

NB-Air™ Terms of Use

Updated: December 1, 2022

These NB-Air™ Term of Use (these “Terms”) are entered into by and between you and Nucleus Biologics, LLC (“Nucleus Biologics,” “we,” “our” or “us”), and, together with our Terms of Use and Privacy Policy, govern your access to and use of the NB-Air™ services (the “Services”).

If you are using the Services on behalf of a business or legal entity, then you represent and warrant that you have the authority to accept these Terms on behalf of such business or legal entity, and that such business or legal entity accepts these Terms. You also represent and warrant that you are using the Services for a business purpose and not as an end consumer.

Purchase Terms: Your order of products from us may be subject to separate purchase terms and conditions, statements of work, or similar agreements entered into between you and Nucleus Biologics at the time of purchase, which may supplement or supersede these Terms and which may include purchasing requirements applicable to your use of the Services.

User-Provided Formulations: For purposes of these Terms, “User-Provided Formulations” means your cell culture media formulations which you submit, share or send to us through the Services, or that are otherwise received by us from you. We acknowledge and agree that, as between us and you, you own all of your User-Provided Formulations and your User-Provided Formulations are considered your Confidential Information hereunder and we will not use your User-Provided Formulations except to provide the Services. Notwithstanding the foregoing, you understand and acknowledge that we will not take any steps to verify your User-Provided Formulations against any other formulation used, provided by or developed for other customers, nor can we provide you any assurances that another customer of our Services has not, or will not, submit to us similar or the same user formulations as your User-Provided Formulations.

Tool-Assisted Output Formulations: For purposes of these Terms, “Tool-Assisted Output Formulations” means the cell culture media formulation output (whether an incomplete or unused formula output, or any portion, subset or derivative) resulting from use of NB-Air™ that is derived from our algorithms or based on your Provided Formulations. Nucleus Biologics expressly retains all rights that it may have to Tool-Assisted Output Formulations. You understand and agree that we will not take any steps to verify any portion of any Tool-Assisted Output Formulation, nor can we provide you any assurances that any Tool-Assisted Output Formulation has not been, or will not be, provided to another customer of our Services based on such customer’s similar user formulations or any freedom to operate. You agree that you will not modify, claim exclusive ownership of, or seek to patent, any Tool-Assisted Output Formulations. In the event that you do file a patent based on, in whole or in part, the Tool-Assisted Output Formulation, then you hereby grant Nucleus Biologics a royalty free, fully-paid up, nonexclusive right and license to any patent you file, sublicenseable to any customer, to make, use and sell its product and both Nucleus and the sublicensed customer shall not be liable for any infringement thereof.

Access and Use: Subject to and conditioned on your compliance with these Terms and payment in full of all fees hereunder, Nucleus Biologics hereby grants to you a non-exclusive, nontransferable, non-assignable, limited license to use the Services during the Subscription Term solely for use by you and your Authorized Users, as applicable, in accordance with the terms and conditions herein. Such use is limited to your internal business purposes of developing formulations and ordering media products from Nucleus Biologics and not for commercial reuse of the Services or any functionality of the Services or for use as an end consumer.

Authorized Users: You agree that the total number of Authorized Users will not exceed the number of Authorized Users for which you or your organization, as applicable, have purchased a license to the Services, except as expressly agreed to in writing by Nucleus Biologics, and subject to any appropriate adjustment of the Fees payable hereunder.

Confidentiality: Except as set forth herein, the recipient will use the other party's Confidential Information only to exercise its rights and fulfill its obligations under these Terms. The recipient will use reasonable care to protect against the disclosure of the other party's Confidential Information to other parties other than the recipient's employees, affiliates, agents or professional advisors (collectively, "Delegates") who need to know it and who have an obligation to keep it confidential. The recipient will ensure that its Delegates are also subject to the same non-disclosure and use obligations set forth in these Terms. The receiving party may disclose the other party's Confidential Information as required by law, subpoena or court order, or with the other party's written permission.

Fees. You agree to pay all applicable fees for the Services in accordance with the applicable fee and payment terms therefor, as determined by Nucleus Biologics at the time of purchase or subscription, as set forth on the applicable web form, quotation or order form or as otherwise set forth in our Terms of Use, as applicable.

