Software License Agreement for Noncommercial Use

THIS IS A SOFTWARE LICENSE issued by SIMULATIONS PLUS, INC., a California corporation with principal place of business at 42505 10th Street West, Lancaster, California 93534-7059, United States, including its divisions (such as but not limited to DILIsym Services, Inc. and Cognigen Corporation), hereinafter referred to as the LICENSOR, and

Applicant Name:

Email Address:

Academic Institution:

hereinafter referred to as the LICENSEE.

WHEREAS, LICENSOR has developed SOFTWARE and DOCUMENTATION that it wishes to make available on a nonexclusive basis to interested parties for NONCOMMERCIAL USE;

WHEREAS, LICENSEE, as a nonprofit or academic or government institution, seeks to obtain a nonexclusive license to SOFTWARE and DOCUMENTATION developed by LICENSOR for LICENSEE's NONCOMMERCIAL USE only.

THEREFORE, in consideration of the mutual agreements of LICENSOR and LICENSEE contained herein and other good and valuable consideration, the legal sufficiency of which is hereby acknowledged, LICENSOR and LICENSEE agree as follows.

1. DEFINITIONS

In this LICENSE, the following terms shall have the following meanings.

a) "SOFTWARE" is the set of copyrighted, object code computer programs, databases, component parts thereof, and support files licensed subject to the terms and conditions of this LICENSE, as identified by tradename selected in SCHEDULE "A" of this LICENSE.

b) "LICENSE" means this license agreement, and the rights and obligations which it creates under the United States copyright laws and other applicable state or federal law or equivalent international laws and treaties.

c) "LICENSE TERM" means the aggregate time period that SOFTWARE is authorized by LICENSOR to function in full version mode, as specified in Section 5 of this LICENSE.

d) "LICENSED GEOGRAPHIC LOCATION" is the area within fifty (50) miles of the territorial boundaries of the city(s) where SOFTWARE is authorized for use or operation by LICENSOR, as specified in SCHEDULE "A" of this LICENSE.

e) "STATION" means a LICENSOR authorized single user software operating license.

f) "INVOICE" means LICENSOR'S bill marked "Invoice" that details LICENSED GEOGRAPHIC LOCATION(s), STATION(s), SOFTWARE, and LICENSE TERM(s), goods shipped or services rendered, with an account of all costs.

g) "AUTHORIZE SOFTWARE" is the process of the exchange of software security codes between LICENSOR and LICENSEE that enables SOFTWARE to function in full version mode for a specific time period.

h) "DERIVATIVE" means any computer software program that may be developed containing any part of SOFTWARE, regardless of the form of the resulting code, the media it is carried on, or its intended use.

i) "DOCUMENTATION" means collectively: (a) all materials (including any medium or format) published or otherwise made available to LICENSEE by or on behalf of LICENSOR that relate to the functional, technical, operational and/or performance capabilities of the SOFTWARE (as defined herein); (b) all user, operator, system administration, technical, training, instructional, support and other manuals, packages (including equations), and all other materials (including any medium or format) published or otherwise made available by or on behalf of LICENSOR that describe the functional, technical, operational and/or performance capabilities of the SOFTWARE; and any updates of the foregoing.

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j) "NONCOMMERCIAL USE" means USE by LICENSEE of the SOFTWARE and/or DOCUMENTATION only for academic teaching purposes, or for nonprofit or not for profit research performed by LICENSEE, wherein the research (i) does not now or in the future benefit or involve, or is not funded by, a commercial entity; and/or (ii) is not now, or in the future, subject to consulting or licensing obligations or other grant of rights to any commercial entity ; and/or (iii) will not generate any intellectual property rights for any commercial entity, and (iv) the results of which will be released in the public domain by publication.

k) "TRADE SECRET" means the program structure, logic, data structures, design, processes, procedures, formulae, equations, and algorithms contained in the ordered set of instructions which together constitute SOFTWARE that may be disclosed by either SOFTWARE or DOCUMENTATION. TRADE SECRET does not include information which is publicly known, except by violation of a license agreement, through no fault of LICENSEE or LICENSEE's employees, contractors, or agents, nor does it include information which is lawfully received by LICENSEE from a third party not bound in a confidential relationship to LICENSOR, nor information disclosed by LICENSOR to a third party without obligation of confidentiality.

