

Terms of Use

Last Updated: December 15, 2022

These Terms of Use (“Terms”) are entered into between Illumina, Inc. (“Illumina”) and Licensee (defined below) and govern Licensee’s use of the Explify RPIP Analysis App, Illumina’s proprietary web-based application for metagenomics testing (“Platform”). As used in these Terms: (1) “Licensee” means: (a) in the case of an individual who accepts these Terms or otherwise accesses the Platform on his or her own behalf, such individual; or (b) in the case of an individual who accepts these Terms or otherwise accesses the Platform on behalf of a company or other legal entity, the company or legal entity; and (2) “Party” refers to Licensee or Illumina individually and “Parties” refers to Illumina and Licensee collectively.

BY ACCEPTING THESE TERMS THROUGH THE REQUIRED PROCESS OR OTHERWISE ACCESSING THE PLATFORM, LICENSEE AGREES THAT LICENSEE HAS READ, UNDERSTOOD, AND IS BOUND BY THESE TERMS. IF LICENSEE DOES NOT AGREE TO THESE TERMS, THEN LICENSEE MAY NOT USE THE PLATFORM.

THE PLATFORM IS INTENDED FOR USE WITH THE RESPIRATORY PANEL ID/AMR PANEL (RPIP), AVAILABLE FROM ILLUMINA AS PART OF THE RESPIRATORY PANEL ID/AMR TARGET ENRICHMENT KIT (“RPIP KIT”). TO PURCHASE AN RPIP KIT, LICENSEE MUST CONTACT ILLUMINA AT CUSTOMERSERVICE@ILLUMINA.COM, OR CONTACT LICENSEE’S LOCAL ILLUMINA SALES REPRESENTATIVE, AND ENTER INTO A SEPARATE AGREEMENT WITH ILLUMINA. ALL USE OF THE PLATFORM IN VIOLATION OF THE PRECEDING SENTENCES IN THIS PARAGRAPH CONSTITUTES A MATERIAL BREACH OF THESE TERMS.

EACH RPIP KIT INCLUDES NINETY-SIX (96) INDEXES/SAMPLES (EACH, A “TEST UNIT”). EACH PURCHASER OF AN RPIP KIT IS AUTHORIZED TO USE THE SERVICES (DEFINED BELOW) THROUGH THE PLATFORM ONCE PER TEST UNIT PURCHASED FROM ILLUMINA, IN EACH CASE FOR A PERIOD OF ONE (1) YEAR FROM THE DATE UPON WHICH LICENSEE PURCHASED THE APPLICABLE TEST UNIT.

1. General.

1. Overview. Each purchaser of an RPIP Kit is authorized to use the Services (as defined below) through the Platform once per Test Unit purchased from Illumina. In connection with Licensee’s purchase of a Test Unit, Licensee will provide next generation sequencing data in FASTQ format (“Licensee Data”) to Illumina through the Platform. Illumina will use its Explify® metagenomics platform to analyze the Licensee Data and Illumina will issue to Licensee a report (“Report”) including the results (“Results”) of such analysis (the “Services”). Illumina will provide one Report for each sample analyzed in connection with a Test Unit (“Sample”), up to a maximum of one hundred (100) Samples per day per user, provided that such Sample is submitted for analysis through the Platform within one (1) year from the date Licensee purchased the applicable Test Unit (“Usage Limitations”). If Licensee requires a Report for more than 100 Samples per

day for a Test Unit, or if Licensee wishes to obtain Services from Illumina without use of the Platform, then Licensee must contact Illumina at techsupport@illumina.com.

