

Terms of Service—BaseSpace Correlation Engine

TERMS OF SERVICE

PLEASE READ THE FOLLOWING LEGALLY BINDING TERMS CAREFULLY BEFORE USING OR ACCESSING THE SERVICES (AS DEFINED BELOW). THESE TERMS OF SERVICE WILL APPLY TO ANY QUOTATION, ORDER, ORDER ACKNOWLEDGEMENT, AND INVOICE REFERENCING THE SERVICES, AND ANY LICENCE OR DELIVERY OF THE SERVICES BY ILLUMINA. BY SELECTING THE ACCEPT OPTION, OR OTHERWISE ACCESSING OR USING THE SERVICES, YOU ACKNOWLEDGE THAT YOU HAVE READ THESE TERMS OF SERVICE, UNDERSTAND IT, AND AGREE TO BE BOUND BY ITS TERMS AND THE TERMS OF THE ILLUMINA CORPORATE PRIVACY POLICY.

ILLUMINA IS WILLING TO PROVIDE ACCESS TO CORRELATION ENGINE (“CE”) AND RELATED SERVICES (AS DEFINED BELOW), ONLY ON THE CONDITION THAT YOU ACCEPT ALL OF THE TERMS AND CONDITIONS OF THESE TERMS OF SERVICE, THE SERVICE LEVEL AGREEMENT AVAILABLE AT <https://docs.platform.illumina.com/SLA.pdf> (THE “SLA”), AND THE DATA PROCESSING ADDENDUM AVAILABLE AT <https://www.illumina.com/content/dam/illumina-marketing/documents/documentation/Illumina-Cloud-and-Tech-Support-DPA.pdf>(THE “DPA”), EACH OF THE SLA AND DPA ARE HEREBY INCORPORATED BY REFERENCE INTO THESE TERMS OF SERVICE. YOU ENTER INTO THESE TERMS OF SERVICE (INCLUDING THE SLA AND DPA) BY (A) CLICKING A BOX INDICATING ACCEPTANCE WHEN IT IS PRESENTED TO YOU; (B) ACCESSING OR USING ANY PART OF THE SERVICES, AS DEFINED IN SECTION 1 BELOW; OR (C) PLACING AN ORDER FOR CE THAT REFERENCES AN ILLUMINA QUOTATION AND THAT IS ACCEPTED.

BY CHECKING THE CHECKBOX LABELED "I HAVE READ AND AGREE TO ILLUMINA’S TERMS OF SERVICE AND [ILLUMINA CORPORATE PRIVACY POLICY](#), WHICH IS INCORPORATED INTO THESE TERMS OF SERVICE, AND CLICKING ON THE "SIGN IN" BUTTON DISPLAYED AS PART OF THE SIGN-IN PROCESS, OR BY USING THE ILLUMINA BASESPACE CORRELATION ENGINE AND THE ILLUMINA BASESPACE CORRELATION ENGINE FOR COVID-19 WEBSITE OR OTHER SERVICES MADE AVAILABLE THROUGH SUCH WEBSITE (COLLECTIVELY, “SERVICES”), YOU AGREE TO THE FOLLOWING TERMS AND CONDITIONS (THE “TERMS OF SERVICE”) GOVERNING YOUR USE OF THE SERVICES. IF YOU ARE ENTERING INTO THESE TERMS OF SERVICE ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THESE TERMS OF SERVICE, IN WHICH CASE THE TERMS “YOU” OR “YOUR” SHALL REFER TO SUCH ENTITY. “ILLUMINA” MEANS ILLUMINA, INC. OR OTHER ILLUMINA AFFILIATE THROUGH WHICH YOU OBTAIN ACCESS TO THE SERVICE. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS OF SERVICE, YOU MAY NOT SIGN UP FOR THE SERVICES AND MAY NOT USE THE SERVICES. THESE TERMS OF SERVICE ARE EFFECTIVE AS OF THE DATE YOU CLICK TO ACCEPT THE TERMS OF SERVICE (“EFFECTIVE DATE”).

UNLESS SEPARATE TERMS OF USE ARE EXPRESSLY AGREED TO IN WRITING BETWEEN YOU AND ILLUMINA, THESE TERMS OF SERVICE WILL EXCLUSIVELY GOVERN YOUR USE OF AND ACCESS TO THE SERVICES.

