



## ATERNITY SOFTWARE LICENSE AGREEMENT

IMPORTANT: PLEASE READ BEFORE INSTALLATION OR USE OF ANY PRODUCTS (AS DEFINED BELOW). THIS ATERNITY SOFTWARE LICENSE AGREEMENT ("**AGREEMENT**") IS A BINDING AGREEMENT BETWEEN ATERNITY LLC ("**ATERNITY**") AND THE ENTITY OR COMPANY THAT IS THE AUTHORIZED PURCHASER OR CUSTOMER OF THE SOFTWARE ("**CUSTOMER**"). BY PURCHASING, DOWNLOADING, INSTALLING OR IN ANY WAY USING THE SOFTWARE, CUSTOMER IS UNCONDITIONALLY CONSENTING TO BE BOUND BY AND IS BECOMING A PARTY TO THIS AGREEMENT WITH ATERNITY. IF CUSTOMER DOES NOT UNCONDITIONALLY AGREE TO ALL OF THE TERMS OF THIS AGREEMENT, CUSTOMER IS NOT AUTHORIZED TO AND MAY NOT DOWNLOAD, INSTALL OR USE ANY OF THE SOFTWARE.

### 1. DEFINITIONS.

- (a) "**Affiliate**" means an entity that controls, is controlled by, or is under common control with Aternity LLC.
- (b) "**Documentation**" means the then-current written and/or electronic end user or technical documentation pertaining to the Software that is provided by Aternity together with the delivery of the Software or otherwise made available by Aternity.
- (c) "**Order**" means a written purchase order for Software and/or Services submitted to Aternity directly (or indirectly through a Partner) and is accepted by Aternity.
- (d) "**Professional Services**" means the training, consulting, installation and other professional services made available by Aternity. Professional Services are subject to the additional terms set forth in Attachment A.
- (e) "**Services**" means, Support together with Professional Services.
- (f) "**Software**" means any commercially available downloadable software products made available by Aternity and any upgrades, updates, patches, enhancements, or fixes to any of the foregoing that may be made available by Aternity.
- (g) "**SOW**" means a mutually agreed upon written statement of work between Aternity and Customer that describes Professional Services to be rendered by Aternity to Customer.
- (h) "**Support**" means Aternity's then-current generally available end user maintenance and support services as described at [www.aterinity.com/supportservicesdescription](http://www.aterinity.com/supportservicesdescription).

