

SFOLD ACADEMIC NON-COMMERCIAL SOFTWARE LICENSE

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THE TERMS AND CONDITIONS CONTAINED HEREIN CONSTITUTE A LEGAL AGREEMENT. THIS AGREEMENT CONTAINS THE ENTIRE AGREEMENT BETWEEN YOU (“YOU” OR “YOUR”), A NOT-FOR-PROFIT COLLEGE OR UNIVERSITY, AND HEALTH RESEARCH INCORPORATED (HEALTH RESEARCH INC.), A NONPROFIT CORPORATION ORGANIZED UNDER THE NEW YORK STATE NONPROFIT CORPORATION LAW WITH RESPECT TO THE TERMS AND CONDITIONS DESCRIBED HEREIN.

READ THIS AGREEMENT CAREFULLY BEFORE YOU CLICK THE “I AGREE TO THE LICENSE TERMS” BUTTON. BY CLICKING ON THE “I AGREE TO THE LICENSE TERMS” BUTTON, THE PERSON ACCEPTING THIS AGREEMENT ACKNOWLEDGES THAT (1) HE OR SHE IS AUTHORIZED TO ENTER INTO THIS AGREEMENT FOR AND ON BEHALF OF YOU, AND IS DOING SO, AND (2) HE OR SHE HAS READ, UNDERSTANDS AND AGREES THAT YOU SHALL BE BOUND BY THESE TERMS AND CONDITIONS AND ALL MODIFICATIONS AND ADDITIONS PROVIDED FOR. IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, CLICK ON THE “RETURN” BUTTON AND INSTALLATION WILL TERMINATE. IF YOU ARE NOT AUTHORIZED TO ENTER INTO AND BIND YOUR INSTITUTION TO THIS AGREEMENT, CLICK ON THE “I AM NOT THE AUTHORIZED SIGNATORY” BUTTON.

You and Health Research Inc. are sometimes referred to in this Agreement as a “Party” and collectively, as the “Parties.” Dr. Ye Ding is the primary developer of the Sfold software package. All intellectual property rights in the Software, including, without limitation, all copyright, patent rights and trademark rights, are owned by Health Research Inc. Except for the limited license rights to use the Software expressly granted in this Agreement, Health Research Inc. reserves all other rights to itself. In consideration of the premises and mutual covenants set forth below, the Parties hereby agree as follows:

1. Definitions

As used in this Agreement, the following terms shall have the meanings set forth in this Section:

1.1 “Effective Date” means the date You enter into this Agreement with Health Research Inc. by clicking the “I Agree to the License Terms” button.

1.2 “Modify” or Modifications” means any changes or extensions introduced into

the Software or otherwise based on or derived from the Software source statements. Modifications may include, but are not limited to, corrections of program errors, translations and stylistic restructuring of the Software, addition or deletion of functions or enhancement of existing functions of the Software, changes or additions required to integrate the Software into other applications or to allow the Software to run under alternative operating systems or computer hardware configurations, and other adaptations of the Software.

1.3 “Site” means Your single street address listed on your application for this Software License at which You will maintain the computers onto which You load the Software and make it available for use by Authorized Users.

1.4 “Software” means the Sfold collection of programs, in version 3.x (current release is 3.9) in machine readable object code, source code, if licensed, or binaries, to run in Linux (32 bit or 64 bit) or Mac architectures, and subsequent error corrections and updates of version 3.9 that may be supplied to You by Health Research Inc., if any.

2. Your Representations and Warranties, Grant of Rights

2.1 You hereby represent and warrant to Health Research Inc. as follows:

2.1.1 You are a not-for-profit college or university organized and existing under the laws of the jurisdiction of your formation;

2.1.2 The person entering into this Agreement on Your behalf is duly authorized to do so; and

2.1.3 Your acceptance and performance of this Agreement (i) have been authorized by all necessary corporate action of You and (ii) do not conflict with any agreement or instrument to which You are a party or are otherwise bound.

2.2 In reliance on the foregoing representations and warranties, and subject to payment of the License Fee (defined below) in accordance with Section 2.3 of this Agreement, Health Research Inc. hereby grants to You a limited, non-exclusive, non-transferable license to install and use the Software, including the source code therefor, and to compile the Software, at the Site for internal research purposes only (the “Purposes”), without the right to sublicense, and to make such copies of the Software as are necessary for use at the Site, subject to the limitations, terms and conditions of this Agreement.

