This **LICENCE AND DIGITAL SERVICES AGREEMENT** (hereinafter referred to as the "Agreement")

is entered into between the following entities:

1. **Ústav molekulární genetiky AV ČR, v. v. i.** (in English commonly referred to as “Institute of Molecular Genetics of the Czech Academy of Sciences”, with registered office at Vídeňská 1083, 142 20 Praha 4, ID No.: 68378050, VAT No.: CZ68378050, represented by: RNDr. Petr Dráber, DrSc., Director, as licensor, established pursuant to Act No. 341/2005 Coll. on Public Research Institutions, as amended, on the one hand

(hereinafter referred to as "Provider")

 and

2. **Fraunhofer-Gesellschaft zur Förderung der angewandten Forschung e.V**. Hansastraße 27c, 80686 München, Federal Republic of Germany, VAT ID DE 129515865, for its **Fraunhofer-Institute for Translationale Medicine and Pharmacology ITMP**, Schnackenburgallee 114, 22525 Hamburg, Federal Republic of Germany, which is interested in using the Software under the terms and conditions hereinafter set forth, as the licensee on the other hand

(hereinafter referred to as the "User"; Provider and User are hereinafter collectively referred to as the "Parties" and each a "Party")

IN THIS MESSAGE:

1. **DEFINITION AND INTERPRETATION**
	1. Unless otherwise expressly provided in a particular case or unless the context otherwise requires, capitalized terms used in this Agreement shall have the following meanings in this Agreement:

**"CC"**

means Act No. 89/2012 Coll., the Civil Code, as amended;

**"Data"**

means the set of data created, organized and processed by the User through the Software;

**"Additional Period"**

means the period of 30 consecutive days immediately following the Licensing Period (i.e. the first day of the Additional Period is the first day following the Licensing Period);

**"Technical Specification"**

means a set of information about the user parameters and features of the Software, how to use the Software, and the software and hardware requirements for the End Devices on which the Software is to be installed or used; such set of information and instructions is set out in the **Attachment 2**;

**"End Devices"**

means computers or other similar devices (e.g. tablets, mobile phones) of End Users;

**"End Users"**

means researchers and other employees of the User and other persons in a similar capacity who use the Software for the purpose of performing their job duties for the User;

**"Licence"**

shall have the meaning ascribed to such term in Article 3.2 of this Agreement;

**"Licensing Period"**

means the period commencing on the effective date of this Agreement and ending on the same day and same month in the following calendar year; with the exemption of the first Licensing Period, which means the period from 1st January 2023 to 31st August 2023, as follows from clause 2.4 of this Agreement.

**"Licence Fee"**

means the remuneration which the User is obliged to pay to the Provider under the terms and conditions set out in this Agreement in the amount of 20,000 € which is agreed upon with the Provider;

**"Notification of Errors"**

means a notification of a Defect made by the User via email xxx, which must contain (i) a basic description of the Defect or a description of the manifestations of the Defect; (ii) a brief description of the procedure or work operation during which the Defect occurred or during which the Defect occurs;

**"Provider"**

shall have the meaning as stated in the heading of this Agreement;

**"Service Fee"**

means the remuneration which the User is obliged to pay to the Provider for the removal of Defects pursuant to Article 5.3 in the amount determined on the basis of the quotation provided by the Provider.

**"Agreement"**

means this Agreement, including all attachments hereto and any amendments thereto;

**"Party"**

shall have the meaning as stated in the heading of this Agreement;

**"Software"**

means the software ScreenX (custom build based on User requirements) in the corresponding variant;

**"User"**

shall have the meaning as stated in the heading of this Agreement;

**"Defect"**

means a state of the Software that substantially prevents the use of the features of the Software corresponding to the relevant variant.