Automatic Renewals:

We may allow you automatically renew the Services at the end of the Subscription Term. If you elect to automatically renew the Services, then we may automatically renew the Service at the end of the current Subscription Term and charge you the then-current price for the renewal term, unless you have chosen to cancel the Service before the end of the current Subscription Term. We will bill your selected payment method for the renewal, whether it was on file on the renewal date or provided later. You may cancel the Services prior to the renewal date, and you must cancel before the renewal date to avoid being billed for the renewal.

Refund Policy:

All purchases are final and non-refundable, unless otherwise required by law or expressly agreed by us in our sole discretion.

Your Account.

To access the Services, you will be required to provide certain account registration details or other information. It is a condition of your use of the Services that all of the information you provide to us and otherwise on or through the Services is correct, current and complete.

If you choose, or are provided with, a user name, password or any other piece of information as part of our security procedures, then you must treat such information as confidential, and you must not disclose it to any other person or entity. You also acknowledge and agree that your account is personal to you and you shall not provide any other person with access to the Services or any portions of it using your user name, password or other security information, without our express written consent. You agree to notify us immediately of any unauthorized access to or use of your user name or password or any other breach of security. You also agree to ensure that you exit from your account at the end of each session. You should use particular caution when accessing your account from a public or shared computer, so that others are not able to view or record your username, password or other personal information.

Use Restrictions. You shall not use the Services for any purposes beyond the scope of the access granted in these Terms. You shall not at any time, directly or indirectly, and shall not permit any other person to: (i) copy, modify or create derivative works of the Services, in whole or in part; (ii) rent, lease, lend, sell, license, sublicense, assign, distribute, publish, transfer or otherwise make available the Services; (iii) reverse engineer, disassemble, decompile, decode, adapt or otherwise attempt to derive or gain access to any software component of the Services, in whole or in part; (iv) remove any proprietary notices from the Services; (v) use the Services in any manner or for any purpose that infringes, misappropriates or otherwise violates any intellectual property right or other right of any person, or that violates any applicable law; (vi) use the Services in, or in association with, the design, construction, maintenance, or operation of any high risk activities or hazardous environments or systems; or (vii) use the Services to develop, train or improve (directly or indirectly) a similar or competing product, or otherwise create a similar or competing product or service.

Your Responsibilities. In addition to your other obligations and responsibilities under these Terms, you acknowledge and agree that, as between you and Nucleus Biologics, you are solely responsible and liable for your use of the Services, including, without limitation, your use of any formulations, User-Provided Formulations, results, recommendations, solutions, information and resources (including, without limitation, Third-Party Products) provided by or through the Services.

Without limiting the generality of the foregoing, you understand, acknowledge and agree that: (i) the information presented on or through the Services is made available solely for general information purposes; (ii) we do not warrant the accuracy, completeness, relevance, timeliness or usefulness of this information, including, without limitation, any results, opinions or recommendations made by the Services; (iii) any reliance that you place on such information is strictly at your own risk. We disclaim any and all liability and responsibility arising from any reliance placed on such information or materials by you, or by anyone who may be informed of any of its contents.

You are responsible for all acts and omissions of Authorized Users, and any act or omission by an Authorized User that would constitute a breach of these Terms if taken by you will be deemed a breach of these Terms by you. You shall use commercially reasonable efforts to make all Authorized Users aware of these Terms' provisions as applicable to such Authorized User's use of the Services, and shall cause Authorized Users to comply with such provisions.

Suspension of Use.

Notwithstanding anything to the contrary in these Terms, in addition to any other suspension or termination rights of Nucleus Biologics set forth herein or the Terms of Use, Nucleus Biologics may suspend your (and any Authorized User's) access to all or any portion of the Services if: (a) Nucleus Biologics reasonably determines that: (i) there is a threat or attack on any of the Services or other Nucleus Biologics IP; (ii) your use of the Services disrupts or poses a security risk to Nucleus Biologics, Nucleus Biologics IP, any other customer or vendor of Nucleus Biologics or any third party; (iii) you are using the Services for fraudulent or illegal activities; (iv) subject to applicable law, you have ceased to continue business in the ordinary course, made an assignment for the benefit of creditors or similar disposition of assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution or similar proceeding; (v) Nucleus Biologics' provision of the Services to you is prohibited by applicable law; or (vi) you have exceeded the number of Authorized Users for which you have purchased licenses or otherwise failed to pay the fees due hereunder; (b) any vendor of Nucleus Biologics has suspended or terminated Nucleus Biologics' access to or use of any Third-Party Products required to enable you to access the Services; or (c) Nucleus Biologics determines in its sole discretion that you have violated these Terms, the Terms of Use or the Privacy Policy.

