

***The Research Institute at Nationwide Children's Hospital***

THIS SOFTWARE IS THE PROPERTY OF THE RESEARCH INSTITUTE AT NATIONWIDE CHILDREN'S HOSPITAL (PATENT(S)PENDING). THIS SOFTWARE MAY ONLY BE USED IN ACCORDANCE WITH THE TERMS OF THIS SOFTWARE END USER CLICKWRAP LICENSE AGREEMENT:

**Software End User Clickwrap License Agreement  
for Churchill Software – Academic Use Only**

THIS IS A LEGAL AGREEMENT BETWEEN YOUR INSTITUTION AND THE RESEARCH INSTITUTE AT NATIONWIDE CHILDREN'S HOSPITAL (“**RINCH**”). BY AGREEING TO THIS AGREEMENT AND TAKING THE STEP(S) DESCRIBED BELOW NEAR THE BOTTOM, YOU AND YOUR INSTITUTION ACKNOWLEDGE THAT YOU HAVE READ THIS SOFTWARE END USER CLICKWRAP LICENSE AGREEMENT (“**AGREEMENT**”), UNDERSTAND IT, AND AGREE TO BE BOUND BY ITS TERMS.

YOU SHOULD NOT TAKE THE STEP(S) DESCRIBED NEAR THE BOTTOM TO INDICATE AGREEMENT UNLESS YOU HAVE READ ALL OF THE BELOW TERMS AND CONDITIONS. BY AGREEING TO THIS AGREEMENT AND TAKING THE STEP(S) DESCRIBED NEAR THE BOTTOM, YOU REPRESENT AND AFFIRM THAT YOU ARE AUTHORIZED TO ENTER THIS AGREEMENT ON BEHALF OF YOUR INSTITUTION, YOU AND YOUR INSTITUTION (“**LICENSEE**”) ACCEPT THIS AGREEMENT, AND LICENSEE AGREES TO BE BOUND BY AND BECOME A PARTY TO THIS AGREEMENT.

CERTAIN PROPRIETARY SOFTWARE AND RELATED DOCUMENTATION, WHICH ARE SUBJECT TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, SHALL BE MADE AVAILABLE AFTER LICENSEE'S ACCEPTANCE OF THIS AGREEMENT.

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**1. DEFINITIONS.**

“**Authorized Users**” means LICENSEE's employees (and, as applicable, students) while performing academic research solely for LICENSEE within the scope of the license.

“**Software**” means a certain software application (sometimes referred to as Churchill), in object-code form, which is a computational pipeline that automates the analysis of human genome sequencing data, taking raw sequence reads as input and outputting an analyzed variant call file. Unless the context dictates otherwise, references to Software include documentation.

**2. OWNERSHIP AND ACCESS.**

2.1 As between the parties to this Agreement, RINCH (or its affiliates, or the licensors to RINCH or its affiliates) owns and shall retain all right, title, and interest in and to the Software, including all trade secret rights, copyrights, patent rights, and any other proprietary and intellectual property rights embodied in or relating to the Software.

2.2 RINCH may provide LICENSEE with a unique, identifying password (either by separate transmission and/or with this Agreement) that may be initially needed to access and use the Software. In such circumstances, during initial access and/or use of the Software, LICENSEE may be prompted to create individual, distinct passwords for each of its Authorized Users to access and/or use the Software. It is LICENSEE's responsibility to safeguard and protect all passwords and to monitor use of such passwords for authorized use.

2.3 LICENSEE shall be responsible for Authorized Users' compliance with this Agreement, including for the acts and omissions of such Authorized Users.

### **3. LICENSE GRANT, RESTRICTIONS, AND ATTRIBUTION.**

3.1 RINCH grants to LICENSEE a limited, non-exclusive, non-transferable, non-sublicensable license to install and use the Software during the term of this Agreement, solely to the extent necessary for its own internal academic research purposes and then solely by its Authorized Users. The Software may not be copied, in whole or in part. Rights and licenses not expressly granted are reserved by RINCH.