You are not permitted to use the Software in any manner not expressly authorized by this Agreement. This grant is limited to use on no more than five (5) computers located at the Site by no more than five (5) concurrent users, all of whom shall be employees of You (“Authorized Users”). It does not authorize Software use by third parties at the Site or by anyone not located at the Site via the Internet or any other means. You may not make the Software available to anyone but Authorized Users. No sublicensing rights whatsoever are granted. You may make Modifications of the Software as are necessary (a) to further the Purposes, (b) to fix minor Software errors, (c) to enable proper Software installation on Your authorized computers, and (d) to enable access to the Software by other computer programs used by You. Health Research Inc. shall not be required to fix any errors or bugs or make any Modifications.

You may also make other Modifications or derivative works of the software with written consent by either the primary developer or the copyright holder. All modifications and derivatives are components of Sfold and remain the property of Health Research Inc. The header line of any newly derived stand-alone code shall include “© 2003-2017 Health Research Inc. All rights reserved.”, with current year updated.

2.3 You shall pay Health Research Inc. a non-refundable license fee in the amount of zero Dollars (\$0) (the “License Fee”) prior to downloading the Software.

2.4 You acknowledge that the Software is the exclusive property of Health Research Inc. and that Health Research Inc. has and shall retain at all times all ownership rights, including all trademarks, patent rights, if any, and copyrights in, and to the Software, and all subsequent releases and copies thereof regardless of the form or media. Upon ten (10) days written notice, Health Research Inc. or its designee may audit your use of the Software. You agree to cooperate with Health Research Inc.’s audit and provide reasonable assistance and access to information. Any such audit shall not unreasonably interfere with your normal operations. You shall pay to Health Research Inc. for Your use of the Software in excess of your license rights, as liquidated damages, within thirty (30) days of written notification a non-refundable amount of Nine Thousand Dollars (\$9,000). Notwithstanding such payment, if You wish to continue to use the Software in a manner that exceeds Your rights under this License, Health Research Inc. may also require You to purchase a commercial license for the Software subject to Health Research Inc.’s standard terms and conditions therefor. If you do not pay the liquidated damages, then in addition to such other legal and equitable remedies available to it, Health Research Inc. may terminate Your license to the Software and/or this Agreement. Health Research Inc. shall not be responsible for any of Your costs incurred in cooperating with the audit.

2.5 You may not (a) distribute, publish, or otherwise transfer or allow to be transferred to third parties, the Software or copies thereof, in whole or in part, or (b) perform services for any third parties using the Software, including, without limitation, on a service bureau basis or with an online hosted service.

2.6 The license granted hereunder shall not include the right to use any other intellectual property or proprietary information or material of Health Research Inc.

2.7 Health Research Inc. and its affiliates and their employees have no obligation to assist You in the use, correction, modification, or enhancement of the Software or to provide any Software error corrections, bug fixes, updates, upgrades, new versions, maintenance or support of any kind under this Agreement.

2.8 In partial consideration of the royalty-free license rights granted hereunder, Licensee shall cite the following publications in any abstract, paper, or presentation referencing Sfold software:

Ding, Y., Chan, C.Y. and Lawrence, C.E. (2005) RNA secondary structure prediction by centroids in a Boltzmann weighted ensemble. RNA 11, 1157-1166.

Ding, Y. and Lawrence, C.E. (2003) A statistical sampling algorithm for RNA secondary structure prediction. Nucleic Acids Res. 31, 7280-7301.

3. Protection of Software

3.1 You shall respect and not remove, obliterate, or cancel from view any copyright, trademark, confidentiality or other proprietary notice, mark, or legend appearing on any of the Software or output generated by the Software, and shall reproduce and include same on each copy of the Software. You shall secure and protect all Software to the extent that You protect Your own software but shall use no less than reasonable effort to protect Health Research Inc.'s proprietary rights therein.

