

DNA-BLAST Software End User License Agreement

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THIS EULA AND THE RELATED TERMS AND CONDITIONS APPLY TO ALL VERSIONS, UPDATE AND UPGRADES OF SOFTWARE DESIGNED, PRODUCED AND/OR SOLD BY TBT.

EXPRESS ACCEPTANCE AND CONSENT TO THE LAST UPDATED EULA WILL BE REQUIRED PRIOR TO ANY ENTRANCE TO THE SOFTWARE.

1. DEFINITIONS

1.1. "The Software" refers collectively to any DNA-BLAST Software, i.e. but not limited to any I-Blast or X-Blast version, part or module of any DNA-Blast software, accompanying files and/or related documentation, designed and/or produced by TBT, whatever the license form and corresponding functionalities granted to the User.

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1.3. The terms "TBT" or "Licensor", "Licensors" refer to the owner of the Software, TBT and its representations and divisions around the World, hereafter collectively referred to as "TBT", whose registered office is 35, avenue Sa Marguerite, les Roses d'Azur B3, 06200 Nice, France. Our company registration number is RCS 481 831 816 00014.

1.4. The "Parties" refer collectively to "TBT" and the "User", as defined under the present CLUF.

1.5. The terms "Output" or "Outputs" refer to the information resulting from the use of the Software.

1.6. "Update" or "Updates" are taken to mean new minor features, changes or alterations to the programs core or graphic user interface, repairs, patches and other fixes of any repairable defect, including irregularities, incompatibilities or other inconsistencies resulting in the failure of or prevention of the normal functioning of the product.

1.7. "Upgrade" is taken to mean a new released version containing significant improvements of the functionality or the possibilities compared with the previous version. These improvements exceed the contents of the improvements in software Update.

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3.2. The prices, sales conditions, corresponding License durations and features, and technical access modes to the License are available through the Website and are subject to change without specific and/or prior notice to the User.

3.3. Licenses starting date, duration, termination and corresponding features is included in the activation Code and/or programmed into the Dongle, is set by TBT in accordance with the present EULA and is displayed to the User on the management screen of the Software.

3.4. If any, the Dongle will be sent to the name and address provided by the Licensee at the time of purchase. The warranty on the operation of the dongle is that supplied by the dongle manufacturer. Notwithstanding this, the operation of the dongle is warranted for a period not exceeding 30 days from the date of dispatch by TBT. Replacement after this period shall be at the discretion and at a cost decided by TBT.

3.5. The subscription period effectively begins when the payment associated to the license has been received by TBT.

3.6. A new activation Code is required to pass from a License category to another or to get access to an Upgrade.

4. PERPETUAL LICENSES

4.1. Software license said to be Perpetual, means that it can continue to be used with the original software for as long as is required, without any annual renewal being required.

4.2. A Perpetual license includes any Updates for a twelve (12) months period starting according to the article 3.3 of present EULA.

4.3. TBT reserves the right to offer preferential prices to Users for the purchase of an Upgrade version of the Software.

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5.1. Time-Limited Licenses might be either an Evaluation License, a Daily license, a Monthly license or a Yearly License. All contain a feature that will automatically disable the Software after the set duration period has expired. Licensee may not disable, destroy, or remove this feature of the Software, and any attempt to do so will be in violation of this EULA.

5.2. EVALUATION LICENSE

5.2.1. A customized version of the Software, hereafter "Evaluation Version", might be provided for a time limited period ("Evaluation Period") set freely by TBT and starting according to the article 3.3 of present EULA.

5.2.2. Receiving an Evaluation Version, you are granted by TBT an Evaluation License. The Evaluation License is subject to all terms set forth in this EULA.

5.2.3. TBT expressly reserves the right to set a price to the Evaluation version in accordance with the customized contain, duration and/or features of the Evaluation Version being provided.

5.3. DAYLY, MONTHLY or YEARLY LICENSE

5.2.1. Software License said to be Daily, Monthly or Yearly, means the Software contains a feature that will automatically disable the Software after a twelve (12) months period has expired, an annual renewal being then required for a further use of the Software.

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6.1. Perpetual Licenses and Time-Limited Licenses are proposed by TBT with a training (hereafter "Training") and support (hereafter "Support") package. The Training and Support offer is aligned with the level of complexity of the selected Software version and shall be tailored to take into account future Users background, quantity, environment and objectives.

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6.3. The Licensee recognizes and acknowledges that installing and/or using the Software without receiving any Training and Support is far from ideal and that improper or wrongful use or presentation could be detrimental to Licensor and or damage the corporate and product images of Licensor.

