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Subscription Terms of Service

Last Updated: August 13, 2024

Subscription Terms of Service: For entities or persons who want to create a DNAnexus user account and use the DNAnexus Platform

Additional Documentation

[DNAnexus Acceptable Use Policy \(AUP\)](#): For subscribers and developers who use the DNAnexus Platform

[DNAnexus Platform Application Agreement \(DPAA\)](#): For app developers who wish to license their app on the DNAnexus Platform

[UKB Research Analysis Platform \("RAP"\) Accelerator Package for use with UKB](#)

This DNAnexus Subscription Terms of Service ("Agreement") is entered into by and between DNAnexus, Inc. ("DNAnexus") and the entity or person placing an order or accessing the Service ("Customer" or "you"). If you are accessing or using the Services

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over any conflicting terms or conditions in this Agreement. If you are accessing or using the Service in your individual capacity, all references to “User” herein mean you, the Customer. The Agreement consists of the terms and conditions set forth below, any attachments or exhibits identified below and any Order Forms (as defined below) that reference this Agreement.

This Agreement permits Customer to purchase online platform-as-a-service products and other services from DNAnexus pursuant to any DNAnexus ordering documents, online registration, order descriptions or order confirmations referencing this Agreement (“Order Form(s)”) and sets forth the basic terms and conditions under which those products and services will be delivered. This Agreement shall govern Customer’s initial purchase on the Effective Date as well as any future purchases made by Customer that reference this Agreement.

The “Effective Date” of this Agreement is the date which is the earlier of (a) Customer’s initial access to the Service (as defined below) through any online provisioning, registration or order process or (b) the effective date of the first Order Form referencing this Agreement.

Third-Party Project Participants: If you are not otherwise a DNAnexus customer, but are accessing or using the Service because you have been invited to participate in a Project controlled by a DNAnexus customer, then the Project Participant Terms, and not this Agreement, apply to such access or use.

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option and as Customer's exclusive remedy) may either: (a) permit Customer to continue under the prior version of this Agreement until expiration of the then-current Subscription Term (after which time the modified Agreement will apply) or (b) allow Customer to terminate this Agreement and receive a pro-rated refund of any fees Customer has pre-paid for use of the Service for the terminated portion of the applicable Subscription Term. Upon any changes to this Agreement, Customer may be required to click to agree to the modified Agreement in order to continue using the Service, and in any event continued use of the Service after the modifications take effect constitutes Customer's acceptance of the modifications.

BY INDICATING YOUR ACCEPTANCE OF THIS AGREEMENT, INSTALLING THE CLIENT SOFTWARE OR ACCESSING OR USING THE SERVICE, 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 INSTALL THE CLIENT SOFTWARE OR USE THE SERVICE. FOR CLARITY, EACH PARTY EXPRESSLY AGREES THAT THIS AGREEMENT IS LEGALLY BINDING UPON IT.

1 Definitions

"Account" means Customer's account on the Service.

"Affiliate" means any entity under the control of Customer where "control" means ownership of or the right to control greater than 50% of the voting securities of such entity.

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“Customer Data” means any business information or other data of any type that is Submitted to the Service by or on behalf of Customer (including from External Platforms and by Users) and all corresponding Output.

“Customer Materials” means Customer Data and Customer Tools.

“Customer Tools” means any Tools Submitted to the Service by or on behalf of Customer (including from External Platforms and by Users).

“DNAnexus APIs” means the proprietary application programming interfaces made available by DNAnexus for accessing the Service.

“Documentation” means the functional and technical user documentation provided with the Service.

“Export” means to copy, transmit or export data or tools out of the Service.

“External Platform” means any third-party software, software-as-a-service, data source or other product or service with which the Service may be integrated or connected.

“HIPAA” means the Health Insurance Portability and Accountability Act, as amended and supplemented.

“Laws” means all applicable local, state, federal and international laws, regulations and conventions, including without limitation,

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“Module” means a designated set of features provided as part of the Service as described in the applicable Order Form.

“Output” means any results or other output from Customer’s use of Tools within the Service or otherwise derived from using the Service.

“Private Health Information” means any patient, medical or other protected health information regulated by HIPAA or any similar Laws.

“Project” has the meaning set forth in Section 3.1 (Creation of Projects) below.

