

* THESE FAQ'S ARE NOT INCORPORATED INTO BENCHLING'S OFFICIAL MSA *

Frequently Asked Questions

Thank you for reading this FAQ. It is designed to provide helpful context about Benchling's industry-leading Services and our Benchling Main Services Agreement (MSA), which we use across our entire customer base.

WHAT IS BENCHLING?

Benchling is a cloud-based informatics platform for bioscience R&D groups, which is a hybrid service combining elements of both SaaS (software as a service) and PaaS (platform as a service). Benchling's R&D Platform is a complete solution that supports all aspects of R&D from early discovery to late-stage development, including:

- "off-the-shelf" functionality such as notebooking, registration, sample tracking, workflow management, among other functions
- "codeless configuration" - workflows, permissions and data types can be configured and re-configured by designated admins without any code or vendor involvement so that you can make Benchling adapt to your R&D processes as quickly and often as you wish.
- lab automation software
- inventory management
- software to manage in vivo studies
- molecular biology software suite

You can find more information about Benchling's R&D Cloud [here](#), and examples of Benchling use-cases [here](#).

The flexibility of Benchling's platform allows our customers to use it to best meet their needs. The platform is also data agnostic, empowering customers to use the Benchling Services however they need, but to protect all our customers we do prohibit sensitive data.

Because our customers control *how* they use Benchling's Platform and which Customer Data is processed by it, our customers must agree to certain obligations and restrictions when using it. This flexibility and the restrictions they require to protect the system and other customers are essential to allowing each customer to use the Platform in a way that best suits their needs.

WHY USE THE BENCHLING MAIN SERVICES AGREEMENT?

Benchling's MSA is only 9 pages!

Benchling's MSA is purpose-built and tailored to our unique cloud-based SaaS and our customers' needs. In addition, our MSA is designed to protect both our customers and Benchling.

As a multi-tenant provider with thousands of customers, Benchling follows a single set of procedures across our business and each customer benefits from the same services and protections that we provide to our entire customer base. Therefore, Benchling's concise MSA matches our practices and scales across our entire customer base.

Benchling provides the Benchling Services, a performance warranty, product support, an SLA (99.5%), industry standard IP infringement indemnity, and other enterprise-grade terms to give our customers certainty in what they can expect from Benchling.

Business terms reside in a Sales Order and not the MSA.

HOW DOES BENCHLING PROTECT OUR CUSTOMER DATA?

PRIVACY

As a Data Processor, Benchling has a Data Processing Addendum that reflects the requirements of the GDPR, CCPA and the ever expanding and changing requirements of privacy regulations. Benchling is certified under the EU-U.S. Data Privacy Framework (DPF) and utilizes the DPF as our cross-border transfer and storage mechanism outside of the EU, to the extent the DPF is applicable and remains valid. In the event of the DPF invalidation or inapplicability, Benchling offers the Standard Contractual Clauses as well. *Benchling NEVER sells or attempts to profit from Customer Data.*

You can request that Benchling delete your Customer Data following expiration or termination, and your use of the Benchling Services is subject to the Benchling [Privacy Policy](#).

SECURITY

We take the responsibility of helping you manage your data seriously. To that end, Benchling has industry leading security, and is ISO27001 certified. Benchling is hosted on AWS and undertakes an enterprise-grade security obligation for what is in our control, which applies to every Benchling customer. All Benchling's operations comply with GDPR and CCPA.

Please see more about Benchling's security in our [Benchling Security Center](#).

WHO OWNS IP DEVELOPED FROM OUR CUSTOMER DATA?

Any intellectual property that is developed from your Customer Data via the Benchling Services is owned by you. Benchling will only access Customer Data as necessary to provide you with the Benchling Services or to provide support related to the Benchling Services.

DOES BENCHLING OFFER TERMINATION FOR CONVENIENCE?

As a SaaS provider, Benchling does not offer termination for convenience.

DOES BENCHLING PROVIDE PROFESSIONAL SERVICES?

While Benchling provides professional services (PS), they are different from traditional PS that contain work product and deliverables. Because the Benchling Services are platform-wide, off-the-shelf solutions, Benchling's PS consists of advisory and assistance with integration and configuration of Benchling's platform. Benchling does not create any work-for-hire or traditional deliverables.

Therefore, concepts such as "testing and acceptance", ownership of works-for-hire, assignment of IP rights, etc. are not applicable or appropriate in our MSA since such language would not apply, by default, to Benchling's PS. If Benchling ever makes an exception and specifically agrees to provide work-for-hire or custom deliverables, then this language will go in the statement of work and will only be applicable to that work.

WHAT WARRANTIES DOES BENCHLING PROVIDE?

Benchling offers an industry-standard performance warranty that the Benchling Services will operate in substantial conformity with applicable Documentation.

DOES BENCHLING LIMIT LIABILITY?

Benchling's liability framework is standard across all our customers as well as the SaaS industry. As a data agnostic cloud-provider, we offer a balanced approach to risk that takes account of each party's responsibilities, including the customer's data obligations, with mutual, reasonable liability caps on remedies if something does go wrong.

Benchling Main Services Agreement

Last updated: 1st March 2024

If you have a separate written agreement with Benchling for your use of the Benchling Services, this Benchling Main Services Agreement will not apply to you, and your use of the Benchling Services will be governed by such separate written agreement.

