

ATTENTION: PLEASE READ THIS ENTIRE DOCUMENT CAREFULLY BEFORE USING THE SERVICE. BY CLICKING THE “I ACCEPT” BUTTON, COMPLETING THE REGISTRATION PROCESS, AND/OR USING THE SERVICE, YOU ARE CONFIRMING YOUR AGREEMENT TO BE BOUND BY THE TERMS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO THESE TERMS, OR DO NOT HAVE AUTHORITY TO AGREE TO THESE TERMS, DO NOT CLICK “I ACCEPT,” COMPLETE REGISTRATION, OR USE THE SERVICE.

This Terms of Service Agreement (“Agreement”) is a legal agreement between the person, company, or organization that has executed this Agreement (“You” or “User”) and Element Biosciences, Inc., located at 10055 Barnes Canyon Road, Suite 100, San Diego, California 92121 (“Company”). This Agreement incorporates the provisions in the [Company's Privacy Notice](#).

1. Definitions.

- (a) “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) or if not so marked, is understood by a reasonable receiving party from the context of disclosure or from the information itself, to be confidential.
- (b) “Company Technology” means methods, materials, equipment, and/or related intellectual property owned, controlled, or licensed by Company or its affiliates.
- (c) “Deliverable” means the data made available to Users through the Service.
- (d) “Documentation” means all Software documentation and materials, including without limitation online, electronic, or printed documentation and materials, made available to User by Company for use with the Software.
- (e) “Service” means Company’s ElemBio™ Cloud web application.
- (f) “Software” means any software and any extensions, upgrades, modified versions, updates, additions, and copies supplied by Company or licensed to User by Company, in Company’s sole discretion, as part of the Service.

2. License Grants. Company grants User a personal, non-exclusive, non-transferable, non-sublicensable license to install and use the Software only in object code (machine readable) format for the sole purpose of using the Service, unless otherwise expressly permitted in writing by Company, and in accordance with the terms and conditions of this Agreement, the Documentation, and Company’s terms and conditions of sale.

3. Third Party Licensor Rights. The Software may use third-party software components (“Third Party Licensors”) and may also include open source software components. In order to use this Software, User must abide by the terms and conditions of these components and any associated third party licenses, if any, which are available [here](#). Third Party Licensors may have enforceable rights in the components included in the Software and may be able to enforce such rights directly against User.

4. ElemBio Catalyst. In the event You purchase a subscription to ElemBio Catalyst™ as part of the Services, Company may act as a data processor and any such activities will be governed by the [ElemBio Catalyst Data Processing Addendum](#). For any data received or generated in ElemBio Catalyst (“Catalyst Data”), Company will retain said Catalyst Data for a period of (1) thirty (30) days in active mode such that said Catalyst Data is readily accessible by You and available for download; and (2) subsequent period of eleven (11) months in archive mode, which can then be reactivated upon Your request. For approved Catalyst upgrades, You may select a different archive policy option in Your account to apply to Catalyst Data. All Catalyst Data will be automatically deleted after twelve (12) months following receipt or generation. For approved Catalyst upgrades, You may select a different delete policy option in Your account to apply to Catalyst Data.

5. Restrictions.

- (a) You will not copy, transfer, rent, lend, lease, modify, distribute, or electronically transmit the Software or Documentation or create derivative works based on the Software or Documentation.
- (b) You will not reverse assemble, reverse engineer, decompile, or otherwise discover the source code of the Software.
- (c) You will not remove any proprietary, copyright, trade secret, or warning legend from the Software or any Documentation.
- (d) You will not export or reexport, directly or indirectly, the Software or Documentation into any country prohibited by the United States export control laws or regulations or take any action in violation of all export laws and regulations of the United States and applicable foreign agencies or authorities.

6. Reservation of Rights. You will be the exclusive owner of Your Confidential Information. Title to and ownership of (i) Software and Documentation, and all associated proprietary rights or intellectual property rights, and (ii) Company Technology and any improvements or modifications thereof, whether developed before or during the performance of the Services, remains exclusively with Company or its licensors. The license granted in this Agreement does not constitute a sale of the Company Technology or Software or any portion or copy of it.

7. Use Limitations. User agrees to use Deliverables only for User’s lawful research purposes in accordance with this Agreement and all applicable laws and regulations. Without limiting the foregoing, User 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.

8. Non-Exclusivity. All Services are provided on a non-exclusive basis, and Company reserves all rights for itself and its affiliates to provide third parties with Services, provided that Company will not use any User Confidential Information in providing or performing Services for any third party.

