Element Biosciences
End User License Agreement – AvitiOS™

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7. **Use of Data; Feedback.** Company, its affiliates, and its and their employees, consultants, and agents may monitor the Software and collect data regarding the performance and operation of the Software and Company's Aviti system ("Performance Data") and use said Performance Data to (i) provide service support to users, (ii) detect and address threats to the functionality, security, integrity and availability of the Software and/or Aviti system, (iii) detect and address violations of this Agreement, and (iv) improve the Software ((i)-(iv) collectively, the "Permitted Purpose"). Performance Data will exclude any personal information and sequence output data generated by the Software and Company's Aviti system. Company and its affiliates and its and their employees, consultants and agents will only use Performance Data for the Permitted Purpose.

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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.

10. **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.

11. **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.

12. **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.

13. **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.

14. **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.

15. **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.