Third-Party Products.

We may from time to time make Third-Party Products available to you in connection with the Services. Such Third-Party Products may be subject to their own terms and conditions and the applicable flow through terms and conditions provided to you. If you do not agree to abide by the applicable terms for any such Third-Party Products, then you should not install or use such Third-Party Products.

You acknowledge and agree that the Services may include Third-Party Products and other content provided by third parties, including, without limitation, information and materials provided by other users, businesses and third-party licensors, syndicators, aggregators and/or reporting services. All information, statements and/or opinions expressed in these materials, and all articles and responses to questions and other content, are solely the respective opinions and the responsibility of the person or entity providing those materials or to which those materials belong. Such materials do not necessarily reflect the opinion of Nucleus Biologics. We are not responsible or liable to you or any third party for the content or accuracy of any Third-Party Products or other information, research, opinions or materials provided by any third parties.

Support. These Terms do not entitle you to any support or maintenance for the Services.

Modifications. Nucleus Biologics may make changes, updates, modifications and improvements to the Services from time to time in its sole and absolute discretion.

Intellectual Property Ownership

Reservation of Rights; Nucleus Biologics IP. Nucleus Biologics reserves all rights not expressly granted to you in these Terms. Except for the limited rights and licenses expressly granted under these Terms, nothing in these Terms grants, by implication, waiver, estoppel or otherwise, to you or any third party any intellectual property rights or other right, title, or interest in or to the Services or other Nucleus Biologics IP or Third-Party Products. You acknowledge and agree that: (a) as between you and Nucleus Biologics, Nucleus Biologics owns all right, title, and interest, including all intellectual property rights, in and to the Services and other Nucleus Biologics IP and (b) with respect to Third-Party Products, the applicable third parties own all right, title, and interest, including all intellectual property rights, in and to their respective ThirdParty Products. Trademarks and logos used in connection with the Services are the trademarks of Nucleus Biologics or their respective owners.

User Data. We acknowledge that, as between us and you, you own all User Data. You hereby grant to us a non-exclusive, royalty-free, worldwide license to reproduce, distribute and otherwise use and display and create derivative works of the User Data and perform all acts with respect to the User Data as may be necessary for Nucleus Biologics to: (a) provide the Services to you; (b) provide maintenance and support services, as applicable; (c) research, develop, enhance, and improve the performance of the Services, including, without limitation, our machine learning, artificial neural network, logical inferencing and other artificial intelligence technologies; and (d) enforce Nucleus Biologics' rights hereunder.

Limited License to Formulations. We acknowledge that, as between us and you, you own all of your User-Provided Formulations. You hereby grant to us a non-exclusive, royalty-free, worldwide license to use the User-Provided Formulations to provide the Services to you, including to manufacture and supply and media products that you purchase from us. You represent and warrant that: (i) you own the entire right, title and interest in and to your UserProvided Formulations; (ii) you have the right to grant the rights and licenses hereunder; and (iii) use of the User-Provided Formulations do not and will not infringe any patents or other intellectual property rights of any other person or entity.

Feedback. If you or any of your employees or contractors, as applicable, send or transmit any communications or materials to Nucleus Biologics by mail, email, telephone or otherwise, suggesting or recommending changes to the Services or other Nucleus Biologics IP, including, without limitation, new features or functionality relating thereto, or any comments, questions, suggestions or the like (collectively "Feedback"), then Nucleus Biologics is free to use such Feedback irrespective of any other obligation or limitation between the parties governing such Feedback. You hereby assign to Nucleus Biologics on your behalf, and on behalf of your employees, contractors and/or agents, as applicable, all right, title and interest in, and Nucleus Biologics is free to use, without any attribution or compensation to any party, any ideas, knowhow, concepts, techniques or other intellectual property rights contained in the Feedback,

for any purpose whatsoever, although Nucleus Biologics is not required to use any Feedback. For the avoidance of doubt, Feedback does not include User Data or User-Provided Formulations.