### 2. SOFTWARE USE RIGHTS.

- (a) **License Grant.** Subject to the terms and conditions of this Agreement and provided that Customer has paid the applicable fees, Aternity grants Customer a limited, personal, non-sublicensable, non-transferable (except as expressly provided in Section 14(c)), nonexclusive license for the duration of the License Term (as defined below) purchased by Customer to: (a) access, and use the Software (in object code format only), and (b) access, use, and reasonably reproduce the Documentation. Customer shall exercise the foregoing license rights solely for Customer's internal business use in accordance with the Documentation and shall comply with all other restrictions and limitations applicable to the Software. Subject to the foregoing, the Software licensed to Customer under this Agreement, including the number of licenses issued and the term of any applicable license ("**License Term**"), will be identified on the applicable ordering documentation received by Aternity. Software may be used only for the License Term purchased by Customer. Without granting any additional licenses hereunder, Customer may authorize its contractors and outsourcers to access, use or operate the Software solely on Customer's behalf, provided that (i) Customer obtains any such third party's binding consent to abide by the terms of this Agreement, and (ii) Customer remains responsible for such third parties' use of the Software and compliance with the terms and conditions of this Agreement, and any breach of this Agreement by any such third party will be deemed a breach of this Agreement by Customer.
- (b) **Licensing Metrics.** The Software is licensed on a per end point and/or similar per license unit basis and may be used only up to the number of end points and/or other license units purchased by Customer.
- (c) **Restrictions.** Except as expressly permitted by this Agreement, Customer shall not, and shall not authorize or permit any other person or entity to, directly or indirectly: (a) copy, modify (except as expressly permitted under the applicable Documentation), distribute, or create derivative works of the Software, (b) disassemble, decompile or reverse engineer the Software, or otherwise attempt to discover any source code, structure, algorithms, sequence, organization or ideas underlying the Software (except where the foregoing is expressly prohibited by applicable local law, and then only to the extent so prohibited), (c) sell or resell the Software, (d) sublicense, rent, lease, use for timesharing or service bureau purposes for third parties or otherwise provide temporary access to the Software or use the Software for the benefit of any third party, (e) publish or disclose any information or results relating to performance, performance comparisons or other "benchmarking" activities relating to the Software, (f) obscure, alter, remove, or destroy any proprietary markings, restrictive legends, or intellectual property notices on the Software, or (g) access or use the Software for purposes of designing or developing a competing product or service. Except as expressly permitted by this Agreement, Customer shall hold in confidence and shall not disclose, provide, or permit access to the Software or Documentation in any form to any third party without Aternity's prior written consent. Regardless of any references to any sale or purchase in this Agreement, all Software is licensed by Aternity, and not sold. As between the parties, all ownership rights with respect to the intellectual property rights in and to the Software, and any copies or portions thereof, remain in Aternity and its suppliers and licensors. The Software is protected by the intellectual property laws (including copyright laws) of the United States, foreign jurisdictions and all applicable international treaties. This Agreement does not grant Customer any rights not expressly set forth herein. Any action of Customer in contravention of this Section 2(c) may result in the termination of this Agreement, including the license grant for the Software.
- (d) **Cloud Services.** This Agreement does not apply to Aternity's SaaS or hosted solution offerings (currently designated as "**Cloud Services**"), use of which requires a separate agreement with Aternity.



### 3. SUPPORT.

(a) Except as expressly provided in Section 3(b) below, the Software includes bundled Support for the duration of the License Term purchased by Customer. During the License Term, Aternity shall provide Support to Customer in accordance with the terms set forth at Aternity's maintenance and support services description.

(b) The license fees for Software licensed on a perpetual basis do not include Support, and therefore Customer is not entitled to receive, any support services, upgrades, updates, patches, enhancements or fixes for any perpetually licensed Software Support has been separately purchased. Aternity is not obligated to provide, and Customer shall not request, any Support for any Cloud Service with respect to which a Support subscription 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 Cloud Service with respect to which a Support subscription is not then in effect or with respect to which Support fees have not been timely and fully paid to Aternity. 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 Software for which Aternity has been paid the applicable Support fees. Aternity retains ownership of any intellectual property resulting from performance of Support. If, with respect to a perpetually licensed Software, there is a lapse in Support, any subsequent purchase of Support will be deemed purchased retroactive to the later of (x) the date on which any prior Support subscription period concluded or (y) the date on which the particular perpetually licensed Software was purchased ("**Lapsed Support Period**"); and Customer shall pay all applicable Support fees for such Lapsed Support Period, plus an additional twenty percent (20%) charge on the applicable Support fees for the Lapsed Support Period. Aternity reserves the right to discontinue the manufacture or sale of, or otherwise render or treat as obsolete the Software, subject to Aternity's end of sale / end of support policy at [www.aternity.com/supportpolicy](http://www.aternity.com/supportpolicy).

### 4. SALE AND PURCHASE.

(a) Aternity shall sell to Customer and Customer shall purchase from Aternity the Software set forth in Orders. An Aternity-issued valid sales quotation that incorporates this Agreement by reference and is signed by Customer may serve as an Order. The terms and conditions of this Agreement will apply to all Orders and supersede any different or additional terms on Customer's purchase orders. Any purchase orders issued by Customer to Aternity are solely for the purpose of requesting quantities, specifying the bill-to addresses, specifying the Software purchased along with the number of licenses issued and the License Term, and specifying the applicable price for the Software; all other terms on such purchase order will have no force or effect. All Orders are subject to acceptance by Aternity (which acceptance may be evidenced by Aternity's issuance of login instructions and/or a license key under the Order).

