



License to Use Agreement

THIS AGREEMENT is entered into as of this May 15, 2003 between GAUSSIAN, INC., having its principal place of business at Carnegie Office Park, Building 6 Pittsburgh, Pennsylvania 15106 ("GAUSSIAN"), and

Prague Institute of Chemical Technology

having its principal place of business at

166 28 Praha 6
CZECH REPUBLIC
("LICENSEE");

WHEREAS, GAUSSIAN desires to grant to LICENSEE and LICENSEE desires to acquire from GAUSSIAN a non-exclusive license to install and use certain Software on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing, the parties agree as follows:

1. Subject to the terms and conditions hereof, GAUSSIAN hereby grants to LICENSEE, for the term specified in Paragraph 15 hereof, a non-exclusive site license to install and use, on an unlimited number of machines, solely at LICENSEE's principal place of business specified above, and on computers owned, operated by, and under the supervision of LICENSEE at such address, one binary copy of the *Gaussian 03W* system of computer programs, designed for use on Intel-based Windows 95/98/NT/2000/ME/XP computer systems. The computer programs, any updates provided by GAUSSIAN in its sole discretion, and the media on which the programs are delivered, and any related documentation, are referred to collectively as the "Software."
2. For and in consideration of the license granted in Paragraph 1 hereof, LICENSEE will pay to GAUSSIAN, simultaneously with LICENSEE's execution and delivery of this Agreement, a license fee in the amount of Four Thousand Dollars (\$4000.00 U.S.). In the event that GAUSSIAN, in its sole discretion, ships the Software to LICENSEE prior to GAUSSIAN's receipt of the license fee for the Software, LICENSEE shall pay the license fee within thirty (30) days of the date of the invoice for the Software.

GAUSSIAN and LICENSEE acknowledge and agree that the license fee provided herein is exclusive of local, state or federal use, sales, excise, personal property or other similar taxes or duties which may be assessed in connection with this license, and that the payment of any such taxes or duties will be borne by and be the sole responsibility of LICENSEE. If applicable, LICENSEE will provide a tax exemption certificate to GAUSSIAN, subject to the express understanding that LICENSEE will indemnify and hold harmless GAUSSIAN from and against any such taxes, including penalties and interest accrued thereon, arising from claimed exemptions that are disallowed by the applicable government authority.
3. Upon the execution and delivery of this Agreement by the parties hereto and LICENSEE's payment of the license fee in compliance with the provisions of Paragraph 2 hereof, GAUSSIAN will deliver to LICENSEE one binary copy of the Software for the purposes recited above. Shipping terms are F.O.B., Pittsburgh, PA. GAUSSIAN will arrange payment for shipping with the carrier, but such costs are the responsibility of LICENSEE. Risk of loss is upon LICENSEE once GAUSSIAN delivers the Software to the carrier. Delivery times are estimates only and GAUSSIAN will not be liable for delays.
4. LICENSEE expressly recognizes and agrees that the license granted hereunder is personal to LICENSEE, and LICENSEE will not under any circumstances sell, give, disclose, lend, or otherwise distribute the Software, in any form, to third parties. If LICENSEE receives any requests to furnish to a third party all or a portion of the Software, it will immediately refer such requests to GAUSSIAN. If LICENSEE obtains the prior written consent of GAUSSIAN, then, subject to the limitations herein expressed, LICENSEE may disclose documentation relating to the Software, for review purposes only, to GAUSSIAN-approved third parties who have expressed an interest in obtaining from GAUSSIAN a license to use the Software. Such documentation will be limited solely to manuals, brochures and other printed materials, and will not include any code relating to or constituting a part of the Software. LICENSEE further agrees to maintain the confidentiality of the Software and represents to GAUSSIAN that access to the Software will only be given to its employees whose confidentiality obligations to LICENSEE include the Software. Notwithstanding anything contained herein to the contrary, LICENSEE will not use the Software in any manner or way that will (a) compete with the business of GAUSSIAN or (b) provide assistance to any competitor of GAUSSIAN.
5. GAUSSIAN retains all ownership rights in the Software delivered to LICENSEE, and LICENSEE recognizes and agrees that it does not acquire by this Agreement any ownership rights, including copyright rights, in the Software delivered to LICENSEE by GAUSSIAN.
6. Subject to the restrictions set forth in this Agreement, LICENSEE may provide to third parties who are not directly or indirectly engaged in competition with GAUSSIAN and whose confidentiality obligations to LICENSEE include the Software, access to the binary code of the Software solely at LICENSEE's business address specified above and on the computers referenced above in Paragraph 1 and owned, operated by, and under the supervision of LICENSEE at such address. LICENSEE may not provide or knowingly allow access to third parties in exchange for services, fees, royalties, payments, or any other consideration to LICENSEE, and any such access will be governed by a separate Agreement between GAUSSIAN and LICENSEE.
7. LICENSEE may make a reasonable number of copies of the Software, solely for the purposes of backup and maintenance of the Software. Any such additional copies will be controlled by this Agreement and will be owned by GAUSSIAN. Such additional copies will be delivered to GAUSSIAN, or destroyed by LICENSEE, if so directed by GAUSSIAN, upon termination of this