“Service” means DNAnexus’ platform-as-a-service solution(s) specified on an Order Form, including the Web UI and any related DNAnexus APIs and Client Software. The Service includes any Modules specified on the Order Form, but excludes Tools.

“Submit” means to input, upload or import data or Tools to the Service.

“Third-Party Project” has the meaning set forth in Section 3.5 (Third-Party Projects).

“Third-Party User” has the meaning set forth in Section 3.4 (Third-Party Users).

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“**Web UI**” means DNAnexus’ web-based user interface for accessing and administering the Service.

2 DNAnexus Service

1. **Service Overview.** The DNAnexus Service is an online platform designed to enable Customer to manage, analyze and collaborate on its Customer Data. Customer organizes its use of the Service through individual Projects to which it invites Users to participate in defined roles. The Service includes features for Customer to Submit Customer Data and use Tools to analyze Customer Data. The Service also includes integrations with External Platforms. Provision of Service. The Service is provided on a subscription basis for a set term designated on the Order Form (each, a “Subscription Term”).
2. **Provision of Service.** The Service is provided on a subscription basis for a set term designated on the Order Form (each, a “**Subscription Term**”). DNAnexus may also offer Professional Services (as defined in Section 14) related to the Service. Customer shall purchase and DNAnexus shall provide the specific Service and related Professional Services (if any) as specified in the applicable Order Form.
3. **Access to Service.** Customer may access and use the Service solely for its own benefit and in accordance with the terms and conditions of this Agreement, the Documentation and any scope of use restrictions designated in the applicable Order Form (“**Scope of Use**”).
4. **Users.** Use of and access to the Service is permitted only by Users. Customer may grant certain Users administrative privileges (which may include authority to provision new User accounts, create new Projects, assign Users to Projects or

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shall be responsible for any and all actions taken by Users on Customer's Account and for rescinding access to its Account (including its Projects) by any User that Customer no longer wishes to have access.

5. **Client Software.** To the extent use of the Service requires Customer to install Client Software, subject to all of the terms and conditions of this Agreement, DNAnexus grants to Customer a limited, non-transferable, non-sublicensable, non-exclusive license during the applicable Subscription Term to use the object code form of the Client Software internally, but only in accordance with (a) the Documentation, (b) this Agreement and (c) the designated Scope of Use.
6. **Contractors and Affiliates.** Customer may permit its independent contractors and consultants who are not competitors of DNAnexus ("**Contractors**") and its Affiliates to serve as Users, provided Customer remains responsible for compliance by each such Contractor or Affiliate with all of the terms and conditions of this Agreement and any such use of the Service by such Contractor or Affiliate is for the sole benefit of Customer (or such Affiliate). Use of the Service by Affiliates, Contractors and Customer in the aggregate must be within the restrictions in the applicable Order Form. The Affiliate rights granted in this section shall not apply to any "enterprise wide" licenses unless Affiliate usage is designated in the applicable Order Form.
7. **General Restrictions.** Customer shall not (and shall not permit any third party to): (a) rent, lease, provide access to or sublicense the Service to a third party (except to Users as permitted herein); (b) use the Service to provide or create, or incorporate the Service into, any similar service provided to a third party or otherwise directly expose the functionality of the Service to any third party (except to Users as permitted herein); (c) reverse engineer, decompile, disassemble, or otherwise seek to obtain the source code or non-public APIs

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Service (including any reports or data printed from the Service); (f) publicly disseminate information regarding the performance of the Service; (g) adversely impact the speed, security or integrity of the Service (or any data contained within the Service); or (h) conduct any penetration testing or exploit or attempt to exploit any vulnerabilities in the Service.

8. **Trial Subscriptions.** If Customer receives a trial, evaluation or other free subscription to the Service (a “Trial Subscription”), then Customer may use the Service in accordance with the terms and conditions of this Agreement until Customer has used all trial credits provided by DNAnexus or such other period granted by DNAnexus (the “Trial Period”). Trial Subscriptions are permitted solely for Customer’s use to determine whether to purchase a paid subscription to the Service. Trial Subscriptions may not include all functionality and features accessible as part of a paid Subscription. DNAnexus has the right to terminate a Trial Subscription at any time for any reason. If Customer does not purchase a paid Subscription following the Trial Period, Customer’s use of the Service will be limited to participation in Projects controlled by other DNAnexus customers and DNAnexus reserves the right to terminate this Agreement at any time for any reason. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, DNANEXUS WILL HAVE NO WARRANTY, INDEMNITY, SERVICE LEVEL OR SUPPORT OBLIGATIONS WITH RESPECT TO TRIAL SUBSCRIPTIONS.

