

# BioCyc™ Databases Subscription Terms

---

## 1. LICENSE GRANT

1.1 License. Subject to the terms and conditions of this Agreement, SRI hereby grants to Licensee a nonexclusive, nontransferable, nonsublicensable, revocable (if the Agreement is terminated pursuant to Section 4.1 (Term)) license for Licensee's Authorized Users to access the Licensed Material during the License Term. "Authorized Users" means: (a) for a company, governmental entity, or nonprofit entity, its current employees (whether on a permanent, temporary or contract basis) and any contractors who are permitted to access Licensee's secure networks; and (b) for an academic entity, current members of its faculty, staff, and student body, and individuals using computer terminals physically located within the institution's facilities. For clarity, Licensee's customers are not Authorized Users.

1.2 Authentication. Licensee's access is limited to Authorized Users who are authenticated by either Internet Protocol address (or ranges of addresses) or by credentials including a password (the "Login Credentials"), as shown on the Network Authentication section of the License Schedule. If access is by Login Credentials, Licensee shall not (and shall ensure its Authorized Users do not) share the Login Credentials with any other person. Any sharing of Login Credentials may result in immediate termination of access with no refund.

Licensee shall promptly notify SRI if it becomes aware of any unauthorized access to Licensee's account. Licensee is responsible for any and all activities, whether by Licensee or a third party, conducted using Licensee's Login Credentials.

1.3 Databases. SRI reserves the right to discontinue any particular database in the Licensed Materials at any time, or to change the status of a particular database in the Licensed Materials from a paid database to a free database, or vice versa.

1.4 Uptime. SRI will make reasonable efforts to make online access to the Licensed Materials available on a continuous basis. However, availability will be subject to periodic interruption and downtime for server maintenance, software installation or testing, loading new files, and other reasons at the discretion of SRI.

1.5 Government Rights. If Licensee is acquiring the Licensed Material on behalf of any part of the United States Government, the following provisions apply. The Licensed Material is "commercial computer software" provided in accordance with FAR 12.212 and DFARS 227.7202 and is, therefore, subject to SRI's standard licensing terms as set forth herein. Any use, modification, reproduction, release, performance, display, or disclosure of the Licensed Material by the U.S. Government or any of its agencies shall be governed solely by the terms of this Agreement and shall be prohibited except to the extent expressly permitted by the terms of this Agreement.

1.6 No Other Rights Granted. Except for the rights enumerated in this Agreement, the License does not include a grant to Licensee of any ownership right, title, or interest, nor any security interest or other interest, in any intellectual property rights relating to the Licensed Material, or any part thereof. Subject to the License, SRI or its licensors shall own exclusively all copyright, patent, trade secret, trademark, and other intellectual property rights in and to the Licensed Material. The License does not grant, by implication, estoppel, or otherwise, a license to any SRI intellectual property other than the Licensed Material. Licensee acknowledges that Licensed Materials may contain or pertain to materials that are subject to proprietary rights, including copyright, trademark, and patent rights of third parties; no licenses or rights to such proprietary rights are granted hereunder.

## 2. FEES AND PAYMENT

2.1 Fees. Licensee shall pay to SRI the License Fee to SRI at the start of the License Term, due net 30 days. Any amounts remaining unpaid after 30 days shall bear interest at the lower of 1.5% per annum and the maximum rate permitted by law. The License Fee stated is net of any sales taxes, duties, or withholding taxes where required by law, and Licensee shall pay any such sales taxes, duties, or withholding taxes in addition to the License Fee stated.

## 3. AUTHORIZED USE

3.1 Access. Licensee may use any of the following methods to access the Licensed Materials:

- a) Use of the BioCyc website to browse, search and view information; and
- b) Use of the BioCyc Web Services to access BioCyc databases.

3.2 Copying and Attribution. Licensee may not provide copies of the Licensed Material to third parties, except that: (1) Licensee may print or copy limited excerpts of the Licensed Materials for internal use; and (2) may include limited excerpts of the Licensed Material within Licensee's reports and publications

that are provided to third parties, provided that in any such report or publication Licensee acknowledges BioCyc as the source of the excerpted data in the manner described at [biocyc.org/publications.shtml](http://biocyc.org/publications.shtml).

3.3 Prohibited Activities. Licensee shall not remove, alter, or obscure any proprietary designation or mark contained on or within the Licensed Material and shall reproduce such designations and marks on any copies of the Licensed Material. Except as expressly provided herein, Licensee shall have no license to, and shall not: (a) market, distribute, or otherwise exploit the Licensed Material by sale or other transfer of ownership, by rental, lease, lending, proxy access, or otherwise; or (b) disclose or disseminate the Licensed Material to any third party.

## 4. TERM AND TERMINATION

4.1 Term. This Agreement automatically terminates on the last day of the License Term. In addition, either party may, in addition to any other rights such party may have at law or equity, terminate this Agreement early: (a) after any material breach of this Agreement by the other party if the other party has not cured such breach within 15 days after written notice thereof by the non-breaching party; or (b) with the mutual agreement of the other party as expressed in writing.