1. USER ACCOUNT, PASSWORD, AND SECURITY

If any of the Services requires you to open a Illumina account (“**Account**”), you must complete the Account registration process by providing us with current, complete and accurate information as prompted by the applicable registration form. You also will choose a password and a login name. You are entirely responsible for maintaining the confidentiality of your password and Account. Furthermore, you are entirely responsible for any and all activities that occur under your Account. You agree to notify Illumina immediately of any unauthorized use of your Account or of any other breach of security that you become aware of. Illumina will not be liable for any loss that you may incur as a result of someone else using your password or Account, either with or without your knowledge. However, you could be held liable for losses incurred by Illumina or another party due to someone else using your Account or password. You may not use anyone else’s Account at any time without the permission of the Account holder and you may not permit any party to access and/or use the Services with your login name and password. Illumina reserves the right to change or update your login name and password in Illumina’s sole discretion from time to time. Illumina also reserves the right to terminate any Account login name or password.

2. LICENSE GRANT

- A. **BaseSpace Correlation Engine.** Subject to the terms and conditions of these Terms of Service and your payment of all applicable fees, during the Subscription Term, Illumina grants you, a personal, revocable, non-exclusive, non-sublicensable, limited license to access and use the Service as provided herein for your Research Use only. “**Research Use**” means use for your internal research, specifically excluding any use that (a) requires new grants of rights or a new license to any Illumina intellectual property rights, (b) is the separation, extraction, or isolation of the algorithms or process included in the Service or other unauthorized analysis of the Service, (c) gains access to or determines the algorithms, processes, or the methods of operation of the Service, or (d) is a clinical, diagnostic, or other non-research use. For the avoidance of doubt, you have no rights to download or modify the Service. You understand that Illumina

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- B. BaseSpace Correlation Engine for COVID-19. In an effort to combat the global COVID-19 pandemic, Illumina is providing limited, no-cost access to the Services to researchers engaged in studying SARS-CoV-2 or COVID-19, subject to these Terms of Service. Subject to these Terms of Service, during the COVID-19 Term, Illumina grants you a personal, revocable, non-exclusive, non-sublicensable, limited license to (i) access and use the Service as provided herein solely for your Research Use related to the SARS-CoV-2 and COVID-19 pandemic, and not for any other purposes.

3. TERM

- a. Subscription Term. The license to the Service in Section 2(A) will commence upon the Effective Date and will continue for the period set forth in the applicable quotation or invoice for your access to the Service (the "**Subscription Term**"). You agree that if you do not purchase additional use of the Service following the expiration of the Term, Illumina may suspend or terminate the Service upon the expiration of the Term. The Term may be extended for additional periods upon written agreement of you and Illumina and payment of applicable fees.
- b. COVID-19 Term. The license to the Service in Section 2(B) will commence upon the Effective Date and will continue effect until the six-month anniversary of such date (the "**COVID-19 Term**"), unless earlier terminated in accordance with this Section.
- c. Termination. You may, at your option, terminate these Terms of Service at any time upon thirty days' prior written notice to Illumina. Either party may, at its option, terminate these Terms of Service in the event of a material breach by the other party by written notice to the breaching party, specifically identifying the breach or breaches on which such notice of termination is based. The breaching party will have a right to cure such breach or breaches within thirty (30) days of receipt of such notice, and these Terms of Service will terminate in the event that such cure is not made within such thirty (30)-day period.
- d. Termination or Suspension by Illumina. Without prejudice to any other right or remedy available to Illumina, Illumina may suspend or terminate your access to the Service without liability if (i) you materially breach these Terms of Service, (ii) Illumina provides you with written notice that it has a reasonable suspicion that you are using the Service in breach of Sections 6 or 7, or (iii) your account or use of the Service is used for any malicious, illegal, or harmful purpose. In the event Illumina suspends your access to the Service, Illumina shall inform you of the reasons for the suspension and shall reasonably work with you to resolve such issues and re-instate Your access to the Service.
- e. Effect of Termination. Upon termination in accordance with these Terms of Service: (i) the Term and all other rights and licenses granted by Illumina to you under these Terms of Service will cease immediately, and (ii) upon written request, Illumina will promptly return or destroy all of your Submissions within its possession or control, to the extent you are unable to delete such Submissions from within the Service; provided, however, that Illumina shall not be obligated to return or destroy such Submissions that are stored on automated backup systems until the same would be destroyed according to such system's normal document retention schedule or such Submissions that must be retained for compliance with applicable laws, rules or regulations; provided further that all Submissions so retained shall be subject to the provisions of Section 21 until the same is returned or destroyed. Notwithstanding the foregoing, you acknowledge that the Service contains features which enable you to delete your Submissions and other confidential information from within the Service and it is your responsibility to delete such Submissions and information prior to termination. Any provision which expressly states it shall survive termination or which should by its very nature survive shall survive termination of these Terms of Service.