l) "USE", "USED" or "USING" means (a) to access, utilize, display or store the SOFTWARE (or information therein), or interact with its functionality or processing capabilities, and/or (b) to read, process, store, download, or utilize the DOCUMENTATION in connection with USE of the SOFTWARE in accordance with the terms of this LICENSE.

m) "USER" or "USERS" means an employee or employees of, or student academically enrolled with, LICENSEE who is authorized by LICENSEE to USE the SOFTWARE on behalf of LICENSEE.

n) "USER SYSTEMS" means any and all addressable systems owned by LICENSEE on which SOFTWARE has been accessed as AUTHORIZE SOFTWARE.

o) "EFFECTIVE DATE" means the date of transfer by or on behalf of LICENSOR to LICENSEE of the key or license or activation file to AUTHORIZE SOFTWARE.

2. OWNERSHIP OF SOFTWARE AND DOCUMENTATION

An express condition of LICENSE is that LICENSOR shall at all times retain ownership of SOFTWARE recorded on the original media copy or copies and all subsequent copies of SOFTWARE or DOCUMENTATION, regardless of the form or media in or on which the original and other copies may subsequently exist.

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Subject to the terms and conditions herein, LICENSOR grants LICENSEE a nonexclusive, nontransferable, limited license for NONCOMMERCIAL USE by LICENSEE of (i) DOCUMENTATION and (ii) SOFTWARE in machine-readable form. Implied licenses are negated. In consideration of the LICENSE LICENSEE agrees, and shall ensure that its USERS authorized by LICENSEE agree, as follows.

a) **The USE of SOFTWARE or DOCUMENTATION in any form of commercial activities is not allowed and such use is a violation of this LICENSE**. In particular, USE of SOFTWARE or incorporating results, predictions, data or information from the USE of SOFTWARE in products, services, analysis, results or predictions sold or otherwise provided to other parties or utilized in commercial or industrial programs or endeavors is not allowed and is a violation of this LICENSE.

b) USE of the SOFTWARE is authorized by this LICENSE only within LICENSED GEOGRAPHIC LOCATION. The USE of SOFTWARE outside of LICENSED GEOGRAPHIC LOCATION, whether through any form of computer network, cloud computing, web-based system, or by other means, is strictly prohibited and is a violation of this LICENSE.

c) LICENSEE agrees to, and shall ensure its USERS, comply with the terms and conditions of this LICENSE and agrees not to USE SOFTWARE or DOCUMENTATION in any way beyond the scope of LICENSE. LICENSEE agrees to, and shall ensure its USERS, take all reasonable steps to protect SOFTWARE and DOCUMENTATION from theft or from use by others contrary to the terms of this LICENSE. LICENSEE agrees not to, and shall ensure its USERS do not, disclose or use any TRADE SECRET

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that is provided to LICENSEE in LICENSEE's SOFTWARE or DOCUMENTATION except in accordance with the terms of this LICENSE. In addition, LICENSEE agrees not to, and shall ensure its USERS do not, seek to discover or to disclose any TRADE SECRET by disassembling, decompiling, or otherwise reverse-engineering SOFTWARE.

d) LICENSEE and its USERS are prohibited from: disabling, modifying, or bypassing any security, copy protection or time limitation mechanism contained in the SOFTWARE or licensing management system needed for SOFTWARE access; reverse engineering, decompiling, disassembling or otherwise attempting to reduce the object code or to discover the source code; transferring the SOFTWARE or source code of the SOFTWARE to a third party, or aiding or allowing a third party to do the same; using the SOFTWARE, or allowing a third party to use the SOFTWAREs, for creating a comparable or competing software product, or software product for a different application, in the same or in another programming language; or creating a DERIVATIVE.

e) LICENSEE and its USERS are prohibited from (i) copying all or a portion of the SOFTWARE to any medium or file other than on USER SYSTEMS of LICENSEE, or (ii) transmitting, downloading, or copying the same to a computer, server, or storage medium, other than LICENSEE-owned USER SYSTEMS or (iii) publishing the code or any other part of the SOFTWARE, (iv) or altering, removing or covering LICENSOR's name, logos, proprietary notices, copyright notices, and trademarks from SOFTWARE, DOCUMENTATION, or any portion thereof.

