

eLabNext Terms of Use

Last Updated: January 2023

PLEASE REVIEW THESE TERMS OF USE CAREFULLY. ONCE ACCEPTED, THESE TERMS OF USE BECOME A BINDING LEGAL COMMITMENT BETWEEN YOU AND ELABNEXT. IF YOU DO NOT AGREE TO BE BOUND BY THESE TERMS, YOU SHOULD NOT ACCEPT THESE TERMS AND YOU SHOULD NOT USE OUR SOFTWARE OR WEBSITES (AS DEFINED BELOW).

These Terms of Use (“**Terms**” or “**Terms of Use**”) are issued by Bio-ITech B.V., part of the Eppendorf Group, trading as eLabNext (“**eLabNext**,” “**we**”, “**us**”, “**our**”).

eLabNext offers comprehensive and flexible lab information management software services (the “**Services**”). These Services include our all-in-one Electronic Lab Notebook eLabJournal (“**eLabJournal**”) as available on www.elabjournal.com or us.elabjournal.com, our sample and inventory tracking system eLabInventory (“**eLabInventory**”) as available on www.elabinventory.com or us.elabinventory.com, our protocol or SOP management system eLabProtocols (“**eLabProtocols**”) as available on www.elabprotocols.com or us.elabprotocols.com and our website www.elabnext.com.

If you have any questions about these Terms of Use or about our Services, please contact us at support@elabnext.com.

1. DEFINITIONS

1.1. “**Add-on**”: a software add-on that extends the core functionality of the eLab Software.

1.2. “**Key-User**” means a User who has been granted certain elevated access rights under a Customer Agreement which allow the use of the Services in accordance with the Customer Agreement, including control of system-wide settings and policies as well as account management and license management.

1.3. “**Cloud Solution**” means eLabNext Software, offered as a shared cloud managed hosting solution.

- 1.4. **“Customer”** means the company or organisation that has concluded a Customer Agreement with eLabNext for the provision, use and support of one or more Services.
- 1.5. **“Customer Agreement”** means the agreement concluded between eLabNext and the Customer, containing the terms and conditions for the provision, use and support of one or more Services to the Customer, including an order/quotation, EULA, SLA, DPA, these Terms of Use and any other contract documents as agreed between eLabNext and the Customer.
- 1.6. **“Customer Account”** means the (paid) subscription features and rights to the Services, as set out and granted to a Customer under a Customer Agreement, excluding a Trial Account.
- 1.7. **“Customer Data”** means any and all data, materials or content that a Customer (including all Users authorised by or otherwise connected to Customer) processes within or submits to the Software and/or Websites.
- 1.8. **“eLabNext Software”** means either eLabJournal, eLabInventory and/or eLabProtocols, made available to the Customer through an On-premises Installation or as a Cloud Solution or Private Cloud Solution, as set out in a Customer Agreement or a Trial Account.
- 1.9. **“Hosting Solution”** means a Cloud Solution or a Private Cloud Solution and related services as set out in the Customer Agreement.
- 1.10. **“IT System”** means the IT system of the Customer or a third party designated and contracted by the Customer on which the Software is installed and implemented in case of an On-premises Installation. This includes (cloud) infrastructure provided or managed by the Customer or by an external hosting provider contracted by the Customer.
- 1.11. **“On-premises Installation”** means a Customer-specific installation of eLabNext Software, installed on an IT System.
- 1.12. **“Private Cloud Solution”** means a Customer-dedicated installation of eLabNext Software offered as a managed hosting solution from an external hosting provider contracted by eLabNext, managed by eLabNext.
- 1.13. **“Services”** means the Software, and/or Hosting Solutions and/or related services as provided by eLabNext on the basis of a Customer Agreement or a Trial Account.