6.4. Should the Licensee declines any Training and Support from TBT, Licensee acknowledges that:

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7. EXCLUSION OF WARRANTIES

7.1. NOTHING IN THIS EULA, INCLUDING THE PRESENT SECTION 7 AND THE FOLLOWING SECTION 8, SHALL EXCLUDE OR LIMIT TBT'S WARRANTY OR LIABILITY FOR LOSSES WHICH MAY NOT BE LAWFULLY EXCLUDED OR LIMITED BY APPLICABLE LAW. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES OR CONDITIONS OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR LOSS OR DAMAGE CAUSED BY NEGLIGENCE, BREACH OF CONTRACT OR BREACH OF IMPLIED GENERAL TERMS, OR INCIDENTAL OR CONSEQUENTIAL DAMAGES. ACCORDINGLY, ONLY THE LIMITATIONS WHICH ARE LAWFUL IN YOUR JURISDICTION WILL APPLY TO YOU AND OUR LIABILITY WILL BE LIMITED TO THE MAXIMUM EXTENT PERMITTED BY LAW.

7.2. THE SOFTWARE ALLOWS USERS EDITING AND/OR PRINTING REPORTS GATHERING SELECTED OUTPUTS. BY DEFAULT, THE SOFTWARE ADDS THE PRESENT EULA AT THE END OF THE REPORT FOR USERS PERUSAL AND INFORMATION, AND ALSO GIVES USERS THE OPTION NOT TO ADD THE EULA TO A CONSIDERED REPORT. WHATEVER USERS' DECISION OF ADDING THE EULA OR NOT, AND CONSIDERING THE EULA CAN BE READ AND DOWNLOADED ANYTIME ON WWW.TBTECH.FR, THE ENTIRE EULA FULLY APPLIES TO THE SOFTWARE AND REPORT.

7.3. THE USER EXPRESSLY UNDERSTANDS AND AGREES THAT USER'S USE OF THE SOFTWARE IS AT THE USER'S SOLE RISK AND THAT THE SOFTWARE ARE PROVIDED 'AS IS' AND 'AS AVAILABLE'. IN PARTICULAR, TBT, ITS SUBSIDIARIES AND AFFILIATES, AND ITS LICENSORS DO NOT REPRESENT OR WARRANT TO THE USER THAT:

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7.3.3. ANY INFORMATION OBTAINED BY THE USER AS A RESULT OF THE USER'S USE OF THE SOFTWARE WILL BE ACCURATE OR RELIABLE, AND

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7.3.5. THE USER'S USE OF THE SOFTWARE AND/OR THE OUTPUT OBTAINED FROM THE SOFTWARE WILL COMPLY WITH ALL DOMESTIC, LOCAL, INTERNATIONAL LAWS, REGULATIONS AND RECOMMENDED PROFESSIONAL PRACTICES THAT APPLY AND OR RELATE TO THE USER.

7.3.6. ANY MATERIAL DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SOFTWARE IS DONE AT THE USER'S OWN DISCRETION AND RISK AND THAT THE USER WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR OTHER DEVICE OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF ANY SUCH MATERIAL.

7.4. THE PROVISIONS OF THE PRESENT SECTIONS 7 AND OF THE HEREAFTER SECTION 8, APPLY IN ALL CASES OF INCORRECT OR INACCURATE USE OR IMPLEMENTATION OF THE OUTPUT.

7.5. THE USER'S USE OF THE SOFTWARE AND/OR THE OUTPUT OBTAINED FROM THE SOFTWARE WILL BE IN ANY CASE AS GOOD AS THE DATA ENTERED AS AN INPUT; IF INCORRECT AND/OR INACCURATE DATA IS ENTERED, THE OUTPUT WILL BE INCORRECT AND/OR INACCURATE.

7.6. NO WARRANTIES ARE GIVEN BY US IN RESPECT OF ANY FAILURE OF THE SOFTWARE TO OPERATE DUE TO CHANGES IN ANY OPERATING SYSTEM OR ENVIRONMENT (WHETHER USER'S OR TBT'S) OR DUE TO USER'S FAILURE TO COMPLY WITH THIS EULA.

7.7. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY THE USER FROM TBT OR THROUGH OR FROM THE SOFTWARE SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THE PRESENT EULA.

7.8. TBT FURTHER EXPRESSLY DISCLAIMS ALL WARRANTIES AND CONDITIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE; NON-INFRINGEMENT; WARRANTIES OF TITLE; OR THOSE ARISING BY STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF DEALING OR USAGE OF TRADE.

7.9. TBT RESERVES THE RIGHT TO PERIODICALLY UPDATE THE SOFTWARE AT ITS OWN DISCRETION. WITH THE INSTALLATION OF THE SOFTWARE, YOU ACKNOWLEDGE AND AGREE THAT YOU APPROVE OF POSSIBLE FUTURE UPDATES AND THE FACT THAT THIS EULA CONTINUES TO APPLY UNIMPAIRED TO UPDATES.