4.2 Effect of Termination. Upon termination of this Agreement, Licensee shall have no further right to use the Licensed Material and shall destroy all copies of the Licensed Material remaining in Licensee's possession. Termination of this Agreement shall not relieve the parties of any obligation accruing prior to termination. Any terms and conditions of this Agreement, which by their nature extend beyond the term of this Agreement, shall survive the termination of this Agreement. This includes, without limitation, the disclaimer of representations and warranties, limitations of liability, and this survival provision.

## 5. REPRESENTATIONS AND WARRANTIES

5.1 Mutual Representations. Each party hereby represents and warrants to the other party that such party has taken all necessary corporate action on its part to authorize the execution and delivery of this Agreement.

5.2 DISCLAIMER OF ALL OTHER WARRANTIES. THE LICENSED MATERIAL AND ANY AND ALL OTHER PRODUCTS OR SERVICES PROVIDED HEREUNDER ARE PROVIDED "AS IS" WITH ALL FAULTS AND SRI MAKES NO REPRESENTATIONS, WARRANTIES, OR CONDITIONS (WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, STATUTORY, OR OTHERWISE) WITH RESPECT TO THE LICENSED MATERIAL OR ANY PORTION THEREOF, INCLUDING, BUT NOT LIMITED TO, ANY AND ALL IMPLIED WARRANTIES OR CONDITIONS OF TITLE, MERCHANTABILITY, LACK OF NEGLIGENCE, THE NON-INFRINGEMENT OF THE INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY, FITNESS OR SUITABILITY FOR A PARTICULAR PURPOSE (WHETHER OR NOT SRI KNOWS, HAS REASON TO KNOW, HAS BEEN ADVISED, OR IS OTHERWISE IN FACT AWARE OF ANY SUCH PURPOSE). WITHOUT LIMITATION TO THE FOREGOING, SRI MAKES NO REPRESENTATION OR WARRANTY THAT THE LICENSED MATERIAL IS: ERROR FREE; COMPATIBLE WITH ANY HARDWARE OR ANY OTHER COMPUTER SOFTWARE; OR ABLE TO COMPLETE CERTAIN FUNCTIONS IN SPECIFIED TIMES.

## 6. RISK ALLOCATION

6.1 EXCLUSION OF INCIDENTAL AND CONSEQUENTIAL DAMAGES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT AND UNDER NO CIRCUMSTANCES SHALL SRI OR ITS AFFILIATES BE LIABLE FOR LOSS OF PROFITS OR SPECIAL, INDIRECT, CONSEQUENTIAL, EXEMPLARY, OR INCIDENTAL DAMAGES OF WHATEVER KIND AND HOWEVER CAUSED, INCLUDING WITHOUT LIMITATION, LOSSES ARISING IN CONNECTION WITH THE SUPPLY, USE, OR PERFORMANCE OF THE LICENSED MATERIAL OR ANY WORK OR SERVICE PERFORMED BY SRI. THE FOREGOING PROVISIONS OF THIS SECTION SHALL APPLY WHETHER OR NOT SRI HAS BEEN ADVISED OF THE POSSIBILITY OF ANY SUCH DAMAGES AND NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY REMEDY STATED HEREIN. SRI SHALL NOT BE LIABLE FOR ANY CLAIM ARISING MORE THAN ONE YEAR PRIOR TO INSTITUTION OF A LEGAL PROCEEDING THEREON.

6.2 THIRD PARTY SUPPLIERS. CERTAIN SOFTWARE LICENSED HEREUNDER MAY CONTAIN FUNCTIONALITY SUPPLIED BY THIRD PARTIES. IN NO EVENT SHALL SUCH THIRD PARTIES, INCLUDING SRI'S THIRD-PARTY DEVELOPERS, VENDORS, SUPPLIERS, CONTRACTORS, OR CONSULTANTS BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, OR ANY DAMAGES ARISING FROM THIS AGREEMENT. THIRD PARTY SOFTWARE COMPONENTS IN THE LICENSED MATERIAL OR OTHERWISE SUPPLIED BY SRI MAY NOT BE USED INDEPENDENTLY OF THE LICENSED MATERIAL.

6.3 Maximum Aggregate Liability. Independent of, severable from, and to be enforced independently of any other provision of this Agreement, IN NO EVENT SHALL SRI'S AGGREGATE LIABILITY TO LICENSEE (INCLUDING LIABILITY TO ANY

PERSON OR PERSONS WHOSE CLAIM OR CLAIMS ARE BASED ON OR DERIVED FROM A RIGHT OR RIGHTS CLAIMED BY LICENSEE) WITH RESPECT TO ANY AND ALL CLAIMS AT ANY AND ALL TIMES ARISING FROM OR RELATED TO THE SUBJECT MATTER OF THIS AGREEMENT, IN CONTRACT, TORT, OR OTHERWISE, EXCEED THE TOTAL AMOUNT PAID TO SRI PURSUANT TO THIS AGREEMENT DURING THE PRIOR TWELVE MONTHS, IF ANY.

