|  |
| --- |
| 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 |
| 1. Université du Luxembourg (in English commonly referred to as the “University of Luxembourg”), a public institution of higher education and research, governed by the modified law of 27 June 2018 organizing the University of Luxembourg, with registered office at 2 Avenue de l’Université, L-4365 Esch-sur-Alzette, Grand Duchy of Luxembourg, registered with the Luxembourg Business Register under number J20, with intra-Community VAT number LU19805732, duly represented by its Acting Director of Administration and Finance, xxx and its Rector, xxx, who or 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
 |
| 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: |
| **"CA"** |
| means Act No. 121/2000 Coll., on Copyright, on Rights Related to Copyright and on Amendments to Certain Acts (Copyright Act), as amended; |
| **“Free trial period”** |
| means a period of the first three months on the first Licensing Period, during which the Software is provided free of charge, in order for the User to decide whether the Software’s functions are in accordance with the User’s needs; |
| **"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 are set out on the Zebrabase website, in a section which the User shall have an access to once this Agreement comes into effect;  |
| **"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 31st December 2025; or if applicable, the consecutive period in accordance with Article 8.3 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 specified in the Annex 1 of this Agreement, determined on the basis of the price list published at the time of conclusion of this Agreement on the website <https://zebrabase.org/pricing> depending on the variant of the Software after applying any discounts agreed with the Provider; the pricing includes a 50 % discount for academic and non-profit organizations; |
| **"CC"** |
| means Act No. 89/2012 Coll., the Civil Code, as amended; |
| **"Notification of Errors"** |
| means a notification of a Defect made by the User through the Provider's Helpdesk system: [ https://zebrabase.atlassian.net/servicedesk/customer/portal/2], 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 ascribed to such term 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 price list published at the time of conclusion of this Agreement on the website <https://www.zebrabase.org/>. The price is defined in the rate per hour of work and is to be charged to the extent of the work actually performed; |
| **"Agreement"** |
| means this Agreement, including all attachments / appendices hereto and any amendments thereto; |
| **" Party"** |
| shall have the meaning ascribed to such term in the heading of this Agreement; |
| **"Software"** |
| means the software Zebrabase in the corresponding variant; |
| **"User"** |
| shall have the meaning ascribed to such term 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. |
| 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, notwithstanding any subjective or objective limitations on the ability of the obligated Party to control or influence third parties or any other subjective or objective factors necessary to achieve the intended result, unless agreed in this Agreement in specific cases otherwise. |
| 1. Subject and purpose OF THE AGREEMENT
 |
| The purpose of the Agreement is to use the Software developed and operated by the Provider in public interest 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 fish breeding administration. |
| Provider to the extent and under the terms and conditions set forth in this Agreement, including all attachments / appendices and data expressly referred to in this Agreement: |
| * + 1. grants the User the right to use the Software for the purpose described in the Technical Specification and to the extent set forth further in this Agreement;
 |
| * + 1. agrees to ensure the full functionality of the Software in accordance with the Technical Specification 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 Term.
 |
| 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. |
| The User shall familiarize self with the Technical specification and User manual prior to using the Software, in particular the functional and user parameters of the Software and the technical conditions for the proper operation of the Software. |
| 1. Licensing arrangements
 |
| The Provider declares that the Software is a work within the meaning of Section 2(2) of the CA, to which the Provider exercises proprietary copyrights.  |
| 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: |
| * + 1. User is authorized to install or use the Software on End devices of End Users;
 |
| * + 1. 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;
 |
| * + 1. the licence is worldwide;
 |
| * + 1. 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**"). The user is entitled to use 1 Licence for number of substocks (substock is a group of fish from one stock, which are bred in one tank) as specified in the order. The number of substocks shall be determined by the highest number of substocks used by the User during the relevant Licencing period of this Agreement. A reduction/ non-utilization on the User’s side of the number of substocks shall not entitle the User to a refund of either the Licence Fee or the Service Fee. In the event that the User needs a greater number of substocks than originally anticipated, the Parties shall conclude an amendment to this Agreement to increase the number of licensed substocks; the billing provisions of this Agreement shall apply similarly. |
| 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.  |
| The Parties have agreed on a Free trial period. |
| 1. LicenCe fee and Service fee
 |
| The User is obliged to pay the Licence Fee and, if applicable, the Service Fee to the Provider. VAT in the amount determined by the Czech legislation on the date of the taxable transaction, shall be added to the Licence Fee and, if applicable, the Service Fee.  |
| The Provider shall not increase the Licence Fee and the Service Fee during the current Licensing Period. The Provider is authorized to increase the Licence Fee and the Service Fee for any consecutive Licensing Period in accordance with Article 8.3.  |