2. Eligibility. LICENSEE ACKNOWLEDGES AND AGREES THAT THE PLATFORM IS NOT INTENDED FOR USE BY CONSUMERS (I.E., PERSONAL HOUSEHOLD USE). THE PERSON WHO ACCEPTS THESE TERMS OR OTHERWISE ACCESSES THE PLATFORM MUST BE AT LEAST 18 YEARS OF AGE AND OTHERWISE HAVE THE LEGAL CAPACITY TO ENTER INTO A BINDING CONTRACT. IF SUCH PERSON IS NOT AT LEAST 18 YEARS OF AGE AND DOES NOT OTHERWISE HAVE SUCH LEGAL CAPACITY, OR IS A CONSUMER, THEN SUCH PERSON CANNOT ACCEPT THESE TERMS OR OTHERWISE ACCESS THE PLATFORM. IF LICENSEE IS USING THE SERVICE ON BEHALF OF AN ENTITY OR ORGANIZATION, THEN LICENSEE REPRESENTS AND WARRANTS THAT LICENSEE HAS THE AUTHORITY TO BIND THAT ENTITY OR ORGANIZATION TO THESE TERMS AND LICENSEE AGREES TO BE BOUND BY THESE TERMS ON BEHALF OF THAT ENTITY OR ORGANIZATION.
3. Accounts. To obtain access to the Platform, Licensee must register an account ("Account") with Illumina on the website located at <https://www.illumina.com/products/by-type/informatics-products/basespace-sequence-hub/apps.html>. ILLUMINA SOLELY PROVIDES A METHOD BY WHICH LICENSEE MAY ACCESS THE PLATFORM AND NOTHING IN THESE TERMS MAY BE CONSTRUED TO MAKE ILLUMINA A PARTY TO THESE TERMS. IDBYDNA AND LICENSEE ARE SOLELY RESPONSIBLE FOR FULFILLING ALL OBLIGATIONS SET FORTH THESE TERMS, AND ILLUMINA MAKES NO REPRESENTATION OR WARRANTY REGARDING THE CONTENT, USE, OR PERFORMANCE OF THE PLATFORM.
4. Licensee Data. LICENSEE MAY INCLUDE NEITHER PROTECTED HEALTH INFORMATION, AS SUCH TERM IS DEFINED IN 45 C.F.R. § 160.103 OF THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 AND ITS IMPLEMENTING REGULATIONS (COLLECTIVELY, THE "HIPAA RULES"), NOR PERSONALLY IDENTIFIABLE INFORMATION IN THE DATA FILE TITLE OF ANY LICENSEE DATA.
5. Privacy and Communications. Licensee's use of the Platform is also subject to Illumina's Privacy Policy available at www.illumina.com/company/legal/privacy.html (the "Privacy Policy"). By using the Platform, Licensee consents to receiving certain electronic communications from Illumina as further described in the Privacy Policy. Licensee agrees that any notices, agreements, disclosures, or other communications that Illumina sends to Licensee electronically will satisfy any legal communication requirements, including, without limitation, that such communications be in writing. To the extent the Licensee Data is subject to Europe's General Data Protection Regulation, the United Kingdom's Data Protection Act 2018, or Singapore's Personal Data Protection Act 2012 (together, the "Data Protection Laws"), Illumina's Data Processing Addendum available at www.idbydna.com/dpa is hereby entered into between the Parties and is incorporated by reference into these Terms.
6. Fees.

1. Subject to Licensee's compliance with the Usage Limitations set forth in Section 1(a), Licensee's access to the Platform and use of the Services in connection with a Sample is included with the purchase price of a corresponding Test Unit paid to Illumina. IDBYDNA RESERVES THE RIGHT TO INVOICE LICENSEE FOR AN OVERAGE FEE (AS DEFINED BELOW) FOR LICENSEE'S USE OF THE SERVICES IN CONNECTION WITH A SAMPLE TO THE EXTENT THAT LICENSEE HAS NOT PURCHASED A UNIQUE CORRESPONDING TEST UNIT FROM ILLUMINA WITHIN ONE (1) YEAR PRECEEDING SUCH USE. The "Overage Fee" is twenty-five dollars (\$25) per Sample.
2. Illumina will bill Licensee for any Overage Fees within one hundred eighty (180) days, and Licensee shall pay each invoice within thirty (30) days of the invoice date by check or wire transfer to an account specified by Illumina.

g. Support. Illumina will provide reasonable client support services to Licensee in connection with Licensee's use of the Platform. Licensee may contact Illumina's client support team 24 hours a day, 7 days a week. During normal business hours Licensee can contact Illumina client services at techsupport@illumina.com. Illumina may periodically update the Platform without advance notice to Licensee. Each update that affects Licensee's use of the Platform will result in a change in the version number for the Platform that will appear on result reports. Illumina will not maintain or keep available multiple versions of the Platform. Illumina will notify Licensee of scheduled maintenance downtime through the Platform.

Proprietary Rights.

. License to Platform. Subject to Licensee's complete and ongoing compliance with these Terms, Illumina hereby grants to Licensee during the Term (defined in Section 4(a)) a non-exclusive, non-transferable (except pursuant to Section 8(b)), non-sublicensable, and revocable license to access and use the Platform.

