

# TERMS OF USE

Effective Date: November 1, 2024.

## Introduction

Please read these Terms carefully before using our emails, websites and mobile apps provided by Aviagen or its affiliates (collectively, “Aviagen”, “we”, or “us” or “our”) that post a link to these Terms (the “Service”). By visiting or otherwise using the Service in any manner, you agree to the then posted Terms, to be bound by them, and that you have read and understood them. Please read our [Global Privacy Notice](#) to have a better understanding on the personal data we collect and what we do with your personal data.

**THESE TERMS AFFECT YOUR LEGAL RIGHTS, RESPONSIBILITIES AND OBLIGATIONS AND GOVERN YOUR USE OF THE SERVICE, ARE LEGALLY BINDING, LIMIT AVIAGEN’S LIABILITY TO YOU AND REQUIRE YOU TO INDEMNIFY US AND TO SETTLE CERTAIN DISPUTES THROUGH INDIVIDUAL ARBITRATION AND CONSENT TO THE LAWS, JURISDICTION, AND VENUE OF THE STATE OF ALABAMA, U.S.A. IF YOU DO NOT WISH TO BE BOUND BY THESE TERMS, DO NOT USE THE SERVICE AND UNINSTALL MOBILE APPLICATIONS.**

## Updates to these Terms

We may prospectively change these Terms by posting new or changed terms on the Service as more fully explained [here](#).

## Quick Links

**We have summarized some (but not all) of the main topics of these Terms below. The complete provisions, and not the headings or summaries govern.**

- **Grants and Limitations of Rights**
  - We only grant you a limited revocable license to use the Service subject to rules and limitations. [More](#)
  - Your use of our Service is subject to various restrictions designed to protect the Service and users. [More](#)
- **Limitations on Your Remedies**

As permitted by applicable law,

  - We also disclaim most warranties and provide the Service “As Is”. [More](#)
  - Our liability is greatly limited. [More](#)
  - Your equitable or injunctive relief rights are limited. [More](#)
- **Dispute Resolution**
  - As permitted by law, you agree to arbitrate disputes and waive jury trial and class actions. [More](#)
- **Availability of Service**
  - We may change or discontinue our Service, or your right to access it, in whole or in part. [More](#)

## 1. OWNERSHIP AND YOUR RIGHTS TO USE THE SERVICE AND CONTENT.

**A. Ownership.** The Service and all of its content (“**Content**”), including all copyrights, patents, trademarks, service marks, trade names and all other intellectual property rights therein (“**Intellectual Property**”), are owned or controlled by Aviagen, our licensors, and certain other third parties. All right, title, and interest in and to the Content and Intellectual Property available via the Service is the property of Aviagen, our licensors or certain other third parties, and is protected by U.S. and international copyright, trademark, trade dress, patent and/or other Intellectual Property and unfair competition rights and laws to the fullest extent possible. Aviagen owns the copyright in the selection, compilation, assembly, arrangement, and enhancement of the Content on the Service.

### **B. Your Rights to Use the Service and Content.**

- i. Your right to use the Service and Content is subject to your strict compliance with these Terms. Your right to access and use the Service and the Intellectual Property shall automatically terminate upon any violations. These rights are non-exclusive, limited, and revocable by us at any time in our sole discretion without advance notice or liability. As your right to access and use the Service and the content is personal to you, you may not assign nor transfer your right; any attempt to do so is void. You may, for your personal, non-commercial, lawful use only (collectively, the following are the “**Aviagen Licensed Elements**”):
  - 1) Display, view, and use the Content on a computer, mobile or other internet enabled or permitted device (“**Device**”) and/or print one copy of the Content (excluding source and object code in raw form or otherwise) as it is displayed to you;
  - 2) If the Service includes a “Download” link next to a piece of content (including, without limitation, an image, publication, e-book, etc.), you may only download a single copy of such content to a single Device;
  - 3) Download, install and use our mobile apps (“**Mobile App**”) on your Device; provided, however, that you understand and agree that (i) by downloading the Mobile App, Aviagen does not transfer title to the Mobile App to you (i.e., you own the medium on which the Mobile App is recorded, but the Mobile App's owner (which may be Aviagen and/or its third-party Mobile App licensor) will retain full and complete title to such Mobile App); (ii) you may not copy, modify, adapt, translate into any language, distribute, or create derivative works based on the Mobile App, except as expressly authorized in these Terms, without the prior written consent of Aviagen; (iii) you may not assign, rent, lease, or lend the Mobile App to any person or entity and any attempt by you to sublicense, transfer, or assign the Mobile App will be void and of no effect; and (iv) you may not decompile, disassemble, reverse engineer, or attempt to reconstruct, identify, or discover any source code, underlying ideas, underlying user interface techniques, or algorithms of the Mobile App by any means whatsoever, except to the extent the foregoing restriction is prohibited by applicable law; and
  - 4) Use any other functionality expressly provided by Aviagen on or through the Service for use by users, subject to these Terms (including, without limitation, functionality to create and/or post Submissions (as defined below)).

