



**Licensing Fee Quotation Provided on Request**

**End User Subscription Agreement**

Arizona Center for Education and Research on Therapeutics (“AZCERT”) and Customer hereby agree as follows:

**1. Scope; Procurement and Provisioning by Affiliates; Subscription Services Users.**

1.1. Scope. This End User Subscription Agreement applies to Customer’s use of the online subscription services offered by AZCERT (collectively, the “Subscription Services”) that are listed in one or more AZCERT ordering documents (each an “Order”). This End User Subscription Agreement and all executed Orders, including any incorporated attachments, addenda and exhibits, are collectively referred to as the “Agreement.” All capitalized terms not defined herein will have the meanings attributed to them in the Order.

1.2. Procurement and Provisioning by Affiliates. Customer may procure Subscription Services under this Agreement for its own account and on behalf of one or more Customer Affiliates (defined below). Customer is responsible for the acts and omissions of Customer Affiliates under any Order pursuant to which the Customer Affiliate receives the benefit of the Subscription Services but is not a signatory. Additionally, Customer Affiliates may procure Subscription Services directly under this Agreement pursuant to an Order executed by such Customer Affiliate and AZCERT. Customer Affiliates who sign an Order will be deemed to be the Customer hereunder and solely responsible for its performance or non-performance thereunder. “Affiliate” means any legal entity directly or indirectly controlling, controlled by or under common control with a Party, where control means the ownership of a majority share of the stock, equity or voting interests of such entity.

1.3. Subscription Services Users. During the Subscription Term set forth in each Order, AZCERT will make the Subscription Services available to Customer and its authorized Affiliates, employees, agents or contractors (“Users”), for access and use by such Users solely for Customer’s internal business purposes in accordance with the terms of the Agreement. Customer is responsible for use of the Subscription Services by Users and any party who accesses the Subscription Services with Customer’s or a User’s account credentials.

**2. Restrictions; Suspension.**

2.1. Restrictions. Customer will not, and will ensure that its Users do not, directly or indirectly (i) make the Subscription Services available to anyone other than Users or use the Subscription Services for the benefit of any unrelated third party; (ii) sell, resell, assign, pledge, transfer, license, sublicense, distribute, rent or lease the Subscription Services; (iii) reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or

underlying structure, ideas or algorithms of the Subscription Services or any software, documentation or data related to or provided with the Subscription Services; (iv) modify, translate or create derivative works based on the Subscription Services or remove any proprietary notices or labels from the Subscription Services; (v) use or access the Subscription Services to build or support, and/or assist a third party in building or supporting products or services competitive to the Subscription Services; or (vi) include the Subscription Services in a service bureau or outsourcing offering.

2.2. Suspension. AZCERT may immediately suspend Customer's account and access to the Subscription Services if (i) Customer fails to make payment due within 10 business days after AZCERT has provided Customer with written notice of such failure; or (ii) Customer violates Section 2.1 (Restrictions), Section 2.2 (AZCERT Use Policy), or Section 9 (Confidential Information). Any suspension by AZCERT of the Subscription Services under the preceding sentence will not relieve Customer of its payment obligations hereunder. AZCERT will promptly lift the suspension upon Customer's payment or remedy of the triggering violation, as applicable.

### **3. Ownership: Subscription Services.**

3.1. Subscription Services. Customer acknowledges that the Subscription Services are offered online on a subscription basis. AZCERT reserves all rights, title and interest in and to the Subscription Services, including any software or documents related to or provided with the Subscription Services and all intellectual property rights and derivatives, modifications, refinements or improvements thereto. No rights are granted to Customer other than as expressly set forth herein.

### **4. Fees; Invoices.**

4.1. Fees. Customer will pay all fees set forth in the Orders and any fees invoiced pursuant to this Agreement. All fees are noncancelable and nonrefundable, except as expressly specified in the Agreement. Any fees paid pursuant to an Order will not offset any fees due under any other Order.

4.2. Invoices. All amounts are due and payable as specified in the Order. If no payment terms are specified in the applicable Order, payment terms are net 30 days from receipt of invoice. Unpaid invoices not the subject of a written good faith dispute are subject to a finance charge of 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is lower, plus all reasonable expenses of collection.