a. Restrictions. Licensee may not do or attempt to do any of the following: (i) reverse engineer, decompile, disassemble, or otherwise attempt to reconstruct, identify, or discover any source code, underlying ideas, underlying user interface techniques, or algorithms of the Platform or Results; (ii) modify the Platform or Results, or sell, lease, license, or otherwise commercialize or distribute the Platform or Results; (iii) interfere with or disrupt the performance of the Platform; (iv) gain unauthorized access to the Platform or its related systems or networks; (v) frame or link to the Platform or any content or material thereon; (vi) provide any false, incorrect, or outdated information to Illumina in connection with Licensee's use of the Platform; (vii) use any portion of the Platform or Results to develop a competitive product or service to those being developed by Illumina; (viii) remove, alter, or obscure in any way any proprietary rights notices of Illumina or its suppliers on or within the Platform or Results; (ix) transmit to the Platform any virus, worm, spyware or other Platform code, file, or program intended to impair, alter, or damage the operation of the Platform or its related systems or networks; or (x) use the Platform or Results in any manner that violates any applicable laws, rules or regulations or infringes any third party rights. The Platform and Results are intended for Licensee's research use only and are not intended to be used in the diagnosis, treatment, or care of persons or animals. For more information, please contact Illumina's client support team.

b. License to Licensee Data. Licensee hereby grants to Illumina a non-exclusive, perpetual, irrevocable, royalty-free, and worldwide right (i) to host, store, and otherwise use Licensee Data for any internal business purpose, including to provide and improve their current and future products, services, resources, systems, tools, and businesses, and (ii) to create, share, and publish aggregated and/or anonymized results derived from Licensee Data.

c. Ownership.

1. Sole Ownership. As between the Parties: (A) Illumina owns and exclusively retains all right, title, and interest in and to the Platform, except to the extent of the license granted in Section 2(a); and (B) Licensee exclusively owns and retains all right, title, and interest in and to Licensee Data and Feedback (defined in Section 2(e)), except to the extent of the licenses granted in Sections 2(c). Each Party retains and reserves all rights that it does not expressly grant to the other in these Terms and does not grant to the other any implied license in these Terms.
2. Joint Ownership. Subject to the restrictions set forth in Section 2(b), the Parties will jointly own and do own an undivided interest in all Results, including all intellectual property rights therein or embodied thereby.

d. Feedback. If Licensee makes available to Illumina, directly or indirectly, feedback, analysis, suggestions and/or comments about any aspect of the Platform or Results (collectively, "Feedback"), then Licensee hereby grants to Illumina a perpetual and irrevocable right to use, exploit, and disclose such Feedback to provide and improve their current and future products, resources, systems, tools, services, and businesses without any restrictions whatsoever or obligation to provide Licensee with any compensation or credit.

Term and Termination.

. Term. These Terms commence upon the first to occur of: (i) Licensee accepting these Terms through the required process; or (ii) the first occasion when Licensee accesses the Platform, and will continue until the termination of these Terms ("Term").

a. Termination. Licensee may terminate these Terms by (i) ceasing to use the Platform and (ii) providing written notice of such termination to Illumina at the address for notice set forth in Section 8(f). Illumina reserves the right, in its sole discretion, to restrict or suspend Licensee's access to the Platform at any time without prior notice or liability for abuse or if Licensee breaches any provision of these Terms. Illumina may further terminate Licensee's Account or these Terms immediately for any or no reason with or without notice to Licensee. Illumina reserves the right to change, suspend or discontinue all or any part of the Platform at any time without prior notice or liability.

b. Effect of Termination; Survival. Upon termination of these Terms for any reason: (i) the license granted in Section 2(a) will automatically terminate; and (ii) the following Sections, and any defined terms and provisions required to interpret or enforce those Sections (but only to the extent required for such interpretation or enforcement), will survive: 1(b), 1(c), 1(d), 1(e), 1(f), 2(b), 2(c), 2(d), 2(e), 3(c), 4, 5, 6, 7, and 8.

Representations and Warranties. Licensee represents and warrants that:

- . Licensee will use the Platform and Results in compliance with all applicable laws, rules and regulations and is solely responsible for the same;
- a. Licensee will promptly inform Illumina if the Licensee Data is subject to the Data Protection Laws;
- b. Licensee will only use the Platform and Results as authorized by the terms hereof and subject to any applicable limitations as may be set forth in the reported Results;
- c. Licensee Data and Feedback do not, and the use or exploitation of the same as contemplated in these Terms will not, infringe, misappropriate, or violate the privacy rights, publicity rights, intellectual property rights, or other rights of any third party, or any applicable laws, rules, or regulations;
- d. all information provided by Licensee in connection with establishing and maintaining Licensee's Account is and shall remain true, accurate, current, and complete and does not include personally identifiable information or protected health information, as such term is defined in the Health Insurance Portability and Accountability Act;
- e. Licensee has obtained and Licensee will obtain all permissions or approvals from each applicable data source, including from Licensee's personnel, as may be necessary or required to provide Licensee Data or any other data to Illumina;
- f. entering into these Terms and performing Licensee's obligations under these Terms do not, and will not, breach or otherwise conflict with Licensee's obligations to any third party;
- g. Licensee has had the opportunity to consult with independent legal counsel prior to accepting these Terms even if Licensee has chosen not to do so;
- h. if Licensee is an individual, then such individual is at least 18 years of age and otherwise has the legal capacity to enter into these Terms; and
- i. if Licensee is a company or other legal entity, then it has all organizational authority of such entity to enter into and perform its obligations under these Terms.