This Benchling Main Services Agreement ("**Agreement**") is entered into by and between Benchling, Inc. ("**Benchling**") and the entity or person placing an order for or accessing the Benchling Services ("**Customer**" or "**you**"). This Agreement consists of the terms and conditions set forth below, and any ordering documents, order descriptions or order confirmations referencing this Agreement ("**Sales Orders**"). If you are accessing or using the Benchling Services on behalf of your company, you represent that you are authorized to accept this Agreement on behalf of your company, and all references to "you" or "Customer" reference your company.

The "**Effective Date**" of this Agreement is the effective date of the first Sales Order referencing this Agreement. This Agreement will govern Customer's initial purchase on the Effective Date as well as any future purchases made by Customer that reference this Agreement.

Benchling may update the terms of this Agreement from time to time. Benchling will provide written notice of any material updates to this Agreement at least thirty (30) days prior to the date the updated version of this Agreement is effective. The updated version of this Agreement will be available at <https://www.benchling.com/main-services-agreement>. Notices for material updates to the terms of this Agreement will be given in accordance with Section 14.3. Following such notice, your continued use of the Benchling Services on or after the date the updated version of this Agreement is effective and binding, as indicated at the top of this Agreement, constitutes your acceptance of the updated version of this Agreement. The updated version of this Agreement supersedes all prior versions. If you do not agree to the updated version of this Agreement, you must stop using the Benchling Services immediately.

BY INDICATING YOUR ACCEPTANCE OF THIS AGREEMENT OR ACCESSING OR USING THE BENCHLING SERVICES, YOU ARE AGREEING TO BE BOUND BY ALL TERMS, CONDITIONS AND NOTICES CONTAINED OR REFERENCED IN THIS

AGREEMENT. IF YOU DO NOT AGREE TO THIS AGREEMENT, PLEASE DO NOT USE THE BENCHLING SERVICES. FOR CLARITY, EACH PARTY EXPRESSLY AGREES THAT THIS AGREEMENT IS LEGALLY BINDING UPON IT.

Accordingly, the parties agree as follows:

1. Benchling Services.

1.1. General Rights.

1.1.1. **Application Services.** During the Sales Order Term, and subject to the terms and conditions of this Agreement, Benchling grants Customer and its Authorized Users a limited, non-exclusive, non-transferable (except as permitted under Section 14.1 (Assignment)) right, during the Term, to access and use the Application Services, up to the maximum number of Authorized Users set forth on the applicable Sales Order(s), and solely for its internal business purposes ("**Permitted Use**").

1.1.2. **Benchling Installed Software.** During the Sales Order Term, and subject to the terms and conditions of this Agreement, Benchling grants Customer a nonexclusive license to download, install, use and run the Benchling Installed Software as necessary for Customer's use in connection with the Application Services and for Customer's own internal business purposes.

1.1.3. **General.** In connection with the Application Services and Benchling Installed Software, Benchling grants Customer the right to access, copy and use the Documentation as part of Customer's Permitted Use. Customer may only use the Benchling Services in compliance with the Documentation. Benchling may, in its sole discretion, update, modify, enhance, or otherwise change the Application Services or the Benchling Installed Software, provided that it maintains backward compatibility and does not have a material and adverse effect. Benchling may delegate the performance of certain portions of the Benchling Services to third parties, including Benchling's wholly owned subsidiaries and Benchling's hosting service provider, provided that Benchling will remain fully responsible for the acts and omissions of such third parties.

1.2. **Affiliates.** If any of Customer's Affiliates use the Benchling Services under this Agreement, then all of the terms of this Agreement that apply to Customer shall apply to such Affiliate and its activities hereunder. Customer will remain responsible for the acts and omissions of Customer Affiliates in connection with each Affiliate's use of the Benchling Services during the term of their orders, including without limitation, breach of the terms of this Agreement applicable to such Affiliate, even if such Control is no longer maintained. Any claim from any Affiliate that uses the Benchling Services under the terms of this Agreement shall only be brought against Benchling by Customer on behalf of such Affiliate. An Affiliate of Customer may enter into its own Sales Order(s) with Benchling incorporating this Agreement with the Affiliate treated as "Customer", which will create a separate agreement between the Affiliate and Benchling. Neither Customer nor any Customer Affiliate will have any rights under each other's Sales Order with Benchling, and breach or termination of any such Sales Order is not breach or termination of any other Sales Order. Notwithstanding the foregoing, Benchling may refuse to provide the Benchling Services to any Affiliate for any reasonable business rationale, including failure to pass a background check, or financial history audit.

1.3. **Authorized Users.** Each Authorized User will be associated with a single, unique email address for purposes of accessing (and being identified to) the Application Services. An Authorized User's email address and password may not be shared or used by any other person or Authorized User. Customer assumes full responsibility and liability for any acts, omissions or failures by its Authorized Users that give rise to any noncompliance, breach or violation of this Agreement and the applicable Sales Order.

1.4. **Unauthorized Access.** Customer will comply with its obligations under this Agreement in establishing a password or other procedures for verifying that only Authorized Users of Customer have access to any administrative functions of the Application Services. Excluding misuse of Customer account directly caused by Benchling's breach of this Agreement, Customer will be responsible for maintaining the security of Customer account, passwords (including but not limited to administrative and user passwords) and files, and for all uses of Customer account with or without Customer's knowledge or consent. Customer will use reasonable efforts to prevent any unauthorized use of the Application Services and Benchling Installed Software and will promptly notify Benchling in writing of any unauthorized use that comes to Customer's attention and provide all reasonable cooperation to prevent and terminate such use.