### **5. Agreement Term; Termination for Cause, Effect of Termination; Survival.**

5.1. Agreement Term. The Agreement will commence on the Subscription Start Date of the first Order (the "Effective Date") and will remain in effect until the Subscription Term in all Orders has expired or has otherwise been terminated (the "Agreement Term"). Notwithstanding the foregoing, if immediately following the expiration of the Subscription Term in any Order, the Parties are negotiating a renewal of such Order, the Agreement Term will remain in effect for a reasonable period of time to allow the parties to effect such renewal. Nothing contained herein will extend the Subscription Term set forth in any Order.

5.2. Termination for Cause. In the event of a material breach by either Party, the non-breaching Party will have the right to terminate the applicable Order for cause if such breach has not been cured within 30 days after written notice from the non-breaching Party specifying the breach.

5.3. Effect of Termination. If AZCERT terminates an Order for Customer's uncured material breach (i) all fees set forth in the terminated Order will be immediately due and payable; (ii) all rights granted thereunder will immediately terminate; and (iii) if such terminated Order includes fees for usage of the Subscription Services in excess of the Usage Rights, such fees are also immediately due and payable. If Customer terminates an Order for AZCERT's uncured material breach, Customer will be entitled to a pro-rata refund for prepaid fees for the Subscription Services not performed as of the date of termination. Upon completion of the Agreement Term, all rights to access and use the Subscription Services will terminate and AZCERT will irretrievably delete and destroy Customer Data and, if requested in writing, AZCERT will certify to such destruction in writing.

5.4. Survival. The following Sections of the Agreement will survive termination of the Agreement: Section 2.1 (Restrictions), Section 3 (Ownership: Subscription Services), Section 4 (Fees; Invoices), Section 6.4 (Warranties Disclaimer), Section 7 (Indemnification), Section 8 (Limitation of Liability), Section 9 (Confidential Information) and Section 10 (General Terms).

## **6. Warranties; Warranty Remedies; Warranties Disclaimer; Product Changes.**

6.1. General Warranty. Each Party represents and warrants to the other Party that it has the power and authority to enter into the Agreement.

6.2. Subscription Services Warranty. AZCERT warrants the Subscription Services, under normal use, will (i) perform materially in accordance with the applicable documentation provided by AZCERT; and (ii) be provided in a manner consistent with generally accepted industry standards.

6.3. Warranty Remedies. Customer will notify AZCERT of any warranty deficiencies under Section 6.2 within 30 days of the performance of the relevant Subscription Services, and Customer's exclusive remedy will be the re-performance of the deficient Subscription Services. If AZCERT cannot re-perform such deficient Subscription Services as warranted, Customer will be entitled to terminate the deficient Subscription Services under Section 5.2 above and recover a pro-rata portion of the fees paid to AZCERT for such deficient Subscription Services, and such refund will be AZCERT's entire liability.

6.4. **WARRANTIES DISCLAIMER. EXCEPT FOR THE EXPRESS WARRANTIES ABOVE, AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, AZCERT AND ITS THIRD PARTY PROVIDERS DISCLAIM ALL EXPRESS, IMPLIED OR STATUTORY WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. AZCERT DOES NOT WARRANT THE RELIABILITY, TIMELINESS, SUITABILITY, OR ACCURACY OF THE SUBSCRIPTION SERVICES OR THE RESULTS CUSTOMER MAY OBTAIN BY USING THE SUBSCRIPTION SERVICES. AZCERT DOES NOT WARRANT**

UNINTERRUPTED OR ERROR-FREE OPERATION OF THE SUBSCRIPTION SERVICES OR THAT AZCERT WILL CORRECT ALL DEFECTS OR PREVENT THIRD PARTY DISRUPTIONS OR UNAUTHORIZED THIRD PARTY ACCESS. AZCERT DISCLAIMS ALL FAILURES, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET.

6.5. Product Changes. AZCERT reserves the right to change or discontinue individual features within the Subscription Services. To the extent any such changes result in a material reduction of overall functionality without a comparable replacement, AZCERT will refund Customer a pro-rata portion of all prepaid fees associated with the discontinued Subscription Services for which no comparable replacement was provided.