Limitations on Liability and Disclaimers. Without limiting any terms set forth elsewhere in these Terms, the following terms in this Section 5 apply to the fullest extent permitted by law:

- . NEITHER IDBYDNA NOR ANY OF ITS AFFILIATES, LICENSORS, OR SUPPLIERS REPRESENT OR WARRANT THAT: (I) THE PLATFORM OR RESULTS WILL MEET ANY REQUIREMENTS OR NEEDS LICENSEE MAY HAVE OR WILL OPERATE ERROR FREE OR IN AN UNINTERRUPTED FASHION; OR (II) ANY DEFECTS OR ERRORS IN THE PLATFORM OR RESULTS WILL BE CORRECTED. THE PLATFORM AND RESULTS ARE PROVIDED "AS IS" AND IDBYDNA, ITS AFFILIATES AND THEIR RESPECTIVE SUPPLIERS AND LICENSORS HEREBY DISCLAIM ALL IMPLIED WARRANTIES IN CONNECTION WITH THE SAME, INCLUDING THE WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE.
- a. WITHOUT LIMITING EITHER PARTY'S INDEMNIFICATION OBLIGATIONS AND EXCEPT FOR ANY BREACH OF SECTION 2, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY FOR ANY SPECIAL, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, STATUTORY OR PUNITIVE DAMAGES

(INCLUDING LOST OF ANTICIPATED REVENUES OR PROFITS), ARISING FROM ANY CLAIM RELATING TO THESE TERMS, OR THE SUBJECT MATTER HEREOF, WHETHER SUCH CLAIM IS BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EVEN IF ADVISED OF THE POSSIBILITY OR LIKELIHOOD OF SAME. IN NO EVENT SHALL IDBYDNA'S TOTAL LIABILITY UNDER THESE TERMS EXCEED THE TOTAL FEES PAID TO IDBYDNA BY LICENSEE DURING THE TWELVE (12) MONTHS PRECEDING SUCH CLAIM.

b. ANY DISPUTE THAT LICENSEE HAS WITH ANY PARTY OTHER THAN IDBYDNA OR ANY OF ITS AFFILIATES IN CONNECTION WITH THE PLATFORM OR RESULTS IS SOLELY BETWEEN LICENSEE AND ANY SUCH PARTY. ACCORDINGLY, LICENSEE HEREBY IRREVOCABLY RELEASES IDBYDNA AND ITS AFFILIATES FROM ANY AND ALL CLAIMS, DEMANDS AND DAMAGES OF EVERY KIND AND NATURE, WHETHER KNOWN OR UNKNOWN, ARISING OUT OF OR IN ANY WAY CONNECTED WITH SUCH DISPUTES.

Indemnification. To the fullest extent permitted by law, Licensee agrees to defend, indemnify and hold harmless Illumina and its affiliates, and their respective officers, directors, employees, consultants, agents, advisors, vendors, and suppliers, from and against all expenses, losses, or other liabilities incurred in connection with any third party claim (each, a "Claim") arising from or relating to: (a) any use or misuse of the Platform by Licensee; (b) Licensee Data; (c) any breach of these Terms by Licensee; and/or (d) any alleged issue or problem arising from any use of Results by Licensee. Illumina will provide prompt notice to Licensee of any Claim and the right to control the defense (with the reasonable cooperation of Illumina) and settlement of any such claim; provided, that Licensee shall not enter into any settlement that admits fault, wrongdoing, or damages without Illumina's written consent, such consent not to be unreasonably withheld or delayed. Illumina shall have the right to participate, at its own expense and with counsel of its choice, in the defense of any Claim that has been assumed by Licensee.

Dispute Resolution. These Terms will be governed by the laws of the State of California, excluding its conflicts of laws principles. If there is any dispute between the Parties arising out of these Terms (each, a "Dispute"), then authorized representatives of each Party will negotiate in good faith to resolve the Dispute. If such representatives cannot resolve the Dispute after no less than thirty (30) days of good faith negotiations, then any such Dispute may be settled by binding arbitration under the Rules of the American Arbitration Association as presently in force ("Rules") and by three (3) arbitrators appointed in accordance with said Rules. Judgment on the award rendered may be entered in any court having jurisdiction thereof. The place of arbitration will be San Francisco, California. Any monetary award will be in U.S. dollars and the arbitration will be conducted in the English language. The Parties may apply to any court of competent jurisdiction for temporary or permanent injunctive relief, without breach of this Section 7 and without any abridgment of the powers of the arbitrator.