(b) Affiliates may sell Software to Customer under the Agreement. The Affiliate will be identified on the Order, and that Order will be solely between that Affiliate and Customer and any references to "Aternity" in this Agreement will be deemed references to that Affiliate solely with regard to that Order. If requested by an Affiliate or Customer, such Affiliate and Customer may enter into one or more local agreements that reflect local laws, terms and conditions and that reference this Agreement (each, a "**Local Agreement**"). In the event of a conflict between the terms herein and those in any Local Agreement, the terms in the Local Agreement will take precedence, but only as pertaining to Orders governed by the Local Agreement.

### 5. FEES AND PAYMENT.

(a) **Fees.** Customer shall pay to Aternity, with respect to each Order, Aternity's standard list prices in effect at the applicable delivery date requested in such Order, unless otherwise mutually agreed upon by the parties pursuant to an accepted Order. Except as otherwise expressly provided in the applicable Order or this Agreement, (i) all payment obligations are non-cancelable and all fees non-refundable, and (ii) quantities purchased cannot be decreased during the relevant License Term.

(b) **Invoicing and Payment.** Fees will be invoiced in advance and otherwise in accordance with the relevant Order. 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 Software before the issuance of login instructions and/or a license key, as applicable. 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. Customer shall make all payments in U.S. dollars.

(c) **Taxes.** 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.

(d) **Delivery.** Software 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.

**6. PARTNER ORDERS.** This Section 6 applies if Customer purchases the Software and/or Services through an authorized channel partner of Aternity ("**Partner**").

(a) Customer will pay the applicable fees to the Partner, as negotiated solely between Customer and the applicable Partner (instead of paying Aternity); the terms and conditions in Sections 4 and 5 and Sections 3(b) and 4 of Attachment A will not apply.

(b) Any order details (identity of Software and Services purchased along with the number of licenses issued and the term of any applicable license or subscription) will be as stated in the Order submitted to Aternity by the Partner on Customer's behalf.

(c) If Customer is entitled to a refund under this Agreement, then unless otherwise specified by Aternity, Aternity will refund any applicable fees to the Partner and the Partner will be solely responsible for refunding the appropriate amounts to Customer.



(d) Partners are not authorized to modify the terms of this Agreement or make any promises or commitments on Aternity's behalf.

(e) The amount paid or payable by the Partner to Aternity for Customer's use of the applicable Software and/or Services under this Agreement will be deemed the amount actually paid or payable by Customer to Aternity under this Agreement for purposes of calculating the liability cap in Section 9.

**7. 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 Software (including its 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 Software or disclose any Aternity Confidential Information, Aternity documentation or any information regarding the Software 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 the Software. 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.

## **8. WARRANTIES AND DISCLAIMER.**

(a) Aternity warrants to Customer that the Services will be provided in a professional manner in accordance with generally accepted industry standards. Aternity further warrants to Customer that the Software, upon issuance by Aternity of a license key will conform in all material respects to the applicable published specifications for such Software during the applicable Warranty Period. "**Warranty Period**" means a period commencing on the date of issuance by Aternity of a license key of the applicable Software and continuing for ninety (90) days. Provision of any updates or upgrades will not extend the Warranty Period. The foregoing warranty does not extend to any Software that (i) is modified or altered, (ii) is not maintained in accordance with Aternity's maintenance recommendations and instructions, or (iii) is not used in accordance with the applicable Aternity published specifications and/or Documentation. Customer's sole and exclusive remedy, and Aternity's sole and exclusive obligation, for any breach of the foregoing warranties will be, at Aternity's option, (I) with respect to Software warranty, the repair or replacement of or (at Aternity's option if repair or replacement is impractical) refund of the fees received by Aternity for returned non-conforming Software for which full documentation and proof of non-conformity is provided to Aternity within the applicable Warranty Period, and (II) with respect to Services, re-performance of the applicable Service.