| The User is obliged to pay the Licence Fee or Service Fee by wire transfer based on an invoice issued by the Provider to an account that the Provider will provide to the User for this purpose; or it can be paid by a pay gate, if it will be enabled by the Provider. The invoice for the first Licensing Period will be issued once the Free trial period is over, unless the User has informed the Provider, in writing, before the end of the Free trial period that they are not any longer interested in using the Software. |
| If the Licence Fee is not duly and timely paid, i.e. it is not paid within its due date, 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, including requiring the User to pay a contractual penalty of EUR 300 for the violation of this Agreement. Data saved by the User in the meantime will be deleted without replacement. |
| 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 for billing matters, as listed in Appendix 2, unless otherwise agreed by the Parties. |
| In the event that the Service has not been available for at least 95% of the time during a given Licensing Period, the User is entitled to request in writing from the Provider a price reduction in the form of a refund of a proportionate part of the Licensing Fee already paid. The User is obliged to exercise this right within 30 days from the end of the Licensing Period, otherwise it shall be time-barred. |
| 1. Warranty and Troubleshooting
 |
| 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 service 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. The Provider thus undertakes to guarantee 99% availability of the Service during the Licensing Period. The Provider shall inform the User in advance in the event of planned outages. 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 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. In accordance with Section 2389e of the CC, the User is obliged to 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, otherwise the User assumes the burden of proof regarding possible defect in the Software. |
| The Provider agrees to remedy Defects that manifest themselves during the Licensing Period without any further remuneration under the conditions set out below: |
| * + 1. The User undertakes to immediately inform the Provider of the occurrence of the Defect by sending a Notification;
 |
| * + 1. 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;
 |
| * + 1. The User undertakes to provide the Provider with all possible assistance in the removal of Defects.
 |
| 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 for such removal the Service Fee to the Provider:  |
| * + 1. The User has not fulfilled any one of its obligations set out in Article 5.2 of this Agreement in connection with the occurrence of the Defect; and/or
 |
| * + 1. 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.
 |
| 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. |
| The Provider shall be liable to the User for actual damages (shall not be liable for loss of profit) caused in the performance of this Agreement due to gross negligence on the part of the Provider, up to an amount equal to the Licence Fee, but not more than EUR 4,000. The above applies for one Licensing Period at a time. |
| 1. Other arrangements of the Parties
 |
| The User undertakes: |
| * + 1. to use the Software only in accordance with the procedures set forth in the Technical Specification and Zebrabase user manual;
 |
| * + 1. to install or use the Software only on End devices with hardware and software that is fully compatible with the Software, and maintain the End devices in such compatible condition as set forth in the Technical specification.
 |
| * + 1. to maintain the End devices in a proper condition that allows the smooth and proper functioning of the Software, in particular it undertakes to perform the necessary software updates of the End devices and to remove unwanted software (any viruses or other malicious programs);
 |
| * + 1. to back up regularly and archive or otherwise properly store the Data at least once a week;
 |
| * + 1. 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. The Parties hereby expressly exclude the application of the provisions of Section 66(1)(b) of the CA;
 |
| * + 1. not to modify the Data or parts thereof without the prior express written consent of the Provider, not to interfere with the Data other than through the functions of the Software in the manner described in the Technical specification and Zebrabase manual;
 |
| * + 1. to create a user account for each employee / End User and ensure that End Users use only their user account to access the system.
 |
| * + 1. to protect access codes (passwords) to End-user accounts;
 |
| * + 1. to ensure that End Users and others do not breach the obligations set out in this clause 6.1;
 |
| * + 1. to ensure that all functions are carried out under the requirements of EU Regulation 2016/679 on the protection of personal data (GDPR);
 |
| * + 1. to train all End Users as recommended by the Provider.
 |
| By entering into this Agreement, the User acknowledges that: |
| * + 1. it will read the Technical specification and Zebrabase user manual prior to using the Software and use the Software once it has fully understood its contents;
 |
| * + 1. it will without undue delay make End Users aware of the obligations and limitations arising from this Agreement, Technical specification, and Zebrabase user manual.
 |
| The Parties further agree that: |
| * + 1. the data is owned by the User, with exemption of basic/statistic data concerning the number of Users and amount of records;
 |
| * + 1. the Provider is not responsible for the accuracy of the outputs transmitted by the User to public authorities or other entities;
 |
| * + 1. the Provider shall not be liable for any financial loss caused by the use of data outputs from the Software; the User is obliged to check the correctness of data outputs before their potential use and should it discover any defects in the data outputs caused by Software’s defect, to inform the Provider in order to have the Provider ensure removal of such defect in Software.