- 1.14. “**Software**” means the eLab Software and other software provided by eLabNext, whether under a Customer Agreement or a Trial Account.
- 1.15. “**Third Party Services**” means third party software, - content, - hosting and other third party services provided by third party suppliers to the Customer and used within or in connection with the Software and/or Hosting Solutions.
- 1.16. “**Trial Account**” means a free trial account which provides access to one or more of the Services on a trial basis for a limited number of users and for a limited amount of time, as determined by eLabNext.
- 1.17. “**User**” means an individual person that who is an employee of or is otherwise affiliated with the Customer and who is given access to the Services by the Customer under a Customer Account.
- 1.18. “**Websites**” means our websites www.elabjournal.com, www.elabinventory.com, www.elabprotocols.com and www.elabnext.com.

2. ELEGIBILITY AND AUTHORITY

- 2.1. To use our Services, you must be, and represent and warrant that i) you are, at least 16 years of age and competent to agree to these Terms, and ii) that your registration for and your use of our Services is in compliance with any and all applicable laws and regulations. If we have previously prohibited you from accessing or using our Services, you are not permitted to access or use the Services.
- 2.2. When signing up for the use of our Services on behalf of a company or organization (a Customer), you represent that you are duly authorized to represent such company and accept the Terms on behalf of such company. To the extent that your use of the Services is subject to a Customer Agreement, such Customer Agreement, including any addendum thereto, will prevail over any conflicting provision in these Terms.

3. REGISTRATION AND USE OF THE SERVICES

- 3.1. To access and use the Services, you must first set up an account. Use of the Services is only accessible to companies (‘industry’) or academic institutions and other non-profit

organizations ('academic'). We reserve the right to deny a request for an account that does not meet these requirements and also reserve the right to determine at our sole discretion whether your organization qualifies as industry or academic. eLabNext uses User account information in accordance with our [Privacy Policy](#).

3.2. Your User account is strictly personal and may not be shared with or used by any other person, including any of your co-workers. It is your responsibility to ensure that your User identification information remains confidential and secure. By registering, you agree that you are fully responsible for all activities that occur under your username and password. We may assume that any communications we receive under your account, including the email address registered to your account, have been made by you.

3.3. A Customer may designate one or more Users as a Key-User with certain elevated access rights over Customer's Account, including account management, User management, license management and access to Customer Data. Customer is fully responsible for its choice of, and any actions taken by a Key-User.

3.3.1. Unauthorized Use. You are responsible for notifying us through support@elabnext.com if you become aware of any unauthorized use of or access to your Customer Account or User account. eLabNext will not be liable for any loss, damages, liability, expenses or attorneys' fees that you may incur as a result of someone else using your account credentials, either with or without your knowledge and/or authorization, and regardless of whether you have or have not advised us of such unauthorized use.

4. TRIAL ACCOUNTS

4.1. If you receive access to the Services through a Trial Account, use of the Services is permitted only for your internal evaluation during the specific period designated by eLabNext (or, if not designated, 30 days). Trials are optional and either party may terminate a Trial Account at any time for any reason. **Notwithstanding anything else in these Terms of Use, we provide no warranty, indemnity or support for Trial Accounts and we are not liable for any damages resulting from your use of the Services through a Trial Account except for damages caused deliberately by or through intentional misconduct of eLabNext.**

5. SUPPORT

5.1. Support is subject to the terms and conditions of the Service Level Agreement (SLA) as concluded between the Customer and eLabNext. If no SLA has been concluded, support is provided at the sole discretion of eLabNext, without any obligation.

6. OUR PROPRIETARY RIGHTS

6.1. The Software and Hosting Solutions are owned and operated by us and/or our affiliates or licensors and contain materials (including all software, designs, texts, photographs, illustrations, audio and video materials, artwork and other graphic materials, and names, logos and trademarks) which are protected under intellectual property rights owned by us, our affiliates and/or our licensors. You agree to abide by all applicable copyright and other intellectual property laws, as well as any additional copyright notices or restrictions contained in the Software and/or Hosting Solutions.