3.2 You shall maintain and place on any copy of the Software that you reproduce in accordance with the limitations in this Agreement, the following notice, or such other reasonable notice as Health Research Inc. shall from time to time require, on each copy of the Software. Such notice shall be loaded in the computer memory for use, display, or reproduction and shall be embedded in program source code and object code, in the video screen display, and on the physical medium embodying the Software copy:

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4. Warranties; Limitation of Liability

4.1 THIS SOFTWARE IS DELIVERED "AS IS." NEITHER HEALTH RESEARCH INC NOR THE STATE OF NEW YORK MAKES ANY WARRANTIES CONCERNING THE SOFTWARE COVERED BY THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY EXPRESS OR IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. HEALTH RESEARCH INC. MAKES NO WARRANTY OR REPRESENTATION AS TO THE VALIDITY OR SCOPE OF THE SOFTWARE OR ANY INTELLECTUAL PROPERTY RIGHT CONTAINED THEREIN, THAT THE SOFTWARE WILL BE ERROR FREE, FREE FROM AN INFRINGEMENT ON PATENTS, COPYRIGHTS OR OTHER INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES, OR THAT NO THIRD PARTIES ARE INFRINGING PATENT, COPYRIGHT OR OTHER INTELLECTUAL PROPERTY RIGHTS COVERED BY THIS AGREEMENT. NO AGENT OF HEALTH RESEARCH INC IS AUTHORIZED TO ALTER OR EXCEED THE WARRANTY OBLIGATIONS OF HEALTH RESEARCH INC SET FORTH IN THIS AGREEMENT.

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4.2 EXCEPT TO THE EXTENT PROHIBITED BY LAW, YOU ASSUME ALL LIABILITY FOR DAMAGES THAT MAY ARISE FROM THE USE OF THE SOFTWARE. NEITHER HEALTH RESEARCH INC NOR THE STATE OF NEW YORK WILL BE LIABLE TO YOU FOR ANY LOSS, CLAIM OR DEMAND MADE BY YOU OR MADE AGAINST YOU BY ANY THIRD PARTY DUE TO OR ARISING FROM YOUR USE OF THE SOFTWARE. THE MAXIMUM LIABILITY OF HEALTH RESEARCH INC AND THE STATE OF NEW YORK TO ANY PERSON, FIRM OR CORPORATION WHATSOEVER ARISING OUT OF, OR IN CONNECTION WITH YOUR USE OF THE SOFTWARE SHALL IN NO CASE EXCEED ONE THOUSAND U.S. DOLLARS (\$1,000 U.S.).

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5. Indemnification

5.1 You shall at all times during the term of this Agreement and thereafter indemnify, defend, and hold Health Research Inc., New York State and their respective trustees, directors, officers, employees and affiliates, harmless against all claims, proceedings, demands and liabilities of any kind whatsoever, including legal expenses and reasonable attorney fees, with regard to claims arising out of (a) the death of, or injury to, any person or persons; (b) any damage to property arising out of Your use of the Software; and (c) or resulting from, the exercise or practice of the license granted to You hereunder.

6. Confidential Information

6.1 Confidential Information Defined. The term “Confidential Information” means (a) the Software, (b) any documentation, instruction and training manuals, diagrams, flow charts, and business processes, and (c) all other information disclosed by Health Research Inc. to You; provided, however, that to be considered Confidential Information under this Agreement, information disclosed in writing or in electronic or other tangible form must bear a “secret,” “confidential,” or other similar designation, or if communicated orally, be followed with a written memorandum delivered to You within thirty (30) days of the disclosure describing the information disclosed and the circumstances of disclosure and asserting a claim of confidentiality with respect thereto. You acknowledge that the Confidential Information is the sole and exclusive property of Health Research Inc. and that the Confidential Information contains the valuable property and trade secrets of Health Research Inc. You shall not disclose any of Your or any third party’s confidential or proprietary information to Health Research Inc. in connection with this Agreement.

6.2 Duty of Security. You shall maintain the Confidential Information in a safe, secure place to which only Your authorized employees with a need to know the Confidential Information to fulfill the Purposes are permitted access. You shall maintain the Confidential Information in confidence, employing measures of security reasonable under the circumstances, but in no event less stringent than the measures You employ to protect your own most valuable trade secrets and not use the Confidential Information except to fulfill the Purposes. The Confidential Information may be disclosed only to those employees of You who have a reasonable need to know to fulfill the Purposes, in light of their duties as employees and only if such employees are warned of the confidential nature of the Confidential Information. You will be responsible for the consequences of any injury resulting from disclosure of the Confidential Information by You or third parties to whom You allow access to the Confidential Information.