8. LIMITATION OF LIABILITY

8.1. SUBJECT TO THE PROVISIONS IN SECTION 7, THE USER EXPRESSLY UNDERSTANDS AND AGREES THAT TBT, ITS SUBSIDIARIES AND AFFILIATES, AND ITS LICENSORS SHALL NOT BE LIABLE TO THE USER FOR:

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8.1.2. ANY LOSS OR DAMAGE WHICH MAY BE INCURRED BY THE USER, INCLUDING BUT NOT LIMITED TO LOSS OR DAMAGE AS A RESULT OF:

(A) ANY RELIANCE PLACED BY THE USER ON THE COMPLETENESS, ACCURACY OR EXISTENCE OF ANY ADVERTISING, OR AS A RESULT OF ANY RELATIONSHIP OR TRANSACTION BETWEEN THE USER AND ANY ADVERTISER OR SPONSOR WHOSE ADVERTISING APPEARS ON THE SOFTWARE;

(B) ANY CHANGES WHICH TBT MAY MAKE TO THE SOFTWARE, OR FOR ANY PERMANENT OR TEMPORARY CESSATION IN THE PROVISION OF THE SOFTWARE (OR ANY FEATURES WITHIN THE SOFTWARE);

(C) THE DELETION OF, CORRUPTION OF, OR FAILURE TO STORE, ANY CONTENT AND OTHER COMMUNICATIONS DATA MAINTAINED OR TRANSMITTED BY OR THROUGH THE USER'S USE OF THE SOFTWARE;

(D) THE USER'S FAILURE TO PROVIDE TBT WITH ACCURATE ACCOUNT INFORMATION;

(E) THE USER'S FAILURE TO KEEP THE PASSWORD OR ACCOUNT DETAILS SECURE AND CONFIDENTIAL;

8.2. THE LIMITATIONS ON TBT'S LIABILITY TO THE USER IN SECTION 7 ABOVE SHALL APPLY WHETHER OR NOT TBT HAS BEEN ADVISED OF OR SHOULD HAVE BEEN AWARE OF THE POSSIBILITY OF ANY SUCH LOSSES ARISING.

8.3. IN THE EVENT TBT IS HELD LIABLE FOR ANY DAMAGES RELATED TO THIS SOFTWARE, THE USER'S SOLE AND EXCLUSIVE REMEDY WILL BE LIMITED TO REIMBURSEMENT OF THE CHARGES FOR SOFTWARE OR PRODUCTS PAID BY THE USER THAT WERE NOT PROVIDED TO THE USER.

8.4. THE USER HEREBY WAIVES ANY AND ALL RIGHTS TO BRING ANY CLAIM OR ACTION RELATED TO THE SOFTWARE BEYOND ONE (1) YEAR AFTER THE FIRST OCCURRENCE OF THE KIND OF ACT, EVENT, CONDITION OR OMISSION UPON WHICH SUCH CLAIM OR ACTION IS BASED.

9. ENDING THE USER'S RELATIONSHIP WITH TBT

9.1. User's relationship with TBT is ruled by the present EULA until termination of the relationship between Licensor and Licensee arisen. This EULA is effective until terminated, afterwards it will be considered as expired.

9.2. This EULA expires if you do not renew the License or do not pay the fee or annual fee prior to the expiration period.

9.3. This EULA expires immediately without notice from Licensor if Licensee fails to comply with any provision of this EULA. Upon termination, Licensee must destroy all copies of Software.

9.4. Licensee agrees that upon termination of this EULA for any reason, Licensor may take actions so that Software no longer operates.

9.5. Upon the expiration of these EULA in accordance with this Section, all of the legal rights, obligations and liabilities that User and TBT have benefited from, been subject to (or which have accrued over time whilst the EULA have been in force) or which are expressed to continue indefinitely, shall be unaffected by this cessation, and the provisions of the law and jurisdiction governing the relationship between User and TBT in Sections 7 and 8 shall continue to apply to such rights, obligations and liabilities indefinitely.

9.6. Whether terminated by the User or TBT, TBT reserves the right to refund any money paid by the User at its sole discretion.

10. WITHDRAWAL OF FUNCTION AND SUPPORT

10.1. TBT does not guarantee that any particular functions will continue to be supported in future versions.

10.2. TBT reserves the right to suspend or withdraw function and support at any time without giving any reasons and without notice.

11. DOCUMENTS & MATERIALS

11.1. TBT owns the entire content of the Software and is entitled to use it at its own discretion. The Software content shall include, but not be limited to, the source code, the routines, the procedures, the functions, the equations, the design, look, appearance and graphics.

