or whether arising out of the use or inability to use the Software or otherwise, even if University has been advised of the possibility of such damages: (a) indirect, incidental, exemplary, special or consequential damages; (b) loss or corruption of data or interrupted or loss of business; or (c) loss of revenue, profits, goodwill or anticipated sales or savings. University’s aggregate liability to You, whether based in warranty, contract, tort (including negligence), or otherwise, shall not exceed the license fees paid by You to University for the Software that gave rise to the claim. This limitation of liability for Software is cumulative and not per incident.

HHMI is not a party to and has no liability under this EULA, however HHMI is an intended third-party beneficiary of this EULA and certain of its provisions are for the benefit of HHMI and are enforceable by HHMI in its own name.

Nothing in this EULA limits or excludes any liability that cannot be limited or excluded under applicable law.

3.8 Indemnification

You agree to indemnify, hold harmless and defend University, HHMI and their respective officers, agents and employees (collectively, “Indemnitees”) from and against any and all losses, claims or suits, including reasonable attorneys' fees and expenses, which arise or result from Your use of the Software or Your breach of any terms this EULA.

3.9 Miscellaneous

- (a) This EULA is the exclusive agreement between You and University concerning the Software, and supersedes any prior purchase order, communication, advertising or representation concerning the Software.

- (b) No waiver or modification of this EULA shall be valid unless in writing signed by both You and University. The waiver of a breach of any term hereof shall in no way be construed as a waiver of any term or other breach hereof.
- (c) If any provision of this EULA is held by a court of competent jurisdiction to be contrary to law the remaining provisions of this EULA shall remain in full force and effect.
- (d) THIS AGREEMENT IS TO BE INTERPRETED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, while the scope and validity of any copyright will be governed by the applicable laws of the country of the copyright registration.
- (e) All requests for renewal of licenses granted under this EULA shall be sent to “genomebrowser@ucsc.edu”. Other notifications related to this EULA shall be sent to the address below:

University of California, Santa Cruz
Industry Alliances & Technology Commercialization
Attention: Genome Browser – IATC
1156 High Street, MS: Office of Research
Santa Cruz, CA, 95064
Email: genomebrowser@ucsc.edu

- (f) You understand that California Education Code section 92000 provides that the name “University of California” is the property of the State of California, and that no person shall use this name in advertising, publicity, or other promotional activities without the written permission of the University.
- (g) Any license granted in this EULA shall be subject to the Additional Terms set forth in the following Appendices A and B. The terms and conditions contained herein and in these Appendices constitute the entire EULA between you and the University.

Appendix A

Definitions

“Commercial Purposes” mean the sale, lease, license, or other transfer of the Software to a for-profit organization, and also include uses of the Software by any organization, including You, to perform contract research, to produce data for general sale, or to conduct research activities that result in any sale, lease, license, or transfer of data or the Software to a for-profit organization.

“Derivative Works” mean any revision, enhancement, modification, translation, abridgement, condensation, or expansion of the Software, or a portion thereof, that would constitute copyright infringement if prepared without the authorization of the owners of the Software.

“Independent Researcher” means an individual who is autonomous with respect to the research activities for which he or she uses the Software. The Non-Commercial License granted herein to Independent Researchers does not extend to any use of the Software at the direction and/or for the benefit of a for-profit organization.

“License Fee” means the applicable fees listed in the UCSC Genome Browser Store (<https://genome-store.ucsc.edu/>) or in Appendix B of this EULA.

“Nonprofit Organization” means a university or other institution of higher education, or a not-for-profit organization officially recognized or qualified under the laws of the country in which it is organized or located, or any nonprofit scientific or educational organization qualified under a federal, state or local jurisdiction’s nonprofit organization statute. As used herein, the term also includes national, state or local government agencies.

“Software” means the UCSC Genome Browser and related tools listed and defined in the UCSC Genome Browser store (<https://genome-store.ucsc.edu/>) and owed by University.

“Software Product” means specific Software for which You purchased an active Commercial Seat License or Enterprise License through the UCSC Genome Browser Store (<https://genome-store.ucsc.edu/>) or Appendix B of this EULA. Examples of a Software Product include, but are not limited to, Genome Browser in a Box (GBiB), Genome Browser source code, LiftOver program, Genome Browser in the Cloud (GBiC), etc.

“Term” means the initial license period commencing on the date You pay the applicable License Fee and ending one (1) year later, unless terminated earlier pursuant to Section 3.6 of this EULA. The Term may be extended, at the sole discretion of University, by Your timely payment-in-full of a license renewal invoice from University that specifies a new end date for the Term.

Appendix B

Additional Terms

Software Product(s) being licensed:

- ☐ **Genome Browser in a Box (GBiB)** ☐ **LiftOver program**
- ☐ **Genome Browser in the Cloud (GBiC)**
- ☐ **Genome Browser source code**

Once signed both by You ("Licensee") and University, this Appendix B, and the additional terms therein ("Additional Terms"), shall supplement the standard EULA terms. If there is a conflict between the standard EULA terms and the Additional Terms, the Additional Terms shall control.

By signing below, You indicate that You agree to be bound by all of the terms of this EULA, including the Additional Terms in this Appendix B.

LICENSEE

Dated: _____

By: _____

Name: _____

Title: _____

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA ON BEHALF OF ITS SANTA CRUZ CAMPUS

Dated: _____

By: _____

Name: _____

Title: _____