* 1. Where this Agreement refers to an obligation of a Party to "ensure" something, or to ensure that a third party acts (or fails to act) in a certain way, it is understood that such obligated Party is responsible for ensuring that the intended result happens, undertaking anything within the limits of every possibility and reasonability of the obligated Party.
1. **SUBJECT AND PURPOSE OF THE AGREEMENT**
	1. The purpose of the Agreement is to use the Software developed and operated by the Provider for research and development, in accordance with the Provider's activities as a public research institution of the Czech Republic. The Software is envisaged for management and storage of data generated in chemical biology experiments (compounds, structures and their activities).
	2. Provider to the extent and under the terms and conditions set forth in this Agreement, including all attachments and data expressly referred to in this Agreement:
	3. grants the User the right to use the Software for the purpose described in the Quotation, which is an **Attachment 1** of this Agreement and to the extent set forth further in this Agreement;
	4. agrees to ensure the full functionality of the Software in accordance with the Quotation and to remedy any defects in the Software in accordance with Article 5 of this Agreement, subject to the terms and conditions set forth in this Agreement, for the duration of the Licence Period.
	5. The User hereby agrees to perform and respect the obligations set forth in this Agreement and to pay to the Provider the Licence Fee and any Service Fee to which the Provider may become entitled under this Agreement.
	6. The Parties hereby confirm that the Licence has been provided to the User before this Agreement has been signed and published in accordance with clause 7.1 of this Agreement. Due to the legal form of the Provider and the value of the Agreement, the effectiveness of the Agreement between the Parties was bound to its publication in the Register of Contracts pursuant to Act No. 340/2015 Coll., on the Register of Contracts, as amended. However, the publication of the Agreement in the Register of Contracts has inadvertently not taken place in time and therefore the granting of the Licence constituted unjustified enrichment by the User. This Agreement cancels the original obligations of both Parties in connection with the Licence and replaces them with the obligations under this Agreement. It is not reasonably practicable to return the object of unjust enrichment, therefore the Parties agree to monetary compensation in the amount corresponding to originally agreed Licence Fee, i. e. 20,000 € for the first Licensing Period. The payment for the License Fee shall be made in accordance with article 4 of this Agreement. Upon payment of the amount of the Licence Fee by wire transfer to the Provider’s bank account, the Parties shall have no obligations or claims against each other arising from the premature provision of the Licence as specified above in this clause 2.4, and may not claim any damages or other losses, penalties, interest for delay and/or other sanctions against each other on this account.
2. **LICENSING ARRANGEMENTS**
	1. The Provider represents and warrants it has the full power and authority to grant the rights set forth in this Agreement and the Software is the exclusive property of the Provider. The Provider represents and warrants that it will not breach any agreements that it has with third parties and that it will not infringe the copyright or any personal, proprietary, or other right of any person or entity. The Provider agrees to indemnify and hold the User harmless from any liability, damage, cost and expense, for or in connection with any claim, action or proceeding based upon an alleged breach of this and the preceding warranties/ representations.
	2. For the duration of the Licensing Period, the Provider grants the User the right to use the Software, subject to the following conditions and to the following (exclusive) extent:
	3. User is authorized to install or use the Software on End devices of End Users;
	4. End Users are entitled to use all the functions of the Software, depending on its variant, exclusively for the purpose of performing their work duties in relation to the User;
	5. the licence is worldwide;
	6. the licence is granted for the Licensing Period as non-exclusive and the User is not obliged to use the licence (the right of use as defined in this Article hereinafter referred to as the "Licence").
	7. Without the prior written consent of the Provider, the User is not entitled to grant the Licence or any part thereof for use, transfer or assignment to a third party, in whole or in part, even in the case of transfer of the User's plant or any part thereof. The Licence shall not be transferred to the User's successor in title without the prior written consent of the Provider.
3. **LICENCE FEE AND SERVICE FEE**