(A) Any redistribution or reproduction of part or all of the contents in any form is prohibited other than the following:

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(B) The User may not, except with Our express written permission, distribute or commercially exploit the content of the Software. Nor may the User transmit it or store it in any other website or other form of electronic retrieval system.

11.2. Unauthorized use of the Software content may give rise to a claim for damages and/or be a criminal offense.

12. RESTRICTIONS

12.1. Unless the accompanying EULA expressly allows otherwise, any copying or redistribution of the Software is prohibited, including any copying or redistribution of the Software to any other server or location, redistribution or use on a service bureau basis, and also including publishing, assigning, selling, bargaining, conveying, transferring, pledging, leasing or granting any further rights to use the Software, or otherwise transfer any part of your rights to use the Software.

12.2. You agree that you will not decompile, reverse engineer or otherwise attempt to discover the source code of the Software. Notwithstanding the foregoing, decompiling the Software is permitted to the extent the laws of the jurisdiction where you are located give you the right to do so to obtain information necessary to render the Software interoperable with other software, provided, however, that you must first request the information from TBT and may, in its discretion, either provide such information to you or impose reasonable conditions, including reasonable fees, on use of the Software to ensure that TBT's Intellectual Property Rights in the Software are protected.

13. GENERAL LEGAL TERMS

13.1. The EULA, and the User's relationship with TBT under the EULA, shall be governed by the laws of France without regard to its conflict of law provisions. You and TBT agree to submit to the exclusive jurisdiction of the courts located in France, to resolve any legal matter arising from the General Terms. Notwithstanding this, User agrees that TBT shall be permitted to apply for injunctive remedies (or an equivalent type of urgent legal relief) in any jurisdiction.

13.2. Whenever possible, each provision of this EULA shall be construed and interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this EULA or the application thereof to any party or circumstance shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition without invalidating the remainder of such provision or any other provision of this EULA or the application of such provision to other parties or circumstances.

13.3. For any and all claims, disputes, or controversies arising under, out of, or in connection with this EULA or the relationship of the parties which the parties shall be unable to resolve within sixty (60) days, the party raising such dispute shall promptly advise the other party of such claim, dispute, or controversy in a writing which describes in reasonable detail the nature of such dispute. By not later than five (5) business days after the recipient has received such notice of dispute, each party shall have selected for itself a representative who shall have the authority to bind such party and shall additionally have advised the other party in writing of the name and title of such representative. By not later than ten (10) business days after the date of such notice of dispute, such representatives shall agree upon a third party which is in the business of providing Alternative Dispute Resolution (ADR) Software Services (hereinafter, "ADR Provider") and shall schedule a date with such ADR Provider to engage in ADR. Thereafter, the representatives of the parties shall engage in good faith in an ADR process under the auspices of the selected ADR Provider for a period of thirty days.

13.4. If within the aforesaid thirty (30) business days after the date of the notice of dispute the representatives of the parties have not been able to agree upon an ADR Provider and schedule a date to engage in ADR, or if they have not been able to resolve the dispute within thirty (30) business days after the termination of ADR, either party shall have the right to submit the matter to binding arbitration in Nice, France, to be determined by one arbitrator. The Arbitrator shall have the right to apportion fees according to his or her best judgment. The parties specifically agree not to litigate any disputes.

13.5. Notwithstanding the foregoing, nothing in this Section shall be construed to waive any rights or timely performance of any obligations existing under this EULA.

14. CHANGES TO THE EULA

14.1. TBT MAY MAKE CHANGES TO THIS EULA FROM TIME TO TIME ("REVISED EULA"). WHEN THESE CHANGES ARE MADE, IN EXAMPLE AFTER AN UPDATE, THE REVISED EULA WILL BE DISPLAYED TO THE USER, AS USUAL, WHEN NEXT ENTERING THE SOFTWARE. THE REVISED EULA WILL HAVE TO BE EXPRESSIVELY ACCEPTED BEFORE ENTERING THE SOFTWARE.

14.2. THE USER UNDERSTANDS AND AGREES THAT BY ACCESSING USING, VIEWING, TRANSMITTING, CACHING OR STORING ANY INFORMATION CONTAINED IN THE SOFTWARE, THE USER SHALL BE DEEMED TO HAVE AGREED TO EACH AND ALL THE TERMS, CONDITIONS, AND NOTICES OF THE REVISED EULA.

FOR FURTHER INFORMATION

Any questions concerning the DNA-Blast Software tools EULA, should be directed to us at the following email address: support@dna-blast.com or by calling +33 950 445 543 (GMT+1).

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