

## Culture Biosciences Terms of Service

Last Updated: February 9, 2019

Welcome, and thank you for your interest in Culture Biosciences, Inc. ("**Culture Biosciences**," "**we**," or "**us**") and our website at [www.culturebiosciences.com](http://www.culturebiosciences.com) (the "**Site**"). These Terms of Service are a legally binding contract between you and Culture Biosciences regarding your use of the Site.

### PLEASE READ THE FOLLOWING TERMS CAREFULLY.

**BY ACCESSING OR USING THE SITE**, YOU AGREE THAT YOU HAVE READ AND UNDERSTOOD, AND, AS A CONDITION TO YOUR USE OF THE SITE, YOU AGREE TO BE BOUND BY, THE FOLLOWING TERMS AND CONDITIONS, INCLUDING CULTURE BIOSCIENCES' PRIVACY POLICY (TOGETHER, THESE "**TERMS**"). IF YOU ARE NOT ELIGIBLE, OR DO NOT AGREE TO THE TERMS, THEN YOU DO NOT HAVE OUR PERMISSION TO USE THE SITE. YOUR USE OF THE SITE, AND CULTURE BIOSCIENCES' PROVISION OF THE SITE TO YOU, CONSTITUTES AN AGREEMENT BY CULTURE BIOSCIENCES AND BY YOU TO BE BOUND BY THESE TERMS.

**ARBITRATION NOTICE.** Except for certain kinds of disputes described in Section 11.3, you agree that disputes arising under these Terms will be resolved by binding, individual arbitration, and BY ACCEPTING THESE TERMS, YOU AND CULTURE BIOSCIENCES ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE IN ANY CLASS ACTION OR REPRESENTATIVE PROCEEDING. YOU AGREE TO GIVE UP YOUR RIGHT TO GO TO COURT to assert or defend your rights under this contract (except for matters that may be taken to small claims court). Your rights will be determined by a NEUTRAL ARBITRATOR and NOT a judge or jury. (See Section 11.)

1. **Culture Biosciences Site Overview.** The Site provides users with general information about our products and services and enables users to sign up to learn more about our automation tools for fermentation.
2. **Eligibility.** You must be at least 18 years old to use the Site. By agreeing to these Terms, you represent and warrant to us that: (a) you are at least 18 years old; (b) you have not previously been suspended or removed from the Site; and (c) your registration and your use of the Site is in compliance with any and all applicable laws and regulations. If you are an entity, organization, or company, the individual accepting these Terms on your behalf represents and warrants that they have authority to bind you to these Terms and you agree to be bound by these Terms.
3. **Licenses**

- 3.1 **Limited License.** Subject to your complete and ongoing compliance with these Terms, Culture Biosciences grants you, solely for your personal, non-commercial use, a limited, non-exclusive, non-transferable, non-sublicensable, revocable license to access and use the Site.
  - 3.2 **License Restrictions.** Except and solely to the extent such a restriction is impermissible under applicable law, you may not: (a) reproduce, distribute, publicly display, or publicly perform the Site; (b) make modifications to the Site; or (c) interfere with or circumvent any feature of the Site, including any security or access control mechanism. If you are prohibited under applicable law from using the Site, you may not use it.
  - 3.3 **Feedback.** If you choose to provide input and suggestions regarding problems with or proposed modifications or improvements to the Site ("**Feedback**"), then you hereby grant Culture Biosciences an unrestricted, perpetual, irrevocable, non-exclusive, fully-paid, royalty-free right to exploit the Feedback in any manner and for any purpose, including to improve the Site and create other products and services.
4. **Ownership; Proprietary Rights.** The Site is owned and operated by Culture Biosciences. The visual interfaces, graphics, design, compilation, information, data, computer code (including source code or object code), products, software, services, and all other elements of the Site ("**Materials**") provided by Culture Biosciences are protected by intellectual property and other laws. All Materials included in the Site are the property of Culture Biosciences or its third party licensors. Except as expressly authorized by Culture Biosciences, you may not make use of the Materials. Culture Biosciences reserves all rights to the Materials not granted expressly in these Terms.
5. **Prohibited Conduct.** BY USING THE SITE YOU AGREE NOT TO:
    - a. use the Site for any illegal purpose or in violation of any local, state, national, or international law;
    - b. violate, or encourage others to violate, any right of a third party, including by infringing or misappropriating any third party intellectual property right;
    - c. interfere with security-related features of the Site, including by: (i) disabling or circumventing features that prevent or limit use or copying of any content; or (ii) reverse engineering or otherwise attempting to discover the source code of any portion of the Site except to the extent that the activity is expressly permitted by applicable law;
    - d. interfere with the operation of the Site or any user's enjoyment of the Site, including by: (i) uploading or otherwise disseminating any virus, adware,

spyware, worm, or other malicious code; (ii) making any unsolicited offer or advertisement to another user of the Site; (iii) collecting personal information about another user or third party without consent; or (iv) interfering with or disrupting any network, equipment, or server connected to or used to provide the Site;

