

LICENCE AGREEMENT – AFRITOX ONLINE

A subscriber who submits an application for AfriTox ONLINE (hereinafter referred to as the “User”) hereby enters into a licence agreement with

THE UNIVERSITY OF CAPE TOWN, THROUGH THE POISONS INFORMATION CENTRE WITHIN THE DEPARTMENT OF PAEDIATRICS AND CHILD HEALTH

A university incorporated in terms of the Higher Education Act, 1997, and the statute of the University of Cape Town, promulgated under Government Notice No. 1199 of 20 September 2002

(hereinafter referred to as the "**University**")

(Collectively hereinafter referred to as the “Parties” and individually as the “Party”)

WHEREAS

- A. The University has designed and is the sole and exclusive owner of a software system which provides for the storage, sorting, classification and retrieval of comprehensive and current information on a database relating to poisons and their respective treatments and antidotes, referred to as the “AfriTox ONLINE”, which system has been developed by the Poisons Information Centre at the Department of Paediatrics and Child Health and is situated at the Red Cross War Memorial Children’s Hospital.
- B. The University has now made AfriTox ONLINE available via a computer-based system that is accessed via the internet.
- C. The User is desirous of obtaining a right under licence from the University to use such system and the University is prepared to grant such a right to the User.
- D. The University and the User have come to an agreement with regard to the above which they wish to record as set out below.

NOW THEREFORE IT IS AGREED AND RECORDED THAT:-

1. DEFINITIONS

1.1 In this Agreement, the following words and expressions shall unless the context clearly otherwise indicates, have the following meanings:-

“Agreement”	the agreement between the Parties captured in this document, together with any annexures, which are incorporated herein by reference;
“AfriTox ONLINE”	the software system exclusively owned by the University and licensed under this Agreement

that includes all information researched, collected, collated and updated by the University relating to poisons and their respective treatments and antidotes. The ONLINE version is accessed by a user via a personal computing device or a mobile computing device which has an active internet connection. The ONLINE version cannot operate without an active internet connection;

“AfriTox OFFLINE”

the software system exclusively owned by the University and licensed under this Agreement that includes all information researched, collected, collated and updated by the University relating to poisons and their respective treatments and antidotes. The OFFLINE version is downloaded via the internet to reside on a personal computing device such as a desktop computer or a laptop computer. The OFFLINE version can operate without an active internet connection and requires intermittent active internet connection to update the database and remain current;

“Effective Date”

the date on which the User signs this Agreement;

"Licence"

the licence granted to the User pursuant to clause 2;

"Licence Fee"

the fee payable for the grant of the Licence pursuant to clause 6 and as stated in the First Schedule hereto and, in the event of the Licence Term being extended, the fee payable under the terms of the agreement by which the Licence Term is extended;

"Licence Term"

the fixed period of this Agreement pursuant to clause 11 and any period of extension thereof which may be agreed upon between the Parties.

1.2 Expressions in the singular shall include the plural and vice versa and in the masculine shall include the feminine and neuter and vice versa and references to persons shall include corporations, firms and companies.

2. THE LICENCE

2.1 In consideration of the payment by the User of the Licence Fee and subject to the compliance by the User of all its obligations hereunder, the University hereby

grants to the User and the User hereby accepts a non-transferable and non-exclusive licence to use the AfriTox ONLINE upon and subject to the terms and conditions contained herein and for the duration of the period of this Agreement.

2.2 The Licence entitles the User, during the currency of this Agreement, to:-

2.2.1 Receive AfriTox ONLINE for use on a personal computer, mobile computer or a smartphone as provided in clauses 3.1 and 6;

2.2.2 use AfriTox ONLINE in accordance with clause 3.

2.3 Save as expressly provided in this Agreement, no right to use, print, copy, reproduce, translate, adapt, record, transmit, display, lend, lease or part with possession of or in any way deal with AfriTox ONLINE or any part thereof is granted.

3. ISSUE AND USE OF AFRITOX ONLINE

3.1 AfriTox ONLINE shall be accessed by a desktop computer, laptop computer, tablet computer or a smart phone by the User using an active internet connection and a web browser. The User shall be solely responsible for accessing AfriTox ONLINE for the display of information contained in AfriTox ONLINE as provided for in, and during the period of this Agreement. The University does not warrant that AfriTox ONLINE issued and supplied to the User shall be compatible with the desktop computer, laptop computer, tablet computer or a smart phone utilized by the User. AfriTox ONLINE's specification is annexed to this Agreement as an appendix and by signing this Agreement, the User acknowledges that they are aware of the requirements applicable to AfriTox ONLINE. In the event that the package does not function properly and no resolution can be found which has been agreed upon by both Parties, the User shall forfeit 50% of the Licence Fee.