(b) EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, ATERNITY PROVIDES THE SOFTWARE "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 SOFTWARE WILL MEET CUSTOMER'S REQUIREMENTS. THIS DISCLAIMER OF WARRANTY CONSTITUTES AN ESSENTIAL PART OF THIS AGREEMENT.

**9. 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 SOFTWARE, 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 SOFTWARE IS NOT DESIGNED FOR USE IN ANY DEVICE OR SYSTEM IN WHICH A MALFUNCTION OF THE SOFTWARE 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. THIS SECTION DOES NOT LIMIT LIABILITY FOR (1) DEATH OR BODILY INJURY OF A PERSON, OR (2) IF CUSTOMER IS LOCATED WITHIN THE EUROPEAN UNION OR THE EUROPEAN FREE TRADE AREA, TORT OF DECEIT, FRAUD, OR BREACH OF THE OBLIGATIONS IMPLIED BY SECTION 12 OF THE SALE OF GOODS ACT 1979 OR SECTION 2 OF THE SUPPLY OF GOODS AND SERVICES ACT 1982.

**10. INDEMNIFICATION.** Aternity shall defend any third party action, suit or proceeding brought against Customer alleging that the Software infringes 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 Software 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 the Software or that are otherwise made available for the Software, 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, 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 Software, (ii) replace the applicable Software with a noninfringing alternative, (iii) modify the applicable Software to make it noninfringing, or (iv) refund any prepaid fees received from or on behalf of Customer for use of the applicable Software for the remainder of the terminated License Term, provided that Customer ceases all use of such Software. 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.

**11. TERM AND TERMINATION.**

(a) **Term of Agreement.** This Agreement is effective as of the Effective Date and continues until expiration of all License Terms, unless earlier terminated as set forth herein.

(b) **Termination for Cause.** Either party may terminate this Agreement (including related Orders) if the other party fails to cure any material breach of this Agreement within thirty (30) days after receipt of written notice describing the breach.

(c) **Effects of Termination.** Upon termination or expiration of this Agreement for any reason, (a) any accrued rights of Aternity to any payments, remedies for breach, and any obligations of the parties under any Orders will remain in effect, and (b) Customer shall pay Aternity all amounts due or accrued as of the date of such termination or expiration. Any Order accepted by Aternity after termination or expiration of this Agreement will be governed by the terms of this Agreement unless a separate mutually executed agreement between the parties covers such Order. Neither party will incur any liability whatsoever for any damage, loss or expenses of any kind suffered or incurred by the other (or for any compensation to the other) arising from or incident to any termination of this Agreement by such party that complies with the terms of this Agreement whether or not such party is aware of any such damage, loss or expenses. Any termination of this Agreement for Customer's breach of Section 2(c) will terminate the licenses and/or other rights granted hereunder. Upon termination of this Agreement for Customer's breach of Section 2(c), Customer shall cease use of all Software and Documentation, shall destroy and remove from all computers, hard drives, networks and other storage media all copies of the Software (if applicable) and Documentation, and shall certify to Aternity that such actions have occurred. Aternity reserves the right to temporarily suspend or permanently terminate use of or access to the Software (and Support for such Software) in the event that Customer violates any terms of this Agreement or Aternity does not timely receive payment from the Customer but only after Aternity has provided Customer with at least two (2) delinquency notices, and at least thirty (30) days (ten (10) days in the case of a failure to pay) have passed since the transmission of the first notice. Customer is not authorized to terminate any Software prior to the end of the purchased License Term unless otherwise agreed in writing by Aternity.