4. DISCLAIMER — ILLUMINA DOES NOT PROVIDE MEDICAL OR ANY OTHER HEALTH CARE ADVICE, DIAGNOSIS OR TREATMENT

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5. DESCRIPTION OF SERVICES AND SERVICES CONTENT

The Services comprise a variety of resources and features, including a search engine, a correlation engine for life sciences data, a content knowledgebase, electronic storage space, data and information sharing tools, public user information, download and import features, communication forums and tools, personalization features, and product information. Many of the Illumina resources and features are available to all Illumina users, while certain resources and features are available only to registered users and/or paying subscribers. The Services, including any updates and enhancements thereof, any new resources or features, and/or the addition of any new Services Content or websites, are subject to the Terms of Service. The Services include the Services Content, the Software, and the Communication Services, all of which are made available to you at the sole discretion of Illumina.

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6. USE LIMITATION

As a condition of your use of the Services, you agree that you will not use the Services for any purpose that is unlawful or otherwise prohibited by any applicable law or regulation, or the terms, conditions and notices of the Terms of Service. You may utilize the Services solely for your personal and non-commercial research unless you obtain additional rights through a paid subscription or other written agreement with Illumina. You must be at least 18 years old to use the Services. Any publication using or based on information derived from the Services must correctly cite and/or attribute Illumina. You agree that you will not:

- modify, copy, translate, alter, distribute, transmit, display, perform, reproduce, publish, license, rent, lease, loan, create derivative works of, transfer, or sell any Content, products, services or other material obtained from the Services unless otherwise provided for in the Terms of Service or in a separate written subscription, services or license agreement;

- interfere with, disrupt, damage, disable, overburden, or impair the Services or Software or any part thereof, or create an undue burden on the Services, Software, or the networks or services connected to the Services, including without limitation, the external websites that contain third party content and that are linked to on the Services, or interfere with any other party's use and enjoyment of the Services;
- attempt to gain unauthorized access to the Services, other Accounts, computer systems or networks connected to any Illumina server or to any of the Services, through hacking, password mining or any other means;
- obtain or attempt to obtain any materials or information through any means not intentionally made available through the Services;
- reverse engineer, decompile, disassemble, or otherwise derive or determine or attempt to derive or determine the source code (or the underlying ideas, algorithms, structure or organization) of the Software or the Services;
- without Illumina's express written permission, introduce software or automated agents or scripts to the Services for any purpose, including, without limitation, to produce multiple Accounts, generate automated searches, requests and queries, or to strip or mine data from the Services;
- perform or publish any performance or benchmark tests or analyses relating to the Services, the Software, or the use or availability thereof;
- provide any personally identifying information about a human subject;
- use the Services to publish, post, import, upload, transmit, use, distribute, disseminate or otherwise make available:
 - any inappropriate, profane, defamatory, obscene, indecent or unlawful topic, name, Content or Submission;
 - any Content or Submission that contains data, text, images, photographs, software or other material protected by intellectual property laws, including, by way of example, and not as limitation, copyright or trademark laws, or by rights of privacy or publicity, unless you own or control the rights thereto or have received all necessary consents to do the same;
 - any Content or Submission that contains viruses, Trojan horses, worms, time bombs, cancelbots, corrupted files, or any other software or programs that may damage, hinder or interrupt the operation of the Services or another's computer or property;
 - any Content or Submission posted by another user of the Services that you know, or reasonably should know, cannot be legally reproduced, displayed, performed, used and/or distributed in such manner;
- use any Content or Submission, including images or photographs, made available through the Services in any manner that infringes any copyright, trademark, patent, trade secret, or other proprietary right of any party; or
- cover or obscure any page or part of the Services via HTML/CSS, scripting, or any other means.

Illumina has no obligation to monitor the Services or Communication Services. However, Illumina reserves the right to review Content and Submissions (defined below) posted to and transmitted through the Services and to remove any Content or Submission that Illumina, in its sole discretion, deems to be inappropriate or in violation of these Terms of Service. Illumina reserves the right to terminate or suspend your access to any or all of the Services, including the Communication Services, at any time, without notice, for any reason whatsoever.