- e. perform any fraudulent activity including impersonating any person or entity, claiming a false affiliation, accessing any other Site account without permission;
- f. sell or otherwise transfer the access granted under these Terms or any Materials or any right or ability to view, access, or use any Materials; or
- g. attempt to do any of the acts described in this Section 5 or assist or permit any person in engaging in any of the acts described in this Section 5.

6. **Modification of these Terms.** We reserve the right to change these Terms on a going-forward basis at any time. Please check these Terms periodically for changes. If a change to these Terms materially modifies your rights or obligations, we may require that you accept the modified Terms in order to continue to use the Site. Material modifications are effective upon your acceptance of the modified Terms. Immaterial modifications are effective upon publication. Except as expressly permitted in this Section 6, these Terms may be amended only by a written agreement signed by authorized representatives of the parties to these Terms. Disputes arising under these Terms will be resolved in accordance with the version of these Terms that was in effect at the time the dispute arose.

## 7. **Term, Termination and Modification of the Site**

- 7.1 **Term.** These Terms are effective beginning when you accept the Terms, first contact us, or use the Site, and ending when terminated as described in Section 7.2.
- 7.2 **Termination.** If you violate any provision of these Terms, your authorization to access the Site and these Terms automatically terminates. In addition, Culture Biosciences may, at its sole discretion, terminate these Terms or suspend or terminate your access to the Site, at any time for any reason or no reason, with or without notice.
- 7.3 **Effect of Termination.** Upon termination of these Terms: (a) your license rights will terminate and you must immediately cease all use of the Site; and (b) Sections 3.2, 3.3, 4, 7.3, 8, 9, 10, 11 and 12 will survive.
- 7.4 **Modification of the Site.** Culture Biosciences reserves the right to modify or discontinue the Site at any time (including by limiting or discontinuing

certain features of the Site), temporarily or permanently, without notice to you. Culture Biosciences will have no liability for any change to the Site or any suspension or termination of your access to or use of the Site.

8. **Indemnity.** To the fullest extent permitted by law, you are responsible for your use of the Site, and you will defend and indemnify Culture Biosciences and its officers, directors, employees, consultants, affiliates, subsidiaries and agents (together, the “**Culture Biosciences Entities**”) from and against every claim brought by a third party, and any related liability, damage, loss, and expense, including reasonable attorneys’ fees and costs, arising out of or connected with: (a) your unauthorized use of, or misuse of, the Site; (b) your violation of any portion of these Terms, any representation, warranty, or agreement referenced in these Terms, or any applicable law or regulation; (c) your violation of any third party right, including any intellectual property right or publicity, confidentiality, other property, or privacy right; or (d) any dispute or issue between you and any third party. We reserve the right, at our own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you (without limiting your indemnification obligations with respect to that matter), and in that case, you agree to cooperate with our defense of those claims.

9. **Disclaimers; No Warranties**

NONE OF THE CULTURE BIOSCIENCES ENTITIES MAKES ANY REPRESENTATIONS REGARDING THE LIKELIHOOD OR PROBABILITY THAT PARTICIPATION IN THE PRE-SALE WILL ACHIEVE A PARTICULAR INVESTMENT OUTCOME OR GOAL. PAST PERFORMANCE IS NOT A GUARANTEE OF FUTURE SUCCESS, AND VOLATILITY MEANS THAT RETURNS IN ANY PERIOD MAY BE FAR ABOVE OR BELOW THOSE OF PREVIOUS PERIODS. YOU MAY LOSE ALL OR PART OF ANY INVESTMENT YOU MAKE THROUGH YOUR PARTICIPATION IN THE PRE-SALE. YOU FURTHER ACKNOWLEDGE AND AGREE THAT NONE OF THE CULTURE BIOSCIENCES ENTITIES MAKES ANY GUARANTEES OR OTHER COMMITMENTS ABOUT YOUR ABILITY TO ACCESS OR USE THE SITE.