For purposes of certainty, no permission is given by these Terms to display, reproduce or distribute our Aviagen Licensed Elements except as expressly set forth above for the purposes of reviewing the Aviagen Licensed Elements.

- C. Rights of Others.** In using the Service, you must respect the Intellectual Property and rights of others and Aviagen. Your unauthorized use of Content may violate the rights of others and applicable laws, and may result in your civil and criminal liability. If you believe that your work has been infringed via the Service, see [Section 2](#) below.
- D. Reservation of all Rights Not Granted as to Content and Service.** These Terms include only narrow, limited grants of rights to use and access the Service and content. No other right or license may be construed, under any legal theory, by implication, estoppel, industry custom, or otherwise. ALL RIGHTS NOT EXPRESSLY GRANTED TO YOU ARE RESERVED BY AVIAGEN AND ITS LICENSORS AND OTHER THIRD PARTIES. *Any unauthorized use of any Content or the Service for any purpose is prohibited.*
- E. Third-Party Services.** We are not responsible for third parties or their content, advertisement(s), apps or sites (“**Third-Party Services**”). For instance, portions of the Service may be integrated into or linked to third-party sites, platforms and apps that we do not control. Similarly, we may make third-party ads and other Third-party Services, which we also may not control, available to you on or via our Service. This may include the ability to register or sign in to our Services using Facebook Connect or other third-party tools, and to post content on Third-party Services using their plug-ins made available on our Services. Use caution when dealing with third parties and consult their terms of use and privacy policies. We take no responsibility for Third-Party Services. If you are accessing or using the Service through Apple, Android, or any other platform, these are Third-Party Services. If you access our Apps via Apple, click [here](#) for terms and conditions that are applicable to you and are incorporated into the Terms by this reference.

#### TERMS APPLICABLE FOR APPLE IOS.

- (i)** To the extent that you are accessing the Service through an Apple mobile application, you acknowledge that these Terms are entered into between you and Aviagen and, that Apple, Inc. (“**Apple**”) is not a party to these Terms other than as third-party beneficiary as contemplated below.
- (ii)** The license granted to you by Aviagen under the Terms is subject to the permitted Usage Rules set forth in the App Store Terms of Use (see: <http://www.apple.com/legal/itunes/us/terms.html>) and any third-party terms of agreement applicable to the Service.
- (iii)** You acknowledge that Aviagen, and not Apple, is responsible for providing the Service and Content thereof.
- (iv)** You acknowledge that Apple has no obligation whatsoever to furnish any maintenance or any support services to you with respect to the Service.
- (v)** To the maximum extent not prohibited by applicable law, Apple will have no other warranty obligation whatsoever with respect to the Service.
- (vi)** Notwithstanding anything to the contrary herein, and subject to the terms and conditions of the Terms, you acknowledge that, solely as between Apple and Aviagen, Aviagen, and not Apple is responsible for addressing any claims you may have relating to the Service, or your possession

and/or use thereof, including, but not limited, to: (i) product liability claims; (ii) any claim that the Service fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection or similar legislation.

- (vii) Further, you agree that if the Service, or your possession and use of the Service, infringes on a third-party's Intellectual Property rights, you will not hold Apple responsible for the investigation, defense, settlement and discharge of any such Intellectual Property infringement claims.
- (viii) You acknowledge and agree that Apple, and Apple's subsidiaries, are third-party beneficiaries of the Terms, and that, upon your acceptance of the terms and conditions of the Terms, Apple will have the right (and will be deemed to have accepted the right) to enforce the Terms against you as a third-party beneficiary thereof.
- (ix) When using the Service, you agree to comply with any and all third-party terms that are applicable to any platform, website, technology or service that interacts with the Service.
- (x) Your use of real time route guidance on the Service (if any) is at your sole risk. Location data may not be accurate.