f) In no case shall LICENSEE or its USER rent, lease, charge, loan, distribute, lend, sublicense, redistribute or re-license the SOFTWARE or any source code derived therefrom to a third party individual, institution, or entity. In no case shall LICENSEE grant further redistribution rights for SOFTWARE without prior written consent of LICENSOR.

g) LICENSEE and USERS shall NOT, nor permit a third party to, repackage, translate, adapt, vary, modify, alter, create DERIVATIVES based upon, SOFTWARE or DOCUMENTATION in whole or in part, or integrate any other computer programs with SOFTWARE in whole or in part.

h) LICENSEE and its USERS shall NOT use the SOFTWARE to engage in, or allow others to engage in, any illegal activity.

i) LICENSEE shall NOT transfer or assign its rights or obligations under this LICENSE to any third party individual, institution, or entity, nor authorize all or any part of the SOFTWARE to be copied on to a computer or computer media for or of a third party individual, institution, or entity.

j) LICENSEE shall: (a) not allow employees or contractors of LICENSEE other than a USER, to USE or access the SOFTWARE; (b) monitor and keep accurate records of a USER's activities utilizing the SOFTWARE; and (c) notify LICENSOR immediately if it becomes aware of unauthorized USE or transfer of the SOFTWARE.

k) If a USER is no longer employed by or academically enrolled with the LICENSEE, LICENSEE shall ensure that such individual shall then no longer have access to SOFTWARE provided to LICENSEE.

l) LICENSEE acknowledges that access and management of the SOFTWARE may contain certain features that generate, collect, and transmit data to LICENSOR about the access and setup of the SOFTWARE that identifies LICENSEE's computer (such as Internet Protocol Address, hardware identification, operating system, and SOFTWARE version); and LICENSEE agrees that this software installation and management information can be used by LICENSOR (a) to authenticate the SOFTWARE and for license verification and management, (b) to verify compliance with the terms of this LICENSE; and (c) to enable LICENSOR to develop, improve, and support LICENSOR's products and services.

4. CERTIFICATIONS

a) LICENSEE certifies that USE of SOFTWARE by LICENSEE, or its USERS, is directly related to research or teaching and that such USE is NONCOMMERCIAL USE.

b) LICENSEE certifies that SOFTWARE shall only be installed on computer(s), server(s), network(s) or processor(s) that are at all times in LICENSEE's full and complete care, custody and control (i.e., USER SYSTEMS) and which apply adequate and commercially reasonable electronic, physical, and other safeguards appropriate to prevent unauthorized access to or unlawful USE

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of SOFTWARE; and should any USER SYSTEMS cease being at all times in LICENSEE's full and complete care, custody and control, LICENSEE shall, and shall ensure that its USERS shall, immediately notify LICENSOR of same and shall, at LICENSOR's direction, immediately DEAUTHORIZE SOFTWARE.

5. LICENSE TERM

This LICENSE shall enter into force on the EFFECTIVE DATE (as defined herein) and will remain in full force and effect until the end of "LICENSE TERM", unless sooner terminated as provided herein.

6. DELIVERY AND SUPPORT

a)   LICENSEE acknowledges that LICENSOR has installed SOFTWARE on a cloud platform hosted by a *third-party* company, Amazon AWS, that offers a cloud-based platform, infrastructure, application, and storage services which LICENSEE can access and use the SOFTWARE under the LICENSE ("hosted access"). Access and use of the hosted SOFTWARE by LICENSEE is governed by LICENSE except for the following terms and conditions which govern hosted access.

  i. LICENSEE agrees with and consents to the AWS privacy policy found at https://aws.amazon.com/privacy/?nc1=f_pr including AWS Data Privacy FAQ found at https://aws.amazon.com/privacy/) for Amazon AWS's processing and security of any data and personal data of LICENSEE as a result of LICENSEE"s access and use the SOFTWARE hosted by Amazon AWS. Industry standard security settings and encryption in transit are used for the hosted access. LICENSEE agrees that LICENSOR has no liability for such processing and security of data and personal data of LICENSEE by Amazon AWS.