9. Confidentiality. 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. User acknowledges that the Software, including without limitation its content, structure, organization and design, constitute proprietary and valuable trade secrets of Company and/or its licensors and are deemed Company’s Confidential Information. The obligations under this Section will survive any termination of the Agreement. The confidentiality obligations set forth in this Section 9 will survive (i) for a period of two (2) years

after expiration or termination of this Agreement or (ii) with respect to any trade secret as defined by 18 U.S.C. § 1839(3), until such time as the Confidential Information, through no improper action or inaction of the receiving party or any of its agents, affiliates, consultants, employees, officers and directors, ceases to constitute a trade secret as so defined.

10. **Feedback.** User hereby grants to Company, its affiliates, and its and their employees, consultants, and agents, a non-exclusive, worldwide, royalty-free, fully paid, transferable, sub-licensable, irrevocable, perpetual license to use or incorporate into the Service, Software, and/or Company's products any suggestions, ideas, enhancement requests, feedback, recommendations, or other information provided by User relating to the features, functionality, or operation of the Service, Software, and/or Company's products.
11. **Warranty.** Company's sole warranty for the Services is that the Services are provided in accordance with (a) this Agreement and (b) applicable laws and regulations. Company 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 User. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, SERVICES, INCLUDING DELIVERABLES, AND SOFTWARE ARE PROVIDED "AS-IS" AND COMPANY DISCLAIMS ALL WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT OF THIRD PARTIES' RIGHTS, AND FITNESS FOR A PARTICULAR USE. WITHOUT LIMITING THE FOREGOING, COMPANY DOES NOT WARRANT THAT THE FUNCTIONS CONTAINED IN SOFTWARE WILL OPERATE IN THE COMBINATION USER SELECTS OR THAT OPERATION OF SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE.
12. **Indemnification.** Company will defend, indemnify, and hold harmless User, 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 Company's gross negligence or willful misconduct. User will defend, indemnify, and hold harmless Company, 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) User's use of or reliance on the Deliverables; and/or (b) User's breach of this Agreement or its gross negligence or willful misconduct.
13. **Liability Limitations.** COMPANY AND ITS LICENSORS WILL NOT BE LIABLE FOR ANY SPECIAL, INDIRECT, PUNITIVE, OR CONSEQUENTIAL DAMAGES RESULTING FROM USE OF SERVICES OR SOFTWARE OR FOR THE RESULTS OBTAINED THROUGH THE USE OF THE SERVICE OR SOFTWARE. IN NO EVENT WILL COMPANY'S CUMULATIVE LIABILITY FOR DAMAGES HEREUNDER, WHETHER IN AN ACTION IN CONTRACT, WARRANTY, TORT, NEGLIGENCE, STRICT LIABILITY, INDEMNITY, OR OTHERWISE, EXCEED \$10,000. THESE LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.
14. **Termination.** This Agreement and all licenses may be terminated (i) by Company, in addition to other remedies, if User is in breach and fails to cure within 30 days following notice; (ii) on notice by either party hereto if the other party ceases to do business in the normal course, becomes insolvent, or becomes subject to any bankruptcy, insolvency, or equivalent proceedings.
15. **Non-Waiver.** The delay or failure of either party to exercise any right provided in the Agreement will not be deemed a waiver. If any provision is held invalid, all others will remain in force.
16. **Governing Law.** This Agreement, interpretation of this Agreement and any claims or disputes arising out of this Agreement will be governed by the laws of the United States and the State of Delaware, exclusive of its conflicts of laws provisions and without regard to the United Nations Convention on Contracts for the International Sale of Goods. 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 will prevent either party from seeking provisional relief, and any such request will 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. **Notice.** All notices that are required under this Agreement will be in writing and will be considered effective upon receipt, provided that there is proof of delivery by a third party or written acknowledgement by the recipient. The notices addressed to Company will be sent to its address set out above. The notices addressed to User will be sent to its address set forth in the applicable price quotation.
18. **Government Restricted Rights.** The Software is a "commercial item," as that term is defined in 48 C.F.R. 2.101 (Oct. 1995), consisting of "commercial computer software" and "commercial computer software documentation," as such terms are used in 48 C.F.R. 12.212 (Sept. 1995). Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4 (June 1995), all U.S. Government End Users acquire the Software with only those rights set forth herein.
19. **Miscellaneous.** This Agreement contains the entire understanding of the parties and supersedes all other agreements, oral or written, including purchase orders submitted by User, with respect to the subject matter covered in this Agreement. Any other terms and conditions contained in a User purchase order will not apply. This Agreement may be modified only by a writing executed by Company and User. User may not assign, pledge, or otherwise transfer this Agreement, nor any rights or obligations hereunder in whole or in part to any entity. Section headings are for convenience and will have no effect on interpretation. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, that provision will be enforced to the maximum extent permissible and the remaining provisions of this Agreement will remain in full force and effect.