1.5. **Restrictions on Use.** Customer shall not, and shall not permit any third party to: (a) license, sublicense, sell, resell, rent, lease, loan, assign, transfer, distribute, timeshare, market, publish, reproduce, or otherwise commercially exploit or make the Application Services (or any portion thereof) or the Benchling Installed Software available to any third party other than as contemplated by this Agreement; (b) decompile, disassemble or reverse engineer the Application Services, or otherwise attempt to discover the source code, object code, logic, process or underlying methodology, structure, ideas or algorithms of the Application Services, or related trade secrets, or any software, documentation or data related to the Application Services; (c) use the Benchling Services (or any portion thereof) except to the extent permitted in Section 1.1 (General Rights), or other than (i) in accordance with this Agreement and (ii) in compliance with Benchling's [Acceptable Use Policy](#) ("**AUP**") as well as all Laws; (d) modify, copy, or create any derivative work of any part of Application Services (or any portion thereof); (e) publish any results of benchmark tests run on the Application Services.

- 1.6. **High Risk Activities & Prohibited Data.** Customer will not (a) use the Application Services for High Risk Activities or (b) submit Prohibited Data to the Application Services, and Customer acknowledges that the Application Services are not designed for (and Benchling has no liability for) use prohibited in this Section 1.6. Customer acknowledges that Benchling shall be in no way liable for any damages whatsoever relating to or in connection with High Risk Activities or Prohibited Data.
- 1.7. **Professional Services.** Benchling will provide the Professional Services as set forth in the applicable SOW and any associated exhibits describing the Professional Services.
- 1.8. **Trials and Betas.** Benchling may offer optional Trials and Betas. Use of Trials and Betas is permitted only for Customer's internal evaluation during the period designated by Benchling on the Sales Order (or if not designated, 30 days). Either party may terminate Customer's use of Trials and Betas at any time for any reason. Trials and Betas are provided "AS IS" and may be inoperable, incomplete or include features never released. **Notwithstanding anything else in this Agreement, Benchling offers no warranty, indemnity, SLA or Support for Trials and Betas and its liability for Trials and Betas will not exceed US\$1,000.**
- 1.9. **Third-Party Services.** Any Third-Party Services used by Customer will be governed by Customer's agreement with the third party, not this Agreement, and Benchling does not warrant, support, or assume any liability or other obligation with respect to such Third-Party Services or how such third parties use Customer Data, unless expressly provided otherwise in a Sales Order or other Agreement entered into between Customer and Benchling. If Customer chooses to enable integrations between the Third-Party Services and the Application Services in a manner that requires Benchling to exchange Customer Data with such Third-Party Service, then Customer: (a) grants Benchling permission to allow the Third-Party Service to access Customer Data and information about Customer's usage of the Third-Party Services, as necessary, to enable integration; (b) acknowledges that any such access to Customer Data is solely between Customer and the Third-Party Service and subject to the agreement governing Customer's use of such Third-Party Service (the presentation and manner of acceptance of which is controlled solely by the Third-Party Service); and (c) agrees that Benchling is not responsible for any disclosure, modification, or deletion of Customer Data resulting from such access to Customer Data.
- 1.10. **Equipment.** Customer will be responsible for obtaining and maintaining, at its expense, all the necessary computer hardware, software, services, modems, connections to the internet, and other items operated or provided by Customer or third parties, as required for Customer's access and use of the Benchling Services. Benchling is not responsible for the operation of any services, nor the availability or operation of the Benchling Services, to the extent such availability and operation is dependent upon such services.
2. **Support.** Benchling will provide technical support for the Application Services and Benchling Installed Software to any named Customer system administrators during normal Business Hours as described further in the [Benchling Support Policy](#).
3. **Data Categories.**
 - 3.1. **Customer Data.** Customer hereby grants Benchling a license to use Customer Data and Customer Materials for the purposes of: (a) providing the Benchling Services to Customer in a manner consistent with this Agreement and the Data Processing Addendum; (b) operating, improving and supporting the Benchling Services, solely for the benefit of Customer; and (c) enforcing its rights under this Agreement. Customer is responsible for its Customer Data, including its content and accuracy, and agrees to comply with Laws and the AUP in using the Benchling Services. Customer represents and warrants that it has made all disclosures and has all rights, consents and permissions necessary to use its Customer Data with the Benchling Services without violating or infringing Laws, third-party rights (including intellectual property, publicity or privacy rights) or any terms or privacy policies that apply to any Third-Party Services and Customer Data.
 - 3.2. **Usage Data.** Benchling may collect Usage Data and use it to operate, improve and support the Application Services and the Benchling Installed Software, and for other lawful business purposes, including benchmarking and reports. However, Benchling will not disclose Usage Data externally unless it is: (a) de-identified so that it does not identify Customer, its users or any other person and (b) aggregated with data across other customers.
4. **Proprietary Rights.**
 - 4.1. **Reserved Rights.** Neither party grants the other any rights or licenses not expressly set out in this Agreement. Except for Benchling's express rights in this Agreement, as between the parties, Customer exclusively owns and reserves all right, title and interest in and to Customer Data and Customer Materials, subject to Benchling's rights to process Customer Data in accordance with this Agreement. Except for Customer's express rights in this Agreement, as between the parties, Benchling and its licensors retain all intellectual property and other rights in the Benchling Intellectual Property.
 - 4.2. **Feedback.** If either party provides feedback, suggestions, ideas, enhancement requests, recommendations, or other information (the "**Feedback**") to the other, about the other party's Confidential Information or the Benchling Services, the other party may use the Feedback without restriction or obligation. All Feedback is provided "AS IS" and neither party will publicly identify the other as the source of any Feedback without the other party's written consent.
5. **Payments and Taxes.**