Agreement.

8. Certain proprietary rights notices, including copyright notices, will be affixed to the Software delivered to LICENSEE. LICENSEE shall not remove, alter, obliterate, or in any way change the form or placement of such notices, which LICENSEE shall ensure appear on any copies made of the Software.
9. GAUSSIAN is not required to provide any services under this Agreement in the installation or maintenance of the Software, it being expressly acknowledged that, if GAUSSIAN agrees to furnish such services to LICENSEE, the providing of such services will be governed by a separate written agreement.
10. If the Software is used to obtain a result, and that result is published in the public literature, then LICENSEE agrees to acknowledge its use of the Software in an appropriate citation. The citation should include:
 - a. the name of the product (Gaussian 03);
 - b. the source (Gaussian, Inc., Carnegie Office Park, Bldg. 6, Pittsburgh, PA 15106);
 - c. the authorship as designated by GAUSSIAN; and
 - d. an appropriate copyright notice as designated by GAUSSIAN.

Alternatively, the citation may be made in the form of a reference to a published scientific journal article as designated by GAUSSIAN.

11. LICENSEE agrees not to accept or use any version of the Software other than the Software delivered to LICENSEE by GAUSSIAN pursuant to Paragraph 3 hereof.
12. The Software is provided on an "as is" basis. GAUSSIAN represents and warrants that it has the right to grant the license granted herein. OTHERWISE, GAUSSIAN MAKES NO WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF FITNESS OR PURPOSE OR OF MERCHANTABILITY, OR OF RESULTS OBTAINED FROM LICENSEE'S USE OF THE SOFTWARE.