(d) **Surviving Provisions.** The following provisions will survive any termination or expiration of this Agreement: Sections 1 (Definitions), 2 (Software Use Rights) (except as otherwise provided in 11(c)), 6 (Confidentiality), 8(b) (Warranty Disclaimer), 9 (Limited Liability), 11 (Term and Termination), 12 (Compliance with Laws and Export Control), 14 (General) and Sections 6 and 7 of Attachment A.

**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 Software, 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. Pursuant to these laws, restrictions, and regulations, Customer shall ensure that no Software is, in the absence of authorization by U.S. and other applicable law as required, used by or exported, sold or re-exported to (a) any U.S. sanctioned or embargoed country, or to nationals or residents of such countries, (b) any person, entity, organization or other party identified on the U.S. Department of Commerce's Denied Persons or Entity List, the U.S. Department of Treasury's Specially Designated Nationals or Blocked Persons List, or the Department of State's Debarred Parties List, as published and revised from time to time, or (c) any party who is known or suspected to be involved in relation to any nuclear, biological or chemical weapons, or proliferation-related end-uses restricted by the U.S. Export Administration Regulations, including the design, development, or production of missiles capable of delivering these weapons. Without limiting the foregoing, Customer shall not use any Software, technology or information it obtains or learns pursuant to this Agreement in relation to any nuclear, biological or chemical weapons, or proliferation-related end-uses restricted by the U.S. Export Administration Regulations, including the design, development or production of missiles capable of delivering these weapons.





**13. GOVERNMENT USE.** If Customer is part of an agency, department, or other entity of the United States Government (“**Government**”), the use, duplication, reproduction, release, modification, disclosure and transfer of the Software is restricted in accordance with the Federal Acquisition Regulations (FAR) as applied to civilian agencies and the Defense Federal Acquisition Regulation Supplement (DFARS) as applied to military agencies. The Software qualifies as “commercial items” under FAR § 2.101 and all Software is developed exclusively at private expense. The Software is (a) “commercial computer software” under FAR §12.212 and §52.227-19 and DFARS §227.7202 and §252.227-7014(a)(1), and (b) “restricted computer software” under FAR §§52.227-14(a). The Documentation is “computer software documentation” as set forth in FAR §52.227-14(a) and DFARS §252.227-7013(a). For purposes of this Agreement, references in this Agreement to “business” use will be deemed references to Government use if Customer is part of the Government. In accordance with such provisions, any use of any Software by the Government will be governed solely by the terms of this Agreement. All other use by or on behalf of the Government is prohibited.

**14. 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 any Orders, or delegate any of its obligations hereunder, in whole or in part (except that Aternity shall obtain the consent of the Government where the 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 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. Aternity may include Customer’s name as part of general customer lists. The parties also may engage in select marketing activities that are approved in writing by both parties, including the issuance of a press release and/or a quote from a Customer representative concerning the parties’ relationship within a reasonable time after the Effective Date.

(h) Aternity may, upon at least two (2) weeks’ advance written notice, inspect, or have an accountant or auditor inspect, Customer’s books and records relating to this Agreement and Customer’s compliance with its terms and conditions, for up to two prior years of records from the date of such audit. Any such audit will be conducted during Customer’s normal business hours and in a manner that does not materially interfere with Customer’s normal business operations. Customer shall provide all reasonable assistance for such audit. If any audit reveals that Customer is in breach of this Agreement, then Customer shall (a) reimburse Aternity for the actual expenses associated with the audit and (b) if applicable, compensate Aternity (at Aternity’s then-current list price) for any unauthorized use of or access to any Software (e.g., use of any unauthorized copies or instances of Software). From time to time Aternity may also require Customer to provide written assurances satisfactory to Aternity to confirm Customer’s compliance with the terms and conditions of this Agreement.

(i) This Agreement may be executed in any number of counterparts, all of which taken together constitute a single instrument. 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.

(j) 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.

