

## ATERNITY PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (“**Agreement**”) is effective as of the date that Aternity accepts the Order (“**Effective Date**”) and is between Riverbed Technology LLC (or if Customer is purchasing directly from an affiliate of Riverbed Technology LLC, the affiliate identified on the applicable Order) (“**Aternity**”) and the customer that is receiving the Professional Services (“**Customer**”).

## 1. Definitions.

- (a) “**Affiliate**” means an entity that controls, is controlled by, or is under common control with Riverbed Technology LLC.
- (b) “**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 Products.
- (c) “**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 Products and/or any Customer IP. All Deliverables will be provided in the English language unless otherwise agreed in writing by Aternity.
- (d) “**Customer Agreement**” means the applicable Aternity end user agreement that accompanies a Product and is also located at [www.aternity.com/customeragreement](http://www.aternity.com/customeragreement), and which governs use of the Product.
- (e) “**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.
- (f) “**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.
- (g) “**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.
- (h) “**Order**” means a written purchase order for Professional Services that is submitted by Customer directly to Aternity and is accepted by Aternity, or a written order for Professional Services that is placed indirectly by Customer through an Authorized Channel Partner and is accepted by Aternity.
- (i) “**Products**” means Aternity’s generally available products, including software and cloud services, and any related Aternity documentation provided therewith by Aternity or an Authorized Channel Partner, that are made available by Aternity.
- (j) “**Professional Services**” means the consulting, installation and other professional services made available by Aternity. Professional Services may be described in Service Documentation and/or a SOW. Professional Services include FP Services and T&M Services.
- (k) “**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 Products 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.
- (l) “**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.
- (m) “**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.
- (n) “**T&M Services**” means Professional Services that are billed on a time and materials basis.

## 2. Sale and Purchase; Delivery.

(a) Aternity shall sell to Customer and Customer shall purchase from Aternity the Professional Services set forth in the Order. An Aternity-issued valid sales quotation that incorporates this Agreement by reference and is signed by Customer, or the mutually executed SOW, will serve as the Order. The terms and conditions of this Agreement (including in any SOW executed in connection with this Agreement) will 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 Professional Services purchased, and specifying the applicable price for each Professional Service; all other terms on such purchase order will have no force or effect.

(b) 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.

(c) 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.

(d) Customer may purchase Professional Services hereunder directly from Aternity or from an authorized Aternity reseller or channel partner (each, an "**Authorized Channel Partner**"). If Customer purchases Professional Services from an Authorized Channel Partner, the terms and conditions set forth in Sections 2(a), 2(c), and 3, as well as any discounts or pricing offered by Aternity, will not apply and the purchase terms and prices for such Customer purchases from Authorized Channel Partner will be negotiated solely between Customer and the applicable Authorized Channel Partner.

### 3. **Price and Payment.**

(a) 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.

(b) 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. 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. **Warranties and Disclaimer.**

(a) Aternity warrants to Customer that the Professional Services 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 the Professional Services in accordance with the foregoing warranty is to re-perform the applicable Professional Services. 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 MAKES NO OTHER WARRANTIES WITH RESPECT TO ANY PRODUCTS OR ANY SERVICES AND 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, RELIABILITY AND NONINFRINGEMENT. ATERNITY ALSO MAKES NO WARRANTY REGARDING NONINTERRUPTION OF USE OR FREEDOM FROM BUGS OR THAT ANY SERVICE OR DELIVERABLE WILL MEET CUSTOMER'S REQUIREMENTS. THIS DISCLAIMER OF WARRANTY CONSTITUTES AN ESSENTIAL PART OF THIS AGREEMENT.

5. **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. Without limiting the foregoing, Customer acknowledges and agrees that (a) Customer's purchase of Products (including any support plans) is covered under one or more separate agreements, (b) except as otherwise expressly provided in this Agreement and/or the applicable SOW, Customer is not granted any rights in or to any Product or any entitlement to receive any support services under this Agreement or any SOW, and (c) no purchase of any Products or other services is 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.

6. **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.

## 7. 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.

8. **Term and Termination.** Unless terminated earlier as provided herein, this Agreement begins on the Effective Date and will continue in effect until the Professional Services on the applicable Order or SOW are complete or expired. This Agreement may be terminated by a party immediately by written notice if the other party materially breaches any material provision of this Agreement and fails to cure such breach within thirty (30) days (ten (10) days in the case of a failure to pay) after receipt of written notice describing the breach. Further, Aternity may terminate this Agreement at any time with or without cause upon thirty (30) days' written notice. Upon termination or expiration of this Agreement, the Order, or the SOW for any reason, (a) 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, (b) Customer shall return to Aternity all Confidential Information and other materials of Aternity relating to such Order or SOW, and (c) the following Sections will survive: 1, 4(b), 7, 8, 9, 10, 11, and 12. If this Agreement is terminated by Aternity for Customer's breach of this Agreement, any SOW then in effect will terminate. If this Agreement expires or is terminated for any other reason, any SOW then in effect will continue in effect subject to the terms and conditions of this Agreement until the expiration or termination of such SOW.

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 ANY PRODUCT, AND (B) THE AGGREGATE LIABILITY OF ATERNITY AND ITS AFFILIATES AND SUPPLIERS WILL NOT EXCEED THE AGGREGATE FEES RECEIVED BY ATERNITY FOR THE PROFESSIONAL SERVICES PROVIDED 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. 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 BODILY INJURY OF A PERSON. THIS AGREEMENT DOES NOT ENTITLE CUSTOMER, UNDER ANY CIRCUMSTANCES, TO A REFUND OF ANY FEES PAID FOR PRODUCTS OR SUPPORT SERVICES OR OF ANY FEES PAID UNDER ANY OTHER AGREEMENT.

11. **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 Deliverable, 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.

12. **General.** 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. 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. 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). 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. Aternity and Customer agree that any Order (or portion thereof) will be deemed separable from any other Order (or portion thereof). This Agreement is governed by and construed in accordance with the laws of the State of California (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 San Francisco, California, 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. There are no third party beneficiaries of this Agreement. 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. 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. Aternity may include Customer's name as part of general customer lists. 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.