

# Element Biosciences

## Terms & Conditions for Research Services

- Definitions:** “Agreement” means the applicable SOW (if any), these Terms and Conditions, and any applicable Supplementary Terms. “Customer” means the person or entity purchasing the Services from Element. “Customer Materials” means materials provided by Customer to Element for use in the performance of the Services. “Element” means Element Biosciences, Inc. and its affiliates. “Element Materials” means materials, including without limitation software, provided by Element to Customer in the performance of the Services. “Element Technology” means methods, materials, equipment, and/or related intellectual property owned, controlled, or licensed by Element or its affiliates. “Purchase Order” means a purchase order provided by Customer to Element for the purchase of Services from Element. “Services” means all sequencing and analysis research services and/or demo services provided pursuant to a Purchase Order. “SOW” means the quote or other written statement of work provided by Element for the purchase of Services from Element. “Supplemental Terms” means additional software licenses, limited use label licenses, or other additional terms that apply to the Services and that are listed on SOW, Seller’s website, or in the documentation that accompanies the Services. “Terms and Conditions” means these Element Terms and Conditions for Research Services.
- Acceptance:** This Agreement is an offer to sell and when a Purchase Order is accepted by Element becomes the exclusive agreement between the parties relating to Services. In the event of a conflict with the documents constituting this Agreement, said documents will be given the following order of precedence: (i) the applicable SOW; (ii) any applicable Supplemental Terms; and (iii) the Terms and Conditions. Any Customer terms of purchase and/or terms or conditions in Customer’s Purchase Order and/or other similar documents that are inconsistent with, in addition to, or that alter in any way the provisions of this Agreement are hereby expressly rejected and will not apply to any Services.
- Performance of Services.** Element will perform the Services as an independent contractor, using Element Technology and Customer Materials. Element will provide Customer with data and/or work product generated by Element using Customer Materials in performance of the Services as specified in the SOW (collectively “Deliverables”). Element will make a good faith effort to start and complete all Services on time and will notify Customer if substantial delays are likely. Element will comply with all laws and regulations generally applicable to the Services. The Services are not performed and the Deliverables are not produced in accordance with United States Food and Drug Administration good manufacturing practices or good laboratory practices or in accordance with any other similar laws or regulations in other jurisdictions. Element may delegate its rights and/or obligations under this Agreement, or portion thereof, to an affiliate or authorized subcontractor, provided that all Services will be performed in accordance with the Agreement.
- Customer Materials.** Customer will provide Element with Customer Materials specified in the SOW, in compliance with applicable laws and regulations and in sufficient amounts, as well as relevant safety information and other characteristics of Customer Materials needed by Element to perform the Services, including without limitation any certification or documentation of Customer Materials reasonably requested by Element. Customer represents and warrants that (i) it has the right to transfer the Customer Materials to Element for use as set forth herein, and (ii) the Customer Materials do not and will not contain any personally identifiable information, personal health information, or Protected Health Information (as said term is defined at 45 C.F.R. 160.13). The Customer Materials, and all information about Customer Materials, whether provided by Customer or generated by Element in the performance of the Services, will be subject to the confidentiality and non-use requirements of Section 9. Element will use Customer Materials and Customer Confidential Information only in accordance with the SOW and will not modify nor reverse engineer Customer Materials except as agreed therein. Unless otherwise specified in the SOW or agreed in writing, any Customer Materials not consumed in the Services or required for additional Services will be destroyed after six months. Element will not transfer Customer Materials, in whole or in part, to any third party, other than a subcontractor or affiliate for purposes of performing the Services, without Customer’s prior written approval.
- Element Materials.** As part of the Services, Element may provide Customer with Element Materials. The Element Materials, and all information about Element Materials, whether provided by Element or generated by Customer in the performance of the Services, will be subject to the confidentiality and non-use requirements of Section 9. Customer will use Element Materials and Element Confidential Information only in accordance with the SOW and will not modify nor reverse engineer Element Materials except as agreed therein. Unless otherwise specified in the SOW or agreed in writing, any Element Materials in Customer’s possession will be returned to Element at the end of the Services. Customer will not transfer Element Materials, in whole or in part, to any third party without Element’s prior written approval.