Aggregated Statistics. Notwithstanding anything to the contrary in these Terms, Nucleus Biologics may monitor your use of the Services and collect and compile Aggregated Statistics. As between Nucleus Biologics and you, all right, title, and interest in Aggregated Statistics, and all intellectual property rights therein, belong to and are retained solely by Nucleus Biologics. You acknowledge and agree that Nucleus Biologics may compile Aggregated Statistics based on User Data input into the Services. You further acknowledge and agree that Nucleus Biologics may make Aggregated Statistics publicly available in compliance with applicable law, and use Aggregated Statistics to the extent and in the manner permitted under applicable law.

Warranty Disclaimer

THE SERVICES AND OTHER NUCLEUS BIOLOGICS IP ARE PROVIDED “AS IS” AND NUCLEUS BIOLOGICS HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, NUCLEUS BIOLOGICS SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. NUCLEUS BIOLOGICS MAKES NO WARRANTY OF ANY KIND THAT THE SERVICES OR OTHER NUCLEUS BIOLOGICS IP, OR ANY PRODUCTS (INCLUDING, WITHOUT LIMITATION, ANY THIRD-PARTY PRODUCTS), SOLUTIONS OR RESULTS OF THE USE THEREOF, WILL MEET YOUR OR ANY OTHER PERSON’S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM OR OTHER SERVICES, OR BE SECURE, ACCURATE, UP TO DATE, RELIABLE, COMPLETE, FREE OF HARMFUL CODE OR ERROR FREE.

Indemnification: You agree to defend, indemnify and hold harmless Nucleus Biologics, its affiliates, licensors and service providers, including, without limitation, Global Life Sciences Solutions, LLC (doing business as Cytiva), and its and their respective officers, directors, employees, contractors, agents, licensors, suppliers, successors and assigns from and against any claims, liabilities, damages, judgments, awards, losses, costs, expenses or fees (including reasonable attorneys’ fees) arising out of or relating to (a) your violation of these Terms or the Terms of Use, including any breach of any representations and warranties hereunder, (b) your use of the Services and any products resulting therefrom other than as expressly authorized in these Terms, (c) your use of any information, data, results, materials, recommendations or solutions (including formulations, User-Provided Formulations, Tool-Assisted Output Formulations or Third-Party Products) obtained from or through the Services, (d) your violation of applicable laws or regulations or (e) your negligence or willful misconduct. Nucleus Biologics reserves the right, at your expense, to assume the exclusive defense and control of any matter for which you are required to indemnify us, and you agree to cooperate with our defense of these claims. You agree not to settle any matter without the prior written consent of Nucleus Biologics.

Nucleus Biologics will use reasonable efforts to notify you of any such claim, action or proceeding upon becoming aware of it.

Subject to Nucleus Biologics' limitations of liability and your indemnification obligations both as set forth herein, Nucleus Biologics agrees to defend, indemnify and hold you harmless against claims, damages and losses (including reasonable attorneys' fees) awarded against you in a final non-appealable judgment arising out of third-party claims solely alleging Nucleus Biologic's gross negligence and willful misconduct in connection with its performance of the Services. Notwithstanding anything herein to the contrary, Nucleus Biologics shall not be obligated to indemnify, hold harmless or defend you against any claim, whether direct or indirect, if such claim or corresponding losses, arise out of or result from, in whole or in part, (a) any indemnification obligations you have as set forth herein, (b) your negligence or more culpable act or omission (including recklessness or willful misconduct), (c) bad faith failure to comply with any of your obligations set forth herein, (d) use of any Third-Party Products, or (e) use of the Services or any other products or services provided by Nucleus Biologics in any manner not otherwise authorized under these Terms, expressly in writing by Nucleus Biologics or that does not materially conform with the then-current usage instructions, guidelines or specifications. Nucleus Biologics reserves the right to assume the exclusive defense and control of any matter for which Nucleus Biologics is required to indemnify you hereunder, and you agree to cooperate with our defense of such claims. You agree not to settle any claim without the prior written consent of Nucleus Biologics; provided that Nucleus Biologics may settle any claim for which Nucleus Biologics is required to indemnify you without your consent. You shall promptly notify Nucleus Biologics of any claim for which you are entitled to indemnification hereunder upon becoming aware of it.