**Attachment A**  
**Professional Services**

**1. Definitions.**

(a) **"Customer IP"** means (i) all Intellectual Property and Intellectual Property Rights that are in existence and owned by Customer as of the Effective Date, and (ii) any Intellectual Property or Intellectual Property Right that is supplied or independently developed solely by Customer without the use and/or benefit of, and that does not relate to or arise out of, any of Aternity's Intellectual Property, Intellectual Property Rights, Confidential Information, or Software.

(b) **"Deliverables"** means all Intellectual Property, whether in tangible or electronic format, that is expressly identified as a deliverable in a SOW or Service Documentation and/or that is provided to Customer by Aternity in the course of providing the Professional Services to Customer, including any analyses, reports, manuals, supporting materials, test results, recommendations and drawings. Deliverables do not include any Software and/or any Customer IP. All Deliverables will be provided in the English language unless otherwise agreed in writing by Aternity.

(c) **"FP Services"** means any Professional Services that are billed at a fixed price. FP Services may include (i) predefined, packaged Professional Services offerings that are described in Service Documentation and/or (ii) Professional Services that are not part of a predefined offering and are described in a SOW.

(d) **"Intellectual Property"** means any and all inventions (whether or not patentable), discoveries, materials, tools, software (both source and object code), works of authorship (whether or not copyrightable), know-how, technical information, data, trade secrets, work product, methods, processes, ideas, designs, schematics, and other forms of technology.

(e) **"Intellectual Property Rights"** means any and all now known or hereafter existing (i) rights associated with works of authorship, including copyrights and moral rights, (ii) trademarks, trade names, service marks, service names, and other indicia of origin, (iii) trade secret rights, (iv) patents, patent rights, and industrial property rights, (v) other similar proprietary rights in Intellectual Property of every kind and nature, and (vi) all registrations, applications, renewals, extensions, continuations, continuations-in-part, divisionals, foreign counterparts, reexaminations, and reissues of any of the foregoing, in each case in any jurisdiction throughout the world.

(f) **"Aternity IP"** means all (i) Intellectual Property resulting from any Professional Services or otherwise conceived, reduced to practice, created, or developed during performance under this Agreement and/or any SOW, (ii) derivatives, enhancements and/or modifications of any of Aternity's Software or services, (iii) Intellectual Property supplied, conceived, reduced to practice, created or developed by or on behalf of Aternity, (iv) Deliverables, and (v) all Intellectual Property Rights in or to any of the foregoing. Aternity IP does not include any Customer IP.

(g) **"Service Documentation"** means a Aternity-written document that describes a Professional Service offering and provides an overview of the key benefits, service tasks, and any Deliverables included in such Professional Service offering, and any service description documents and proposals provided by Aternity to Customer.

(h) **"SOW"** means a mutually agreed upon written statement of work between Aternity and Customer that describes Professional Services to be rendered by Aternity to Customer.

(i) **"T&M Services"** means Professional Services that are billed on a time and materials basis.

**2. Services.** Professional Services may be described in Service Documentation and/or a SOW. Professional Services include FP Services and T&M Services. Subject to Customer's compliance with all the terms of this Agreement and payment of the applicable fees, Aternity will use commercially reasonable efforts to provide the Professional Services as set forth in the applicable Order, Service Documentation, or SOW. For clarity, Aternity is not obligated to deliver any Professional Services under any Service Documentation or SOW unless Aternity has received and accepted an Order for such Professional Services. If the Professional Services are provided at Customer's facilities, Aternity shall comply with Customer's reasonable policies that apply to onsite service providers, provided that such policies are provided to and agreed to by Aternity in writing in advance. Customer acknowledges and agrees that Customer's purchase of the Software (including any Support plans) is not contingent upon the provision of any Professional Services hereunder. Aternity may subcontract its obligations under this Agreement, provided that Aternity shall remain responsible for its obligations under this Agreement.