- 5.1. **Fees.** Customer will pay the fees described in the applicable Sales Order within thirty (30) days of the invoice date in U.S. dollars unless otherwise stated in the Sales Order. All fees and expenses are non-refundable except as expressly stated in this Agreement or a Sales Order. Late payments are subject to an interest charge of 1.5% per month, or the maximum rate allowed by law, whichever is less.
- 5.2. **Taxes.** Customer is responsible for any sales, use, value-added, withholding, and other taxes, duties or levies that apply to a Sales Order, assessed by any jurisdiction whatsoever ("**Taxes**"), other than Benchling's income tax. If Benchling is required to pay or collect Taxes for which Customer is responsible, Benchling will invoice Customer and Customer will pay that amount, unless Customer provides Benchling with a valid tax exemption certificate authorized by the appropriate taxing authority. Fees and expenses are exclusive of Taxes.
- 5.3. **Expenses.** Customer will reimburse Benchling for reasonable expenses incurred by Benchling in performing Professional Services at sites other than Benchling facilities that have been pre-approved by Customer in writing and are evidenced by valid receipts.

6. Warranties and Disclaimers.

- 6.1. **Mutual.** Each party represents and warrants that it: (a) has the legal power and authority to enter into this Agreement; and (b) will use industry-standard measures to avoid introducing viruses, malicious code or similar harmful materials into the Application Services or Benchling Installed Software.
- 6.2. **Benchling Additional Warranties.** Benchling warrants that (a) the Application Services and the Benchling Installed Software will perform materially as described in the Documentation during a Sales Order Term ("**Performance Warranty**"); and (b) any Professional Services will be provided in a professional and workmanlike manner ("**Professional Services Warranty**"). The Performance Warranty will not apply if the Application Services or the Benchling Installed Software are used outside the scope of what is permitted by this Agreement and the Documentation.
- 6.3. **Disclaimers.** Benchling Services are provided "as is" and "as available". Except as expressly provided in this Agreement, and to the maximum extent permitted by applicable law, each party expressly disclaims all warranties, express or implied, statutory or otherwise, including, without limitation, warranties of merchantability, fitness for a particular purpose (even if advised of the purpose), accuracy, title, and non-infringement. In addition, except as expressly provided in this Agreement, Benchling does not warrant that access to the Application Services or Benchling Installed Software will be uninterrupted or error free, that Benchling Services will meet Customer's needs, or that data will not be lost. Benchling's warranties in this Section 6 do not apply to issues arising from Third-Party Services or misuse or unauthorized modifications of the Application Services or Benchling Installed Software.

7. Term, and Termination.

- 7.1. **Term.** This Agreement starts on the Effective Date and continues until terminated pursuant to the provisions herein (the "**Term**").
- 7.2. **Termination.** Either party may terminate this Agreement (including all related Sales Orders) if the other party: (a) fails to cure a material breach of this Agreement within thirty (30) days after written notice; (b) ceases operation without a successor; or (c) seeks protection under a bankruptcy, receivership, trust deed, creditors' arrangement, composition or comparable proceeding, or if such a proceeding is instituted against that party and not dismissed within thirty (30) days.
- 7.3. **Data Export & Deletion.**
 - 7.3.1. During a Sales Order Term, Customer may export Customer Data from the Application Services (or Benchling will otherwise make the Customer Data available to Customer) as described in the Documentation.
 - 7.3.2. After sixty (60) days following termination or expiration, Benchling may irretrievably erase any Customer Data stored on the Application Services.
 - 7.3.3. Nonetheless, Benchling may retain Customer Data or Confidential Information in accordance with its standard backup or record retention policies or as required by Law, subject to Section 12 (Security), Section 11 (Confidentiality) and any DPA agreed to between the Customer and Benchling.
- 7.4. **Effect of Termination.** Upon expiration or termination of this Agreement for any reason: (i) Customer's right to use the Benchling Services will cease; (ii) each party will promptly cease all use of, destroy, or return Confidential Information, including for the avoidance of doubt all versions of the Documentation that Customer has in its possession (at Disclosing Party's discretion), (iii) Benchling will terminate Customer and its Authorized Users access to the Application Services, (iv) Customer will promptly, but in no event later than fifteen (15) days after termination, pay in full all fees due or accrued prior to termination.
- 7.5. **Survival.** Upon termination or expiration of this Agreement, all licenses granted hereunder shall immediately terminate. The following provisions shall survive any termination or expiration of this Agreement: Sections 1.5 (Restrictions on Use), 1.6 (High Risk Activities & Prohibited Data), 3 (Data Categories), 4 (Proprietary Rights), 5.1 (Fees), 5.2 (Taxes), 6.3 (Disclaimers), 7.3

(Data Export & Deletion), 7.4 (Effect of Termination), 9 (Limitations of Liability), 10 (Indemnification), 11 (Confidentiality), 14 (General) and 15 (Definitions).