## **7. Indemnification.**

7.1. AZCERT. AZCERT will defend Customer against any claim brought against Customer by a third party alleging the Subscription Services as provided by AZCERT directly infringe the intellectual property rights of the claimant and will pay Customer for finally-awarded damages and costs and AZCERT-approved settlements of the claim. AZCERT's obligations to defend or indemnify will not apply to the extent that a claim is based on (i) Customer Data, Customer's or a third party's technology, software, materials, data or business processes; (ii) a combination of the Subscription Services with non-AZCERT products or services; or (iii) any use of the Subscription Services not in compliance with this Agreement. AZCERT may, in its discretion and at no cost to Customer, (a) modify the Subscription Services to avoid infringement; or (b) terminate Customer's subscriptions for the affected Subscription Services and refund Customer any related prepaid fees for the remainder of the Subscription Term.

7.2. Customer. Customer will defend AZCERT against any claim brought against AZCERT by a third party alleging (i) Customer Data infringes the intellectual property, privacy or other rights of the claimant; or (ii) Customer's use of the Subscription Services, other than as authorized in this Agreement, violates applicable law or regulations, or infringes the claimant's intellectual property rights, and will pay AZCERT for finally-awarded damages and costs and Customer-approved settlements of the claim.

7.3. Procedure. As a condition to the indemnifying Party's obligations under this Section 7, the Party seeking indemnification must (i) promptly give written notice of the claim to the indemnifying Party; (ii) give the indemnifying Party sole control of the defense and settlement of the claim (provided that the indemnifying Party may not settle any claim unless it unconditionally releases the indemnified Party of all liability); and (iii) provide the indemnifying Party, at the indemnifying Party's cost, all reasonable assistance. THIS SECTION STATES THE INDEMNIFIED PARTY'S SOLE REMEDY, TO THE EXCLUSION OF ALL OTHER REMEDIES (IN CONTRACT, TORT OR OTHERWISE), AND THE INDEMNIFYING PARTY'S TOTAL LIABILITY, REGARDING THE CLAIMS AND LIABILITIES ADDRESSED BY THIS SECTION 7.

8. **Limitation of Liability**. NO PARTY WILL BE LIABLE UNDER ANY CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY (i) FOR ERROR OR INTERRUPTION OF USE, INACCURACY OR COST OF PROCUREMENT OF SUBSTITUTE

GOODS, SERVICE OR TECHNOLOGY, OR LOSS OF BUSINESS OR DATA; (ii) FOR ANY INDIRECT, EXEMPLARY, LOST PROFITS, LOST REVENUE, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES; (iii) FOR ANY MATTER BEYOND ITS REASONABLE CONTROL, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE; OR (iv) EXCEPT FOR CUSTOMER PAYMENT OBLIGATIONS, FOR ANY AMOUNTS THAT, TOGETHER WITH AMOUNTS ASSOCIATED WITH ALL OTHER CLAIMS, EXCEED THE CUMULATIVE FEES INVOICED TO CUSTOMER UNDER THE AGREEMENT IN THE 12 MONTHS PRECEDING THE DATE THE CLAIM AROSE. AZCERT UNDERTAKES NO LIABILITY FOR ANY CUSTOMER DATA ELEMENTS PROHIBITED BY THE AZCERT USE POLICY OR ANY THIRD PARTY TECHNOLOGY ACQUIRED BY CUSTOMER TO INTERACT WITH THE SUBSCRIPTION SERVICES. THE FOREGOING LIMITATION WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.

