



STANDARD TERMS AND CONDITIONS OF SALE AND LICENSE

These Standard Terms and Conditions of Sale and License (“**Agreement**”) are effective as of the date that Aternity accepts the Order (“**Effective Date**”) and are between Aternity LLC. (or if Customer is purchasing directly from an affiliate of Aternity LLC, the affiliate identified on the applicable Order) (“**Aternity**”) and the customer identified on the applicable Order (“**Customer**”).

1. Definitions.

(a) “**Customer Agreement**” means the applicable Aternity end user agreement that accompanies a Product and is also located at www.aterinity.com/customeragreement, and which governs use of the Product.

(b) “**Products**” means Aternity’s generally available products, including cloud services and software, and any related Aternity documentation provided therewith by Aternity, that are listed on Aternity’s or one of its affiliate’s then-current price list or that are otherwise made available by Aternity.

(c) “**Support**” means Aternity’s then-current generally available end user maintenance and support services as described at www.aterinity.com/supportservicedescription.

2. **Sale and Purchase.** The Products and/or Support to be sold or licensed to Customer under this Agreement are identified on the Aternity-issued valid sales quotation that incorporates this Agreement by reference (“**Quote**”). Customer may purchase from Aternity the Products and/or Support set forth on the Quote by submitting a written purchase order to Aternity; such purchase order is subject to acceptance by Aternity (“**Order**”). A Customer-signed Quote may also serve as the Order. The terms and conditions of this Agreement will apply to the Order and supersede any different or additional terms on Customer’s purchase order. Any purchase order issued by Customer to Aternity is solely for the purpose of requesting delivery dates and quantities, specifying the bill-to addresses, specifying the identity of Products and Support purchased along with the number of licenses issued and the term of any applicable license or subscription, and specifying the applicable price for each Product and Support; all other terms on such purchase order will have no force or effect. The Order is subject to acceptance by Aternity (which acceptance may be evidenced by Aternity’s issuance of a license key and/or login instructions under the Order). Customer shall not resell any Products or Support.

3. **Price and Payment.** Customer shall pay to Aternity the prices for Products and Support set forth in the accepted Order. Customer is responsible for all taxes, withholding, duties and other governmental assessments (other than Aternity’s franchise taxes or taxes based upon Aternity’s net income), including goods and services, sales or use tax, VAT or similar taxes, provided that Aternity shall not invoice Customer for taxes to the extent Customer has provided an appropriate resale certificate, exemption documentation or valid VAT identification number that exempts Customer from paying and/or Aternity from collecting such tax. If Customer is required to pay any withholding taxes on payments to Aternity, then Customer shall increase its payments to Aternity such that the net payment to Aternity, after withholding tax, would be the same as if no withholding tax were applicable. Customer shall make all payments in U.S. dollars. Customer shall pay all amounts invoiced within 30 days after the invoice date, unless Aternity at any time determines that Customer’s credit is not satisfactory, in which case payment terms will be C.O.D. Aternity shall not invoice for any Products or Support before the actual date of license key and/or login instruction issuance of the applicable Products. All sums not paid when due will accrue interest daily at the lesser of an annual rate of eighteen percent (18%) or the highest rate permissible by law on the unpaid balance until paid in full.

4. **Delivery Terms.** Products will be delivered by issuing login instructions and/or a license key to Customer at the email address provided by Customer. Each partial issuance of a license key will be deemed a separate sale and may be invoiced upon such issuance. Customer shall not cancel any Order; provided that if Aternity has not yet issued the applicable login instructions and/or license key, Customer may cancel an Order.

5. Warranties and Disclaimer.

(a) Aternity warrants to Customer that the Support will be provided in a professional manner in accordance with generally accepted industry standards. Any warranties for Products are as set forth in the Customer Agreement. Customer’s sole and exclusive remedy, and Aternity’s sole and exclusive obligation, with respect to any failure to provide Support in accordance with the foregoing warranty is to re-perform the applicable Support. Customer’s sole and exclusive remedy, and Aternity’s sole and exclusive obligation, with respect to any nonconformity, deficiency, warranty or defect with respect to any Product is as set forth in the Customer Agreement.

(b) EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, ATERNITY PROVIDES THE PRODUCTS AND SUPPORT “AS IS” AND WITHOUT WARRANTY OF ANY KIND, AND HEREBY DISCLAIMS ALL OTHER WARRANTIES AND CONDITIONS, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING WARRANTIES AND CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, PERFORMANCE, ACCURACY, SECURITY, RELIABILITY AND NONINFRINGEMENT. ATERNITY ALSO MAKES NO WARRANTY REGARDING NONINTERRUPTION OF USE OR FREEDOM FROM BUGS OR THAT ANY PRODUCT OR SERVICE WILL MEET CUSTOMER’S REQUIREMENTS. THIS DISCLAIMER OF WARRANTY CONSTITUTES AN ESSENTIAL PART OF THIS AGREEMENT.