THE SITE AND ALL MATERIALS AND CONTENT AVAILABLE THROUGH THE SITE ARE PROVIDED “AS IS” AND ON AN “AS AVAILABLE” BASIS. CULTURE BIOSCIENCES DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, RELATING TO THE SITE AND ALL MATERIALS AND CONTENT AVAILABLE THROUGH THE SITE, INCLUDING: (A) ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, QUIET ENJOYMENT, OR NON-INFRINGEMENT; AND (B) ANY WARRANTY ARISING OUT OF COURSE OF DEALING, USAGE, OR TRADE. CULTURE BIOSCIENCES DOES NOT WARRANT THAT THE SITE OR ANY PORTION OF THE SITE, OR ANY MATERIALS OR CONTENT OFFERED

THROUGH THE SITE, WILL BE UNINTERRUPTED, SECURE, OR FREE OF ERRORS, VIRUSES, OR OTHER HARMFUL COMPONENTS, AND CULTURE BIOSCIENCES DOES NOT WARRANT THAT ANY OF THOSE ISSUES WILL BE CORRECTED.

NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM THE SITE OR CULTURE BIOSCIENCES ENTITIES OR ANY MATERIALS OR CONTENT AVAILABLE THROUGH THE SITE WILL CREATE ANY WARRANTY REGARDING ANY OF THE CULTURE BIOSCIENCES ENTITIES OR THE SITE THAT IS NOT EXPRESSLY STATED IN THESE TERMS. WE ARE NOT RESPONSIBLE FOR ANY DAMAGE THAT MAY RESULT FROM THE SITE AND YOUR DEALING WITH ANY OTHER SITE USER. YOU UNDERSTAND AND AGREE THAT YOU USE ANY PORTION OF THE SITE AT YOUR OWN DISCRETION AND RISK, AND THAT WE ARE NOT RESPONSIBLE FOR ANY DAMAGE TO YOUR PROPERTY (INCLUDING YOUR COMPUTER SYSTEM OR MOBILE DEVICE USED IN CONNECTION WITH THE SITE) OR ANY LOSS OF DATA, INCLUDING USER CONTENT.

THE LIMITATIONS, EXCLUSIONS AND DISCLAIMERS IN THIS SECTION APPLY TO THE FULLEST EXTENT PERMITTED BY LAW. Culture Biosciences does not disclaim any warranty or other right that Culture Biosciences is prohibited from disclaiming under applicable law.

#### **10. Limitation of Liability**

TO THE FULLEST EXTENT PERMITTED BY LAW, IN NO EVENT WILL THE CULTURE BIOSCIENCES ENTITIES BE LIABLE TO YOU FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES (INCLUDING DAMAGES FOR LOSS OF PROFITS, GOODWILL, OR ANY OTHER INTANGIBLE LOSS) ARISING OUT OF OR RELATING TO YOUR ACCESS TO OR USE OF, OR YOUR INABILITY TO ACCESS OR USE, THE SITE OR ANY MATERIALS OR CONTENT ON THE SITE, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), STATUTE, OR ANY OTHER LEGAL THEORY, AND WHETHER OR NOT ANY CULTURE BIOSCIENCES ENTITY HAS BEEN INFORMED OF THE POSSIBILITY OF DAMAGE.

TO THE FULLEST EXTENT PERMITTED BY LAW, THE AGGREGATE LIABILITY OF THE CULTURE BIOSCIENCES ENTITIES TO YOU FOR ALL CLAIMS ARISING OUT OF OR RELATING TO THE USE OF OR ANY INABILITY TO USE ANY PORTION OF THE SITE OR OTHERWISE UNDER THESE TERMS, WHETHER IN CONTRACT, TORT, OR OTHERWISE, IS LIMITED TO \$100.

EACH PROVISION OF THESE TERMS THAT PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES, OR EXCLUSION OF DAMAGES IS

INTENDED TO AND DOES ALLOCATE THE RISKS BETWEEN THE ENTITIES UNDER THESE TERMS. THIS ALLOCATION IS AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE ENTITIES. EACH OF THESE PROVISIONS IS SEVERABLE AND INDEPENDENT OF ALL OTHER PROVISIONS OF THESE TERMS. THE LIMITATIONS IN THIS SECTION 10 WILL APPLY EVEN IF ANY LIMITED REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