- 8. Suspension.** Benchling may suspend Customer's access to the Application Services, access to Third-Party Services via the Application Services and related services due to a Suspension Event but will use its best efforts to give Customer prior notice so that Customer may seek to resolve the issue and avoid suspension. Benchling is not required to give prior notice in exigent circumstances or for a suspension made to avoid material harm or violation of Laws. Once the Suspension Event is resolved, Benchling will promptly restore Customer's access to the Application Services in accordance with this Agreement.

"Suspension Event" means (a) Customer's account is thirty (30) days or more overdue, (b) Customer is in breach of Section 1.4 (Unauthorized Access) or 1.5 (Restrictions on Use); or (c) to prevent harm to other customers or third parties or to preserve the security, availability or integrity of the Benchling Services.

9. Limitations of Liability.

- 9.1. Liability Cap.** Each party's entire liability arising out of or related to this Agreement will not exceed an amount equal to amounts paid or payable by Customer to Benchling under this Agreement and all of the then-current Sales Orders thereunder in the twelve (12) months immediately preceding the first incident giving rise to liability ("**Liability Cap**").
- 9.2. Consequential Damages Waiver.** Neither party will have any liability arising out of or related to this Agreement for indirect, special, incidental, reliance or consequential damages or damages for loss of use, lost data or interruption of business, even if informed of their possibility in advance.
- 9.3. Exceptions.** Sections 9.1 (Liability Cap) and 9.2 (Consequential Damages Waiver) will not apply to Uncapped Claims, defined below.

"Uncapped Claims" means (i) Customer's breach under Section 5.1 (Fees), (ii) either party's obligations under Section 10 (Indemnification), (iii) either party's infringement or misappropriation of the other party's Intellectual Property Rights, (iv) any breach of Section 11 (Confidentiality), excluding breaches related to Customer Data, and (v) liabilities that cannot be limited by Law.

- 9.4. Nature of Claims.** The waivers and limitations in this Section 9 apply regardless of the form of action, whether in contract, tort (including negligence), strict liability or otherwise and will survive and apply even if any limited remedy in this Agreement fails of its essential purpose.

10. Indemnification.

- 10.1. Indemnification by Benchling.** Benchling, at its own cost, will defend Customer from and against any Benchling-Covered Claims (defined below) and will indemnify and hold harmless Customer from and against any damages or costs awarded against Customer (including reasonable attorneys' fees) or agreed in settlement by Benchling resulting from the Benchling-Covered Claims.
- 10.2. Indemnification by Customer.** Customer, at its own cost, will defend Benchling from and against any Customer-Covered Claims (defined below) and will indemnify and hold harmless Benchling from and against any damages or costs awarded against Benchling (including reasonable attorneys' fees) or agreed in settlement by Customer resulting from the Customer-Covered Claims.
- 10.3. Indemnification Definitions.** The following definitions apply:

"Benchling-Covered Claim" means a third-party claim that the Application Services and Benchling Installed Software, when used by Customer as authorized in this Agreement, infringes or misappropriates a third party's Intellectual Property Rights.

"Customer-Covered Claim" means a third-party claim arising from (a) Customer Data, (b) Customer Materials or (c) Customer's breach or alleged breach of Section 1.5 (Restrictions on Use) or 1.6 (High-Risk Activities & Prohibited Data).

- 10.4. Procedures.** The indemnifying party's obligations in this Section 10 are subject to receiving from the indemnified party: (a) prompt notice of the claim (but delayed notice will only reduce the indemnifying party's obligations to the extent it is prejudiced by the delay); (b) the exclusive right to control the claim's investigation, defense and settlement, and; (c) reasonable cooperation at the indemnifying party's expense. The indemnifying party may not settle a claim without the indemnified party's prior approval if settlement would require the indemnified party to admit fault or take or refrain from taking any action (except regarding use of the Application Services when Benchling is the indemnifying party). The indemnified party may participate in a claim with its own counsel at its own expense.
- 10.5. Mitigation.** In response to an infringement or misappropriation claim, if required by settlement or injunction or as Benchling determines necessary to avoid material liability, Benchling may: (a) procure rights for Customer's continued use of the Application Services; (b) replace or modify the allegedly infringing portion of the Application Services to avoid infringement,

without reducing the Application Services overall functionality; or (c) terminate the affected Sales Order and refund to Customer any pre-paid, unused fees for the terminated portion of the Sales Order Term.

10.6. Exceptions. Benchling's obligations in this Section 10 do not apply to claims resulting from: (a) modification or unauthorized use of the Application Services not in accordance with this Agreement and the Documentation; (b) use of the Application Services in combination with items not provided by Benchling, including Third-Party Services; or (c) any software that Benchling may distribute to Customer other than the most recent release, if Benchling made available (at no additional charge) a newer release that would avoid infringement. Customer will indemnify Benchling from all losses related to any claims excluded from Benchling's indemnity obligation by the preceding sentence.

10.7. Exclusive Remedy. This Section 10 sets out the indemnified party's exclusive remedy and the indemnifying party's sole liability regarding third-party claims of intellectual property infringement or misappropriation covered by this Section 10.