[Return to navigation](#)

## 2. CONTENT YOU SUBMIT

- A. User-Generated Content.** To the greatest extent permissible under the jurisdiction where you access the services (which may be more limited in the UK/EEA), you grant us a non-exclusive, unrestricted, unconditional, unlimited, worldwide, irrevocable, perpetual, transferable and cost-free right and license to use, copy, record, distribute, reproduce, disclose, sell, re-sell, sublicense (through multiple levels), display, publicly perform, transmit, publish, broadcast, translate, make derivative works of, and otherwise use and exploit in any manner whatsoever, all or any portion of any material or information you post or submit to us (on or via the Service, or by means other than the Service, including without limitation via our social media pages and accounts such as Facebook, Twitter and LinkedIn) ("**Submissions**"), and derivative works thereof, for any purpose whatsoever in all formats, on or through any means or medium now known or hereafter developed, and with any technology or devices now known or hereafter developed, and to advertise, market, and promote the same, all without any obligation to you not required by applicable law, or explicit terms of our [Global Privacy Notice](#). As permitted by applicable law, you hereby waive, and you agree to waive, any moral rights (including attribution and integrity) that you may have in any Submissions, even if it is altered or changed in a manner not agreeable to you. To the extent not waivable, you irrevocably agree not to exercise such rights (if any) in a manner that interferes with any exercise of the granted rights. You understand that you will not receive any fees, sums, consideration, or remuneration for any of the rights granted in this Section. In addition, we and our successors, assigns and licensees retain all of the rights held by members of the general public with regard to your Submissions. Our receipt of your Submissions is not an admission of their novelty, priority, or originality, and it does not impair our right to contest existing or future Intellectual Property rights relating to your Submissions.

[Return to navigation](#)

### 3. SERVICE AND CONTENT USE RESTRICTIONS.

- A. Service Use Restrictions.** You agree that you will not: (i) use any meta tags or any other “hidden text” utilizing any Intellectual Property; (iii) engage in any activities through or in connection with the Service that seek to attempt to or do harm any individuals or entities or are unlawful, offensive, obscene, lewd, lascivious, filthy, violent, threatening, harassing, or abusive, or that violate any right of any third-party, or are otherwise objectionable to Aviagen; (iv) decompile, disassemble, reverse engineer, or attempt to reconstruct, identify, or discover any source code, underlying ideas, underlying user interface techniques, or algorithms of the Service by any means whatsoever or modify any Service source or object code or any Mobile App or other products, services, or processes accessible through any portion of the Service; (v) engage in any activity that interferes with a user’s access to the Service or the proper operation of the Service, or otherwise causes harm to the Service, Aviagen, or other users of the Service; (vi) interfere with or circumvent any security feature (including any digital rights management mechanism, device or other content protection or access control measure) of the Service or any feature that restricts or enforces limitations on use of or access to the Service, the Content; (vii) harvest or otherwise collect or store any information (including personally identifiable information about other users of the Service, including email addresses, without the express consent of such users); (viii) attempt to gain unauthorized access to the Service, other computer systems or networks connected to the Service, through password mining or any other means; or (ix) otherwise violate these Terms
- B. Content Use Restrictions.** You also agree that, in using the Service, you: (i) will not monitor, gather, copy, or distribute the Content (except as may be a result of standard search engine activity or use of a standard browser) on the Service by using any robot, rover, “bot”, spider, scraper, crawler, spyware, engine, device, software, extraction tool, or any other automatic device, utility, or manual process of any kind; (ii) will not frame or utilize framing techniques to enclose any such content (including any images, text, or page layout); (iii) will keep intact all Trademark, copyright, and other Intellectual Property and other notices contained in such content; (iv) will not use such content in a manner that suggests an unauthorized association with any of our or our licensors’ products, services, or brands; (v) will not make any modifications to such content (other than to the extent of your specifically permitted use of the Aviagen Licensed Elements, if applicable); (vi) will not copy, modify, reproduce, archive, sell, lease, rent, exchange, create derivative works from, publish by hard copy or electronic means, publicly perform, display, disseminate, distribute, broadcast, retransmit, circulate or transfer to any third-party or on any third-party application or website, or otherwise use or exploit such content in any way for any purpose except as specifically permitted by these Terms or with the prior written consent of an officer of Aviagen or, in the case of content from a licensor, the owner of the content; and (vii) will not insert any code or product to manipulate such content in any way that adversely affects any user experience or the Service.
- C. Availability of Service and Content.** To the greatest extent permissible under the jurisdiction where you access the services (which may be more limited in the UK/EEA), Aviagen, in its sole discretion without advance notice or liability, may immediately suspend or terminate the availability of the Service and/or Content (and any elements and features of them), in whole or in part, for any reason, in Aviagen’s sole discretion, and without advance notice or liability.

[Return to navigation](#)

#### 4. NOTICES AND CUSTOMER SERVICE.

You agree that we may give you notices or otherwise respond to you by mail or to your email (if we have it on file) or in any other manner reasonably elected by us. All legal notices to us must be sent to: Aviagen Global Corporate Office, Cummings Research Park, 920 Explorer Boulevard NW, Huntsville, AL 35806 U.S.A. Customer service personnel cannot change or waive Terms.

