

Element Biosciences

End User License Agreement – Bases2Fastq

ATTENTION: PLEASE READ THIS ENTIRE DOCUMENT CAREFULLY BEFORE COMPLETING THE INSTALLATION PROCESS AND USING THE SOFTWARE. BY INSTALLING AND/OR USING THE SOFTWARE, YOU ARE CONFIRMING YOUR ACCEPTANCE OF 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 INSTALL OR USE THE SOFTWARE.

This End User License Agreement (“EULA” or “Agreement”) is a legal agreement between the person, company, or organization that has licensed this software (“You” or “Licensee”) and Element Biosciences, Inc. located at 10055 Barnes Canyon Road, Suite 100, San Diego, California 92121 (“Company”).

1. **Definitions.**

- (a) "Software" means one or more versions of Bases2Fastq Software and any extensions, upgrades, modified versions, updates, additions and copies supplied by Company or licensed to Licensee by Company, in Company's sole discretion.
- (b) "Documentation" means all Software documentation and materials, including without limitation online, electronic, or printed documentation and materials.

2. **License Grants.** Company grants Licensee 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 use with the Aviti™ system for research use only, 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, Licensee 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 Licensee.

4. **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.

5. (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.** Title to and ownership of Software and Documentation, and all associated proprietary rights or intellectual property rights, remains exclusively with Company or its licensors. The license granted in this Agreement does not constitute a sale of the Software or any portion or copy of it.

7. **Confidentiality.** The term “Confidential Information” means, collectively, non-public information that Company (and its licensors) provide and reasonably consider to be of a confidential, proprietary or trade secret nature, whether in tangible or intangible form, whether designated as confidential or not, and whether or not stored, compiled or memorialized physically, electronically, graphically, photographically, or in writing. Licensee acknowledges that the Software, including without limitation its content, structure, organization and design, constitute proprietary and value trade secrets of Company and/or its licensors and are deemed Company's Confidential Information. Licensee agrees to protect and maintain Company's Confidential Information in confidence using at least the same degree of care it uses for its own similar proprietary information, but in no event less than a reasonable degree of care. Licensee will only use Company's Confidential Information to the extent necessary to exercise the rights expressly granted under this Agreement and will not disclose Company's Confidential Information to anyone for any purpose except to its employees for the purpose of exercising the rights expressly granted under this Agreement. The obligation under this Section will survive any termination of the Agreement.

8. **Feedback.** Licensee 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 Software and/or Company's products any suggestions, ideas, enhancement requests, feedback, recommendations, or other information provided by Licensee relating to the features, functionality, or operation of the Software or Company's products.

9. **Warranty.** SOFTWARE IS 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 LICENSEE SELECTS OR THAT OPERATION OF SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE.
10. **Liability Limitations.** COMPANY AND ITS LICENSORS WILL NOT BE LIABLE FOR ANY SPECIAL, INDIRECT, PUNITIVE, OR CONSEQUENTIAL DAMAGES RESULTING FROM USE OF SOFTWARE OR FOR THE RESULTS OBTAINED THROUGH THE USE OF THE SOFTWARE, INCLUDING ANY LICENSEE APPLICATION 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.
11. **Termination.** This Agreement and the license may be terminated (i) by Company, in addition to other remedies, if Licensee is in default 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. Upon termination for any reason, Licensee will immediately return Software and all copies to Company and delete all Software and all copies.
12. **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.
13. **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.
14. **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 Licensee will be sent to its address set forth in the applicable price quotation.
15. **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.
16. **Miscellaneous.** This Agreement contains the entire understanding of the parties and supersedes all other agreements, oral or written, including purchase orders submitted by Licensee, with respect to the subject matter covered in this Agreement. Any other terms and conditions contained in a Licensee purchase order will not apply. This Agreement may be modified only by a writing executed by Company and Licensee. Licensee 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.