3.2 LICENSEE shall not either attempt to, or examine with the intent to, reverse engineer, reverse compile, modify, translate, disassemble, or otherwise extract the source code of, the Software, in whole or in part, and shall not permit any person to remove any identification, confidentiality, copyright, or other notices from the Software or to create a derivative work of any part of the Software. LICENSEE may not rent, lease, transfer, or sublicense the Software to third parties, nor use the Software to perform any paid services on behalf of third parties of any kind. LICENSEE may not re-license the Software or use the Software for third-party training, commercial time-sharing, rental or service-bureau use. LICENSEE agrees to comply with all United States export control laws and regulations controlling the export of the Software, including, without limitation, the United States Export Administration Act and the regulations thereunder.

3.3 LICENSEE is strictly prohibited from use of the Software for any for-profit, paid, or commercial purpose.

3.4 LICENSEE may not use the Software for any medical or clinical purposes, including but not limited to diagnostics and provision of medical care or medical information.

3.5 Nothing in this Agreement shall be construed to confer any rights upon LICENSEE by implication, estoppels, or otherwise to any computer software, trademark, intellectual property or patent rights of RINCH, except as expressly granted herein.

3.6 There are one or more patents pending for the Software.

3.7 (a) LICENSEE agrees to include (and shall ensure that, as applicable, its faculty, researchers, staff, and students include) appropriate attribution if any results obtained through, from, or otherwise predicated upon the use of the Software are included in or described in any publication (including any paper, manuscript, or document of any kind).

(b) Such attribution shall reference such results having been made possible through the use of the Churchill Software provided by the Center for Microbial Pathogenesis at The Research Institute at Nationwide Children's Hospital and shall otherwise be consistent with prevailing standards of the scientific and scholarly communities.

(c) Except as permitted by the foregoing in this Section 3.7, LICENSEE shall not use any trademarks or trade names of RINCH, or any variation, adaptation, or abbreviation of such trademarks or trade names, or any names of any officers, faculty, students, employees, or agents of RINCH.

**4. NO FEES.** There are no fees in connection with this Agreement.

**5. CONFIDENTIALITY.** LICENSEE acknowledges and agrees that the Software and any and all information with respect to the Software, including, without limitation, information regarding the features, functionality, and performance of the Software (collectively, the "Confidential Information") are confidential and proprietary to RINCH. LICENSEE shall not disclose, communicate, or divulge or permit disclosure, communication, or divulgence to another, or use for its own benefit or the benefit of another, any such Confidential Information, except to the extent expressly permitted in the license grant set forth herein. The

existence of any copyright notice shall not be construed as an admission that publication for trade secret purposes has occurred.

## **6. WARRANTIES AND DISCLAIMERS.**

6.1 Each party represents and warrants to the other party that it has the full and unrestricted right, power, and authority to enter into this Agreement and to perform its obligations in accordance with the terms of this Agreement.

6.2 Warranty Disclaimers. RINCH DOES NOT MAKE ANY REPRESENTATION OR WARRANTY THAT IS NOT EXPRESSLY SET FORTH IN THIS AGREEMENT, AND, ON BEHALF OF ITSELF AND ITS AFFILIATES (AND THEIR RESPECTIVE LICENSORS), RINCH EXPRESSLY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, STATUTORY, IMPLIED OR OTHERWISE, INCLUDING MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, ARISING FROM ANY COURSE OF DEALING, USAGE, OR TRADE PRACTICE, RESPECTING THE ACCURACY OF THE OUTPUT OF THE INFORMATION OR THE RESULTS THAT MAY BE OBTAINED OR DERIVED THROUGH THE USE OF THE SOFTWARE, WHICH IS PROVIDED "AS IS."