3.2 The User shall use AfriTox ONLINE on one desktop computer, or laptop computer, or tablet computer or a smart phone at a time for each license granted in clause 2.2.1. If the User shall require any further copies of AfriTox ONLINE, it shall in respect of each further copy obtain the University's prior written permission to possess and/or use such further copy which permission shall be granted at the sole discretion of the University and in the event of the granting of such permission, the University shall supply such further copy or permit the copying by the User of its existing copy at a fee from time to time determined by the University.

3.3 AfriTox ONLINE shall be used by the User solely to promote the expeditious treatment of poison cases and for such purposes access to and retrieval of information on AfriTox ONLINE shall, subject to due and proper compliance with clause 7.3, be permitted solely to and by medical practitioners registered with the South African Medical and Dental Council or with the official medical registration authority of their country of origin, who are at the time when access is required, treating patients suffering or suspected to be suffering from poisoning and provided only that information which is necessary for the treatment of each

specific case may be retrieved. The User shall not allow any other person access to AfriTox ONLINE without the prior written consent of the University first having been obtained in respect of each such other person.

- 3.4 The User hereby undertakes that it shall use, supervise and control the use of AfriTox ONLINE solely in accordance with the terms of this Agreement and further that it shall not at any time after expiry or termination for whatsoever cause of this Agreement use or disclose any information relating to AfriTox ONLINE, whether directly or indirectly, to any person whomsoever without the written consent of the University first having been obtained.
- 3.5 The User shall be entitled to quote the name of the University in connection with the use of AfriTox ONLINE, solely in the event that AfriTox ONLINE is not translated or modified in any manner and is to be used in the medium and format as issued by the University. If the User translates or modifies AfriTox ONLINE in any manner as may be permitted in terms of this Agreement, the User shall be entitled to make reference to the University in connection with the use of AfriTox ONLINE solely by using the following nomenclature: "The University of Cape Town Poison Information System as modified by x", x being the full name of the party that effected the translation or modification.
- 3.6 Should the User conclude this Agreement for access to AfriTox ONLINE and subsequently require access to AfriTox OFFLINE, a separate agreement will need to be signed.

4. SYSTEM ENHANCEMENT

- 4.1 The User shall automatically have access to the updated system of AfriTox ONLINE on accessing the internet to ensure that the data is current. Access to AfriTox ONLINE can be denied on misuse or non-payment of the Licence Fee.

5. CHARGES AND DELIVERY

- 5.1 The Licence Fee shall be due and payable in full and free of bank charges and exchange by the User to the University forthwith on execution of this Agreement and on receipt of such payment, the University shall forthwith supply the usernames and password to permit the User to download AfriTox ONLINE via the internet. The License Fee of the first payment shall be calculated pro-rata for the period of time until the next annual renewal cycle on 1 April.
- 5.2 An annual renewal fee shall be due and payable in full and free of bank charges and exchange by the User to the University on the first day of April each succeeding year to provide for automatic access to the continuously updated AfriTox ONLINE. The first annual renewal fee shall be payable on 1 April following the date on which the licence agreement becomes effective, which shall coincide with the last date of signature to this Agreement and shall be pro-rated accordingly.

- 5.3 It is hereby recorded that the annual renewal fee is payable not merely for acquiring access to AfriTox ONLINE but also in respect of the research and work undertaken by the University in the on-going seeking, collection, collation and updating thereof.
- 5.4 The Licence Fee and annual renewal fee shall be subject to an annual increase which shall be commensurate with the Consumer Price Index.

6. PROPRIETARY RIGHTS AND CONFIDENTIALITY

- 6.1 The User acknowledges that AfriTox ONLINE and all copies or reproductions thereof, including translations and any compilations whether whole or partial, or authorized or unauthorized and all copyright to and other intellectual property rights used or embodied in or in connection with the aforesaid are and shall at all times remain the sole property of the University and undertakes that same shall at all times be treated with the utmost confidentiality.
- 6.2 The User shall not do, omit or allow to be done or omitted any act or thing which in the opinion of the University may jeopardize the University's rights in or the confidentiality of the property referred to in clause 7.1.
- 6.3 The User shall retain, preserve and keep secure the original of each and every document subscribed to in accordance with this Agreement, which document the User agrees shall be the property of the University. The User undertakes to deliver to the University from time to time and on request by notice such original documents and register or update thereof as the University may specify.