  ii. LICENSEE acknowledges and agrees that LICENSEE is prohibited from sharing passwords and/or usernames with unauthorized users for the hosted access. LICENSEE will be responsible for the confidentiality and use of LICENSEE's (including its authorized users') passwords and usernames used with the hosted access.

b)   DOCUMENTATION supporting USE of SOFTWARE may be provided by LICENSOR through a documentation site. No other support is provided under this LICENSE. Without obligation, LICENSOR may, in its sole discretion and within its own schedule, review the merit of any issues or questions reported by LICENSEE regarding its USE of SOFTWARE.

c)   LICENSOR reserves the right to audit LICENSEE's compliance with this LICENSE at LICENSOR's reasonable request, and LICENSEES agrees to give reasonably cooperate with LICENSOR to do so.

7. INTELLECTUAL PROPERTY

a)   Title, ownership, intellectual property rights (copyright, trademarks, trade names, and other intellectual property rights), specifications, data, algorithms, equations, design, graphical user interfaces, screen layouts related to or in the SOFTWARE and DOCUMENTATION are, and shall remain, solely in LICENSOR. LICENSEE acquires no title, right or interest in SOFTWARE, DOCUMENTATION, or associated intellectual property rights other than the non-exclusive license specifically granted herein.

8. REPORTING

LICENSEE shall provide to LICENSOR a written report of LICENSEE's USE of SOFTWARE. The report shall include, but not necessarily be limited to, a summary of SOFTWARE USE by LICENSEE for research and teaching, and a list of LICENSEE's pending or published manuscripts and meeting abstracts that cite the USE of SOFTWARE by LICENSEE. The report shall be completed and provided to LICENSOR within 30 days of the date of LICENSE expiration or termination.

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If this is a license type requiring payment of a license fee, LICENSEE agrees to pay to LICENSOR the LICENSE fee specified in accepted LICENSOR's quotations prior to having access to SOFTWARE. All payments required under this Section 9 or otherwise under this LICENSE are exclusive of taxes and LICENSEE agrees to bear and be responsible for the payment of all such taxes (except for taxes based upon LICENSOR's income) including, but not limited to, all sales, use, rental receipt, personal property, import and value-added or other taxes which may be levied or assessed in connection with this LICENSE.

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11. TERMINATION

a) LICENSOR is entitled to terminate this LICENSE, and/or the rights granted hereunder, at its sole discretion, if LICENSEE does or is suspected of doing any one or more of: (a) fails to comply with any of the terms and conditions in this LICENSE; (b) USES the SOFTWARE or DOCUMENTATION for other than NONCOMMERCIAL USE.

b) Upon receiving notification of termination of the LICENSE, LICENSEE shall cease to use SOFTWARE and DOCUMENTATION and shall, at LICENSOR's direction, remove and either destroy or return to LICENSOR, all copies of SOFTWARE and DOCUMENTATION from all USER SYSTEMS together with LICENSEE's written certification that this Section 11 b) has been complied with in full. In such event, the LICENSE and rights granted hereunder shall be terminated and LICENSEE (i) shall have no further rights or access to SOFTWARE and DOCUMENTATION, and (ii) shall cease USE of SOFTWARE and DOCUMENTATION.

c) Termination of LICENSE shall be in addition to and not a waiver of any remedy available to LICENSOR.

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a) LICENSEE acknowledges that the SOFTWARE is a modeling tool for research purposes to predict and simulate drug development scenarios based on assessment of the current scientific and clinical information, as well as currently accepted approaches for drug development. The results or information generated by LICENSEE's USE of the SOFTWARE and DOCUMENTATION cannot guarantee any specific outcome, nor establish a standard of care, nor are they intended to dictate the treatment of any particular patient, or establish safety criteria for a drug. Patient care, drug safety, and treatment decisions should always be based on the independent medical judgment of health care providers, given each patient's individual clinical circumstances. In no event shall LICENSOR be liable for any damages whatsoever (including, without limitation, consequential damages, damages for loss of business profits, business interruption, loss of business information, or any other pecuniary loss) arising out of the USE of or inability to USE SOFTWARE and DOCUMENTATION and related materials, even if being advised of the possibility of such damages. Because some states do not allow the exclusion or limitation of liability for consequential or incidental damages, the above limitation may not apply and, in such case, LICENSOR's cumulative liability to LICENSEE or any other party for any loss or damages arising out of or relating to this LICENSE, including the USE of SOFTWARE and DOCUMENTATION, shall not exceed any license fee paid to LICENSOR hereunder.