6. **Use of Products.** All Products are subject to, and Customer shall comply with, the terms and conditions of the Customer Agreement. No licenses or usage rights for any Products are granted under this Agreement.

7. **Support Services.** Subject to Customer’s compliance with all terms of this Agreement and annual advance payment of Aternity’s then-standard fees for the level of Support purchased, Aternity shall use reasonable commercial efforts to provide Support to Customer. Aternity is not obligated to provide, and Customer shall not request, any Support for any Product with respect to which a Support contract is not then in effect or with respect to which Support fees have not been timely and fully paid to Aternity. Customer shall not escalate any calls to Aternity for Support nor install any updates, upgrades, bug fixes or the like for any Product with respect to which a Support contract is not then in effect or with respect to which Support fees have not been timely and fully paid to Aternity. Aternity’s obligations under any Support plan with respect to any Product are subject to Customer’s annual advance payment of Aternity’s applicable Support fee. Aternity may elect to cancel a Support plan for which full payment has not been received. Customer acknowledges that Aternity has the right to verify Customer’s entitlement to receipt of Support, and that Customer is entitled to receive Support only on Products for which Aternity has been paid the applicable Support fees. The purchase or renewal of Support for any Product purchased by Customer requires the purchase or renewal of Support for all Products purchased by Customer, and Aternity is not obligated to provide Support to Customer if the foregoing condition is not met. Aternity retains ownership of any intellectual property resulting from performance of Support. If, with respect to a particular Product, there is a lapse in Support, (a) any subsequent purchase of Support will be deemed purchased retroactive to the later of (i) the date on which any prior Support period concluded or (ii) the date on which the particular Product was purchased, and (b) Customer shall pay all applicable Support fees for such lapsed period plus an additional twenty percent (20%) charge on the applicable Support fees for the lapsed Support period, which amounts will be based on the level of Support that Customer requests to purchase for such Products on a go-forward basis. Aternity reserves the right to discontinue



the manufacture or sale of, or otherwise render or treat as obsolete, any Product, subject to Aternity's end of sale / end of support policy at www.aternity.com/supportpolicy.

8. **Professional Services.** If Customer purchases any training, consulting, installation and/or other professional services, the terms of this Agreement do not apply to such services and the terms set forth at www.aternity.com/professional-services-terms will apply to such purchase.

9. **Confidentiality.** Each party (the "**Receiving Party**") agrees that any nonpublic information, software, inventions (whether patentable or not), algorithms, designs, know-how, ideas, product development plans, pricing and discounts, and all customer, business, technical, training and financial information (collectively, "**Confidential Information**") it obtains from the other (the "**Disclosing Party**") are the confidential property of the Disclosing Party and its suppliers. Without limiting the foregoing, the Products (including their design and structure) and all information on Aternity's customer care website constitute trade secrets and/or Confidential Information of Aternity or its licensors. Except as expressly and unambiguously allowed herein, the Receiving Party will hold the Disclosing Party's Confidential Information in confidence using the same degree (but no less than a reasonable degree) of care and protection that it uses to protect its own Confidential Information of a similar nature and not use or disclose any Confidential Information. Notwithstanding the foregoing, the Receiving Party may disclose Confidential Information to those of its employees and contractors with a need to know such Confidential Information and who have signed a written agreement with nonuse and nondisclosure provisions at least as protective of such Confidential Information as the terms of this Agreement. Confidential Information does not include any information that (a) was publicly known at the time of the Disclosing Party's communication thereof to the Receiving Party or becomes publicly known thereafter through no fault of the Receiving Party, (b) was in the Receiving Party's possession free of any obligation of confidentiality at the time of the Disclosing Party's communication thereof to the Receiving Party, (c) is rightfully obtained by the Receiving Party free of any obligation of confidentiality from a third party authorized to make such disclosure without restriction, or (d) is identified by the Disclosing Party as no longer proprietary or confidential. The Receiving Party may disclose Confidential Information to the minimum extent disclosure is required by court order or as otherwise required by law, on condition that (i) notice of such requirement for such disclosure is given to the Disclosing Party prior to making any such disclosure (if permitted under applicable law), and (ii) the Receiving Party ensures that any Confidential Information disclosed under this provision will still be afforded the protection of this Agreement to the extent it does not become publicly available as a result of such disclosure. Because of the unique and proprietary nature of the Confidential Information, it is understood and agreed that the Disclosing Party's remedies at law for a breach by the Receiving Party of its obligations under this Section will be inadequate and that the Disclosing Party will be entitled to equitable relief (including provisional and permanent injunctive relief) in addition to any other remedies. Without limiting the foregoing, Customer shall not provide the Products or disclose any Aternity Confidential Information, Aternity documentation or any information regarding any Products to any Aternity competitors. Customer shall not, without Aternity's prior written consent, publish or provide to any third party results of any benchmark or comparison tests of any Products. Upon termination or expiration of this Agreement, the Receiving Party shall return or destroy all Confidential Information of the Disclosing Party in its possession. The obligations set forth in this Section will survive any termination or expiration of this Agreement.