7. CONDITIONS FOR DATA RETRIEVAL

The following conditions apply to the User who has been permitted access to retrieval of data from AfriTox ONLINE:

- 7.1 All information on AfriTox ONLINE is strictly confidential and the retrieval thereof is permitted solely for the purposes of facilitating the treatment of patients suffering or suspected to be suffering from poisoning. The User undertakes at all times to maintain the confidentiality of the information on AfriTox ONLINE.
- 7.2 No information retrieved from AfriTox ONLINE shall be disclosed to any third party unless essential to the treatment of the patient in respect of whom that information was retrieved.
- 7.3 Information has been compiled diligently and while all information has been carefully checked, the persons retrieving and using the information shall bear full responsibility in connection with the use thereof. Whenever any doubt arises as to the correctness of information retrieved from AfriTox ONLINE, standard text

books, experts or the relevant company or other authority should be consulted. Notwithstanding the classification of information, the University of Cape Town, the Director of Hospital Services of the Cape Provincial Administration and all other persons who designed, developed, compiled, prepared and checked AfriTox ONLINE or contributed thereto, do not warrant that the information contained thereon is correct and shall not bear any responsibility for errors or omissions nor any liability towards any person under any circumstances for any loss, injury, death or damage, to persons or property, of whatsoever nature and howsoever caused as a result of or arising in connection with the use of AfriTox ONLINE or the retrieval of information therefrom.

- 7.4 In the event that any errors or omissions are found on AfriTox ONLINE, the User should forthwith notify the Poisons Information Centre of the Department of Paediatrics and Child Health thereof.

8. INTELLECTUAL PROPERTY RIGHT INFRINGEMENT

8.1 If any action or claim against the University for or of any intellectual property right infringement has occurred or in the University's opinion is likely to occur through the use of AfriTox ONLINE by the User in accordance with the provisions of this Agreement, or through the use of AfriTox ONLINE by any other party with whom the University has contracted on similar terms in accordance with the provisions of such other agreement, the User hereby agrees to permit the University at its option and expense to:-

8.1.1 procure for the User the right to continue using AfriTox ONLINE; or

8.1.2 modify AfriTox ONLINE so that it becomes non-infringing; or

8.1.3 replace AfriTox ONLINE by a non-infringing system; or

8.1.4 terminate this Agreement forthwith on the giving of notice thereof to the User in which event the sole obligation of the University to the User shall be to refund a proportionate amount of the Licence Fee relative to the unexpired fixed period of the Agreement.

8.2 If any action or claim against the University for or of any intellectual property right infringement has occurred or in the opinion of the University is likely to occur as a result of the breach by the User of any of its obligations under this Agreement, whether during or after the currency of this Agreement, the University may at its sole option defend, settle or take such action as it in its sole discretion deems necessary to counter the consequences of such breach and action or claim and the User hereby fully indemnifies the University against and in respect of all such costs, including legal costs on an attorney and client scale, and damages that the University may incur in connection with the aforesaid.

8.3 The University shall have no obligation to defend or contribute in any manner to the defence of any claim or action brought against the User in respect of any intellectual property right infringement howsoever such claim or action arises.

9. EXCLUSION OF THE UNIVERSITY'S LIABILITY

9.1 The University shall not in any circumstances be liable to the User or to any third party for any loss, injury, death or damage, to person or property, of whatsoever nature and whether direct, indirect, special or consequential and howsoever and whensoever caused or arising (whether in contract or in delict, including negligence by the University or its employees or agents) in connection with or in relation to this Agreement and/or AfriTox ONLINE and/or the use otherwise thereof and the User hereby indemnifies and holds the University harmless against and from any claims and/or action by any person, and all legal costs, on an attorney and client scale, that the University may incur in connection therewith, relating to the aforesaid.

10. TERMINATION

10.1 This Agreement shall terminate on expiry by effluxion of time of the fixed period as specified in clause 11.1, unless the User shall exercise its option to renew the Agreement as provided in clause 11.

10.2 The University may terminate this Agreement forthwith by notice in writing:

10.2.1 if the User shall have failed to pay the Licence Fee or the Update Fee or any part of either or any other sums due to the University within 14 (fourteen) days after they shall have become due;

10.2.2 if the User shall have committed any breach of its other obligations hereunder and failed to remedy such breach within 7 (seven) days after notice of such breach requiring the remedy thereof has been served by the University on the User;

10.2.3 if the User shall have committed any breach of its obligations hereunder which is not capable of remedy.

10.3 The User shall be entitled to give written notice of termination to the University 2 (two) months prior to the anniversary date of the Effective Date of this Agreement in the first year and thereafter written notice of termination must be furnished 2 (two) months prior to 1 April of any successive year of this Agreement.