14. THIRD PARTY Software

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a) LICENSEE is solely responsible for its compliance with, and it agrees to comply with, all applicable laws, rules, and regulations in connection with its USE of the SOFTWARE and DOCUMENTATION. LICENSEE acknowledges that the SOFTWARE may be subject to the import and export laws of the United States, specifically the U.S. Export Administration Regulations, and the laws of any country where software is imported or re-exported. LICENSEE agrees to comply with all relevant laws and will not to export any SOFTWARE in contravention to U.S. law nor to any prohibited country, entity, or person for which an export license or other governmental approval is required.

b) Personal data transferred pursuant to this LICENSE between LICENSOR and LICENSEE shall be governed by the Data Processing Addendum in Schedule B incorporated as part of this LICENSE. To learn more about how LICENSOR uses LICENSEE'S personal information and rights regarding such personal information, visit LICENSOR's privacy policy at https://www.simulations-plus.com/privacy-policy/.

16. U.S. GOVERNMENT CONTRACTS

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17. GENERAL

This LICENSE represents the complete agreement concerning the subject matter hereof and may be amended or waived only by a writing executed by both LICENSOR and LICENSEE. If any provision of this LICENSE is held to be unenforceable, such provision shall be reformed only to the extent necessary to make it enforceable. This LICENSE shall be governed by the laws of the State of California, country of USA, excluding conflict of law provisions. The application of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded. Sections 1, 2, 3 a) through l) (to the extent LICENSEE breaches Section 11 b)), 7, 8, 9, 10, 11 b), 11 c), 12, 13, 15, 16, 17 of this LICENSE will survive any termination or expiration of this LICENSE. LICENSEE acknowledges that LICENSOR would suffer substantial damage if the LICENSEE breached this LICENSE and agrees that if that happened, LICENSOR is entitled (in addition to any other rights or remedies) to obtain an injunction from any court with jurisdiction, without posting of bond or other security.

IN WITNESS WHEREOF, the parties have caused this LICENSE to be effective as of the EFFECTIVE DATE, as evidenced by the signature of the representative who has the authority to agree to the terms and conditions on behalf of the respective party.

LICENSOR   **LICENSEE**

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DIVISION: Lancaster

John DiBella

Authorized Signature

Type Authorized Signature

President
_____

Title

Title

Date

Date

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SCHEDULE A

LICENSOR authorizes LICENSEE to use or operate the following SOFTWARE products in the following LICENSED GEOGRAPHIC LOCATION(S) during the specified LICENSE TERM in accordance with the terms and conditions of the LICENSE.