3 Projects

1. **Creation of Projects.** Customer may create projects associated with Customer’s Account (each, a “**Project**”) and invite Users to collaborate therein. A typical Project will contain (i) Customer Data and (ii) Tools.

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such User has with respect to such Project.

4. **Third-Party Users.** If the applicable Module is specified on the Order Form, Customer may invite unaffiliated third parties who are otherwise registered users of the Service to be Users of its Projects (“**Third-Party Users**”). A Third-Party User will have all permissions applicable to the role assigned to it by Customer (including, if applicable, as an Administrator) and anything Submitted by a Third-Party User to a Project will be deemed to be Customer Materials. Customer is solely responsible for: (i) evaluating the risk of granting Third-Party Users access to Customer’s Projects, (ii) separately entering into any terms it deems necessary with such Third-Party Users, (iii) assigning and rescinding access or permissions for each Third-Party User and (iv) any and all actions of each Third-Party User as if it were any other User of Customer under this Agreement.
5. **Third-Party Projects.** Customer’s Users may be invited by another customer of the Service to participate in Projects controlled by such other customer (a “**Third-Party Project**”). **Customer acknowledges and agrees that to the extent any of its Users participate in a Third-Party Project, any data, Tools or other materials Submitted by its Users to such Third-Party Project will be treated as the materials of such other customer and not as “Customer Materials” in connection with such Third-Party Project.** Customer is solely responsible for: (i) evaluating the risk of Submitting Customer Materials to a Third-Party Project and (ii) separately entering into any terms it deems necessary with the owners of such Third-Party Projects.

4 Tools

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2. **Customer Tools.** If Customer Submits Customer Tools for use with a Project, Customer must have the right to do so as described in Section 6.1(b) (Responsibility for Customer Materials) below.
3. **Library Tools.** Customer may, in its sole discretion, elect to install and use Library Tools within a Project. Library Tools are made available through the Service for Customer's convenience, but the terms which govern use of such Tools are solely as set forth in the Library Tool's EULA. By installing or using a Library Tool, Customer agrees to the applicable EULA and agrees to pay any associated listed fees when accrued in accordance with the terms of Section 9.2 (Fees and Payment). Unless otherwise separately specified by DNAnexus in writing, DNAnexus has no warranty, support, indemnity or other obligations with respect to Library Tools. Customer agrees not to Export any Library Tools from Customer's Account on the Service unless expressly permitted in the applicable EULA. **"EULA"** means any end user agreement, open source license or other terms or conditions posted in connection with a Library Tool.

5 External Platforms

1. **External Platform Accounts.** The Service may support integrations with certain External Platforms. In order for the Service to communicate with such External Platforms, Customer may be required to input credentials for the Service to access and receive relevant information from such External Platforms. By enabling use of the Service with any External Platform, Customer authorizes DNAnexus to access Customer's accounts with such External Platform for the purposes described in this Agreement. Customer is solely responsible for complying with any relevant terms and

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Customer Materials or Tools that Customer Exports to an External Platform. Except as otherwise set forth in the applicable Order Form, DNAnexus does not guarantee that the Service will maintain integrations with any External Platform and DNAnexus may disable integrations of the Service with any External Platform at any time with or without notice to Customer.

6 Customer Materials

1. Customer Obligations.

1. In General.

1. Customer shall ensure that Customer's use of the Service is at all times compliant with Customer's privacy policies and all Laws.