6. **Use Limitations.** Customer agrees to use Deliverables only for Customer's lawful internal research purposes and in accordance with any Limited Use Label License (LULL) identified in the SOW, these Terms and Conditions, and all applicable laws and regulations. Where more than one LULL is applicable, the most restrictive LULL will apply, and these Terms and Conditions take precedence over any less restrictive LULL. Without limiting the foregoing, Customer will not directly or indirectly furnish Deliverables or information provided hereunder to any entity, or destination, or for any use, except in full accordance with all applicable laws and regulations, including without limitation export control and trade sanctions laws and regulations of the United States. Customer agrees that Element may use Deliverables for Element's internal research and development purposes, including development and improvement of Element products and services.
7. **Payments.** Unless otherwise specified in the SOW, Element will provide Customer with an invoice upon completion of the Services and Customer will pay said invoice within 30 days of Customer's receipt of said invoice. Each Purchase Order is a separate transaction and Customer may not offset payments from other Purchase Orders or other transactions with Element. Any amount not paid when due will accrue interest until paid at the rate of 1.5% per month or the maximum amount allowed by law, whichever is less, and Customer will be responsible for any reasonable costs of collection (including collection agency fees and attorneys' fees) incurred by Element. Where invoices for Services are not timely paid, subsequent Services or Purchase Orders may be canceled or delayed or subject to prepayment until overdue amounts are paid.
8. **Ownership, Intellectual Property.** As between the parties, Customer will be the exclusive owner of (i) Customer Confidential Information, (ii) Customer Materials, and (iii) Deliverables, excluding TAP Deliverables (as defined below), ((i)-(iii) collectively, the "Customer Property"). As between the parties, Element will be the exclusive owner of Element Materials and Element Technology and any improvements or modifications thereof, whether developed before or during the performance of the Services. Except to the extent necessary to use the Deliverables in accordance with Section 5, nothing in the Agreement will be construed as conferring to Customer explicitly or by implication, estoppel or otherwise any license, right or immunity under Element's intellectual property rights, including without limitation Element Technology. The parties will jointly own any Deliverables generated as part of Element's Technology Access Program ("TAP Deliverables"). TAP Deliverables will be deemed the Confidential Information of both parties and, in addition to the use limitations in Section 6, Customer will not publish TAP Deliverables and/or disclose or transfer TAP Deliverables to any third party without Element's prior written consent.
9. **Non-Exclusivity.** Unless expressly agreed in writing, all Services are provided on a non-exclusive basis, and Element reserves all rights for itself and its affiliates to provide third parties with deliverables that are identical or similar to Deliverables, provided that Element will not use any Customer Materials or Customer Confidential Information to perform Services for any third party.
10. **Confidentiality.** "Confidential Information" means any and all information and materials disclosed by one party to the other party that is (i) marked "confidential" or otherwise identified in writing as confidential or proprietary at the time of disclosure, or (ii) if not so marked, is understood by a reasonable receiving party from the context of disclosure or from the information itself, to be confidential. Each party will (i) use Confidential Information of the other party only to the extent necessary to perform the Agreement, and (ii) not disclose Confidential Information of the other party to any person other than those persons under its direction who require said Confidential Information in order to perform the Agreement and who have agreed to confidentiality obligation as stringent as those set forth herein. Each party will protect the Confidential Information or materials of the other party by using the same degree of care as said party uses to protect its own Confidential Information, but in any event no less than a reasonable degree of care. Notwithstanding any other provisions herein, each recipient party will have no obligation to the other party for any information or material that is (a) already known to the recipient party; (b) publicly known other than by a wrongful act of the recipient party; (c) received from a third party lawfully entitled to disclose it; (d) disclosed pursuant to an enforceable order of a court or administrative agency; and/or (e) is independently developed by or for the recipient party. The confidentiality obligations set forth in this Section 9 will survive for a period of two (2) years after expiration or termination of this Agreement.
11. **Limited Warranty.** Element's sole warranty for the performance of the Services is that the Services will be performed using due care in accordance with (a) the Agreement, including the respective SOW(s), and (b) laws, regulations and generally prevailing industry standards applicable to said Services. Element does not warrant or represent that the results of the Services, including the Deliverables, will produce scientifically successful results or that they will advance the interests of Customer. If Customer believes that Element, in breach of its limited warranty, has made a material error in the Services that renders the results of said Services invalid, Customer must notify Element of said error in writing, within one month after receipt of the final Deliverable for said Services; and as Customer's sole remedy for said error, Element will either (i) repeat the particular Services at Element's own expense, or (ii) refund to Customer the fees actually paid for the particular Services giving rise to the breach of warranty. THE WARRANTY SET FORTH IN THIS SECTION 10 IS IN LIEU OF ANY AND ALL OTHER WARRANTIES RELATING TO THE SERVICES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF SATISFACTORY QUALITY,

MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR THAT DELIVERABLES OR USE THEREOF WILL NOT INFRINGE ANY THIRD PARTY INTELLECTUAL PROPERTY RIGHT.

12. **Indemnification.** Element will defend, indemnify, and hold harmless Customer, its officers, directors, employees, agents, and representatives from and against any and all losses, liabilities, damages, and expenses (including, but not limited to, reasonable attorneys' fees) resulting from any claims, demands, actions or other proceedings ("Claims") made or instituted by a third party to the extent arising out of or resulting from Element's gross negligence or willful misconduct. Customer will defend, indemnify, and hold harmless Element, its affiliates and its and their respective officers, directors, employees, agents and representatives from and against any and all losses, liabilities, damages, and expenses (including, but not limited to, reasonable attorney's fees) resulting from any Claims made or instituted by a third party to the extent arising out of or resulting from (a) Customer Materials or use thereof in performance of the Services as specified in the SOW; (b) Customer's use of the Deliverables; (c) the manufacture, sale, use (or misuse), and possession of any product or service based in whole or part on Customer's reliance on Deliverables, or any portion or derivative thereof; and/or (d) Customer's breach of this Agreement or its gross negligence or willful misconduct.
13. **Limitation of Liability.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ELEMENT WILL NOT BE LIABLE HEREUNDER, UNDER ANY LEGAL THEORY, FOR ANY INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES OR FOR LOSS OF PROFITS OR LOSS OF BUSINESS, EVEN IF ELEMENT HAD NOTICE OF THE POSSIBILITY THEREOF. ELEMENT'S LIABILITY TO CUSTOMER FOR BREACH OF ANY PROVISION OF THE AGREEMENT (OTHER THAN BREACH OF THE WARRANTY IN SECTION 10 FOR WHICH LIABILITY IS LIMITED TO RE-PERFORMANCE OR REFUND AS SPECIFIED THEREIN) WILL BE LIMITED TO DAMAGES IN AN AMOUNT NOT TO EXCEED THE FEE TO BE PAID FOR THE APPLICABLE SERVICES.
14. **Changes, Termination.** Changes to the Services must be agreed by both parties in writing and may require changes in the fees or timelines. Element may terminate the Agreement if (a) Customer breaches any material provision of the Agreement and fails to remedy the breach to the satisfaction of Element within 15 days after written notice thereof; (b) Element is unable to obtain third party materials or technology specified in the SOW, for reasons beyond Element's reasonable control; (c) Element determines that biosecurity, biosafety, and/or feasibility reasons prevent or are likely to prevent the performance of the Services, or (d) Customer is or is deemed by law to be unable to pay its debts or perform its obligations under the Agreement. Customer will have the right to terminate any SOW upon 30 days prior written notice to Element. Termination of Services in progress will result in a partial charge commensurate with the percentage of Services completed at the time of cancellation, in addition to any other termination or cancellation charges specified in the SOW.
15. **Assignment:** This Agreement may not be assigned by either party without the prior written consent of the other party. Notwithstanding the foregoing, either party may assign, without consent, its rights and obligations hereunder to any successor to all or substantially all of its business that concerns this Agreement (whether by sale of stock or assets, merger, consolidation or otherwise); provided, however, that the assigning party provides written notice of said assignment to the other party and said successor agrees in writing to be bound by the terms of this Agreement. Any attempted assignment contrary to this Agreement is null and void. This Agreement will be binding upon and inure to the benefit of the successors, representatives, and permitted assigns of the parties.
16. **Governing Law.** This Agreement and performance of the parties hereunder will be governed by and interpreted in accordance with the laws of the United States and the State of Delaware, without reference to choice of law provisions. The parties agree that any application of the United Nations Convention on Contracts for the International Sale of Goods is specifically excluded and will NOT apply to this Agreement. Any dispute, controversy, or claim arising out of or relating to this Agreement or to a breach hereof, including without limitation its interpretation, performance or termination, and the determination of the scope or applicability of this agreement to arbitrate, will be finally resolved by arbitration in San Diego, California before one arbitrator. The arbitration will be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures and in accordance with the Expedited Procedures in those Rules, unless the claim is for less than \$100,000, in which case the arbitration will be pursuant to JAMS' Streamlined Arbitration Rules and Procedures. The parties will keep confidential: (i) the fact that any arbitration occurred; (ii) any awards awarded in the arbitration; (iii) all materials used, or created for use in the arbitration; and (iv) all other documents produced in the arbitration and not otherwise in the public domain, except, with respect to each of the foregoing, to the extent that disclosure may be legally required (including to protect or pursue a legal right) or necessary to enforce or challenge an arbitration award before a court or other judicial authority. The arbitrator(s) will award to the prevailing party, if any, its costs and expenses, including its attorneys' fees. The prevailing party will also be entitled to its attorneys' fees and costs in any action to confirm and/or enforce any arbitration award in any judicial proceedings. Judgment on the award may be entered in any court having jurisdiction. Nothing in the Agreement shall prevent either party from seeking provisional relief, and any such request shall not be deemed incompatible with the agreement to arbitrate or a waiver of the right to arbitrate. The parties agree that the exclusive jurisdiction for such relief will be the state or federal courts located in San Diego, California.