A. __xx__ GastroPlus®, GastroPlus® Optimization Module, GastroPlus® Metabolism and Transporter Module, GastroPlus® IVIVCPlus™ Module, GastroPlus® PKPlus™ Module, GastroPlus® PDPlus™ Module, GastroPlus® PBPKPlus™ Module, GastroPlus® ADMET Predictor® Module, GastroPlus® DDI Module, GastroPlus® Additional Dosage Routes Module, GastroPlus® Biologics Module, ADMET Predictor®, ADMET Modeler™, ADMET Predictor® Physicochemical and Biopharmaceutical Module, ADMET Predictor® Toxicity Module, ADMET Predictor® Metabolism Module, ADMET Predictor® Simulation Module, ADMET Predictor® MedChem Module, ADMET Predictor® Chemistry Module, ClassPharmer™ Basic Module, ClassPharmer™ SAR Module, ClassPharmer™ Design Module, MedChem Studio™ Basic Module, MedChem Studio™ Design Module, MedChem Studio™ SAR Module, MedChem Studio™ ADMET Predictor® Module, MedChem Designer™ DDDPlus™, DDDPlus™ ADMET Predictor® Module, MembranePlus™, MembranePlus™ ADMET Predictor® Module, PKPlus™ and KIWI™.GastroPlus™, GastroPlus™ Optimization Module, GastroPlus™ Metabolism and Transporter Module, GastroPlus™ IVIVCPlus™ Module, GastroPlus™ PKPlus™ Module, GastroPlus™ PDPlus™ Module, GastroPlus™ PBPKPlus™ Module, GastroPlus™ ADMET Predictor™ Module, GastroPlus™ DDI Module, GastroPlus™ Additional Dosage Routes Module, GastroPlus™ Biologics Module, ADMET Predictor™, ADMET Modeler™, ADMET Predictor™ Physicochemical and Biopharmaceutical Module, ADMET Predictor™ Toxicity Module, ADMET Predictor™ Metabolism Module, ADMET Predictor™ Simulation Module, ADMET Predictor™ MedChem Module, ADMET Predictor™ Chemistry Module, ClassPharmer™ Basic Module, ClassPharmer™ SAR Module, ClassPharmer™ Design Module, MedChem Studio™ Basic Module, MedChem Studio™ Design Module, MedChem Studio™ SAR Module, MedChem Studio™ ADMET Predictor™ Module, MedChem Designer™ DDDPlus™, DDDPlus™ ADMET Predictor™ Module, MembranePlus™, MembranePlus™ ADMET Predictor™ Module,

B. ___ PKPlus™

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SCHEDULE B

Data Processing Addendum

This Data Processing Addendum (the "DPA") is an addendum to LICENSE and is applicable between Simulations Plus (the "Data Processor") and the LICENSEE to the LICENSE (the "Data Controller"), (each a "Party", and together the "Parties").

WHEREAS

The LICENSE governs the right for the LICENSEE to use the licensed SOFTWARE, and services related thereto provided by LICENSOR. For purposes of satisfying its obligations under the LICENSE, LICENSOR shall act as a Data Processor on behalf of the LICENSEE. In order to ensure compliance with Personal Data regulations, the Parties have agreed to supplement the LICENSE to set forth the terms and conditions applicable to the Processing of Personal Data by the Data Processor on behalf of the Data Controller.

IT IS AGREED AS FOLLOWS.

1. **DEFINITIONS**

1.1   In this DPA, capitalized terms shall have the following meanings, unless defined in the LICENSE or otherwise required given the context.

Data Controller - means the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of personal data; in this DPA, the LICENSEE.

Data Processor - means a natural or legal person, public authority, agency or other body which processes personal data on behalf of the controller; in this DPA, the LICENSOR.

Data Protection Laws - means, as applicable and binding on either Party or the Services.

a) the GDPR; b) any federal, state, or regional law on personal data protection; and c) any laws that replace, extend, or amend any of the foregoing.

Data Subject - means an identified or identifiable natural person.

DPA - means this Data Protection Addendum.

GDPR - means the General Data Protection Regulation (EU) 2016/679;

Personal Data - has the meaning given in applicable Data Protection Laws, and includes personal information including any information relating to an identified or identifiable natural person ('data subject'); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person; wherein such Personal Data is transferred to Data Processor by Data Controller.

Personal Data Breach - means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, personal data transmitted, stored or otherwise processed.

Processing - has the meaning given in applicable Data Protection Laws from time to time (and related expressions, including process, processed, processing, and processes).

Sub-Processor - means any agent, subcontractor or other third party (excluding its employees) engaged by the Data Processor for carrying out any processing activities on behalf of Data Controller in respect of the Protected Data.

2. **SCOPE**

2.1   This DPA only supplements the provisions of the LICENSE in relation to the Processing provided by the Data Processor to the Data Controller pursuant to the LICENSE.