**3. Delivery and Completion.**

(a) Professional Services will be deemed completed by Aternity upon the sooner of (i) mutual agreement by the parties, (ii) for T&M Services, once each applicable hour or day has been delivered, or (iii) for FP Services, upon delivery of the FP Services or each applicable phase or milestone identified in the applicable Service Documentation and/or SOW. Notwithstanding the foregoing, if Aternity has partially completed a FP Service and Aternity is not able to complete the FP Service due to Customer's failure to schedule completion of the FP Services within the later of (A) ninety (90) days after Customer purchased the FP Service or (B) thirty (30) days after the originally agreed upon completion date for the FP Service, such FP Services will be deemed delivered and completed on such later date. Aternity will use commercially reasonable efforts to schedule Professional Services as promptly as practicable; however, Aternity requires a minimum of ten (10) business days after Aternity's acceptance of an Order to prepare and plan for Professional Services to begin. Customer shall schedule all remote work in one (1) day minimum blocks of time. If Customer purchases five (5) or more days of T&M Services in an Order, Customer shall schedule such T&M Services in minimum increments of five (5) consecutive days unless otherwise approved in advance by Aternity. If Professional Services will be performed onsite at a location designated by Customer, such onsite visits must include fixed or budgeted travel and expenses as part of the Order, and Customer shall schedule each day of onsite Professional Services in consecutive days, and in minimum increments of five (5) consecutive days if five (5) or more days are purchased, unless otherwise approved in advance by Aternity. Unless otherwise expressly provided in the applicable Service Documentation or a SOW, as used with respect to Professional Services, a **"day"** is defined as eight (8) hours during the regular business hours 7:00 AM to 7:00 PM local time, Monday through Friday, of a single day (excluding local holidays). Customer is not permitted to cancel or reschedule any Professional Services without Aternity's prior consent except as otherwise expressly set forth in this



Agreement. Without limiting the foregoing, Professional Services that are not completed within six (6) months after the Order date will be deemed completed unless otherwise agreed by Aternity in writing. Regardless of how such Professional Services are billed, if requested by Aternity, Customer shall confirm the completion of all Professional Services to Aternity in writing within two (2) business days after any such completion. If Customer fails to provide written notice to Aternity of Aternity's failure to complete any Professional Services within five (5) business days after such Professional Services are deemed completed in accordance with this Section, Customer waives any right to claim that Aternity did not complete the Professional Services.

(b) If Customer requests to cancel or requests to reschedule delivery of any Professional Services, Aternity may accept or reject the rescheduling or cancellation request in its discretion, provided that if such request is received within three (3) business days prior to a confirmed delivery date, Aternity may invoice Customer in full for any such cancelled or rescheduled Professional Services.

4. **Price and Payment.** Customer shall pay Aternity for the Professional Services in accordance with the rates set forth in the accepted Order and/or SOW, as applicable. Notwithstanding the foregoing, to the extent that any T&M Services outside the definition of a "day" are delivered, then Customer shall pay for such T&M Services at a rate of time and a half (1.5X), unless otherwise approved in advance by Aternity. Aternity shall invoice Customer for Professional Services in advance upon execution of the Order or SOW, as applicable, unless otherwise expressly stated therein. Customer shall not cancel any Orders for Professional Services, provided however that Aternity may cancel an Order for Professional Services in whole or in part at any time. Travel and other expenses that are incurred in connection with the Professional Services may, at Aternity's option, either be quoted by Aternity and paid by Customer on a fixed fee basis, or upon submission of an invoice detailing actual expenses, reimbursed by Customer. Aternity is not obligated to provide any receipts for any expenses that are less than or equal to fifty U.S. dollars (\$50). Any travel and hotel arrangements that are not included in a fixed fee are to be made by Aternity, and may be approved by Customer if such approval is requested by Customer prior to the arrangements being booked, provided that such approval is not unreasonably withheld or delayed. Orders or SOWs received without travel and expenses line items will be delivered remotely unless otherwise approved by Aternity in writing. All fees applicable to Professional Services are nonrefundable.