11. **Dispute Resolution and Arbitration** With respect to any and all disputes arising out of or in connection with these Sites or these Terms (including without limitation our Privacy Policy), Culture Biosciences and you agree to negotiate in good faith and undertake reasonable efforts to cooperate with one another in order to achieve a mutually satisfactory resolution. You agree that Culture Biosciences is entitled to obtain preliminary injunctive relief to the extent allowed by law to enforce any of the terms of these Terms.
  - 11.1 **Generally.** Any dispute between you and Culture Biosciences with respect to these Terms that cannot be resolved by amicable discussion (including any question regarding its existence, validity or termination, or the application of the requirement to arbitrate claims), shall be resolved through binding arbitration in Palo Alto, California, conducted in the English language in front of a single arbitrator in accordance with the Federal Arbitration Act, and governed by the Commercial Dispute Resolution Procedures and the Supplementary Procedures for Consumer Related Disputes (collectively, “**AAA Rules**”) of the American Arbitration Association (“**AAA**”), as modified by these Terms, and will be administered by the AAA. The AAA Rules and filing forms are available online at [www.adr.org](http://www.adr.org), by calling the AAA at 1-800-778-7879, or by contacting Culture Biosciences.
  - 11.2 **No Class Actions.** YOU AND CULTURE BIOSCIENCES AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. Further, unless both you and Culture Biosciences agree otherwise, the arbitrator may not consolidate more than one person’s claims, and may not otherwise preside over any form of a representative or class proceeding.
  - 11.3 **Enforceability.** If Section 11.2 is found to be unenforceable or if the entirety of this Section 12 is found to be unenforceable, then the entirety of this Section 11 will be null and void and, in that case, you and Culture Biosciences agree that the exclusive jurisdiction and venue described in Section 12.2 will govern any action arising out of or related to these Terms.

## 12. Miscellaneous

- 12.1 **General Terms.** These Terms, together with the Privacy Policy and any other agreements expressly incorporated by reference into these Terms, are the entire and exclusive understanding and agreement between you and Culture Biosciences regarding your use of the Site. You may not assign or transfer these Terms or your rights under these Terms, in whole or in part, by operation of law or otherwise, without our prior written consent. We may assign these Terms at any time without notice or consent. The failure to require performance of any provision will not affect our right to require performance at any other time after that, nor will a waiver by us of any breach or default of these Terms, or any provision of these Terms, be a waiver of any subsequent breach or default or a waiver of the provision itself. Use of section headers in these Terms is for convenience only and will not have any impact on the interpretation of any provision. Throughout these Terms the use of the word “including” means “including but not limited to”. If any part of these Terms is held to be invalid or unenforceable, the unenforceable part will be given effect to the greatest extent possible, and the remaining parts will remain in full force and effect.
- 12.2 **Governing Law.** These Terms are governed by the laws of the State of California without regard to conflict of law principles. You and Culture Biosciences submit to the personal and exclusive jurisdiction of the state courts and federal courts located within County of San Mateo, California. for resolution of any lawsuit or court proceeding permitted under these Terms. We operate the Site from our offices in California, and we make no representation that Materials included in the Site are appropriate or available for use in other locations.
- 12.3 **Privacy Policy.** Please read the Culture Biosciences Privacy Policy [www.cultuerbiosciences.com/privacy-policy](http://www.cultuerbiosciences.com/privacy-policy) carefully for information relating to our collection, use, storage, disclosure of your personal information. The Culture Biosciences Privacy Policy is incorporated by this reference into, and made a part of, these Terms.
- 12.4 **Additional Terms.** Your use of the Site is subject to all additional terms, policies, rules, or guidelines applicable to the Site or certain features of the Site that we may post on or link to from the Site (the “**Additional Terms**”). All Additional Terms are incorporated by this reference into, and made a part of, these Terms.
- 12.5 **Consent to Electronic Communications.** By using the Site, you consent to receiving certain electronic communications from us as further

described in our Privacy Policy. Please read our Privacy Policy to learn more about our electronic communications practices. You agree that any notices, agreements, disclosures, or other communications that we send to you electronically will satisfy any legal communication requirements, including that those communications be in writing.

- 12.6 **Contact Information.** The Site is offered by Culture Biosciences, Inc. located at 269 E. Grand Avenue, South San Francisco, California 94080. You may contact us by sending correspondence to that address or by emailing us at [inquiries@culturebiosciences.com](mailto:inquiries@culturebiosciences.com)]. You can access a copy of these Terms by clicking here: [www.culturebiosciences.com/terms-of-service](http://www.culturebiosciences.com/terms-of-service)
- 12.7 **No Support.** We are under no obligation to provide support for the Site. In instances where we may offer support, the support will be subject to published policies.
- 12.8 **International Use.** The Site is intended for visitors located within the United States. We make no representation that the Site is appropriate or available for use outside of the United States. Access to the Site from countries or territories or by individuals where such access is illegal is prohibited.