11. Confidentiality. The party receiving Confidential Information ("**Receiving Party**") from the other party ("**Disclosing Party**") agrees not to use or disclose it to any third party except as expressly permitted in this Agreement, without the Disclosing Party's prior written consent. Notwithstanding the foregoing, the Receiving Party may disclose Confidential Information to its and its Affiliates' consultants and contractors who reasonably need to know such Confidential Information and which consultants and contractors are bound by obligations of confidentiality substantially similar to the terms of this Agreement, provided that the Receiving Party shall be liable for any disclosure of Confidential Information by its consultants and contractors. The Receiving Party shall use at least the same degree of care which it uses to prevent the disclosure of its own confidential information of like importance to prevent the disclosure of the Disclosing Party's Confidential Information, but in no event less than reasonable care. In the event of any termination or expiration of this Agreement, each party will either return or, at the Disclosing Party's request, destroy the Confidential Information of the other party; provided however, that each Receiving Party may retain copies of the Disclosing Party's Confidential Information for routine backup and archival purposes, subject to the confidentiality obligations set forth in this Agreement. Notwithstanding the foregoing, the obligations set forth in this Section 11 shall not apply with respect to any information that: (a) prior to disclosure by the Disclosing Party, was already in the possession of the Receiving Party without confidentiality restrictions; (b) is already or becomes generally available to the public other than as a result of the Receiving Party's breach of this Agreement; (c) was rightfully disclosed to it by a third party without restriction; or (d) is independently developed by the Receiving Party without reference to or use of the Confidential Information of the Disclosing Party. The Receiving Party may make disclosures required by law or court order provided that, if practicable, the Receiving Party provides adequate notice and assistance to the Disclosing Party for the purpose of enabling the Disclosing Party to prevent or limit the disclosure.

12. Security. Benchling will implement and maintain appropriate information security policies and processes (including reasonable technical, administrative and physical safeguards) that are designed to prevent unauthorized access to or use or disclosure of any Customer Data as further described in Benchling's [Information Security Policy](#).

13. Publicity. Benchling may reference Customer as a Benchling Services user on Benchling's website and investor materials including use of Customer's logo. Upon prior written approval and on a case-by-case basis, Customer may be mentioned in marketing and promotional materials, and participate in press announcements, case studies, trade shows, or other forms as reasonably requested by Benchling.

14. General.

14.1. Assignment. Neither party may assign this Agreement without the prior consent of the other party, except that either party may assign this Agreement, with notice to the other party, in connection with the assigning party's merger, reorganization, acquisition or other transfer of all or substantially all of its assets or voting securities. Any non-permitted assignment is void. This Agreement will bind and inure to the benefit of each party's permitted successors and assigns.

14.2. Governing Law and Courts. The laws of the State of California govern this Agreement and any action arising out of or relating to this Agreement, without reference to conflict of law rules. The parties will adjudicate any such action in the state or federal courts of San Francisco County, California and each party consents to the exclusive jurisdiction and venue of such courts for these purposes.

In the event a dispute arises out of or in connection with this Agreement, the parties will attempt to resolve the dispute through good faith consultation. If the dispute is not resolved within a reasonable period, then any or all outstanding issues may be submitted to mediation in accordance with any statutory rules of mediation. If mediation is not successful in resolving the entire dispute or is unavailable, any outstanding issues shall be finally settled by arbitration in San Francisco, California, in accordance with the Arbitration Rules and Procedures of JAMS then in effect, by one or more commercial arbitrators with substantial experience in resolving complex commercial contract disputes. Judgment upon the award so rendered may be entered in a court having jurisdiction or application may be made to such court for judicial acceptance of any award and an order of enforcement, as the case may be. Notwithstanding the foregoing, each party shall have the right to institute an action in a court of proper jurisdiction for injunctive or other equitable relief.

14.3. Notices.

- 14.3.1. Except as set out in this Agreement, notices, requests and approvals under this Agreement must be in writing if to Customer, to the address on the Sales Order, and if to Benchling, to the Benchling Contact Information below. Notice will be deemed given: (1) upon receipt if by personal delivery; (2) upon receipt if by certified or registered U.S. mail (return receipt requested); (3) one day after dispatch if by a commercial overnight delivery; or (4) upon delivery if by email. Either party may update its address with notice to the other.

Benchling Contact Information:

Attn: Benchling Legal
Benchling, Inc.
680 Folsom Street, 8th Floor
San Francisco, CA 94107
Copy to: legal@benchling.com

- 14.3.2. Benchling may also send operational notices through the Application Services.