LICENSEE represents and warrants that: (a) this Agreement constitutes a legally binding agreement of LICENSEE, fully enforceable in accordance with all of its terms and conditions; (b) LICENSEE possesses the requisite power and authority to execute and deliver this Agreement and to perform and comply with all of the obligations and restrictions imposed on LICENSEE herein; and (c) the individual signing this Agreement on behalf of LICENSEE has been duly authorized, empowered and directed to sign this Agreement on behalf of LICENSEE.
13. LICENSEE hereby agrees to indemnify and hold harmless GAUSSIAN from and against all damages, liabilities, attorney fees, and costs incurred by GAUSSIAN in defending against third party claims or threats of claims against GAUSSIAN arising out of LICENSEE'S use of the Software, excluding, however, any third party claims or threats of claims against GAUSSIAN arising out of any alleged copyright, trade secret or trademark infringement by the Software caused by GAUSSIAN.
14. LICENSEE HEREBY ACKNOWLEDGES AND AGREES THAT GAUSSIAN'S AGGREGATE TOTAL LIABILITY, IN ANY EVENT, FOR ANY COST, LOSS, OR DAMAGE, OR OTHER POTENTIAL OR ACTUAL EXPENSE WHICH IS IN ANY WAY RELATED TO THE EXECUTION, PERFORMANCE, OR SUBJECT MATTER OF THIS AGREEMENT SHALL NOT EXCEED THE AMOUNT OF THE LICENSE FEE PAID BY LICENSEE TO GAUSSIAN HEREUNDER, REGARDLESS OF THE FORM OF THE ACTION EMPLOYED. IN NO EVENT, SHALL GAUSSIAN BE LIABLE TO LICENSEE FOR INDIRECT, PUNITIVE, SPECIAL, OR CONSEQUENTIAL DAMAGES, SUCH AS LOSS OF PROFITS, INABILITY TO USE THE SOFTWARE, OR LOSS OF DATA.
15. This Agreement and the license granted to LICENSEE under Paragraph 1 hereof will be effective as of the date hereof and will continue for a term of twenty (20) years from such effective date; provided, however, that GAUSSIAN will have the right to immediately terminate this Agreement by delivering written notice thereof to LICENSEE at any time after the occurrence of any of the following events of default:
 - a. the failure of LICENSEE to observe any of the restrictions imposed on LICENSEE under this Agreement;
 - b. the failure of LICENSEE to perform, observe or comply with any of its obligations, covenants or representations under this Agreement or under any ancillary agreement between the parties hereto relating to the subject matter hereof;
 - c. the discovery that any representation or warranty made by LICENSEE herein was incorrect in any material respect when such representation or warranty was made or given;
 - d. the filing of a voluntary petition in bankruptcy by LICENSEE; the institution of any bankruptcy, reorganization or insolvency proceeding against LICENSEE; LICENSEE's execution of an assignment for the benefit of creditors; LICENSEE's admission in writing of its inability to pay its debts as they mature; or the appointment of a trustee or receiver for a substantial part of LICENSEE's property; or
 - e. the liquidation or dissolution of LICENSEE; the discontinuation of the business conducted by LICENSEE relating to the subject matter of this license; any change in the controlling interest of LICENSEE; or any sale of substantially all of the assets of LICENSEE.

Upon the expiration of the Agreement, the license granted herein will automatically terminate, and the Software and all materials relating to the Software delivered to LICENSEE, will be returned to GAUSSIAN, or destroyed by LICENSEE, if so directed by GAUSSIAN, all without prejudice to or impairment of the provisions of this Paragraph 15 and Paragraphs 5, 12, 13 and 14 hereof, all of which will survive the termination of this Agreement and will continue thereafter to be binding upon LICENSEE and GAUSSIAN.

16. LICENSEE will not assign or transfer this Agreement, or any rights and obligations hereunder, without obtaining the prior written consent of GAUSSIAN, which consent may be withheld by GAUSSIAN in its sole discretion for any reason whatsoever. The failure of either party to insist upon the strict enforcement of any of the provisions of this Agreement will not be construed as a waiver or relinquishment of the right to assert or rely upon any such provisions on any future occasion. If any provision of this Agreement is held to be unenforceable, such decision will not affect the validity or enforceability of any or all of the remaining provisions of this Agreement.

17. Any notice required or permitted to be made or given by either party under this Agreement shall be made in writing and delivered by Federal Express or any other comparable overnight courier service, or mailed by certified mail, postage prepaid, addressed to the party at the address first set forth above or to such other address as a party shall designate by written notice given to the other party in compliance with this paragraph.
18. This Agreement shall be governed, construed, and enforced in accordance with the internal substantive laws of the Commonwealth of Pennsylvania, without regard to its conflicts of laws provisions and, to the extent applicable, the copyright laws of the United States of America and all other applicable federal laws and regulations. The parties specifically agree that the provisions of the U.N. Convention on the International Sale of Goods shall not apply.
19. This Agreement constitutes the complete and exclusive statement of the agreement between the parties and supersedes all proposals, oral or written, and all other prior or contemporaneous communications between the parties relating to the subject matter of this Agreement.
20. This Agreement may be modified only by a written amendment executed by duly authorized officers or representatives of both parties.

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the day and year first above written.

Prague Institute of Chemical Technology

GAUSSIAN, INC.

Signature

By: _____
Vice President

Type or Print Name

Date

Title

Date