	1. The User is obliged to pay the Licence Fee and, if applicable, the Service Fee to the Provider. VAT is to be determined by the Provider on the date of the taxable transaction and shall be added to the Licence Fee and, if applicable, the Service Fee.
	2. The Provider shall not increase the Licence Fee and the Service Fee for the period from the signing of the Agreement until the end of the current Licence Period.
	3. The User is obliged to pay the Licence Fee and, if applicable, the Service Fee by bank wire transfer based on an invoice issued by the Provider to an account that the Provider will provide to the User for this purpose.
	4. If the Licence Fee is not duly and timely paid and is not paid within 30 days of Provider's request sent to the User's contact address to pay it, this Agreement shall automatically terminate from the outset; and for the avoidance of doubt, the Parties stipulate that in such event the Provider shall be entitled to assert without further delay all claims for unauthorized use of the Software arising therefrom. Data saved by the User in the meantime will be deleted without replacement.
	5. The invoice issued by the Provider will be in the form of a tax document with all the details according to the relevant legislation and will be due within 30 days from the date of its delivery to the User. The Provider's invoice shall be sent to the User at the User's registered email address xxx, unless otherwise agreed by the Parties.
4. **WARRANTY AND TROUBLESHOOTING**
	1. For the duration of the Licensing Period, the Provider shall provide the User with a guarantee of the functional and user parameters of the Software set out in the Technical Specification, and the Parties agree that this guarantee shall be applied exclusively in accordance with the procedure set out in Article 5.2 of this Agreement. The user acknowledges that there may be temporary Software access interruptions of no more than 120 minutes when the system is updated and administered and/or 1 % of the total time in the Licensing Period. An outage may also occur due to power failure, non-functionality of equipment, civil unrest, strikes and other events beyond the Provider's control, i.e. due to force majeure. The User acknowledges that he/she needs an internet connection to access the Software. The Provider thus undertakes to guarantee 99% availability of the Software access during the Licensing Period. The Provider shall inform the User in advance in the event of planned outages. The warranty shall not apply if the Defect occurs as a result of the User's failure to comply with any condition or procedure set out in the Technical Specification or due to breach of any User’s obligation set out in this Agreement. The User shall provide the Provider with assistance to verify whether the defect was caused by inadequate technical or software equipment or network connection, which does not comply with the Technical Specification set out in **Attachment 1** of the Agreement, otherwise the User assumes the burden of proof regarding possible defect in the Software.
	2. The Provider agrees to remedy Defects that manifest themselves during the Licensing Period without any further remuneration under the conditions set out below:
5. The User undertakes to immediately inform the Provider of the occurrence of the Defect by sending a Notification;
6. The Provider undertakes to commence work on the removal of the Defect within 7 working days of receipt of the Notification, if the notified Defect is found to be relevant under this Agreement, and to notify the User of the provisional period within which the Defect will be removed. The Provider shall make the necessary and economically optimal efforts to remove the Defect within the notified provisional period. Should it become apparent during the course of the removal of the Defect that the deadline cannot be met, the Provider shall notify the User of a new reasonable deadline for the removal of the Defect;
7. The User undertakes to provide the Provider with all possible assistance in the removal of Defects.
	1. The provisions of Article 5.2 on warranty do not apply in the following circumstances, in which case the Provider is obliged to remove the Defects and the User is obliged to pay the Service Fee to the Provider:
8. The User has not fulfilled any of its obligations set out in Article 5.2 of this Agreement in connection with the occurrence of the Defect; and/or
9. The defect has arisen as a direct or indirect result of a breach of the User's obligations under this Agreement, in particular, but not exclusively, Article 6.1 of this Agreement.
	1. Any defect caused by force majeure, such as war, civil unrest, pandemic, energy crisis, lack of electricity supply or any other circumstances in which the Provider did not participate neither had any relevant influence on shall be removed by the Provider once the force majeure passes, if possible, and/or economically sensible. Should the force majeure last longer than 30 calendar days or should the Provider not remove the defect within 14 calendar days after the force majeure event has ended, both Parties are entitled to withdraw from this Agreement, in writing, effective ex nunc (i.e. with future effect), articles 9.2 and 9.3 of this Agreement apply.