**7. LIMITATIONS OF LIABILITY.** IN NO EVENT SHALL RINCH, ITS AFFILIATES OR THEIR RESPECTIVE LICENSORS, OFFICERS, DIRECTORS, EMPLOYEES, REPRESENTATIVES, STUDENTS, INDEPENDENT CONTRACTORS OR AGENTS, BE RESPONSIBLE OR LIABLE FOR ANY DAMAGES WHATSOEVER ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE USE OR PERFORMANCE OF THE SOFTWARE, INCLUDING WITHOUT LIMITATION NOT BEING RESPONSIBLE OR LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES WHATSOEVER, LOST PROFITS OR LOST DATA, WHETHER GROUNDED IN TORT (INCLUDING NEGLIGENCE AND PRODUCT LIABILITY), STRICT LIABILITY, CONTRACT OR OTHERWISE. THE ABOVE LIMITATIONS OF LIABILITY APPLY EVEN IF RINCH HAS KNOWLEDGE OR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE.

## **8. TERM AND TERMINATION.**

8.1 The term of this Agreement shall continue until the license's term (if any) expires or if terminated earlier in accordance with Section 8.2.

8.2 RINCH may terminate this Agreement upon LICENSEE's breach of any provision of this Agreement.

8.3 On termination of the license, however occurring, LICENSEE shall return the Software or, upon RINCH's request, destroy all of the Software. At RINCH's request, LICENSEE will also promptly provide written certification of its compliance with the foregoing. Upon expiration of the term or the termination of this Agreement, LICENSEE agrees to cease all use of the Software. All rights and obligations that become absolute before expiration or termination of this Agreement or that are of a continuing nature shall survive any expiration or termination of this Agreement.

## **9. MISCELLANEOUS.**

9.1 This Agreement shall be governed by the laws of the State of Ohio, without regard to conflicts of laws principles. Each party hereby unconditionally consents to submit to the exclusive jurisdiction of the state and federal courts located in or for Columbus, Ohio, for any action, suit or proceeding arising out of or relating to this Agreement.

9.2 This Agreement may not be assigned or transferred by LICENSEE.

9.3 LICENSEE is responsible for monitoring use of the Software to ensure compliance with this Agreement. LICENSEE shall maintain records regarding use of the Software and make such information

available to RINCH upon request. In the event RINCH has reasonable grounds to believe that there is a discrepancy between LICENSEE's use of the Software and the Agreement, RINCH may notify LICENSEE and work with LICENSEE in good faith to resolve such discrepancy. In the event the discrepancy is not resolved to the reasonable satisfaction of RINCH, RINCH or its authorized agents may audit LICENSEE's use of the Software for compliance with the terms of this Agreement. Such audit shall be conducted during LICENSEE's normal business hours and upon reasonable advance notice.

9.4 The parties agree that a breach of this Agreement adversely affecting RINCH's proprietary and/or intellectual property rights in any portion of the Software and/or any Confidential Information will cause irreparable injury to RINCH for which monetary damages are not an adequate remedy, and RINCH shall be entitled to equitable relief in addition to any remedies it may have hereunder or at law.

9.5 Failure by either party to enforce any provision of this Agreement will not be deemed a waiver of future enforcement of that or any other provision. If for any reason any provision of this Agreement is unenforceable, that provision will be enforced to the maximum extent permissible so as to effect the intent of the parties, and the remainder of this Agreement will continue in full force and effect.

9.6 If LICENSEE is a federal government entity, RINCH provides the Software solely in accordance with those rights customarily provided to the public, under the terms and conditions of this Agreement.

9.7 Headings are for reference purposes only.

9.8 This Agreement sets forth the entire understanding between the parties concerning the subject matter hereof and supersedes all contemporaneous and prior agreements with respect to the subject matter hereof. In the event of an unavoidable conflict between the terms and conditions in this Agreement and in any other agreement between the parties, the terms and conditions in this Agreement shall prevail to the extent that they are more restrictive of LICENSEE's access and use of the Software and/or more protective of RINCH's Confidential Information. None of LICENSEE's purchase order terms or acknowledgements shall modify or supersede the terms of this Agreement. This Agreement may be amended only in a writing signed by authorized representatives of both parties.

\* \* \* \* \*

*As referenced in the initial sentences above, in using Churchill LICENSEE agrees to be bound by and become a party to this Agreement.*