- 14.4. **Entire Agreement.** This Agreement is the parties' entire agreement regarding its subject matter and supersedes any prior or contemporaneous agreements, proposals or discussions regarding the subject matter herein and controls over the preprinted terms of any purchase order or similar document even if signed by the parties after the date hereof unless the parties expressly agree otherwise. In this Agreement, headings are for convenience only and "including" and similar terms are to be construed without limitation. Excluding Sales Orders, terms in business forms, purchase orders or quotes used by either party will not amend or modify this Agreement; any such documents are for administrative purposes only. This Agreement may be executed in counterparts (including electronic copies and PDFs), each of which is deemed an original and which together form one and the same agreement.
- 14.5. **Order of Precedence.** In the event of a conflict among the documents making up this Agreement, the main body of this Agreement will control, except the Policies will control for their specific subject matter, and a Sales Order may only control if it specifically identifies the provisions in this Agreement to be superseded.
- 14.6. **Amendments.** Any amendments to this Agreement must be in writing and signed by each party's authorized representatives.
- 14.7. **Operational Changes.** With notice to Customer, Benchling may modify the Policies to reflect new features or changing practices, but the modifications may not be retroactive or materially decrease Benchling's overall obligations during a Sales Order Term.
- 14.8. **Waivers and Severability.** Waivers must be signed by the waiving party's authorized representative and cannot be implied from conduct. If any provision of this Agreement is held invalid, illegal or unenforceable, it will be limited to the minimum extent necessary so the rest of this Agreement remains in effect. Except where an exclusive remedy is provided, exercising a remedy under this Agreement, including termination, does not limit other remedies a party may have.
- 14.9. **Force Majeure.** Neither party is liable for a delay or failure to perform this Agreement due to events beyond its reasonable control, such as a strike, blockade, war, act of terrorism, riot, Internet or utility failures, natural disaster or any law or any action taken by a government or public authority, including imposing an export or import restriction, quota or prohibition, or failing to grant a necessary license or consent ("**Force Majeure**"), other than an obligation to pay fees. If a Force Majeure materially adversely affects the Application Services for fifteen (15) or more consecutive days, either party may terminate the affected Sales Order(s) upon notice to the other and Benchling will refund to Customer any pre-paid, unused fees for the terminated portion of the Sales Order Term. However, this Section does not limit Customer's obligations to pay fees owed.
- 14.10. **Subcontractors.** Benchling may use subcontractors and permit them to exercise its rights and fulfill its obligations, but Benchling remains responsible for their compliance with this Agreement and for its overall performance under this Agreement. This does not limit any additional terms for sub-processors under a DPA.
- 14.11. **Independent Contractors.** The parties are independent contractors, not agents, partners or joint venturers.
- 14.12. **No Third-Party Beneficiaries.** There are no third-party beneficiaries to this Agreement.
- 14.13. **Open Source.** Benchling Installed Software distributed to Customer (if any) may include third-party open source software ("**Open Source**") as listed in the Documentation or by Benchling upon request. If Customer elects to use the Open Source on a stand-alone basis, that use is subject to the applicable Open Source license and not this Agreement.
- 14.14. **Export.** Customer acknowledges that the Benchling Services are subject to the international trade laws of the United States, including the United States Export Administration Regulations and United States Office of Foreign Assets Control sanctions programs, and other applicable jurisdictions (collectively "**Trade Laws**"), and Customer agrees to comply with all Trade Laws in using the Benchling Services. Customer: (a) represents and warrants that it is not listed on any United States government list of prohibited or restricted parties or located in (or ordinarily resident in) a country that is subject to a United States government embargo or comprehensive sanctions, or that has been designated by the United States government as a "terrorist supporting" country; (b) agrees not to access, export or use the Benchling Services in violation of any United States

export embargo, prohibition or restriction (including those administered by the United States Bureau of Industry and Security and United States Office of Foreign Assets Control; (c) will not use the Benchling Services for any nuclear, chemical/biological weapons, missile or military-related end use prohibited by the Trade Laws; (d) will not submit to the Benchling Services any information controlled under the United States International Traffic in Arms Regulations; and (e) represents and warrants that any export-controlled technology provided to Benchling (including technology subject to the United States Export Administration Regulations) is properly authorized when sharing it with Authorized Users and with Benchling personnel.

- 14.15. **Government Rights.** To the extent applicable, the Application Services are “commercial computer software” as defined at 48 C.F.R. § 2.101 and 48 C.F.R. § 252.227-7014(a)(1) and as the term is used in 48 C.F.R. §§ 12.212 and 227.7202, and related services are “commercial services” as defined under 48 C.F.R. § 2.101. The Application Services are provided to U.S. federal, state, or local government customers and end users, for use by the government customer or on its behalf, subject to the terms of this Agreement and with only those rights as are granted to all other customers and users pursuant to the terms and conditions herein. All provisions herein apply to government customers and end users except to the limited extent prohibited by applicable law. If any provision of these terms is so prohibited, such provision will be deemed modified only to the extent reasonably necessary to conform to applicable law, giving maximum effect to the terms as written. Use, reproduction, release, modification, disclosure or transfer of the Application Services is governed solely by the terms of this Agreement, and all other use is prohibited.

15. Definitions.

“**Affiliate**” means any entity which directly or indirectly controls, is controlled by, or is under common control with a party. “Control,” for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the party. Any legal entity will be considered a party’s Affiliate as long as that interest is maintained.

“**Application Services**” means the proprietary cloud service detailed in the applicable Sales Order, hosted on servers under the control or direction of Benchling, and as modified from time to time.

“**Authorized User**” means anyone authorized by Customer to access and use the Benchling Services for the benefit of Customer, including, but not limited to, employees, contractors, and agents of Customer and its Affiliates.

“**Benchling Installed Software**” means Benchling’s proprietary software components or tools made available for installation on Customer’s computer systems or devices, including but not limited to for the purpose of integrating the Application Services with Third-Party Services.

“**Benchling Intellectual Property**” means Benchling’s proprietary technology, including the Benchling Services, Benchling’s website, software tools, hardware designs, algorithms, software, user interface, designs, architecture, network designs, know-how, and trade secrets, and all Intellectual Property Rights therein throughout the world (whether owned by Benchling or licensed to Benchling by a third party), as well as templates of the reports, models and calculations referred to below.