6.3 Exclusions. The obligations of Article 6 shall not apply to information that:
6.3.1 is, at the time of disclosure, in the public domain or that, after disclosure, falls into the public domain through no fault or neglect of You;

6.3.2 is lawfully disclosed to You by a third party who is under no obligation of secrecy or confidentiality with respect to the information; and

6.3.3 information that You can demonstrate, through written contemporaneously dated documents in Your files, was either in Your possession or independently developed by You by persons without access to the Confidential Information prior to the Effective Date.

7. Termination

7.1 Health Research Inc. may also terminate this Agreement upon written notice to You if You are in material breach of this Agreement and fail to cure such breach within five (5) days of a written demand for performance.

7.2 Upon termination of this Agreement:

7.2.1 You shall discontinue all use of the Software;

7.2.2 You shall immediately remove the Software from all computers at the Site and from all hard drives and media in Your possession;

7.2.3 You shall certify in writing to Health Research Inc. within thirty (30) days from the termination or expiration of this Agreement that You have complied with this Section; and

7.2.4 You shall return to Health Research Inc. within thirty (30) days from the termination or expiration of this Agreement upon written notice all Confidential Information, including, without limitation, materials, samples, documents, notes and other materials that embody or disclose Confidential Information, including all copies of any of the foregoing You made or permitted others to make.

8. Export Controls

8.1 You understand and acknowledge that the transfer of certain commodities and technical data is subject to United States laws and regulations controlling the export of certain commodities and technical data, including, without limitation, all Export Administration Regulations of the United States Department of Commerce. These laws and regulations, among other things, prohibit or require a license for the export of certain types of technical data to certain specified countries. You hereby agree and give Health Research Inc. written assurance that You will comply with all United States laws and regulations controlling the export of commodities and technical data, that You will be solely responsible for any violation of such by You, and that You will defend, indemnify and hold Health Research Inc. and its employees, officers and agents harmless in the event of any legal action of any nature occasioned by such violation.

9. Notices

9.1 Except as otherwise expressly provided in this Agreement, all notices and other communications in connection with this Agreement shall be in writing and shall be sent by postage prepaid certified mail return receipt requested, overnight delivery service or fax to Health Research Inc. at the address set forth below, and to You, at the email address you provided to Health Research Inc. with Your application for this license, or to such other addresses as may be designated by either Party by like notice:

To Health Research Inc. at 150 Broadway Suite 560, Menands, New York 12204

10. General Provisions

10.1 This Agreement shall be governed by, construed and enforced exclusively in accordance with the laws of New York State without reference to any of its conflict of laws rules. Any action brought regarding or arising out of this Agreement shall be in the United States District Court, Northern District of New York (Albany), or New York State Supreme Court, Health Research Inc. or Albany County.

10.2 If any formal acts of registration or recordation of this Agreement are required under the laws of any governmental authority to which You are subject, or if You are required by any such law to take any other action as a result of this Agreement, You shall take all necessary steps to immediately undertake and fully comply with same and promptly furnish to Health Research Inc. proof of registration, recordation and/or compliance therewith.

10.3 Neither Party, absent written approval of the other, shall have any right to use any name, trade name, or trademark of the other.

10.4 Neither Party, absent written approval of the other, shall assign any rights under this Agreement to any third party.

10.5 Nothing contained in this Agreement shall require or permit Health Research Inc. or You to do any act inconsistent with the requirements of any United States law, regulation or executive order as the same may be in effect from time to time.

10.6 The following Sections and Articles shall survive the termination of this

Agreement: 2.4; 2.5; 4.2; 5.1; 6; 7.2; 8; and 10.

10.7 This Agreement (a) contains the entire understanding between you and Health Research Inc. and supersedes all prior agreements with respect to the subject matter hereof, and (b) may only be amended by another writing expressly referring to this Agreement signed by both You and Health Research Inc. This Agreement shall be binding upon and inure to the benefit of You and Health Research Inc. and their respective successors and permitted assigns.

Updated May 25, 2017