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3.   **DATA PROCESSING**

3.1   The Data Processor agrees to Process the Personal Data in accordance with the terms and conditions set out in this DPA, and in particular the Data Processor undertakes:

3.1.1   to Process the Personal Data only on behalf of the Data Controller and at all times in compliance with the Data Controller's instructions for Data Processor to perform pursuant to the LICENSE, and all applicable data protection laws ("Processing Services");

3.1.2   to ensure that any personnel entrusted with the Processing Services have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;

3.1.3   to take technical, physical and organizational measures to ensure the security and confidentiality of the Personal Data and appropriately protect Personal Data Processed on behalf of the Data Controller against misuse and loss;

3.1.4   that it will promptly notify the Data Controller about: (a) any legally binding request for disclosure of the Personal Data by a government authority unless otherwise prohibited, such as a prohibition under criminal law to preserve the confidentiality of a law enforcement or intelligence investigation, (b) any Personal Data Breach affecting the Personal Data processed by Data Processor on behalf of the Data Controller, (c) any request received by Data Processor directly from the Data Subjects (including and Data Subject rights under Data Protection Laws such as the right to access, rectification, deletion, objection, restriction, data transfer); the Data Processor (i) will not respond directly to that request, except to notify the Data Subject that it is acting on behalf of the Data Controller and to furnish the Data Subject with the contact information of the Data Controller, and (ii) taking into account the nature of the Processing, will assist the Data Controller by appropriate technical, physical and organizational measures, insofar as this is possible, for the fulfilment of the Data Controller's obligation to respond to requests for exercising the Data Subject's rights;

3.1.5   to provide commercially reasonable cooperation to the Data Controller to assist the Data Controller comply with its own legal obligations related to Personal Data Processed by Data Processor, such as: notification of a Personal Data Breach to the competent supervisory authority, communication of such Personal Data Breach to the Data Subjects affected and, where applicable, implementation of data protection impact assessments and prior consultations with supervisory authorities, taking into account the nature of the Processing and the information available to the Data Processor;

3.1.6   to make available to the Data Controller all information necessary to prove compliance with the obligations laid out in this DPA and allow for and contribute to audits, including inspections, conducted by the Data Controller or another auditor mandated by the Data Controller as set forth in Section 6; and

3.1.7   that any Processing Services carried out by a Subprocessor will be carried out in accordance with Section 6.

3.2   With respect to the Processing Services, the Data Controller will be responsible for complying with all requirements that apply to it under Data Protection Laws regarding the Processing of Personal Data and the Instructions it issues to the Data Processor. In particular but without prejudice to the generality of the foregoing, the Data Controller acknowledges and agrees that it will be solely responsible for the following: (i) the accuracy, quality, and legality of Personal Data; (ii) complying with all necessary transparency and lawfulness requirements under applicable law for the collection and use of the Personal Data, including obtaining any necessary consents and authorizations from Data Subjects or otherwise; (iii) ensuring the Data Controller has the right to transfer, or provide access to, the Personal Data to the Data Processor and that the Data Controller has provided any required notifications and obtained any required consents and/or authorizations in relation to that transfer or access and, more generally, for Processing in accordance with the terms of the LICENSE (including this DPA); and (iv) ensuring that its Instructions comply with applicable laws. Upon request from the Data Processor, the Data Controller shall provide to the Data Processor within three (3) business days written evidence of such notifications, consents and authorizations. The Data Controller will not input into the Processing Services, or otherwise provide the Data Processor, with any sensitive or special categories of Personal Data, as defined in Data Protection Laws, unless otherwise agreed to separately in writing by the Data Controller. The Data Controller will inform the Data Processor, immediately and without undue delay, if Data Controller is not able to comply with its responsibilities set forth in this DPA.

3.3   The Data Controller authorizes the Data Processor to anonymize the Personal Data Processed pursuant to the LICENSE in order to derive analytics data relating to the use of SOFTWARE and the LICENSOR'S products and services. Further use of the resulting analytical data by the Data Processor is not subject to prior authorization from the Data Controller.

4.   **INTERNATIONAL DATA TRANSFERS**

Software License Agreement for Noncommercial Use

4.1   The Data Controller hereby acknowledges and agrees that, for providing the Processing Services under the LICENSE, the Data Processor may transfer and retain Personal Data in the United States of America, and any other country in which the Data Processor is located, for the purpose of providing the Processing Services. Therefore, in the course of the provision of the Processing Services, it may be necessary to transfer Personal Data to the Data Processor located outside of the country of establishment of the Data Controller. If the Data Controller is located in the European Economic Area, UK, or in Switzerland, the Parties undertake to apply the any existing legal mechanism, including the provisions of the Standard Contractual Clauses, for the transfer of Personal Data by the Data Controller (acting as data exporter pursuant to the Standard Contractual Clauses) to the Data Processor (acting as data importer pursuant to the Standard Contractual Clauses).