Limitations of Liability

NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY OR OTHERWISE, IN NO EVENT WILL NUCLEUS BIOLOGICS BE LIABLE UNDER OR IN CONNECTION WITH THESE TERMS UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY: (a) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES; (b) INCREASED COSTS, DIMINUTION IN VALUE OR LOST BUSINESS, PRODUCTION, REVENUES, OR PROFITS; (c) LOSS OF GOODWILL OR REPUTATION; (d) USE, INABILITY TO USE, LOSS, INTERRUPTION, DELAY OR RECOVERY OF ANY DATA, OR BREACH OF DATA OR SYSTEM SECURITY; OR (e) COST OF REPLACEMENT GOODS OR SERVICES, IN EACH CASE REGARDLESS OF WHETHER NUCLEUS BIOLOGICS WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE.

NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY OR OTHERWISE, EXCEPT FOR NUCLEUS BIOLOGICS' GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, IN NO EVENT WILL NUCLEUS BIOLOGICS' AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THESE TERMS OR THE SERVICES UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT

(INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE EXCEED THE TOTAL AMOUNTS PAID TO NUCLEUS BIOLOGICS UNDER THESE TERMS IN THE THREE MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

Governing Law. You agree that your use of the Services and these Terms are to be interpreted, construed, and enforced in all respects in accordance with the laws of the State of Delaware, without reference to its choice of law rules. You further hereby irrevocably consent to the exclusive jurisdiction and venue of the federal, state, and local courts in San Diego, California in connection with any action arising out of or in connection with your use of the Services or these Terms.

Term; Termination. These Terms will remain in effect for so long as you subscribe to the Services in accordance with these Terms or until terminated as set forth herein (the “Term”). You may terminate these Terms at any time by ceasing to use the Services and disabling or deleting your NB-Air™ account. Nucleus Biologics may terminate these Terms at any time, effective immediately, if you breach these Terms, the Terms of Use or the Privacy Policy, if Nucleus Biologics ceases offering the Services or for its convenience without liability.

Definitions.

“Aggregated Statistics” means data and information related to your use of the Services that is used by Nucleus Biologics in an aggregate and anonymized manner, including to compile statistical and performance information related to the provision and operation of the Services as well as market, product, service and commercial insights.

“Authorized User” means your employees, consultants, contractors and agents (i) who are authorized by you to access and use the Services under the rights granted to you pursuant to these Terms and (ii) for whom a license to access to the Services has been purchased hereunder.

“Confidential Information” means information that one party discloses to the other party under these Terms, and that is marked as confidential or would normally be considered confidential information under the circumstances. User Data and User-Provided Formulations are User’s Confidential Information. Confidential Information does not include information that is independently developed by the recipient, is shared with the recipient by a third party without confidentiality obligations, or becomes publicly available through no fault of the recipient.

“Nucleus IP” means the Services and any and all intellectual property provided to you in connection with the foregoing, including, without limitation, all intellectual property rights therein and thereto, and any and all intellectual property developed by us in connection with our provision of the Services and our manufacturing and supply techniques, procedures, processes and know-how. For the avoidance of doubt, Nucleus IP includes, without limitation: Aggregated Statistics and any information, data or other content derived from Nucleus Biologics’ monitoring of your access to or use of the Services; and any and all changes, modifications, improvements and enhancements to and derivative works of any Nucleus IP.

“Subscription Term” means the applicable subscription Service period for the Services set forth in the corresponding web form, quotation or order form.

“Third-Party Products” means any third-party products, services, materials, information or resources (including open source software, resources, publications and information) provided with or incorporated into the Services.

“User Data” means data that you submit, store, send to the Services or that is received by the Services from you. User Data does not include User-Provided Formulations, which are addressed separately.

Changes

Nucleus Biologics may make changes to these Terms, including pricing for Services (and any linked documents) from time to time. Unless otherwise noted by Nucleus Biologics, material changes to these Terms will become effective thirty (30) days after they are posted, except if the changes apply to new functionality in which case they will be effective immediately. If you do not agree to the revised Terms, then please stop using the Services.