10. **Limited Liability.** NOTWITHSTANDING ANYTHING ELSE IN THIS AGREEMENT OR OTHERWISE, BUT SUBJECT TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT OR UNDER ANY TORT, CONTRACT, NEGLIGENCE, STRICT LIABILITY, STATUTE OR OTHER LEGAL OR EQUITABLE THEORY, (A) NEITHER ATERNITY NOR ANY OF ITS AFFILIATES OR SUPPLIERS IS LIABLE FOR (I) ANY INDIRECT, SPECIAL, EXEMPLARY, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR FOR ANY LOSS OF PROFITS, CONTRACTS, BUSINESS, REVENUES, GOODWILL OR REPUTATION, (II) COST OF COVER OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, TECHNOLOGY OR SERVICES, OR (III) LOSS OR CORRUPTION OF DATA, INTERRUPTION OF USE, LOSS OF GOODWILL, WORK STOPPAGE, ACCURACY OF RESULTS, COMPUTER FAILURE OR MALFUNCTION, OR DAMAGES RESULTING FROM CUSTOMER'S USE OF (OR INABILITY TO ACCESS OR USE) ANY PRODUCT OR SERVICE, AND (B) THE AGGREGATE LIABILITY OF ATERNITY AND ITS AFFILIATES AND SUPPLIERS WILL NOT EXCEED THE AGGREGATE FEES RECEIVED BY ATERNITY FROM CUSTOMER UNDER THIS AGREEMENT DURING THE TWELVE MONTH PERIOD PRIOR TO THE DATE THE CAUSE OF ACTION AROSE. THE FOREGOING LIMITATION IS CUMULATIVE, WITH ALL CLAIMS BEING AGGREGATED TO DETERMINE SATISFACTION OF THE LIMIT. THE EXISTENCE OF ONE OR MORE CLAIMS WILL NOT ENLARGE THE LIMIT. THE FOREGOING LIMITATIONS WILL APPLY EVEN IF ATERNITY IS INFORMED OF THE POSSIBILITY OF SUCH DAMAGES. THE PRODUCTS ARE NOT DESIGNED FOR USE IN ANY DEVICE OR SYSTEM IN WHICH A MALFUNCTION OF THE PRODUCT WOULD RESULT IN FORESEEABLE RISK OF INJURY OR DEATH TO ANY PERSON. THIS INCLUDES OPERATION OF NUCLEAR FACILITIES, LIFE-SUPPORT SYSTEMS, AIRCRAFT NAVIGATION OR COMMUNICATION SYSTEMS AND AIR TRAFFIC CONTROL. NEITHER ATERNITY NOR ANY OF ITS AFFILIATES IS LIABLE FOR ANY FAILURE OR DELAY DUE TO MATTERS BEYOND ITS REASONABLE CONTROL OR FOR ANY ALLOCATION OF PRODUCTS BETWEEN ITS CUSTOMERS IN THE EVENT OF A SHORTAGE. THIS SECTION DOES NOT LIMIT LIABILITY FOR BODILY INJURY OF A PERSON.

11. **Indemnification.** Aternity shall defend any third party action, suit or proceeding brought against Customer alleging that the Products infringe any of such third party's patents or copyrights that are registered in the United States as of the Effective Date (each, a "**Claim**"), and shall indemnify Customer for any losses, damages, costs, expenses and judgments resulting from a Claim that are agreed to by Aternity in a settlement or that are finally awarded against Customer by a court or a governmental entity with competent jurisdiction. The foregoing obligations are expressly conditioned on Customer promptly notifying Aternity of any and all threats, claims and proceedings related to a Claim and providing Aternity with reasonable assistance and the opportunity to assume sole control over the defense and all negotiations for a settlement or compromise of such Claim. Aternity is not responsible for any settlement it does not approve in writing. The foregoing obligations of Aternity do not apply with respect to any Product or any portion or component thereof: (a) that is not supplied by Aternity, (b) that is made in whole or in part in accordance with Customer specifications or requests, (c) that is modified, including any modification made using any programming capabilities or scripting languages that are included in or with a Product or that are otherwise made available for a Product, if the alleged infringement relates to such modification, (d) that is combined, processed, or used with other products, technologies, processes or materials, if the alleged infringement relates to such combination, process or use, (e) where Customer continues allegedly infringing activity after being notified thereof or after being informed of modifications that would have avoided the alleged infringement, (f) where Customer's use is not strictly in accordance with this Agreement and the Customer Agreement, or (g) where the alleged infringement relates to a patent that is deemed essential or required for any industry standard or that claims a method of conducting business. In addition, Aternity, at its sole expense and option, may (i) procure for Customer the right to continue to use the applicable Product, (ii) replace the applicable Product with a noninfringing alternative, (iii) modify the applicable Product to make it noninfringing, or (iv) refund a pro rata portion of the amount received from or on behalf of Customer for the applicable Product depreciated on a straight line basis over a five (5) year period, provided that Customer ceases all use of such Product and, at Aternity's option, returns the Product to Aternity. This Section states Aternity's sole and exclusive obligation, and Customer's sole and exclusive remedy, to the maximum extent permitted under applicable law, for any third party claims of infringement.