[Return to navigation](#)

#### 5. PRODUCT SPECIFICATIONS; PRICING; TYPOGRAPHICAL ERRORS.

We strive to accurately describe our products or services offered on the Service; however, we do not warrant that such specifications, pricing, or other content on the Service is complete, accurate, reliable, current, or error-free. As permitted by applicable law, to the extent we permit order to be made via the Service: i) Aviagen shall have the right to refuse or cancel any orders in its sole discretion; and ii) your orders are offers to purchase subject to our acceptance, which we may reject or cancel subject to refund.

[Return to navigation](#)

#### 6. ARBITRATION AND DISPUTE TERMS.

- A. Forum Selection/Jurisdiction.** Jurisdiction and venue for any controversy, allegation, or claim arising out of or relating to the Service, the Content, your Submissions, these Terms, (collectively, “**Dispute**”) shall be in Huntsville, Alabama U.S.A. Each party submits to personal jurisdiction and venue in Huntsville, Alabama U.S.A. for any and all purposes. To the extent that a tribunal of applicable jurisdiction does not apply Alabama law, jurisdiction, or venue, the laws of Belgium shall apply, and the jurisdiction and venue shall be the tribunals located in Brussels, Belgium.
- B. Pre-Arbitration Notification.** Aviagen and you agree that it would be advantageous to discuss and hopefully resolve any Disputes before formal proceedings are initiated; provided, however, that Aviagen need not do so in circumstances where its claims of Intellectual Property rights are concerned (“**IP Disputes**,” with all other disputes referred to as “**General Disputes**”). The party making a claim – whether you or Aviagen – shall send a letter to the other side briefly summarizing the claim and the request for relief. If Aviagen is making a claim, the letter shall be sent, via email, to the email address listed in your Aviagen account, if applicable. If no such information exists or if such information is not current, then we have no notification or delay obligations under this Section 8.B. If you are making a claim, the letter shall be sent to: Attn: General Counsel, Aviagen Global Corporate Office, Cummings Research Park, 920 Explorer Boulevard NW, Huntsville, AL 35806 U.S.A. If the Dispute is not resolved within sixty (60) days after notification, the claimant may proceed to initiate proceedings as set forth in this Section 6. Either you or Aviagen, however, may seek provisional remedies (such as preliminary injunctive relief, subject to Section 6.D) before the expiration of this sixty (60)-day period.
- C. Arbitration of Claims.** Unless you give us notice of opt-out within five (5) business days of your first use of the Service, addressed to: Aviagen Global Corporate Office, Cummings Research Park, 920 Explorer Boulevard NW, Huntsville, AL 35806 U.S.A., all actions or proceedings arising in connection with, touching upon or relating to any Dispute, or the scope of the provisions of this Section, shall be submitted to JAMS ([www.jamsadr.com](http://www.jamsadr.com)) for final and binding arbitration under its Comprehensive Arbitration Rules and Procedures if the matter in dispute is over \$250,000 or under its Streamlined Arbitration Rules and Procedures if the matter in dispute is \$250,000 or less, to be held in Madison County, Alabama, before a single arbitrator in accordance with Alabama law. If the matter in dispute is between Aviagen and a consumer, the matter shall be submitted to JAMS in accordance with its Policy on Consumer Arbitration Pursuant to Pre-Dispute Clauses Minimum Standards of Procedural Fairness. The arbitrator shall be selected by mutual agreement of the parties or, if the parties cannot agree, then by striking from a list of

arbitrators supplied by JAMS. We may have the right to pay the JAMS fees if required for arbitration to be enforceable. If you are a consumer you have the right to an in-person hearing. The arbitration shall be a confidential proceeding, closed to the general public; provided, however, that a party may disclose information relating to the arbitration proceedings to its and its affiliates' lawyers, insurance providers, auditors and other professional advisers. The fact that there is a dispute between the parties that is the subject of arbitration shall be confidential to the same extent. The parties may engage in the discovery or exchange of non-privileged information relevant to the dispute. The arbitrator shall issue a written opinion stating the essential findings and conclusions upon which the arbitrator's award is based. Neither party shall be entitled or permitted to commence or maintain any action in a court of law with respect to any matter in dispute until such matter shall have been submitted to arbitration as herein provided and then only for the enforcement of the arbitrator's award; provided, however, that prior to the appointment of the arbitrator or for remedies beyond the jurisdiction of an arbitrator, at any time, either party may seek pendente lite relief (subject to the provisions of these Terms waiving or limiting that relief) in a court of competent jurisdiction in Madison County, Alabama or, if sought by Aviagen, such other court that may have jurisdiction over you, without thereby waiving its right to arbitration of the dispute or controversy under this Section; provided further, however, that the losing party shall have fifteen (15) business days after the issuance of the arbitrator's decision to fully comply with such decision, after which the prevailing party may enforce such decision by a petition to the Madison County Superior Court or, in the case of you, such other court having jurisdiction over you, which may be made ex parte, for confirmation and enforcement of the award.