7. USE OF COMMUNICATION SERVICES

The Services may contain e-mail services, bulletin board services, chat areas, news and groups, forums, communities, personal web pages, calendars, photo albums, file cabinets and/or other message or communication facilities designed to enable you to communicate with others (each a "**Communication Service**" and collectively "**Communication Services**"). You agree to use the Communication Services only to post, send and receive messages and material that are proper and, when applicable, related to the particular Communication Service. By way of example, and not as a limitation, you agree that when using the Communication Services, you will not:

- use the Communication Services in connection with surveys, contests, pyramid schemes, chain letters, junk email, spamming or any duplicative or unsolicited messages (commercial or otherwise);
- defame, abuse, harass, stalk, threaten or otherwise violate the legal rights (such as rights of privacy and publicity) of others;

- advertise or offer to sell or buy any goods or services for any business purpose, unless such Communication Service specifically allows such messages;
- falsify or delete any copyright management information, such as author attributions, legal or other proper notices, or proprietary designations or labels of the origin or source of software or other material contained in a file that is uploaded;
- restrict or inhibit any other user from using and enjoying the Communication Services;
- violate any published code of conduct or other guidelines which may be applicable for any particular Communication Service;
- harvest or otherwise collect information about others, including e-mail addresses;
- violate any applicable laws or regulations;
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- create, download, copy, use, or provide (whether or not for a fee) to a person or entity any directory of users of the Services, of other users, or of usage information or any portion thereof;
- create Internet "links" to the Services or "frame" or "mirror" any Services Content on any other server or wireless or Internet-based device.

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You represent and warrant that, except for Third Party Content that is in the public domain, you will not (1) use, reproduce, make, have made, sell, offer for sale, import, modify, publish, transmit, distribute, publicly perform or display, sell, disclose to any third party, or create derivative works based on the Third Party Content, or (2) decompile or reverse engineer any Third Party Content, without the prior written consent of the owner of such Third Party Content and without correct and complete attribution to the owner and/or author of such Third Party Content or to any other sources of such Third Party Content as may be appropriate.

You acknowledge and agree that, although Illumina may periodically screen, modify, refuse or remove certain Third Party Content, (a) Illumina is not responsible for any such Third Party Content, (b) Illumina makes no guarantees about the accuracy, currency, suitability, or quality of the information in such Third Party Content, and (c) Illumina assumes no responsibility for any unintended, objectionable, inaccurate, misleading, or unlawful Third Party Content made available by other users and third parties.

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You agree that you are authorized to use and transmit the Submissions on or through the Services, including that your use and transmission of Submissions on or through the Services complies with all applicable laws and regulations, including without limitation, any data privacy laws and laws protecting intellectual property rights, and that you have obtained all necessary permissions (including, without limitation, all consents from human subjects) to use and transmit the Submissions on or through the Services. You acknowledge that Illumina has no responsibility to monitor or screen the Submissions for compliance with any law or regulation or for any other purpose.

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By Posting a Submission you warrant and represent that you own or otherwise control all of the rights to such Submission as described in the Terms of Service including, without limitation, all the rights necessary for you to Post the Submission and to make it available to others, if applicable. You further represent and warrant that your Submissions do not and shall not (1) infringe any copyright, trademark, or patent; (2) misappropriate any trade secret; (3) be false, misleading, deceptive, defamatory, obscene, offensive, pornographic or promote, endorse or further illegal activities or conduct that is abusive, threatening, obscene, defamatory or libelous; (4) contain any viruses, worms or other malicious computer programming codes able to damage the Services; (5) violate the rights of or harass a third party; (6) promote, copy, perform or distribute an illegal or unauthorized copy of another party's work, whether it is protected by copyright or trade secret law or not, such as, without limitation, by presenting the work of a third party as your own (plagiarism), providing stolen or illegally obtained Third Party Content, providing pirated computer programs or links to them, providing information to circumvent manufacturer-installed copy-protection devices, or providing pirated music, videos, or movies, or links to such pirated music, videos, or movies; or (7) otherwise violate the Terms of Service or create liability for Illumina.

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Except as may be expressly agreed by you and Illumina in a separate, signed written agreement, when uploading, transmitting, or modifying Submissions that contains information of a person, including without limitation, Submissions consisting of genomic information (whether whole genome sequences or portions), you agree that you will not, in connection with or through the Services, provide any personally identifying information or personal information or personal data as defined by applicable law (e.g. HIPAA, the EU General Data Protection Regulation, and the California Consumer Privacy Act). For example, you will not provide the name, date of birth, address, social security, government issued identification number, or any other information that could directly or indirectly identify the individual from whom any genomic or other information was derived. If it is agreed to by Illumina for You to process Personal Data that is collected or derived from individuals within the European Union, the European Economic Area, the United Kingdom, or Switzerland through the Services the DPA will apply

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Susan E. Farley, Esq.
Heslin Rothenberg Farley & Mesiti P.C.
E-mail: susan.farley@hrfmlaw.com
5 Columbia Circle
Albany, New York 12203
Tel: 518-452-5600
Fax: 518-452-5579

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This Terms of Service was last revised on June 1, 2020.