10.4 If this Agreement is terminated under any of the provisions of clause 10.2, the whole or any unpaid portion of the Licence Fee and all such other fees and charges that may then be payable hereunder shall thereupon immediately become due and payable as and for damages sustained by the University by reason of such termination and similarly any payment received by the University in respect of the Licence Fee and any other fee or charge hereunder shall be forfeited to the University as and for and on account of such damages.

10.5 On the termination of this Agreement howsoever terminated and for whatsoever reason, the User shall forthwith return to the University or destroy (as the University shall instruct) any copies, translations, compilations and reproductions of AfriTox ONLINE, whether whole or in part and whether authorized or unauthorized, together with all documentation relating thereto and the User shall furthermore furnish the University with a certificate certifying that the aforesaid has been done.

11. PERIOD OF AGREEMENT

11.1 This Agreement shall, subject to clause 11.2, endure for a fixed period of 5 (five) years, commencing on the Effective Date and provided that annual update fees are paid timeously.

11.2 On expiry of the above fixed period, the User shall have the option to renew this Agreement for a further period of 1 (one) year upon and subject to the same terms and conditions as contained herein, provided that the amounts of the Licence Fee and the Update Fee payable in respect of such further fixed period shall be reviewed and determined at the sole discretion of the University.

11.3 In the event that the User intends to exercise its option to renew as provided in clause 11.2, it shall by no later than 2 (two) months prior to the expiry of the fixed period, give notice thereof to the University, failing which such option shall lapse.

12. DISPUTE RESOLUTION

12.1 The Parties shall use all reasonable efforts to resolve any dispute that may arise under this Agreement through good faith negotiations.

12.2 In the event that the Parties are unable to resolve the dispute concerned, the Parties shall attempt in good faith to reach a negotiated resolution by designating an officer of appropriate authority from each party to resolve the dispute and by recourse to whatever means they deem appropriate, including the use of technical, legal, accounting or other experts, each Party to bear its own costs in relation to such expertise as applicable.

12.3 In the event that the Parties are unable to reach a settlement, either Party shall be entitled to submit such dispute for determination by arbitration in Cape Town, which shall be heard by an arbitrator to be agreed between them, failing which one shall be nominated by the President of the Law Society of Cape Town.

12.4 The arbitration shall commence within 30 (Thirty) days of the appointment of the arbitrator.

- 12.5 The decision of the arbitrator shall be final and binding, and may at the request of either of the Parties be made an Order of Court, in a Court of competent jurisdiction, which shall include an order on legal costs.
- 12.6 The University shall have the right, but shall not be obliged, to bring any proceedings for the enforcement of its rights arising out of or from the conclusion or termination of this Agreement, or any breach thereof by the User, against the User in the Magistrate's Court having jurisdiction in respect of the person of the User, from time to time, notwithstanding that the relief claimed may exceed the jurisdiction of such Magistrate's Court and shall be entitled to recover from the User all costs (on an attorney and client scale) and collection commission, if any, which the University may incur in the bringing of any such proceedings.

13. SERVICE OF REQUIRED NOTICES

- 13.1 The University and the User hereby select their respective *domicilia citandi et executandi* for all purposes under this Agreement as follows:-

The University of Cape Town-
Department of Paediatrics and Child Health
Institute of Child Health
University of Cape Town
Rondebosch, 7700

the User: Address details as inserted in the address field on the application to subscribe form shall apply.

- 13.2 Any notices to be addressed to the User by UCT, may be sent by email and shall be deemed received if a message receipt is obtained by the sending party.

14. GENERAL

- 14.1 This Agreement shall not affect the University's right to grant the same, or substantially similar Licence as is provided in this Agreement to any third party upon and subject to any terms and conditions which the University may in its sole discretion agree to.
- 14.2 The University shall be entitled to assign its rights and obligations hereunder.
- 14.3 The User shall not assign, transfer or change the Licence, this Agreement or AfriTox ONLINE.
- 14.4 No extension of time, leniency, relaxation or other indulgence which the one party may grant to the other in the due performance of their respective obligations hereunder shall constitute or be deemed to be a waiver by or

operate as an estoppel against or prejudice that party of or in respect of the due assertion or enforcement of its rights against the other hereunder.

- 14.5 The clause headings in this Agreement are for ease of reference only and in no way affect the construction thereof.
- 14.6 This Agreement includes the schedules above the respective signatures of the University and the User and is the complete and exclusive statement of the agreement between such Parties. No alteration or variation of this Agreement shall be of any force or effect unless it is recorded in writing and signed by both the University and the User.

By submitting the application to subscribe to AfriTox ONLINE, the User acknowledges that they have read and understood the contents of AfriTox ONLINE's Licence Agreement and its confidentiality requirements and that the computer specifications required for operation of AfriTox ONLINE have been read and understood.