6.2. You acknowledge and agree that all intellectual property rights and other proprietary rights resulting from any amendments, improvements, supplements and additions to the eLab Software or our Hosting Solutions that are, in whole or in part, based upon your Feedback (as defined in section 8.3) will be vested exclusively in eLabNext. For the avoidance of doubt, this section 6.2 does not apply to any Customer Data.

7. ACCEPTABLE USE

7.1. Acceptable Use. All Users must comply with the following rules regarding acceptable use of the Services:

7.1.1. *Prohibited actions*. You may not:

- probe, scan, or test the vulnerability of any system or network of or relating to the Services or breach or circumvent any security or authentication measure;
- access or search the Services by any means other than eLabNext's publicly supported interfaces (for example, "scraping");
- attempt to disrupt or overwhelm our infrastructure by intentionally imposing unreasonable requests or burdens on our resources (e.g. using "bots" or other automated systems to send requests to our servers at a rate beyond what could be sent by a human user during the same period of time); or
- interfere with or disrupt the access of any Customer, User, host or network, including, without limitation, by sending a virus, overloading, flooding, spamming, mail-bombing the Services, or by scripting the creation of Customer Data in such a manner as to interfere with or create an undue burden on the Services.

7.1.2. *Prohibited use.* You may not use the Services to carry out, promote or support:

- any unlawful or fraudulent activities;
- the impersonation of another person or entity or the misrepresentation of an affiliation with a person or entity in a manner that does or is intended to mislead, confuse, or deceive others;
- activities that are defamatory, discriminatory, libellous or threatening, constitute hate speech, harassment, or stalking;
- the publishing or posting of other people's private or personal information without their express permission;
- the sending of unsolicited communications, promotions advertisements or spam; or
- the publishing of or linking to i) Prohibited User Data (as defined below) or ii) malicious content intended to damage or disrupt another Customer's or User's browser or computer or other device.

7.1.3. *Prohibited User Data.* You may not post or process any data on or through the Services that:

- violates any applicable law or contractual confidentiality obligation, any third party's intellectual property rights or privacy rights;
- is deceptive, misleading, fraudulent, illegal, obscene, pornographic, defamatory, libellous or threatening, constitutes hate speech, harassment, or stalking;
- contains any sensitive personal information, such as financial information, payment card numbers, social security numbers, or patient health information, except with eLabNext's explicit prior written consent granted under a Customer Agreement;
- contains viruses, bots, worms, or similar harmful materials.

7.1.4. In addition to any other remedies that may be available to us, we reserve the right to take any remedial action we deem necessary, including immediately suspending or terminating your User account or your access to one or more of the Services, upon notice and without any liability for us, should you fail to abide by the rules in this section 7 or if, in our sole discretion, such action is necessary to prevent disruption of the Services for other Customers/Users.

8. CUSTOMER DATA

8.1. Users grant eLabNext a license to access, use, copy, reproduce, process, adapt, publish, transmit, and display Customer account information and User account information (not including Customer Data) as permitted by our Privacy Policy, including any use required under applicable law.

- 8.2. We reserve the right to remove any Customer data from the Services that violate these Terms.
- 8.3. Customer Data is owned and controlled by the Customer as set forth in the Customer Agreement. eLabNext maintains a limited, non-exclusive and non-transferrable (except in connection with the sale or transfer of its business) license to access, use, copy, reproduce, process, adapt, publish, transmit, host, and display Customer Data for the following limited purposes: (i) to maintain and provide the Services; (ii) to prevent or address technical or security issues and resolve support requests; (iii) to investigate when we have received a complaint alleging, that such Customer Data is in violation of the Customer Agreement and/or these Terms; (iv) to comply with a valid legal subpoena, request or other lawful process; and (v) as otherwise set forth in our Customer Agreement or as expressly permitted in writing by the Customer.
- 8.4. We welcome any recommendations, suggestions, improvement or correction requests, comments, or other feedback from you about the Software or the Websites (“*Feedback*”). By submitting Feedback to us, you agree that: (a) Feedback will not be treated as your confidential or proprietary information; (b) we may use or disclose, or choose not to use or disclose, Feedback for any purpose and in any way; and (c) you are not entitled to any compensation or reimbursement of any kind from us under any circumstances for Feedback.
- 8.5. You guarantee that you have all required rights to submit user data, Customer Data and Feedback without violation of any third-party rights. You understand that we do not control, and are not responsible for, user data, Customer Data and Feedback. You agree that you will indemnify, defend, and hold harmless eLabNext for all claims resulting from user data, Customer Data and Feedback that you submit through the Services.