	2. The Provider shall be liable to the User for damages caused in the performance of this Agreement up to an amount equal to the yearly Licence Fee.
10. **OTHER ARRANGEMENTS OF THE PARTIES**
	1. The User undertakes:
11. to use the Software only in accordance with the Provider’s instructions;
12. to install or use the Software only on End devices with hardware and software in its up-to-date versions; IMPORTANT NOTE: Software functionality is guaranteed in Firefox and Chrome. The Software may be compatible with other web browsers, however, the compatibility is not guaranteed;
13. to maintain the End devices in a proper condition that allows the smooth and proper functioning of the Software, in particular the User undertakes to perform the necessary software updates of the End devices and to remove unwanted software (any viruses or other malicious programs);
14. to back up regularly and archive the Data;
15. without the prior express written consent of the Provider, he/she shall not interfere with, modify or change the Software himself/herself or through third parties, even in connection with the functional interconnection of the Software with other software applications;
16. not to modify the Software or parts thereof without the prior express written consent of the Provider;
17. to create a user account for each employee / End User and ensure that End Users use only their user account to access the system;
18. to protect access codes (passwords) to EndUser accounts;
19. to ensure that End Users and others do not breach the obligations set out in clause 6.1;
20. to ensure that all functions are carried out under the requirements of EU Regulation 2016/679 on the protection of personal data (GDPR);
21. to train all End Users as recommended by the Provider.
	1. By entering into this Agreement, the User acknowledges that:
	2. It has made End Users aware of the obligations and limitations arising from this Agreement
	3. The Parties further agree that:
	4. the Data is owned by the User, with exemption of basic/statistic data concerning the number of Users and number of records;
	5. the Provider is not responsible for the accuracy of the outputs transmitted by the User to public authorities or other entities;
	6. the Provider shall not be liable for any financial loss caused by the use of data outputs from the Software.
22. **DURATION OF THE AGREEMENT**
	1. This Agreement will become valid upon its signature and enter into force on the date of its publication in the registry of contracts pursuant to the Act No. 340/2015 Coll., on Register of Contracts, as amended (“Effective Date”) and is for a fixed term, for the Licencing Period, and shall terminate exclusively as follows:
23. by the expiration of the Licensing Period;
24. by written agreement of the Parties;
25. by withdrawing from the Agreement in accordance with Article 9 of this Agreement; and/or
26. by notice with a cancellation period of 14 days, which begins on the day following delivery of the notice.
	1. Upon termination of this Agreement due to the expiration of the Licence Period, User shall be entitled to use the Software for the Additional Period, and User acknowledges that the functionality of the Software may be limited during the Additional Period.
	2. No later than 5 days before the expiration of the Licensing Period, the Provider shall send the User an offer for an agreement on the use of the Software for the next Licensing Period. In the event that the User does not reject this offer, this Agreement shall be extended for a further period of 12 months. If the User refuses this offer, the User shall remove the Software from all End devices, ensure the disposal of all copies of the Software and ensure the preservation of the Data.
	3. The Provider is entitled not to renew this Agreement with the User. The User acknowledges that non-renewal of the Agreement may occur due to various reasons, whereas the Provider is not obliged to inform the User of these reasons.
27. **WITHDRAWAL FROM THE AGREEMENT**
	1. Either Party shall be entitled to withdraw from the Agreement if the other Party breaches its obligations under this Agreement and fails to remedy the breach within 30 days of receipt of a written request to do so.
	2. Notice of withdrawal from this Agreement shall be given with at least 14 days by the Parties in writing to the other Party.