2. Responsibility for Customer Materials.

1. Customer is solely responsible for the accuracy, content and legality of all Customer Materials (including those Submitted by Third-Party Users) and for sharing Customer Materials as described in Section 3.4 (Third-Party Users) and Section 3.5 (Third-Party Projects). Customer represents and warrants to DNAnexus that Customer has all necessary rights, consents and permissions to collect, share and use all Customer Materials as contemplated in this Agreement (including granting DNAnexus the rights in Section 8.1 (Rights in Customer Materials)), and that no Customer Materials will violate or infringe (i) any third-party intellectual property, publicity, privacy or other rights, (ii) any Laws, (iii) any terms of service, privacy policies or other agreement governing

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has entered into a Business Associate Agreement (“BAA”) with DNAnexus. Unless a BAA is in place, DNAnexus will have no liability under this Agreement for Private Health Information, notwithstanding anything to the contrary in this Agreement or under HIPAA or any similar Laws. If Customer is permitted to submit Private Health Information to the Service, it may only do so by uploading it to a Project specifically identified as a “PHI Project”. The mutually executed BAA shall be incorporated by reference into this Agreement and is subject to its terms. For clarity, the BAA only applies to Private Health Information stored within Customer’s PHI Projects and not to Private Health Information Customer Exports to any External Platform or shares with any Third-Party Project.

4. Customer agrees not to Submit to the Service any Private Health Information unless (i) the Order Form specifies the applicable Module and (ii) Customer has entered into a Business Associate Agreement (“**BAA**”) with DNAnexus. Unless a BAA is in place, DNAnexus will have no liability under this Agreement for Private Health Information, notwithstanding anything to the contrary in this Agreement or under HIPAA or any similar Laws. If Customer is permitted to submit Private Health Information to the Service, it may only do so by uploading it to a Project specifically identified as a “PHI Project”. The mutually executed BAA shall be incorporated by reference into this Agreement and is subject to its terms. For clarity, the BAA only applies to Private Health Information stored within Customer’s PHI Projects and not to Private Health Information Customer Exports to any External Platform or shares with any Third-Party Project.

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respect to maintaining archives or backups of Customer Materials.

3. **Indemnification by Customer.** Customer shall indemnify, defend and hold harmless DNAnexus from and against any and all claims, costs, damages, losses, liabilities and expenses (including reasonable attorneys' fees and costs) arising out of or in connection with any claim arising from or relating to (a) any Customer Materials or breach or alleged breach by Customer of Section 6.1 (Customer Obligations), (b) any service or product offered by Customer in connection with or related to the Service or (c) sharing of Customer Materials with (or use thereof by) Third-Party Users or Third-Party Projects. This indemnification obligation is subject to Customer receiving (i) prompt written notice of such claim (but in any event notice in sufficient time for Customer to respond without prejudice); (ii) the exclusive right to control and direct the investigation, defense, or settlement of such claim; and (iii) all necessary cooperation of DNAnexus at Customer's expense.

7 Security

DNAnexus agrees to use commercially reasonable technical and organizational measures designed to prevent unauthorized access, use, alteration or disclosure of the Service or Customer Data, as further described in the Data and Security Policy [available here](#). However, DNAnexus shall have no responsibility for errors in transmission, unauthorized third-party access or other causes beyond DNAnexus' control.

8 Ownership

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Materials solely to the extent necessary to provide the Service to or as directed by Customer.

2. **DNAexus Technology.** This is a subscription agreement for access to use of the Service. Customer acknowledges that it is obtaining only a limited right to the Service and that irrespective of any use of the words “purchase”, “sale” or like terms in this Agreement no ownership rights are being conveyed to Customer under this Agreement. Customer agrees that DNAexus or its suppliers retain all right, title and interest (including all patent, copyright, trademark, trade secret and other intellectual property rights) in and to all of the Service, Documentation, Professional Services deliverables (but excluding any Customer Materials incorporated therein) and any and all related and underlying technology and documentation; and any derivative works, modifications or improvements of any of the foregoing, including as may incorporate Feedback (collectively, “**DNAexus Technology**”). Except as expressly set forth in this Agreement, no rights in any DNAexus Technology are granted to Customer. Further, Customer acknowledges that the Service is an online, hosted solution, and that except for Client Software Customer has no right to obtain a copy of the Service.
3. **Feedback.** Customer, from time to time, may submit comments, questions, suggestions or other feedback relating to any DNAexus product or service to DNAexus (“**Feedback**”). DNAexus may freely use or exploit Feedback in connection with any of its products or services.
4. **Service Data.** Notwithstanding anything to the contrary herein, Customer agrees that DNAexus may obtain technical and other data about Customer’s use of the Service and Library Tools (“**Service Data**”), and DNAexus may use and share the Service Data to improve, support, develop, provide and deliver reporting regarding the Service and Library Tools

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on the applicable Order Form, each Subscription Term shall automatically renew for additional twelve (12) month periods at DNAnexus' then-current license rates unless either party gives the other written notice of termination at least thirty (30) days prior to expiration of the then-current Subscription Term.