4.2   If the Parties apply the Standard Contractual Clauses pursuant to Section 4.1, Appendix 1 of the Standard Contractual Clauses shall be applied on the following basis: (a) Data exporter: the Data Controller, (b) Data importer: the Data Processor, (c) Data subjects: personnel of the Data Controller (the LICENSEE), (d) Categories of data: data relating to LICENSEE'S use of SOFTWARE or related services owned, licensed, or managed by the Data Processor, pursuant to the LICENSE, including registration data (i.e., usernames and passwords), (e) Special Categories of Personal Data: N/A, and (f) Processing operations: collection, copy, transfer, storage, modification, deletion and other operations necessary for the Processing Services pursuant to the LICENSE.

4.3.   The description of the technical, physical and organizational security measures implemented by the Data Processor acting as data importer for the purpose of Appendix 2 of the Standard Contractual Clauses shall be: physical access controls to facilities, access control to systems, logical access control to data disclosure ad data protection control, input control, availability control, and segregation control.

4.4   If the Standard Contractual Clauses are applicable between the Parties pursuant to Section 4.1, their provisions will be deemed incorporated by reference into this DPA, unless the Parties execute the Standard Contractual Clauses as a standalone document pursuant to Section 4.5.

4.5   To the extent required by the applicable data protection regulations, the Parties shall enter into and execute the Standard Contractual Clauses as a separate document.

5.   **TERMINATION AND RETENTION**

5.1   This DPA will become effective upon the effective date of the LICENSE.

5.2   This DPA will terminate automatically upon the later of termination or expiry of (a) the LICENSE or (b) of the Data Processor's obligations in relation to the Processing Services, and such termination shall not require a court order or court proceeding or any other action of the Data Processor, the Data Controller or any third party in order to be effective. Where applicable, on termination of this DPA, the Data Processor shall return to the Data Controller or delete, at the Data Controller's request, all the Data Controller's Personal Data in its possession or under its control. Upon the request of the Data Controller, the Data Processor shall confirm compliance with such obligations in writing and delete all existing copies, unless applicable law requires storage or otherwise permits retention of the Personal Data. Personal Data may be retained for a period of sixty (60) days following termination of the LICENSE, or any other retention period limited to the duration necessary, for Data Processor to perform Processing Services or meet its obligations under applicable law.

5.3   Either Party shall be entitled to terminate this DPA by notice in writing to the other Party if the other Party is in a material or persistent breach of this DPA which, in the case of a breach capable of remedy, shall not have been remedied within thirty (30) working days from the date of receipt by the other Party of a notice from the non-breaching Party identifying the breach and requiring its remedy.

6.   **APPOINTMENT OF SUBPROCESSORS**

6.1   The Data Controller authorizes the Data Processor to use the service of Subprocessors: Amazon AWS (cloud hosting and storage services) and Microsoft Corporation (cloud storage, electronic communications), and as may be notified to Data Controller by Data Processor during the term of the DPA.

7.   **MISCELLANEOUS PROVISIONS**

7.1   Amendments or additions to this DPA must be made in writing to be effective. Notwithstanding the foregoing, the Data Processor may, at any time and without notice to Data Controller, change the technical, physical and organizational measures used with the Processing Services, provided such change does not materially impact the security, confidentiality, or integrity of Personal Data.

7.2.   References in this DPA to "writing" or "written" includes e-mail communications and certified mail.

7.3   Should any provision of this DPA be or become invalid, this shall not affect the validity of the remaining terms. In the event of invalidation of any provision of this DPA, the Parties shall, in any case, endeavor, in good faith, to replace the invalidated provision by another one, enforceable, valid and legal, having to the greatest possible extent a legal impact equal or equivalent to the one of the initial provision.

7.4   This DPA is governed by the same governing law as the LICENSE.