**D. Limitation on Injunctive Relief.** AS PERMITTED BY APPLICABLE LAW, IF YOU CLAIM THAT YOU HAVE INCURRED ANY LOSS, DAMAGES, OR INJURIES IN CONNECTION WITH YOUR USE OF THE SERVICE, THEN THE LOSSES, DAMAGES, AND INJURIES WILL NOT BE DEEMED IRREPARABLE OR SUFFICIENT TO ENTITLE YOU TO AN INJUNCTION OR TO OTHER EQUITABLE RELIEF OF ANY KIND. THIS MEANS (WITHOUT LIMITATION) THAT, IN CONNECTION WITH YOUR CLAIM, YOU AGREE THAT YOU WILL NOT SEEK, AND THAT YOU WILL NOT BE PERMITTED TO OBTAIN, ANY COURT OR OTHER ACTION THAT MAY INTERFERE WITH OR PREVENT THE DEVELOPMENT OR EXPLOITATION OF ANY WEBSITE, APPLICATION, CONTENT, SUBMISSIONS, PRODUCT, SERVICE, OR INTELLECTUAL PROPERTY OWNED, LICENSED, USED, OR CONTROLLED BY ANY Aviagen PARTY (DEFINED BELOW) (INCLUDING YOUR LICENSED SUBMISSIONS) OR A LICENSOR OF ANY Aviagen PARTY.

**E. Governing Law.** These Terms, General Disputes and IP Disputes, and any other claim brought by you against Aviagen or by Aviagen against you pursuant to this Section 6, or otherwise related to the Service, Content, Aviagen Licensed Elements, Submissions or other Aviagen products or services, will be governed by, construed, and resolved in accordance with, the laws of the State of Alabama, U.S.A., without regard to its conflicts of law provisions that might apply the laws of another jurisdiction, unless the applicable laws of your jurisdiction of residence require that the laws of such jurisdiction govern, in which case the laws of such jurisdiction are to govern.

Notwithstanding the above, it is understood that if any part of these Terms is invalid or unenforceable in any jurisdiction, then (i) in that jurisdiction it shall be construed, to the fullest effect permitted by law, in order to effect its intent to the greatest extent possible, while the rest of these Terms shall remain in full force and effect, and (ii) in any other jurisdiction, all of these Terms shall remain in full force and effect.

This Section 6 shall be governed solely by the Federal Arbitration Act, 9 U.S.C. §1, et seq., and not by the law of any state, and is enforceable pursuant to its terms on a self-executing basis. You and Aviagen agree that we intend that this Section 6 satisfies the "writing" requirement of the

Federal Arbitration Act. This Section 6 can only be amended by mutual agreement. Either party may seek enforcement of this Section 6 in any court of competent jurisdiction. The arbitrator shall determine any and all challenges to the arbitrability of a claim.

- F. Class Action Waiver.** As permitted by applicable law, both you and Aviagen waive the right to bring any Dispute as a class, consolidated, representative, collective, or private attorney general action, or to participate in a class, consolidated, representative, collective, or private attorney general action regarding any Dispute brought by anyone else. Notwithstanding any provision in the JAMS Comprehensive Arbitration Rules and Procedures to the contrary, the arbitrator shall not have the authority or any jurisdiction to hear the arbitration as a class, consolidated, representative, or private attorney general action or to consolidate, join, or otherwise combine the Disputes of different persons into one proceeding. Notwithstanding the arbitration provision set forth above, if the provision regarding waiver of class, collective, representative, and private attorney general claims of this Section 6 is found to be void or otherwise unenforceable, any such class, collective, representative, or private attorney general claims must be heard and determined through an appropriate court proceeding, and not in arbitration.
- G. Jury Waiver.** **AS PERMITTED BY APPLICABLE LAW, THE PARTIES HEREBY WAIVE THEIR RIGHT TO JURY TRIAL WITH RESPECT TO ALL CLAIMS AND ISSUES ARISING UNDER, IN CONNECTION WITH, TOUCHING UPON OR RELATING TO THESE TERMS, THE BREACH THEREOF AND/OR THE SCOPE OF THE PROVISIONS OF THIS SECTION, WHETHER SOUNDING IN CONTRACT OR TORT, AND INCLUDING ANY CLAIM FOR FRAUDULENT INDUCEMENT THEREOF.**
- H. Small Claims Matters.** Notwithstanding the foregoing, either of us may bring qualifying claim of General Dispute (but not IP Disputes) in small claims court, subject to Section 6.F. The provisions of this Section 6 shall supersede any inconsistent provisions of any prior agreement between the parties. This Section 6 shall remain in full force and effect notwithstanding any termination of your use of the Service or these Terms.