2. **Fees and Payment.** All fees are as set forth in the applicable Order Form and shall be paid by Customer within thirty (30) days of invoice, unless otherwise specified in the applicable Order Form. Except as expressly set forth in Section 11.1 (Limited Warranty), Section 12 (Availability and Service Credits) and Section 16 (Indemnification), all fees are non-refundable. Customer is required to pay any sales, use, GST, value-added, withholding, or similar taxes or levies, whether domestic or foreign, other than taxes based on the income of DNAnexus. Any late payments shall be subject to a service charge equal to 1.5% per month of the amount due or the maximum amount allowed by law, whichever is less.
3. **Suspension of Service.** Without limiting DNAnexus' termination or other rights hereunder, DNAnexus reserves the right with notice (email sufficient) to suspend Customer's access to the Service in whole or in part, without liability to Customer: (i) if Customer's account is thirty (30) days or more overdue; (ii) for Customer's breach of Sections 2.6 (General Restrictions) or 6.1 (Customer Obligations); or (iii) to prevent harm to other customers or third parties or to preserve the security, availability or integrity of the Service. Unless this Agreement has been terminated, DNAnexus will cooperate to restore Customer's access to the Service promptly after DNAnexus verifies that Customer has resolved the issue requiring suspension.

10 Term and Termination

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written notice; (b) ceases operation without a successor; or (c) seeks protection under any bankruptcy, receivership, trust deed, creditors' arrangement, composition, or comparable proceeding, or if any such proceeding is instituted against that party (and not dismissed within sixty (60) days thereafter).

3. **Effect of Termination.** Upon any expiration or termination of this Agreement, Customer shall immediately cease any and all use of and access to the Service (including any and all related DNAnexus Technology) and delete (or, at DNAnexus' request, return) any and all copies of the Documentation, any DNAnexus passwords or access codes and any other DNAnexus Confidential Information in its possession. Customer acknowledges that following termination it shall have no further access to the Service or any Customer Materials Submitted to the Service, and that DNAnexus may delete any such materials as may have been stored by DNAnexus at any time. Except where an exclusive remedy is specified, the exercise of either party of any remedy under this Agreement, including termination, will be without prejudice to any other remedies it may have under this Agreement, by law or otherwise.
4. **Survival.** The following Sections shall survive any expiration or termination of this Agreement: 2.6 (General Restrictions), 6.2 (Backups of Customer Materials), 6.3 (Indemnification by Customer), 8 (Ownership), 9.2 (Fees and Payment), 10 (Term and Termination), 11.2 (Warranty Disclaimer), 15 (Limitation of Remedies and Damages), 16 (Indemnification), 17 (Confidential Information) and 19 (General Terms).

11 Limited Warranty

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such remedy to be impracticable, either party may terminate the applicable Subscription Term and Customer shall receive as its sole remedy a refund of any fees Customer has pre-paid for use of the Service for the terminated portion of the applicable Subscription Term. The limited warranty set forth in this Section 11.1 shall not apply: (i) unless Customer makes a claim within thirty (30) days of the date on which Customer first noticed the non-conformity, (ii) if the error was caused by misuse, unauthorized modifications or third-party hardware, software or services, or (iii) to use provided on a no-charge or evaluation basis.

2. **Warranty Disclaimer.** (A) EXCEPT FOR THE LIMITED WARRANTY IN SECTION 11.1, THE SERVICE IS PROVIDED “AS IS”. NEITHER DNANEXUS NOR ITS SUPPLIERS MAKES ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT. DNANEXUS does not warrant that Customer’s use of THE SERVICE will be uninterrupted or error-free, nor does DNANEXUS warrant that it will review the Customer MATERIALS for accuracy or that it will preserve or maintain the Customer MATERIALS without loss. DNANEXUS SHALL NOT BE LIABLE FOR DELAYS, INTERRUPTIONS, SERVICE FAILURES OR OTHER PROBLEMS INHERENT IN USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS OR OTHER SYSTEMS OUTSIDE THE REASONABLE CONTROL OF DNANEXUS. CUSTOMER MAY HAVE OTHER STATUTORY RIGHTS, BUT THE DURATION OF STATUTORILY REQUIRED WARRANTIES, IF ANY, SHALL BE LIMITED TO THE SHORTEST PERIOD PERMITTED BY LAW.

