1. DEFINITIONS.

(a) “Documentation” means the then-current written and/or electronic end user or technical documentation pertaining to the applicable Evaluation Product that is provided by Aternity together with the delivery of the applicable Evaluation Product or otherwise made available by Aternity.

(b) “Evaluation Confirmation” means the Aternity evaluation quotes or confirmations provided to Company from time to time by Aternity.

(c) “Evaluation Products” means, the Aternity products, listed on the Evaluation Confirmation that are provided to Company for evaluation hereunder, including, the Software, Cloud Services and all Documentation associated therewith.

(d) “Evaluation Term” means the period of time commencing on the date of issuance by Aternity of a license or access key (as applicable) until the evaluation end date provided in the Evaluation Confirmation. If no evaluation end date is provided in the Evaluation Confirmation, the period shall be for thirty (30) days following the date of issuance by Aternity of a license or access key (as applicable).

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

2. EVALUATION.

This Agreement does not entitle Company to any Support with respect to the Evaluation Product, but any such support provided by Aternity in its sole discretion shall be subject to this Agreement. At the conclusion of the Evaluation Term, or, if earlier, upon termination of the evaluation by Aternity or Company, the Evaluation Products have been purchased by Company, Company shall immediately discontinue any use of the Evaluation Product and de-install the software (if any) in accordance with any de-installation instructions provided by Aternity. If Company elects to purchase the Evaluation Product, Aternity reserves the right to charge for any taxes or duties incurred in connection with electronic delivery of the Evaluation Product to Company. In the event Company fails to discontinue use of the Evaluation Product within thirty (30) days after the end of the Evaluation Term, Aternity reserves the right to invoice Company for the then-current list price of such product and Company shall pay such invoice within ten (10) days after receipt of the invoice. Upon payment of the invoice, the product will no longer be deemed an Evaluation Product and its use is subject to the applicable terms located at www.aternity.com/customeragreement.

3. RESTRICTIONS.

Company agrees not to (a) copy, modify, distribute, or create derivative works of any Evaluation Product, (b) disassemble, decompile or reverse engineer any of the Evaluation Products, or otherwise attempt to discover any trade secrets, algorithms, sequence, organization or ideas underlying any of the Evaluation Products; (c) sell or resell any Evaluation Products, (d) sublicense, rent, lease, use for timesharing or service bureau purposes for third parties or otherwise provide temporary access to any Evaluation Product or use any Evaluation Product for the benefit of any third party, (e) provide Evaluation Product passwords or other Product log-in information to any unauthorized third party, (f) publish or disclose any information or results relating to performance, performance comparisons or other “benchmarking” activities relating to any Evaluation Product, (g) obscure, alter, remove, or destroy any proprietary markings, restrictive legends, or intellectual property notices on any Evaluation Product, or (h) access or use any Evaluation Product for purposes of designing or developing a competing product or service. Company may not retain the Products after the Evaluation Term except with the written approval of Aternity and then only if Company has paid the then-current list price for the Evaluation Products (or such other price if mutually agreed). Company will keep confidential all business, technical or financial information which Company knows or has reason to know is confidential, proprietary or trade secret information of Aternity ("Confidential Information"), and Company shall not use Confidential Information except as expressly authorized by Aternity under this Agreement. Company will comply with all laws and regulations relating to export control. Company will disclose the Evaluation Product and Confidential Information to its employees and consultants only as may be necessary in connection with Company’s evaluation hereunder; any consultants shall have first agreed in writing to be bound by provisions substantially similar to those in this Agreement.

4. WARRANTY DISCLAIMER.

The Evaluation Products are for evaluation only and are provided "AS IS" without warranties of any kind, 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 Evaluation Product will meet customer’s requirements. This disclaimer of warranty constitutes an essential part of this Agreement.

5. LIMITATION OF LIABILITY.

Aternity shall not be responsible or liable with respect to any subject matter of this Agreement under any theory of liability 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) 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 EVALUATION PRODUCT, (IV) FOR ANY AMOUNT IN THE AGGREGATE IN EXCESS OF $100, OR (V) FOR ANY MATTER BEYOND ITS REASONABLE CONTROL.

6. DATA COLLECTION. Company acknowledges that some Evaluation Products may depend on the transmission of certain data ("Company Data"). Company retains all rights and ownership in Company Data. Aternity does not claim any ownership rights in Company Data. If Company provides Aternity with any Personal Data (as defined in the DPA), Company represents and warrants that Company has the necessary rights and licenses required to provide Company Data to Aternity in connection with Company’s evaluation of the Evaluation Products and that by providing Company Data in this manner, Company will not violate any intellectual property rights of third parties, confidential relationships, contractual obligations or laws. Without limiting the generality of the foregoing, Company shall provide all notices to, and obtain any consents from, any data subject as required by any applicable law, rule or regulation in connection with the processing of any Personal Data of such data subjects via the Evaluation Products by Aternity and/or Company. Company shall not process or submit to the Evaluation Products any Company Data that includes any: (a) “personal health information,” as defined under the Health Insurance Portability and Accountability Act; (b) government issued identification numbers, including Social Security numbers, driver’s license numbers and other state-issued identification numbers; (c) financial account information, including bank account numbers; (d) payment card data, including credit card or debit card numbers; or (e) “sensitive” personal data, as defined under Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (“GDPR”) and any national laws adopted pursuant to the GDPR, about residents of Switzerland and any member country of the European Union. To the extent that Aternity processes any Personal Data contained in Company Data, on Company’s behalf, in the provision of the Evaluation Products, the terms of the data processing addendum at www.aternity.com/data-processing-addendum ("DPA"), as may be updated by Aternity from time to time, shall apply.

7. TERMINATION. Either party may terminate this Agreement for any reason immediately by written notice to the other party. Upon expiration or termination of this Agreement, unless the Evaluation Products have been purchased by Company as set forth in Section 2, Company shall immediately discontinue any use of the Evaluation Product and de-install the Software (if any) in accordance with any de-installation instructions provided by Aternity. Upon termination hereof for any reason, the terms of sections 2 through 8 shall survive.

8. GENERAL. This Agreement shall be governed by and construed under the laws of the State of Delaware (without reference to conflicts of laws provisions), without application of the UN Convention on Contracts for the International Sale of Goods. No waiver hereunder shall constitute a subsequent waiver hereunder. All notices and waivers hereunder will be in writing, and this Agreement may be modified only in a mutually signed writing. This Agreement is the complete agreement between the parties concerning the subject matter hereof and replaces all prior communications between the parties with respect thereto.