5. **Customer Responsibilities.** Customer will perform all obligations and satisfy all requirements identified as a Customer obligation or requirement in any Order, Service Documentation, or SOW. Without limiting the foregoing, Customer shall (a) make available in a timely manner all technical data, facilities, programs, files, documentation, test data, sample output, or other information and resources reasonably required by Aternity and (b) provide services and access to equipment and all supporting infrastructure, including network connectivity and power supply requirements, if applicable, that Aternity may reasonably require for the performance of the Professional Services. Customer will be responsible for, and assumes the risk of any problems resulting from, the content, accuracy, completeness and consistency of all such data, materials and information supplied by Customer. If Customer fails to perform any Customer obligations or satisfy any Customer requirements, Aternity is not obligated to perform any Professional Services that are affected by such failure.

6. **License and Proprietary Rights.**

(a) **Ownership.** As between the parties, Customer owns all right, title and interest in and to the Customer IP and Aternity owns all right, title and interest in and to the Aternity IP. To the extent, if any, that ownership of any of the Aternity IP does not automatically vest in Aternity, Customer hereby irrevocably and unconditionally (i) transfers and assigns to Aternity all right, title and interest in and to the Aternity IP without further consideration and (ii) waives all moral rights in or to all Aternity IP. During and after the term of this Agreement, Customer shall execute all documents and provide all information and assistance as requested by Aternity in order to effectuate the foregoing provision. Aternity has the exclusive right to apply for or register any Intellectual Property Rights with respect to any Aternity IP. Aternity makes no assignment of any sort under this Agreement.

(b) **Licenses.**

(i) To the extent reasonably required to perform the Professional Services, Customer hereby grants to Aternity a nonexclusive, royalty-free license, with the right to grant sublicenses, to use, make, modify, reproduce, prepare derivative works of, display, transmit, perform and otherwise exploit the Customer IP and all Intellectual Property Rights therein, in each case solely for the purposes of performing Professional Services for Customer and solely for Customer's benefit.

(ii) For any Deliverables provided to Customer in connection with the Professional Services or any SOW, Aternity hereby grants to Customer a nonexclusive, nontransferable, royalty-free, nonsublicensable license to (A) use such Deliverables for Customer's internal business use, and (B) exercise any other rights (if any) expressly granted under any Service Documentation or SOW with respect to such Deliverables. Except as expressly permitted in an applicable SOW or other written agreement between Aternity and Customer, Customer shall not, and shall not allow any third party to, (1) provide any Deliverable to any third party or use any Deliverable for the benefit of any third party, (2) modify, create derivative works of, reverse engineer, or copy any portion of the Deliverables, (3) incorporate or embody any Deliverables in any other Intellectual Property, or (4) without Aternity's prior written consent, publish or provide to any third party results of any benchmark or comparison tests of any Deliverable. Unless expressly agreed in a SOW or otherwise in a written agreement signed by Aternity, Aternity is not obligated to provide support or maintenance services for any Deliverable. Aternity does not grant Customer any rights not expressly set forth herein or in an applicable SOW.

(c) **Nonexclusive Relationship.** Nothing in this Agreement will be construed as to preclude Aternity from developing, using, marketing or otherwise exploiting products, services, software or other Intellectual Property that may be competitive with any Deliverables prepared for Customer hereunder, irrespective of whether such Intellectual Property is similar or related to the Deliverables developed under this Agreement, provided that Aternity does not use or reference any Customer IP in such activities.

7. **Effect of Termination.** Upon termination or expiration of any Order for Professional Services or any SOW for any reason, (i) if Customer purchased directly from Aternity, Customer shall pay Aternity all amounts due or accrued under such Order or SOW as of the date of such termination or expiration, and (ii) Customer shall return to Aternity all Confidential Information and other materials of Aternity relating to such Order or SOW. Termination or expiration of any Order for Professional Services or SOW will not affect any other Order for Professional Services or SOW then in effect.