(B) DNANEXUS HAS NO LIABILITY OR RESPONSIBILITY, AND

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RESULTS AND DNANEXUS DISCLAIMS ALL LIABILITY OF ANY KIND FOR DECISIONS MADE BASED ON OUTPUT OR OTHER RESULTS OF THE SERVICE. DNANEXUS HAS NO CONTROL OVER, AND WILL HAVE NO LIABILITY FOR, ANY ACTS OR OMISSIONS OF ANY THIRD-PARTY USERS OR THIRD-PARTY PROJECTS.

12 Availability and Service Credits

The service is subject to Service Levels agreement.

13 Support

During the Subscription Term of the Service, DNAnexus shall provide end user support in accordance with the Customer Support Policy [available here](#).

14 Professional Services

DNAnexus shall provide the professional consulting services (“**Professional Services**”) purchased in the applicable Order Form. The scope of Professional Services shall be as set forth in a Statement of Work referencing this Agreement and executed by both parties describing the work to be performed, fees and any applicable milestones, dependencies and other technical specifications or related information (“**SOW**”). Unless Professional Services are provided on a fixed-fee basis, Customer shall pay DNAnexus at the per-hour rates set forth in the Order Form (or, if not specified, at DNAnexus’ then-standard rates) for any services.

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retain all right, title and interest in and to any such work product, code or deliverables and any derivative, enhancement or modification thereof created by DNAnexus (or its agents) (excluding any underlying Customer Materials or Confidential Information).

15 Limitation of Remedies and Damages

1. **Consequential Damages Waiver.** EXCEPT FOR EXCLUDED CLAIMS (DEFINED BELOW), NEITHER PARTY (NOR ITS SUPPLIERS) SHALL HAVE ANY LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT FOR ANY LOSS OF USE, LOST DATA, LOST PROFITS, FAILURE OF SECURITY MECHANISMS, INTERRUPTION OF BUSINESS, OR ANY INDIRECT, SPECIAL, INCIDENTAL, RELIANCE, OR CONSEQUENTIAL DAMAGES OF ANY KIND, EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE.
2. **Liability Cap.** EXCEPT FOR EXCLUDED CLAIMS, NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, EACH PARTY AND ITS SUPPLIERS' ENTIRE LIABILITY TO THE OTHER PARTY ARISING OUT OF OR RELATED TO THIS AGREEMENT SHALL NOT EXCEED THE AMOUNT ACTUALLY PAID BY CUSTOMER TO DNANEXUS DURING THE PRIOR TWELVE (12) MONTHS UNDER THIS AGREEMENT.
3. **Excluded Claims.** "Excluded Claims" means any claim arising (a) from Customer's breach of Section 2.6 (General Restrictions); (b) under Section 6.1 (Customer Obligations); (c) from a party's breach of its obligations in Section 17 (Confidential Information) (but excluding claims related to Customer Materials); or (d) a party's indemnification obligations under this Agreement.

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16 Indemnification

DNAexus shall defend Customer from and against any claim by a third party alleging the Service when used as authorized under this Agreement infringes a U.S. patent, U.S. copyright, or U.S. trademark and shall indemnify and hold harmless Customer from and against any damages and costs awarded against Customer or agreed in settlement by DNAexus (including reasonable attorneys' fees) resulting from such claim, provided that DNAexus shall have received from Customer: (i) prompt written notice of such claim (but in any event notice in sufficient time for DNAexus to respond without prejudice); (ii) the exclusive right to control and direct the investigation, defense and settlement (if applicable) of such claim; and (iii) all reasonable necessary cooperation of Customer. If Customer's use of the Service is (or in DNAexus' opinion is likely to be) enjoined, if required by settlement or if DNAexus determines such actions are reasonably necessary to avoid material liability, DNAexus may, in its sole discretion: (a) substitute substantially functionally similar products or services; (b) procure for Customer the right to continue using the Service; or if (a) and (b) are not commercially reasonable, (c) terminate the Agreement and refund to Customer the fees paid by Customer for the portion of the Subscription Term that was paid by Customer but not rendered by DNAexus. The foregoing indemnification obligation of DNAexus shall not apply: (1) if the Service is modified by any party other than DNAexus, but solely to the extent the alleged infringement is caused by such modification; (2) if the Service is combined with