Miscellaneous.

. Federal Government End Use Provisions. Illumina provides the Platform and Results, and all related Platform and technology, for ultimate federal government end use solely in accordance with the following: Government technical data and Platform rights related to the Platform and Results include only those rights customarily provided to the public as specified in these Terms. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Platform) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data – Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Platform or Computer Platform Documentation). If a government agency has a need for rights not granted under these terms,

then it must negotiate with Illumina to determine if there are acceptable terms for granting those rights, and a mutually acceptable written addendum specifically granting those rights must be included in the applicable agreement.

a. Assignment. These Terms bind and are for the benefit of the successors and permitted assigns of each Party. Licensee may not assign these Terms to any third party without Illumina's prior express written consent, which Illumina may withhold in its sole discretion. "Assign" as used in the prior sentence includes any changes of control or sale of stock or assets of Licensee. Illumina may assign these Terms in its sole discretion. Any attempt to assign these Terms other than as permitted in this Section 8(b) will be void.

b. Severability. If any provision in these Terms is held by a court of competent jurisdiction to be unenforceable, then: (i) it will be severed from these Terms; (ii) the court of competent jurisdiction will replace the severed provision with another provision that most closely reflects the Parties' original intent to the fullest extent permitted by law; and (iii) these Terms will remain in full force and effect.

c. Entire Terms; Order of Precedence. These Terms constitute the entire agreement between the Parties with respect to the subject matter set forth in these Terms and supersede any previous or contemporaneous communications, whether oral or written, express, or implied.

d. Waivers; Amendments. All waivers of rights arising under these Terms must be made in writing by the Party waiving rights. Licensee understands and agrees that Illumina may change these Terms at any time without prior notice. Illumina will endeavor to provide Licensee with prior notice of any material changes to these Terms. Licensee may read a current, effective copy of these Terms at any time at www.idbydna.com/terms-of-use/ExplifyRPIP. The revised Terms will become effective at the time of posting on the Platform, and Licensee's use of the Platform after such time will constitute Licensee's acceptance of the revised Terms. If any change to these Terms is not acceptable to Licensee, then Licensee's sole remedy is to stop using the Platform and to cancel Licensee's Account as described in Section 3(b). Notwithstanding the preceding sentences of this Section 8(e), no revisions to these Terms will apply to any dispute between Licensee and Illumina that arose prior to the effective date of those revisions. These Terms may be amended by a written agreement executed by Illumina and Licensee that specifically references this Agreement.

e. Notices. Any notice required or permitted shall be in writing and shall be deemed received when (i) delivered personally; (ii) 5 days after having been sent by registered or certified mail, return receipt requested, postage prepaid (or 10 days for international mail); or (iii) 1 day after deposit with a commercial express courier that provides written verification of receipt.

f. Interpretation. Unless a clear contrary intention appears: (i) any term defined in the singular includes the plural when required by the applicable context; (ii) all references in these Terms to "Sections" are intended to refer to Sections in these Terms; and (iii) the headings in these Terms are for convenience of reference only, will not be deemed to be a part of these Terms, and will not be referred to in connection with the construction or interpretation of these Terms.

g. Publications. Licensee acknowledges that from time to time Illumina may publish information that may include anonymized data and results aggregated across users of the Platform. Illumina will not

publish any information that identifies Licensee without Licensee's express written approval. Please see the Privacy Policy for more information.

h. Export Controls. Licensee agrees to comply with all applicable export and re-export control laws and regulations, including the Export Administration Regulations ("EAR") maintained by the U.S. Department of Commerce, trade and economic sanctions maintained by the Treasury Department's Office of Foreign Assets Control, and the International Traffic in Arms Regulations ("ITAR") maintained by the Department of State. Specifically, Licensee covenants that it will not — directly or indirectly — sell, export, re-export, transfer, divert, or otherwise dispose of any products, software, or technology (including products derived from or based on such technology) received from Illumina under these Terms to any destination, entity, or person prohibited by the laws or regulations of the United States, without obtaining prior authorization from the competent government authorities as required by those laws and regulations. Licensee agrees to indemnify, to the fullest extent permitted by law, Illumina from and against any fines or penalties that may arise as a result of Licensee's breach of this provision.

i. Relationship of the Parties. The Parties are independent contractors, and these Terms do not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between them.