6.4 Intentional Risk Allocation. SRI and Licensee each acknowledge that the provisions of this Agreement were negotiated to reflect an informed, voluntary allocation of risks (both known and unknown) associated with the transactions associated with this Agreement. The warranty disclaimers and limitations in this Agreement are intended to limit the circumstances of liability. The remedy limitations and the limitations of liability are separately intended to limit the forms of relief available to the parties.

#### **7. INDEMNIFICATION**

7.1 Licensee shall indemnify, defend and hold harmless SRI and its affiliates, successors, assigns, officers, directors, employees, and agents from all losses, liabilities, damages, and expenses (including reasonable attorneys' fees and costs) that SRI may suffer as a result of any claims, demands, actions, or other proceedings made or instituted by any 3rd party against SRI arising out of or relating to Licensee's use of the Licensed Material, except for claims alleging the Licensed Materials infringe any third party copyrights.

7.2 SRI shall promptly notify Licensee of any proceeding with respect to which SRI intends to claim such indemnification. Licensee's indemnity obligations shall not apply to amounts paid in any settlement if effected without the consent of Licensee, which consent shall not be unreasonably withheld or delayed. Licensee shall not settle or consent to an adverse judgment in any such claim, demand, action, or other proceeding that adversely affects the rights or interests of SRI or imposes additional obligations on SRI, without the prior express written consent of SRI. SRI, its employees, and its agents shall cooperate fully with Licensee and its legal representatives in the investigation of any action, claim, or liability covered by this indemnification provision.

#### **8. MISCELLANEOUS**

8.1 Entire Agreement. This Agreement, together with the License Schedule, embodies the entire understanding and agreement between the parties and supersedes any prior understanding and agreement between and among them respecting the subject matter hereof. There are no representations, agreements, arrangements, or understandings, oral or written, between the parties hereto relating to the subject matter of this Agreement which are not fully expressed herein. No change, modification, extension, termination, or waiver of this Agreement, or any of the provisions herein, shall be valid unless made in writing and signed by duly authorized representatives of the parties. Neither party's technical contact is an authorized representative for this purpose.

8.2 Dispute Resolution. Except when prohibited by law, the parties shall resolve disputes arising out of this Agreement, including disputes about the scope of this arbitration provision, by final and binding arbitration seated and held in San Francisco, California before a single independent arbitrator. JAMS ([www.jamsadr.com](http://www.jamsadr.com)) shall administer the arbitration under its comprehensive arbitration rules and procedures. The arbitrator shall award the prevailing party its reasonable attorneys' fees and expenses, and its arbitration fees and associated costs. Any court of competent jurisdiction may enter judgment on the award. Notwithstanding the above, either party may seek preliminary relief from a court of competent jurisdiction to prevent imminent or continuing irreparable harm before filing a demand for arbitration.

8.3 Force Majeure. Neither party shall be held liable or responsible to the other party nor be deemed to have defaulted under or breached this Agreement for failure or delay in fulfilling or performing any obligation under this Agreement (other than an obligation for the payment of money to SRI) to the extent, and for so long as, such failure or delay is caused by or results from causes beyond the reasonable control of the affected party including but not limited to fires, earthquakes, floods, embargoes, wars, acts of war (whether war is declared or not), acts of terrorism, insurrections, riots, civil disturbances, strikes, lockouts or other labor disturbances, acts of God or any acts, omissions, or delays in acting by any governmental authority or the other party.

8.4 Notices. Any consent, notice or report required or permitted to be given or made under this Agreement by one party to the other party shall be in writing, delivered personally, by email (and promptly confirmed by personal delivery, U.S. first class mail, courier or internationally-recognized delivery service), U.S. first class mail postage prepaid, courier or internationally-recognized delivery service, and addressed to the other party at its address indicated in the License Schedule. Such consent, notice, or report shall be effective upon receipt by the addressee.

8.5 No Use of Name. Except as otherwise required by applicable law, regulation or order of a governmental agency or court of competent jurisdiction, neither party shall use the name of the other party or the other party's directors, officers or employees in any advertising, news release or other publication, without the other party's prior express written consent.

8.6 Counterparts; Headings. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The headings used in this Agreement are for reference only and are not to be used in the interpretation of construction of this Agreement.

8.7 Export Restrictions. Each party hereby acknowledges that the rights and obligations of this Agreement are subject to laws and regulations relating to the export of products and technical information. Without limitation, each party shall comply with all such applicable laws and regulations.

8.8 Independent Contractor. The parties intend to create an independent contractor relationship. Nothing herein shall be construed as creating a partnership, a joint venture, an agency, or any other relationship.

8.9 Assignment. Licensee shall not assign this Agreement, in whole or in part, by operation of law or otherwise, without SRI's prior written consent. Any purported assignment in violation of this provision is void.

8.10 Governing Law. The laws of the State of California govern this Agreement, without regard to the conflicts of law principles thereof, and the United Nations Convention on Contracts for the International Sale of Goods does not apply.

[ END OF TERMS ]