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alleged infringement is not caused by the particular technology or implementation of the Service but instead by features common to any similar product or service; or (6) if Customer settles or makes any admissions with respect to a claim without DNAnexus' prior written consent. THIS SECTION 16 SETS FORTH DNANEXUS' AND ITS SUPPLIERS' SOLE LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO ANY CLAIM OF INTELLECTUAL PROPERTY INFRINGEMENT.

17 Confidential Information

Each party (as "**Receiving Party**") agrees that all code, inventions, know-how, business, technical and financial information it obtains from the disclosing party ("**Disclosing Party**") constitute the confidential property of the Disclosing Party ("**Confidential Information**"), provided that it is identified as confidential at the time of disclosure or should be reasonably known by the Receiving Party to be confidential or proprietary due to the nature of the information disclosed and the circumstances surrounding the disclosure. Any DNAnexus Technology, performance information relating to the Service, and the terms and conditions of this Agreement shall be deemed Confidential Information of DNAnexus without any marking or further designation. Except as expressly authorized herein, the Receiving Party will (1) hold in confidence and not disclose any Confidential Information to third parties and (2) not use Confidential Information for any purpose other than fulfilling its obligations and exercising its rights under this Agreement. The Receiving Party may disclose Confidential

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compliance by any such representative with the terms of this Section 17. The Receiving Party's confidentiality obligations shall not apply to information that the Receiving Party can document: (i) was rightfully in its possession or known to it prior to receipt of the Confidential Information; (ii) is or has become public knowledge through no fault of the Receiving Party; (iii) is rightfully obtained by the Receiving Party from a third party without breach of any confidentiality obligation; or (iv) is independently developed by employees of the Receiving Party who had no access to such information. The Receiving Party may make disclosures to the extent required by law or court order, provided the Receiving Party notifies the Disclosing Party in advance and cooperates in any effort to obtain confidential treatment. The Receiving Party acknowledges that disclosure of Confidential Information would cause substantial harm for which damages alone would not be a sufficient remedy, and therefore that upon any such disclosure by the Receiving Party the Disclosing Party shall be entitled to seek appropriate equitable relief in addition to whatever other remedies it might have at law.

18 Co-Marketing

At the request of DNAnexus, Customer agrees to the issuance of a joint press release ("**Press Release**") on a mutually agreed upon date or the 90th day from the Effective Date, whichever is earlier. Each party will have the right to approve the Press Release in advance, but such approval will not be unreasonably delayed or withheld. Customer also agrees to participate in other reasonable

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19 General Terms

1. **Assignment.** This Agreement will bind and inure to the benefit of each party's permitted successors and assigns. Neither party may assign this Agreement without the advance written consent of the other party, except that either party may assign this Agreement in connection with a merger, reorganization, acquisition or other transfer of all or substantially all of such party's assets or voting securities. Any attempt to transfer or assign this Agreement except as expressly authorized under this Section 19.1 will be null and void.
2. **Severability.** If any provision of this Agreement shall be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited to the minimum extent necessary so that this Agreement shall otherwise remain in effect.
3. **Governing Law; Jurisdiction and Venue.** This Agreement shall be governed by the laws of the State of California and the United States without regard to conflicts of laws provisions thereof, and without regard to the United Nations Convention on the International Sale of Goods. The jurisdiction and venue for actions related to the subject matter hereof shall be the state and United States federal courts located in Santa Clara County, California and both parties hereby submit to the personal jurisdiction of such courts.
4. **Attorneys' Fees and Costs.** The prevailing party in any action to enforce this Agreement will be entitled to recover its attorneys' fees and costs in connection with such action.
5. **Notice.** Any notice or communication required or permitted under this Agreement shall be in writing to the parties at the addresses set forth on the Order Form or at such other address as may be given in writing by either party to the