 |
| * + 1. The User shall provide the Provider with the details of the person authorized to act on behalf of the User in contractual matters, the person authorized to provide assistance in technical matters, and the person designated to communicate in billing matters, whereby as of the date of signing of this Agreement the data set out in Appendix No. 2 to this Agreement shall apply. The User is obliged to inform the Provider of a change in these persons or their contact details within eight days of the change; it is not necessary to sign a written amendment to this Agreement for this purpose.
 |
| Acknowledgements |
| * + 1. Zebrabase is a non-profit project, so if the User and its End Users use the Zebrabase, the Provider asks to cite it within publications accordingly to ensure its sustainability: xxx (2018). Zebrabase: an intuitive tracking solution for aquatic model organisms. Zebrafish, 15(6), 642-647. [xxx](https://doi.org/10.1089/zeb.2018.1609)
		2. The Acknowledgement clause shall survive the termination of this Agreement.
 |
| 1. Penalty provisions
 |
| In the event of the User's delay in payment of the Licensing Fee or Service Fee that is not remedied even within an additional time period provided by the Provider, the Provider shall be entitled to a contractual penalty of 0.1% of the amount owed and due for each day of delay in each respective delay. |
| Payment of the contractual penalty shall be without prejudice to any claim by the entitled Party for compensation for damages or the release of unjust enrichment, including damages or unjust enrichment over the amount of the contractual penalty. |
| 1. Duration of the agreement
 |
| This Agreement is concluded for a fixed term, for the Licence Period, and shall terminate exclusively as follows: |
| * + 1. by the expiration of the Licensing Period (at the end of any consecutive Licensing Period);
 |
| * + 1. by written agreement of the Parties; and/or
 |
| * + 1. by withdrawing from the Agreement in accordance with Article 9 of this Agreement;
		2. by the end of the Free trial period if the User informs the Provider in writing prior to end of the Free trial period that they are not interested in the Software any longer.
 |
|

|  |
| --- |
| 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 and the Provider is not obliged to provide services to their full extent and in terms according to this Agreement. 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. No later than 6 months from the termination of this Agreement the Data shall be deleted by the Provider.  |

In the event that neither Party provides written rejection of prolongation clause according to this Article 8.3 at least one calendar month prior to the end of the current Licensing Period, this Agreement shall automatically renew for an additional Licensing Period of 1 year. The License Fee for this consecutive Licensing Period shall correspond to the License Fee for the current Licensing Period, unless the Provider has notified the User about a License Fee increase at least 2 month prior to the end of the current Licensing Period, then such increased License Fee shall apply. If the Provider does not notify the User within the period set out in previous sentence about the License Fee for an additional Licensing Period, and the initial Licensing Period was of a duration other than one full calendar year or whole years, the License Fee shall be calculated proportionally to the current License Fee (i.e., if the initial Licensing Period is 2 years and 4 months, i.e. 28 months, and the subsequent Licensing Period is agreed to be 3 years, i.e. 36 months, the subsequent License Fee shall be calculated by dividing the original License Fee by 28 and then multiplying by 36).  |
| The Provider is entitled not to renew / extend 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. |
| 1. Withdrawal from the Agreement
 |
| 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.  |
| Notice of withdrawal from this Agreement shall be given by the Parties in writing to the other Party and the withdrawal shall be effective upon delivery of such written withdrawal. |
| 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 the Licence and Service Fee for the period from the negotiation of this Agreement to the date of delivery of the withdrawal to the other Party.  |
| 1. Final provisions
 |
| This Agreement is concluded in written form, in one of the following three ways: 1. in physical form, with wet-ink signatures of both Parties;2. electronically, with qualified electronic signatures of Parties, as defined in Regulation (EU) 910/2014 on electronic identification and trust services for electronic transactions in the internal market. |
| This Agreement shall enter into force on the date of its signature by both Parties and shall become effective on the date of its publication in accordance with Act No. 340/2015 Coll., on the Register of Contracts, unless the value of the Agreement does not exceed CZK 50,000 excluding VAT, in which case it shall become effective simultaneously with its entry into force.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. 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. |
| 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. |
| 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. |
| If any provision of this Agreement, including any Annexes 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. |
| 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. |
| 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. |
| 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 |
| 1. Price Quote  |
| 2. User’s Contact Details  |
|  |

|  |
| --- |
| In Prague In  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  |
|  |
| For the Ústav molekulární genetiky AV ČR, v. v. i.: |  | For the (User)………………………. |
| Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  |  | Signature:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Name: RNDr. Petr Dráber, DrSc.  |  | Name:  |
| [Director] |  | Function […………………….]  |