9. **Confidential Information.** Each Party (the “Recipient”) understands that the other Party (the “Discloser”) may, during the Agreement Term and in connection with the Subscription Services, disclose non-public information relating to the Discloser’s business that is designated as confidential or reasonably should be understood to be confidential given the nature of the information and circumstances of disclosure (“Confidential Information”). The Recipient agrees (i) to take reasonable precautions to protect such Confidential Information; and (ii) not to use or divulge to any third person any such Confidential Information except as set forth herein and to those of its employees and contractors who need access for purposes consistent with this Agreement and who are bound to confidentiality terms with Recipient containing protections no less stringent than those herein. The Discloser agrees that the foregoing will not apply with respect to Confidential Information after 5 years following the termination of the Agreement or any Confidential Information the Recipient can document (a) is or becomes generally available to the public; (b) was in its possession or known by it prior to receipt from the Discloser; (c) was rightfully disclosed to it by a third party; or (d) was independently developed without use of any Confidential Information of the Discloser. If the Recipient is required by law or court order to disclose Confidential Information, it will give prior written notice to the Discloser (to the extent legally permitted) and reasonable assistance at the Discloser’s cost to contest the disclosure.

## 10. General Terms.

10.1. Notice. AZCERT may give general notices for Subscription Services applicable to all customers by means of a notice on the Subscription Services web portal. Specific notices applicable to Users of the Subscription Services, technical support, system security and other account notices will be given by electronic mail to Customer's e-mail address on record in AZCERT's account information. All legal or dispute-related notices will be sent by first class mail or express delivery, if to AZCERT, at 1822 E. Innovation Park Drive, Oro Valley, AZ, and if to Customer, to Customer's account representative and address on record in AZCERT's account information or such other addresses as either Party may designate in writing from time to time.

10.2. Force Majeure. Neither Party will be responsible for failure or delay of performance if caused by an act of nature, war, hostility or sabotage; an electrical, internet, or telecommunication outage that is not caused by the obligated Party; government restrictions (including the denial or cancellation of any export or other license); or other event outside the reasonable control of the obligated Party. Each Party will use reasonable efforts to mitigate the

effect of a force majeure event. If such event continues for more than 20 days, either Party may cancel unperformed Subscription Services upon written notice.

10.3. Governing Law. Unless specifically set forth in the applicable Order (i) any action, claim, or dispute between the Parties will be governed by Arizona law, excluding its conflicts of law provisions, and controlling U.S. federal law; and (ii) the Parties agree to the exclusive jurisdiction of and venue in the state and federal courts in Pima County and Tucson, AZ, respectively. Except for actions for nonpayment or breach of either Party's proprietary rights, no action, regardless of form, arising out of or relating to the Agreement may be brought by either Party more than 2 years after the cause of action has accrued.

10.4. Entire Agreement. This Agreement represents the Parties' entire understanding relating to the Subscription Services and supersedes any prior or contemporaneous agreements or understandings regarding the Subscription Services. In the event of a conflict between this Agreement and a contemporaneous or later-dated Order, the terms of the contemporaneous or later-dated Order will control.

10.5. Standard Terms of Customer. No terms, provisions or conditions of any purchase order, acknowledgement or other business form Customer may use in connection with the acquisition of Subscription Services will affect the rights, duties or obligations of the Parties hereunder, or otherwise modify this Agreement, regardless of any failure of AZCERT to object to such terms, provisions or conditions.

10.6. Amendment / No Waiver. The Agreement may be amended only by written agreement signed by the Parties. If any provision of the Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then such provision(s) will be construed to reflect the intent of the invalid or unenforceable provision(s), with all other provisions remaining in full force and effect. The failure of either Party to enforce any right or provision in the Agreement will not constitute a waiver of such right or provision unless acknowledged and agreed to by such Party in writing.

10.7. Assignment. No joint venture, partnership, employment, or agency relationship exists between AZCERT and Customer as a result of the Agreement or use of the Subscription Services. This Agreement and any rights or obligations hereunder may not be assigned, sublicensed or otherwise transferred by the Parties without the prior written approval of the non-assigning Party, except that either Party may assign or transfer this Agreement in connection with a merger or acquisition of all or substantially all of the assets of the assigning company (other than to a direct competitor of the non-assigning Party and provided that the assignee agrees in writing to be bound by all terms and conditions of this Agreement) by providing the non-assigning Party with prompt written notice of assignment. Any purported assignment in violation of this section will be void.

10.8. Compliance with Laws. Each Party agrees to abide by all laws, ordinances and regulations (whether international, federal, state, local or provincial) applicable to its performance under this Agreement.