17. **Notices:** Any and all notices, requests, demands, or other communications that relate to the other party's failure to perform or which otherwise affect either party's rights under this Agreement will be deemed properly given when furnished by receipted hand-delivery to the other party, deposited with an express courier, or deposited with the postal service (postage prepaid, certified mail, return receipt requested). Except in situations involving hand-delivery, the sender will address all notices, requests, demands or other communications to the address located on the Purchase Order and/or SOW, as applicable.
18. **Publicity:** Except as required by law or deemed necessary under applicable federal or state securities laws or regulations, Customer will not use the name of Element, nor the name of any member of Element's staff, in connection with any publicity without the prior written approval of Element.
19. **Force Majeure:** Except for payment obligations, each party will be relieved of its obligations under this Agreement to the extent that fulfillment of said obligations is prevented by acts of war, labor difficulties, riots, fire, flood, hurricane, windstorm, acts or defaults of common carrier, governmental laws, acts, or regulations (including the inability to obtain any necessary permits), pandemics, epidemics, shortages of materials or any other occurrences, whether or not similar to the foregoing, beyond the reasonable control of the affected party; provided, however, that said relief will only continue for so long as the force majeure condition exists.
20. **General.** This Agreement is the final, complete, and exclusive statement of the understanding between Element and the Customer with respect to the subject matter hereof. This Agreement will expire upon completion of the Services. No terms, conditions, usages of trade, courses of dealing or agreements purporting to modify, vary, explain, or supplement this Agreement will be binding. This Agreement may not be waived, amended, or otherwise modified except by a writing signed by both Element and the Customer. If any provision of this Agreement is held invalid or unenforceable, such provision will be enforced to the maximum extent permissible so as to give effect to the intent of the parties, and the remainder of this Agreement will continue in full force and effect. The relationship of the parties is that of independent contractors, and nothing herein will be construed as establishing one party or any of its employees as the agent, legal representative, joint venturer, partner, employee, or servant of the other. There are no third party beneficiaries to this Agreement. No remedy herein provided will be deemed exclusive of any other remedy allowed by law or in equity. All rights and obligations of the parties set forth herein that expressly or by their nature survive the expiration or termination of this Agreement will continue in full force and effect subsequent to and notwithstanding the expiration or termination of this Agreement until they are satisfied or by their nature expire and will bind the parties and their legal representatives, successors, and permitted assigns.