9. LIMITATION OF LIABILITY

- 9.1. Unless agreed otherwise in a Customer Agreement, eLabNext is only liable for a failure to perform its obligations arising from these Terms in the event of deliberate or intentional misconduct. Any other liability of eLabNext, arising from contract or any other legal basis whatsoever is expressly excluded. eLabNext’s total liability is in any event limited to the compensation of direct damages only and will never exceed € 1.000,- (one thousand euro).
- 9.2. You agree to indemnify, defend and hold harmless eLabNext and its affiliates, directors, employees, agents and assignees from and against any and all claims, losses, costs and expenses, including without limitation legal fees and expenses, arising directly or indirectly out of, relating to, or, incurred in connection with your use of the Services.

10. THIRD PARTY SERVICES

- 10.1. The Software and Hosting Solutions may provide access to Third Party Services through the installation of Add-ons based on customer preference. You agree and acknowledge that we have no control over and are not responsible for the availability and performance of such Third Party Services, and do not endorse and are not responsible or liable for (i) any content, advertising, products, or other materials on or available from such Third Party Services, (ii) any non-availability, errors or omissions in these Third Party Services or (iii) any damage or loss caused or alleged to be caused by or in connection with use of or reliance on any Third Party Services.
- 10.2. Your interactions with and use of such Third Party Services will be governed by terms of service, privacy policies and any other similar terms of the third parties concerned.

11. MODIFICATION

- 11.1. We reserve the right at any time to modify or discontinue, temporarily or permanently, any functionalities or features in the Services (or any part thereof), with or without notice, as long as the core functionality of the Software is maintained. We may, in our sole discretion, decide what features to include in the Software and whether to make them optional or mandatory. You agree that we shall not be liable to you or any third party for any modification, suspension or discontinuance of the Services.

12. APPLICABLE LAW

- 12.1. Please note that these Terms, and their subject matter and formation, are governed by the laws of the Netherlands.
- 12.2. You can contact us through our support@elabnext.com if you have any complaints or disputes regarding (any part of) the Services. We agree to use best efforts to settle any dispute, claim, question, or disagreement amicably. If we do not reach an amicable solution within a period of 30 days from the time informal dispute resolution has commenced, to the extent permitted by applicable law, all controversies, disputes, demands, counts, claims or causes of action between you and us arising out of, under, or related to (your use of) the Services, shall be submitted to the exclusive jurisdiction of the courts of Groningen, the Netherlands.

13. GENERAL TERMS

- 13.1. Assignment. You may not assign your rights and obligations arising from these Terms without our prior written consent. Any non-permitted assignments are void.
- 13.2. Waiver. If we fail to insist that you perform any obligations under these Terms, or if we do not enforce our rights against you, or if we delay in doing so, that will not constitute a waiver of our rights and will not mean that you do not have to comply with your obligations. If we do waive a failure or breach by you, we will only do so in writing and that will not mean that we automatically waive any future failure of breach by you.
- 13.3. Severability. Each of the paragraphs of these Terms operates separately. If any court or relevant authority decides that any of them are unlawful or unenforceable, the remaining paragraphs will remain in full force and effect.