[Return to navigation](#)

## **7. DISCLAIMER OF REPRESENTATIONS AND WARRANTIES.**

- A.** AS PERMITTED BY APPLICABLE LAW, YOUR ACCESS TO AND USE OF THE SERVICE IS AT YOUR SOLE RISK AND THE SERVICE IS PROVIDED ON AN “AS IS”, “AS AVAILABLE”, AND “WITH ALL FAULTS” BASIS. To the fullest extent permissible by applicable law, Aviagen and their direct and indirect parents, subsidiaries, affiliates, and each of their respective employees, directors, members, managers, shareholders, agents, vendors, licensors, licensees, contractors, customers, successors, and assigns (collectively, “**Aviagen Parties**”) hereby disclaim and make no representations, warranties, endorsements, or promises, express or implied, in connection with, or otherwise directly or indirectly related to, without limitation, the Service, Content, Aviagen Licensed Elements, Submissions or other Aviagen products or services, except as set forth in subsection C, below.
- B.** EXCEPT FOR ANY SPECIFIC WARRANTIES PROVIDED HEREIN, OR AS OTHERWISE REQUIRED BY APPLICABLE LAW, AVIAGEN PARTIES HEREBY FURTHER DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES, TITLE, CUSTOM, TRADE, QUIET ENJOYMENT, SYSTEM INTEGRATION AND FREEDOM FROM COMPUTER VIRUS.

- C. NOTWITHSTANDING THE FOREGOING, THIS SECTION DOES NOT EXPAND OR LIMIT (I) ANY EXPRESS, WRITTEN PRODUCT WARRANTY OR RELATED DISCLAIMERS THAT ARE PROVIDED BY AVIAGEN PARTIES OR THEIR SUPPLIERS WITH REGARD TO A PHYSICAL PRODUCT SOLD BY AVIAGEN PARTIES TO YOU, OR ANY WARRANTY ON A PHYSICAL PRODUCT TO THE EXTENT REQUIRED BY APPLICABLE LAW; (II) AVIAGEN PARTIES' LIABILITY FOR PERSONAL INJURY TO YOU CAUSED BY AVIAGEN PARTIES TO THE EXTENT NOT WAIVABLE OR CANNOT BE LIMITED UNDER APPLICABLE LAW; OR (III) ANY CAUSE OF ACTION YOU MAY HAVE AGAINST AVIAGEN PARTIES THAT IS NOT WAIVABLE OR CANNOT BE LIMITED UNDER APPLICABLE LAW.**

[Return to navigation](#)

**8. LIMITATIONS OF OUR LIABILITY.**

- A. AS PERMITTED BY APPLICABLE LAW, UNDER NO CIRCUMSTANCES WILL ANY AVIAGEN PARTIES BE RESPONSIBLE OR LIABLE FOR ANY LOSS OR DAMAGES OF ANY KIND, including personal injury or death or for any direct, indirect, economic, exemplary, special, punitive, incidental, or consequential losses or damages of any kind, including without limitation loss of profits, in connection with, or otherwise directly or indirectly related to, the Service, Content, Aviagen Licensed Elements, or Submissions.**
- B. The foregoing limitations of liability will apply even if any of the events or circumstances were foreseeable and even if Aviagen Parties were advised of or should have known of the possibility of such losses or damages, regardless of whether you bring an action based in contract, negligence, strict liability, or tort (including whether caused, in whole or in part, by negligence, acts of god, telecommunications failure, or destruction of the Service).**
- C. AS PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL AVIAGEN PARTIES' TOTAL LIABILITY TO YOU, FOR ALL POSSIBLE DAMAGES, LOSSES, AND CAUSES OF ACTION IN CONNECTION WITH YOUR ACCESS TO AND USE OF THE SERVICE AND YOUR RIGHTS UNDER THESE TERMS, EXCEED AN AMOUNT EQUAL TO THE AMOUNT YOU HAVE PAID AVIAGEN IN CONNECTION WITH THE TRANSACTION(S) THAT UNDERLIE THE CLAIM(S).**
- D. NOTWITHSTANDING THE FOREGOING, THIS SECTION DOES NOT EXPAND OR LIMIT (I) ANY EXPRESS, WRITTEN PRODUCT WARRANTY OR RELATED DISCLAIMERS THAT ARE PROVIDED BY AVIAGEN PARTIES OR THEIR SUPPLIERS WITH REGARD TO A PHYSICAL PRODUCT SOLD BY AVIAGEN PARTIES TO YOU, OR ANY WARRANTY ON A PHYSICAL PRODUCT TO THE EXTENT REQUIRED BY APPLICABLE LAW; (II) AVIAGEN PARTIES' LIABILITY FOR PERSONAL INJURY TO YOU CAUSED BY AVIAGEN PARTIES TO THE EXTENT NOT WAIVABLE OR CANNOT BE LIMITED UNDER APPLICABLE LAW; OR (III) ANY CAUSE OF ACTION YOU MAY HAVE AGAINST AVIAGEN PARTIES THAT IS NOT WAIVABLE OR CANNOT BE LIMITED UNDER APPLICABLE LAW.**