12. **Compliance with Laws and Export Control.** Customer shall conduct its business operations in accordance with all applicable U.S., European Union, Singapore and other foreign laws, ordinances, codes and regulations. Without limiting the foregoing, Customer shall comply with all applicable export laws, restrictions and regulations of the Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, and any other United States, European Union, Singapore or other foreign agency or authority and shall not import, export or re-export, or allow the import,



export or re-export of, any Product, technology or information it obtains or learns pursuant to this Agreement (or any direct product thereof) in violation of any such laws, restrictions or regulations.

13. **General.**

(a) All notices under this Agreement must be in writing and will be deemed given (i) when personally delivered, (ii) one day after being sent by overnight courier, (iii) upon receipt, if sent by certified or registered mail, return receipt requested, or (iv) the day of sending by email, to the address of the party to be noticed as set forth herein or such other address as such party last provided to the other by written notice.

(b) If any provision of this Agreement is found invalid or unenforceable, that provision will be enforced to the maximum extent permissible consistent with the original intent of the parties, and the other provisions of this Agreement will remain in force. The failure of Aternity to enforce its rights under this Agreement or to act with respect to a breach of this Agreement by Customer or others will not be construed as a waiver of such rights and will not limit Aternity's rights with respect to any such breach or any subsequent breaches.

(c) This Agreement is personal to Customer and Customer shall not assign (by operation of law or otherwise), transfer or sublicense any obligation or benefit under this Agreement, in whole or in part, for any reason whatsoever without Aternity's prior written consent, and any action or conduct in violation of the foregoing will be void and without effect. Aternity may assign this Agreement and/or the Order, or delegate any of its obligations hereunder, in whole or in part (except that Aternity shall obtain the consent of the U.S. government where the U.S. government is the Customer hereunder and such consent is required).

(d) For all purposes under this Agreement, each party shall be and act as an independent contractor of the other and shall not bind nor attempt to bind the other to any contract.

(e) Aternity and Customer agree that any Order (or portion thereof) will be deemed separable from any other Order (or portion thereof). There are no third party beneficiaries of this Agreement.

(f) Unless otherwise expressly provided, all remedies under this Agreement are cumulative and not exclusive. Unless otherwise expressly indicated, "including" (and other variations thereof) means, as applicable, "including but not limited to" and "herein" and "hereunder" are references to this Agreement. This Agreement, including the Customer Agreement and all online terms referenced herein, constitutes the entire agreement between the parties with respect to the subject matter hereof, to the exclusion of any pre-printed or contrary terms of any purchase order (or similar document) and supersedes and cancels any prior agreements, proposals, discussions, understandings, negotiations or representations between the parties relating to the subject matter of this Agreement, and all past dealing or industry custom.

(g) This Agreement will not be modified or waived, except by a mutual signed writing, provided that Aternity may update the online terms referenced herein from time to time. If this Agreement is deemed an offer, acceptance is expressly limited to these terms. Notwithstanding anything to the contrary, if there is a mutually signed agreement (not including any purchase order or similar document) expressly covering the sale or license of Products or Support by Aternity to Customer at the time the Order is accepted by Aternity, then the express terms of that agreement will govern. Aternity may include Customer's name as part of general customer lists.

(h) Execution and delivery of this Agreement may be evidenced by facsimile or other electronic transmission. The parties acknowledge and agree that this Agreement is subject to the U.S. Electronic Signatures in Global and National Commerce Act, the Singapore Electronic Transactions Act, the U.K. Electronic Communications Act 2000, and any similar law in any other applicable jurisdiction that makes legally effective a contract in electronic form, and authorizes acceptance by means of an electronic signature or process.

(i) This Agreement is governed by and construed in accordance with the laws of the State of Delaware, USA (without regard to the conflicts of laws provisions thereof or the UN Convention on the International Sale of Goods). Unless otherwise elected by Aternity in writing for a particular instance or prohibited by applicable law, the sole jurisdiction and venue for any court claims will be the state and U.S. federal courts located in Wilmington, Delaware, USA, and both parties consent to the jurisdiction of such courts. In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover costs and attorneys' fees.