Software License Agreement for Government Funded Institutions

1. Aim of this agreement

This agreement between XAFS Services International (hereinafter referred to as XSI) and the
_____ (hereinafter referred to as enduser) has the aim to protect the ownership and copyright of the XAFS Data Analysis Program (hereinafter referred to as XDAP).

2. License

XSI grants enduser and enduser accepts a non-exclusive, non-transferable and perpetual license for in-house use of XDAP. Enduser acknowledges and agrees that XDAP is XSI's proprietary information and that this agreement grants enduser no title or rights of ownership of XDAP. Enduser agrees not to remove or destroy any proprietary markings or legends placed upon or contained within XDAP.
Title patent, copyright, and trademark rights to XDAP are retained by XSI. Enduser shall take all reasonable precautions to preserve these rights. XSI reserves the right to license or grant any other rights to XDAP to other persons or entities.

3. Provision of Program and Documentation

After receipt of the signed license agreement, and fifty percent (50%) of the license fee, XSI will provide enduser the ordered copy, or copies, of XDAP and a User's Guide. After receipt of the ordered copy, or copies, enduser will pay the remaining fifty percent (50%) of the license fee and all other charges within thirty (30) days.

4. Restriction on Use

Enduser agrees that neither XDAP nor any of its components shall be used as the basis of a commercial product, and that it shall not be rewritten in any other computer language or otherwise adapted to circumvent the need for obtaining additional license rights. XDAP is provided only for independent or federal-funds-supported research of persons employed by the enduser. In no event shall enduser install or provide XDAP on any other computer system on which enduser purchases or sells computer-related services.
Use of XDAP for any purpose other than that specified in this agreement requires prior approval in writing from XSI. The license granted hereunder and XDAP may not be assigned, sublicensed, or otherwise transferred by enduser. Enduser shall take reasonable precautions to ensure that neither XDAP not its components are copied, transferred, or disclosed to parties other than enduser. Enduser shall not transfer XDAP or any of its components outside of his/her academic laboratory. Nothing in this agreement shall be construed as conferring rights to use in advertising, publicity or otherwise any trademark or the names of XDAP or XSI.

5. Acknowledgement

In all publications and reports which use results generated with XDAP enduser shall refer to XDAP by this name and cite the following literature reference:

M. Vaarkamp, J.C. Linders and D.C. Koningsberger, Physica B 208&209 (1995) 159-160

This citation may be updated by XSI through written notification.

6. Warranty

XSI warrants the physical diskette(s), hardware key, and physical documentation provided to be free of defects in materials and workmanship for a period of sixty days from the date of delivery. If XSI receives notification within the warranty period of defects in materials or workmanship, and such notification is determined by XSI to be correct, XSI will replace the defective diskette(s), hardware key, or documentation.

The entire and exclusive liability and remedy for breach of this Limited Warranty shall be limited to replacement of defective diskette(s), hardware key, or documentation and shall not include or extend to any claim for or right to recover any other damages, including but not limited to, loss of profit, data or use of the software, or special, incidental, or consequential damages or other similar claims, even if XSI has been specifically advised of the possibility of such damages. In no event will XSI's liability for any damages to enduser or any other person ever exceed the lower of suggested list price or actual price paid for the license to use the software, regardless of any form of the claim.

Enduser agrees to accept XDAP "as is" and it is understood that XSI is not obligated to provide maintenance, improvements, debugging or support of any kind.

7. Limitation of Liability

XSI shall not be liable for any direct, indirect, special, incidental, or consequential damages suffered by enduser or any other parties from the use of XDAP. Enduser agrees to indemnify XSI for liability resulting from the use of XDAP by enduser. Enduser and XSI each agree to hold the other harmless for their own negligence.

8. Termination

Enduser and XSI may mutually agree to terminate this agreement at any time for any reason. In the event XSI believes enduser has violated any of the terms of this agreement, XSI will inform enduser in writing of the possible violation and enduser will have thirty (30) days from the date of such notification to provide explanation or remedy satisfactory to XSI. Enduser agrees that if satisfactory remedy or explanation is not provided, XSI may immediately terminate this agreement. Upon termination of this agreement, enduser agrees to return or destroy all copies of XDAP within thirty (30) days and confirm destruction in writing.

9. Law

This agreement shall be governed by the laws of the Netherlands. This agreement contains the entire agreement between XSI and enduser and supersedes all prior written or oral representations with respect to XDAP.

In witness whereof the parties hereto have executed this instrument as of the dates given below:

Enduser   XSI

By   _____   By   _____

Title _____   Title _____

Date _____   Date _____

Signature: Signature:

_____   _____

Laboratory Affiliation and Address:

_____

_____

_____

_____

Phone _____

FAX   _____

e-mail _____