Residents of the European Union are entitled to the following exclusions to the disclaimers or limitation of liability: Nothing in these Terms shall operate to exclude or limit our liability for death or personal injury caused by negligence, fraud or fraudulent concealment; or any other liability which cannot be excluded or limited under applicable law.

[Return to navigation](#)

## 9. UPDATES TO TERMS.

It is your responsibility to review the posted Terms each time you use the Service (at least prior to each submission). EACH TIME YOU USE THE SERVICE YOU ARE ENTERING INTO A NEW AGREEMENT WITH US ON THE THEN APPLICABLE TERMS AND CONDITIONS AND YOU AGREE THAT WE MAY NOTIFY YOU OF NEW TERMS BY POSTING THEM ON THE SERVICE (OR IN ANY OTHER REASONABLE MANNER OF NOTICE WHICH WE ELECT), AND THAT YOUR USE OF THE SERVICE AFTER SUCH NOTICE CONSTITUTES YOUR GOING FORWARD AGREEMENT TO THE NEW TERMS FOR YOUR NEW USE AND TRANSACTIONS. Any new Terms will be effective as to new use as of the time that we post them, or such later date as may be specified in them or in other notice to you. In the event any notice to you of new, revised, or additional terms is determined by a tribunal to be insufficient, the prior agreement shall continue until sufficient notice to establish a new agreement occurs. You can reject any new, revised or additional terms by discontinuing use of the Service.

[Return to navigation](#)

## 10. GENERAL PROVISIONS.

- A. Aviagen's Consent or Approval.** As to any provision in these Terms that grants Aviagen a right of consent or approval, or permits Aviagen to exercise a right in its "sole discretion," Aviagen may exercise that right in its sole and absolute discretion. No Aviagen consent or approval may be deemed to have been granted by Aviagen without being in writing and signed by an officer of Aviagen.
- B. Consent to Electronic Contacting and Receiving Electronic Records.** When you use our Service, including signing up to receive emails, you consent to receive electronic records from us and consent to us contacting you electronically. We will try to promptly respond to all inquiries, but we are not obligated to do so. You agree that all agreements, notices, disclosures, and other communications that we provide to you electronically satisfy any legal requirement that such communications be in writing. You agree that any time you electronically transact, agree or consent via the Service it is intended to be an electronic signature which binds you as if you had signed on paper. You agree that your use of the Service, other than to read the and [Global Privacy Notice](#), constitutes agreement to the Terms, then posted without further action by you. In order to withdraw your consent, update your contact information, or obtain paper copies of electronic records, you must contact us as outlined in [Section 4](#), and stop using the Service. If you withdraw your consent, you will be removed from any email program. If there is a cost to provide you with paper copies of electronic records, we will disclose that to you prior to sending you electronic records. Your devices must be able to review websites and electronic documents, and receive email to receive electronic records, depending on whether you are using the Service, or subscribe to emails.
- C. Indemnity.** As permitted by applicable law, you agree to, and you hereby, defend (if requested by Aviagen), indemnify, and hold Aviagen Parties harmless from and against any and all claims, damages, losses, costs, investigations, liabilities, judgments, fines, penalties, settlements, interest, and expenses (including attorneys' fees) that directly or indirectly arise from or are related to any claim, suit, action, demand, or proceeding made or brought against any Aviagen Party, or on account of the investigation, defense, or settlement thereof, arising out of or in connection with: (i) your Submissions; (ii) your use of the Service and your activities in connection with the Service; (iii) your breach or alleged breach of these Terms; (iv) your violation or alleged violation of any laws, rules, regulations, codes, statutes, ordinances, or orders of any governmental or quasi-governmental authorities in connection with your use of the Service or your activities in connection with the Service; (v) information or material transmitted through your Device, even if not submitted by you, that infringes, violates, or misappropriates any copyright, trademark,