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6. **Amendments; Waivers.** No supplement, modification, or amendment of this Agreement shall be binding, unless executed in writing by a duly authorized representative of each party to this Agreement. No waiver will be implied from conduct or failure to enforce or exercise rights under this Agreement, nor will any waiver be effective unless in a writing signed by a duly authorized representative on behalf of the party claimed to have waived. No provision of any purchase order or other business form employed by Customer will supersede the terms and conditions of this Agreement, and any such document relating to this Agreement shall be for administrative purposes only and shall have no legal effect.
7. **Order of Precedence.** In case of conflict between any provisions of this Agreement, the order of precedence of the documents constituting this Agreement is as follows, each listed document superseding in the event of any conflicting provision in a later listed document: (1) Amendments to the Agreement; (2) the Agreement including the exhibits; (3) quotes; and (4) purchase orders and any other document that makes specific reference to this Agreement. If Customer or DNAnexus submits Purchase Orders, invoices or other similar documents for accounting or administrative purposes or otherwise, no pre-printed or similar terms and conditions contained in any such form will be deemed to supersede or modify any of the terms and conditions of this Agreement
8. **Entire Agreement.** This Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements and communications relating to the subject matter of this Agreement. Customer acknowledges that the Service is an online, subscription-based product, and that in order to provide improved customer experience DNAnexus may make changes to the Service, and DNAnexus will update the applicable Documentation accordingly. The support,

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such terms as of the Effective Date).

9. **Force Majeure.** Neither party shall be liable to the other for any delay or failure to perform any obligation under this Agreement (except for a failure to pay fees) if the delay or failure is due to unforeseen events that occur after the signing of this Agreement and that are beyond the reasonable control of such party, such as a strike, blockade, war, act of terrorism, riot, natural disaster, failure or diminishment of power or telecommunications or data networks or services, or refusal of a license by a government agency.
10. **Subcontractors.** DNAnexus may use the services of subcontractors and permit them to exercise the rights granted to DNAnexus in order to provide the Service under this Agreement, provided that DNAnexus remains responsible for (i) compliance of any such subcontractor with the terms of this Agreement and (ii) for the overall performance of the Service as required under this Agreement.
11. **Subpoenas.** Nothing in this Agreement prevents DNAnexus from disclosing Customer Data to the extent required by law, subpoenas, or court orders, but DNAnexus will use commercially reasonable efforts to notify Customer where permitted to do so.
12. **Independent Contractors.** The parties to this Agreement are independent contractors. There is no relationship of partnership, joint venture, employment, franchise or agency created hereby between the parties. Neither party will have the power to bind the other or incur obligations on the other party's behalf without the other party's prior written consent.
13. **Independent Development.** Subject to any obligations of confidentiality and to the parties' respective IP Rights, in no event shall either party be precluded or restricted from developing, using, marketing or providing for itself, or for others, materials that are competitive with the products and

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business that are used or developed in the course of undertaking this Agreement by such party, and each party shall remain free to provide products and services to any client or prospective client, and to enter into to alliance, teaming or other arrangements with any third party (including competitors of the other party), so long as the terms of this Agreement are not violated.

14. **Export Control.** In its use of the Service, Customer agrees to comply with all export and import laws and regulations of the United States and other applicable jurisdictions. Without limiting the foregoing, (i) Customer represents and warrants that it is not listed on any U.S. government list of prohibited or restricted parties or located in (or a national of) a country that is subject to a U.S. government embargo or that has been designated by the U.S. government as a “terrorist supporting” country, (ii) Customer shall not (and shall not permit any of its users to) access or use the Service in violation of any U.S. export embargo, prohibition or restriction, and (iii) Customer shall not submit to the Service any information that is controlled under the U.S. International Traffic in Arms Regulations.
15. **Government End-Users.** Elements of the Service are commercial computer software. **If the user or licensee of the Service is an agency, department, or other entity of the United States Government, the use, duplication, reproduction, release, modification, disclosure, or transfer of the Service, or any related documentation of any kind, including technical data and manuals, is restricted by a license agreement or by the terms of this Agreement in accordance with Federal Acquisition Regulation 12.212 for civilian purposes and Defense Federal Acquisition Regulation Supplement 227.7202 for military purposes. The Service was developed fully at private expense. All other use is prohibited.**

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