	3. In the event of withdrawal from this Agreement, the Parties shall be obliged to settle their claims for the performance already provided under the Agreement, within 30 days from the effective date of withdrawal from the Agreement, in particular to pay, if still outstanding, the Licence and Service Fee for the period from the negotiation of this Agreement to the date of delivery of the withdrawal to the Provider. If the Licence Fee and Service Fee have been paid in full, there shall be a pro rata repayment claim for the User, reducing the amount according to the period from the negotiation of this Agreement to the date of delivery of the withdrawal.
28. **FINAL PROVISIONS**
	1. This Agreement is concluded in electronic form, either by DocuSign or other qualified electronic signature means, or combination of such electronic signatures. There shall not be an exchange of handwritten original signatures. This provision applies also for changes or additions to this Agreement.
	2. This Agreement shall be governed by the law of the Czech Republic. The Parties exclude the application of conflict of laws rules of international law. The Parties proclaim that should there be any surprising liability clauses outside the provisions of this Agreement that affect the liability of one of the Parties in a significant way, they do not apply. In accordance with the provisions of Section 89a of Act No. 99/1963 Coll., the Code of Civil Procedure, as amended, the Parties agree to the local jurisdiction of the court of first instance in the place of the Provider's registered office for the settlement of disputes arising from the Agreement.
	3. The Parties agree that if a reply with an amendment or deviation is made by either Party in connection with an obligation under this Agreement, then the Party to whom the reply is addressed shall not be bound by the amendment or deviation unless it expressly accepts the amendment or deviation without undue delay, but not later than 10 days from the date of delivery of the reply. Section 1740(3) of the CC, which provides that a contract is concluded even if the manifestations of the intent of the contracting parties do not fully coincide, is excluded.
	4. The Parties have disclosed to each other all facts and legal circumstances of which they knew or ought to have known at the date of signing of this Agreement and which are relevant to the conclusion of this Agreement.
	5. If any provision of this Agreement, including any exhibits hereto, is or becomes unenforceable, void, or voidable, or if it becomes so in the future, only that provision shall be or become unenforceable, void, or voidable, while the other provisions of this Agreement, including any Annexes hereto, shall remain unaffected unless the nature, content or circumstances under which such provision was adopted indicate that such portion cannot be severed from the other provisions without rendering the Agreement unenforceable, void, or null. In such event, the Parties undertake to replace such provision without undue delay with a new provision whose content and purpose shall, as far as possible, correspond to the content and purpose of the defective provision.
	6. The failure to exercise, or any delay in exercising, any right or claim under the Agreement or by operation of law shall not prevent the exercise of, or constitute a waiver of, the right to further exercise such right or claim, nor shall it constitute a waiver of any other right or claim. A single or partial exercise of a right or claim under the Agreement or by operation of law shall not preclude the re-exercise of such right or the re-assertion of such claim.
	7. The parties declare that they do not feel themselves to be the weaker party in relation to the other Party. This Agreement shall be binding on the successors in title of both Parties. The User shall not be entitled to assign or set off any claim or part thereof arising under this Agreement without the prior written consent of the Provider.
	8. The Parties exclude the application of Sections 557, 558(2), and 1757(2) of the CC to the mutual obligations established by this Agreement. The Parties declare that they assume the risk of undue hardship in the event of mutually granted performance and therefore exclude the application of the provisions of Section 1793 CC.

In Appendix

**Attachment 1 - Quotation** (including such part of Technical Specification which is not included in Attachment 2)

**Attachment 2 - Set of information** about the user parameters and features of the Software, how to use the Software, and the software and hardware requirements for the End Devices on which the Software is to be installed or used

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| **Ústav molekulární genetiky AV ČR, v. v. i.** |  | **Fraunhofer-Gesellschaft zur Förderung der angewandten Forschung e.V**. |
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| Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  | Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Name: RNDr. Petr Dráber, DrSc., Director |  | Name: xxx Head of Discovery Research |
| Date: |  | Date: |
|  |  |  |
|  |  | Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
|  |  | Name: xxx, Ordering Manager |
|  |  | Date: |