trade secret, trade dress, patent, publicity, privacy, or other right of any person or entity; (vi) any misrepresentation made by you; and (vii) Aviagen Parties' use of the information that you submit to us (including your Submissions) subject to our [Global Privacy Notice](#) (all of the foregoing, "Claims and Losses"). You will cooperate as fully required by Aviagen Parties, in the defense of any Claim and Losses. Notwithstanding the foregoing, Aviagen Parties retain the exclusive right to settle, compromise, and pay any and all Claims and Losses. Aviagen Parties reserve the right to assume the exclusive defense and control of any Claims and Losses. You will not settle any Claims and Losses without, in each instance, the prior written consent of an officer of a Aviagen Party. This section is not intended to limit any causes of action against us that you may have but are not waivable under applicable law.

- D. Operation of Service; Availability of Products and Services; International Issues.** Aviagen controls and operates the Service from the USA, UK, and EEA, and makes no representation that the Service is appropriate or available for use beyond the USA, UK, and EEA. If you use the Service from other locations, you are doing so on your own initiative and responsible for compliance with applicable local laws regarding your online conduct and acceptable content, if and to the extent local laws apply.
- E. Export Controls.** You are responsible for complying with all applicable trade regulations and laws both foreign and domestic. Except as authorized by U.S. law, you agree and warrant not to export or re-export the software to any country, or to any person, entity, or end-user subject to U.S. export controls or sanctions.
- F. Severability; Interpretation.** If any provision of these Terms is for any reason deemed invalid, unlawful, void, or unenforceable by a court or arbitrator of competent jurisdiction, then that provision will be deemed severable from these Terms, and the invalidity of the provision will not affect the validity or enforceability of the remainder of these Terms. To the extent permitted by applicable law, you agree to waive and will waive, any applicable statutory and common law that may permit a contract to be construed against its drafter.
- G. Investigations; Cooperation with Law Enforcement; Termination; Survival.** As permitted by applicable law, Aviagen reserves the right, without limitation, to: (i) investigate any suspected breaches of its Service security or its information technology or other systems or networks, (ii) investigate any suspected breaches of these Terms, (iii) use any information obtained by Aviagen in accordance with its [Global Privacy Notice](#) in connection with reviewing law enforcement databases or complying with applicable laws and use and/or disclose any information obtained by Aviagen to comply with law enforcement requests or legal requirements in accordance our [Global Privacy Notice](#) , (iv) involve and cooperate with law enforcement authorities in investigating any of the foregoing matters, (v) prosecute violators of these Terms, and (vi) discontinue the Service, in whole or in part, or suspend or terminate your access to it, in whole or in part, including any user accounts or registrations, at any time, without notice, for any reason and without any obligation to you or any third-party. Any suspension or termination will not affect your obligations to Aviagen under these Terms. Upon suspension or termination of your access to the Service, or upon notice from Aviagen, all rights granted to you under these Terms will cease immediately, and you agree that you will immediately discontinue use of the Service. The provisions of these Terms, which by their nature should survive your suspension or termination will survive, including the rights and licenses you grant to Aviagen in these Terms, as well as the indemnities, releases, disclaimers, and limitations on liability and the provisions regarding jurisdiction, choice of law, no class action, and mandatory arbitration.
- H. Assignment.** Aviagen may assign its rights and obligations under these Terms, in whole or in part, to any party at any time without any notice. These Terms may not be assigned by you, and

you may not delegate your duties under them, without the prior written consent of an officer of Aviagen.

- I. Complete Agreement; No Waiver.** These Terms, reflect our complete agreement regarding the Service and supersede any prior agreements, representations, warranties, assurances or discussion related to the Service. Nothing in the preceding sentence shall limit or exclude any liability for fraud or fraudulent misrepresentation. Except as expressly set forth in these Terms, (i) no failure or delay by you or Aviagen in exercising any of rights, powers, or remedies under will operate as a waiver of that or any other right, power, or remedy, and (ii) no waiver or modification of any term of these Terms will be effective unless in writing and signed by the party against whom the waiver or modification is sought to be enforced.
  
- J. California Consumer Rights and Notices.** California residents can obtain information on our privacy practices, including how we comply with the California Online Privacy Protection Act in our [Global Privacy Notice](#).

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//End Terms of Use//