“**Benchling Services**” means the Application Services, Benchling Installed Software, the Documentation, and Professional Services. The Benchling Services do not include Third-Party Services.

“**Business Hours**” means, for U.S. customers: 6:00 a.m. to 5:00 p.m. Pacific Time, Monday through Friday, and for non-U.S. customers: 9:00 a.m. to 5:00 p.m. Central European Time, Monday through Friday. Business Hours exclude federal and national holidays.

“**Confidential Information**” means any nonpublic information disclosed by or on behalf of one party (as discloser) to the other party (as recipient) under this Agreement in any form, which (a) the discloser identifies as “Confidential” or “Proprietary” or (b) should be reasonably understood as confidential or proprietary due to its nature and the circumstances of its disclosure. Confidential Information includes (i) Benchling’s pricing, technical and performance information about the Benchling Services as well as all technology, software, or proprietary information underlying the Benchling Services, (ii) Customer Data and Customer Materials and (iii) trade secrets of either party.

“**Customer Data**” means any data or other content or information submitted by or on behalf of Customer (including Authorized Users) to its Application Services account, including from Third-Party Services, as well as any Output.

“**Customer Materials**” means materials, systems and resources that Customer makes available to Benchling in connection with the Benchling Services.

“**Data Processing Addendum**” or “**DPA**” means the terms relating to the processing of Customer Data (including any personal data) pursuant to this Agreement, located at <https://www.benchling.com/data-processing-addendum>.

“**Documentation**” means the then current version of the readme and help files, knowledge base and other documentation for the Application Services made available at help.benchling.com and docs.benchling.com.

“**High Risk Activities**” means activities where use of the Benchling Services could lead to death, personal injury or environmental damage, including life support systems, emergency services, nuclear facilities, autonomous vehicles or air traffic control.

“Intellectual Property Rights” means rights, priorities and privileges, under the laws of any jurisdiction worldwide associated with (a) works of authorship (including exclusive exploitation rights, copyrights, copyright licenses and moral rights), trade secrets, trademarks, trademark licenses, patents, patent licenses, technology, know-how, processes and other proprietary rights, as well as (b) registrations, protection, renewals, extensions, combinations, divisions, and reissues of, and applications for, any of the above and (c) all rights to sue at law or in equity for any infringement or other impairment thereof, including the right to receive all proceeds and damages from the same.

“Laws” means all relevant local, state, federal and international laws, regulations and conventions, including those related to data privacy and data transfer, international communications and export of technical or personal data.

“Output” means the reports, models, calculations and similar information generated directly from Customer Data by Customer, or by Benchling via the Benchling Services. For clarity, Output excludes the Benchling Intellectual Property and the templates of the reports, models, and calculations set forth in this Section.

“Policies” means the AUP, Information Security Policy, SLA and Support Policy.

“Professional Services” means any configuration, consulting, training and similar ancillary services, that are set forth in the applicable statement of work (“**SOW**”) entered into between the parties.

“Prohibited Data” means (a) personal health information and personal health data (including but not limited to: personally identifiable human sample data, medical records or an individual's health care claim information); (b) personally identifiable genetic or biometric information; (c) non-public, government-issued ID numbers; (d) personal financial data, account numbers, or other sensitive identifying number (e.g. passport number, driver's license numbers, Social Security Numbers, Tax Identification Number, or account numbers for a personal debit card or credit card, including, without limitation, cardholder data or sensitive authentication data, as such terms are defined under the Payment Card Industry Data Security Standards); (e) an individual's username or email address in combination with a password or security question that would permit access to such individual's account; (f) geolocation data that could identify the precise location of any individual; (g) any personally identifiable information regarding an individual under the age of 16; (h) any data regarding an individual's criminal convictions, offenses, or records; (i) any data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, or data concerning an individual's sex life or sexual orientation; or (j) any other data that (1) is classified as "sensitive," "special category" or a similar categorization pursuant to applicable data protection laws, including, without limitation (i) the Health Insurance Portability and Accountability Act; and (ii) Gramm-Leach-Bliley Act; (2) for which there is no consent, or other necessary authority, from the owner of the data to be submitted to or stored in the Application Services; or (3) that, if subject to a breach, is likely to result in risk to the rights and freedom to the related individual.

“Sales Order” means an ordering document entered into by the parties that sets forth the specific pricing and options for the Benchling Services to the Customer including any SOW entered into between the parties for the provision of Professional Services. Customer and Benchling may enter into multiple Sales Orders, if appropriate. Capitalized terms used herein, but not defined, shall have the meaning set forth in the Sales Order.

“Sales Order Term” means the term for Customer's use of the Benchling Services as identified in a Sales Order.

“SLA” means the [Service Level Agreement](#) describing the Application Services performance and availability metrics.

“Support” means support for the Application Services as described in Section 2 (Support).

“Third-Party Services” means any product, add-on, services or platform not provided by Benchling that Customer uses with the Benchling Services.

“Trials and Betas” means access to the Application Services (or Application Services features) on a free, trial, beta or early access basis.

“Usage Data” means technical logs, account and login data, and data and learnings that Benchling collects in connection with Customer's use of the Application Services and Benchling Installed Software (e.g., frequency of logins and features and functionalities being utilized, and actions taken within the Application Services). For clarity, Usage Data does not include Customer Data.