

Subscription Terms of Service

These Subscription Terms of Service (“**Agreement**”) is entered into by and between DNAnexus, Inc. (“**DNAnexus**”) and you (“**Customer**”) and is effective as of the date on which you create a DNAnexus user account and/or access the DNAnexus Platform (the “**Effective Date**”).

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.

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.

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.

“**AUP**” means DNAnexus’ Acceptable Use Policy for MSA, available at <https://www.dnanexus.com/terms/msa-acceptable-use-policy>, and DNAnexus’ Acceptable Use Policy for TRE, as applicable.

“**Client Software**” means the proprietary command line scripts or other desktop client software that is made available to Customer by DNAnexus to access the Service from User computers.

“**Customer Data**” means any business information or other data of any type, including TRE Data (as applicable), that is Submitted to the Service by or on behalf of Customer (including from External Platforms and by Users) and all corresponding Output. Customer Data expressly excludes Feedback (as defined below).

“**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, those related to data privacy (including HIPAA) and data transfer, international communications and the exportation of technical or personal data.

“**Library Tools**” means any Tools made available within the Service.

“**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).

“**Tools**” means any analytical, computational or other tools, scripts, applications or workflows.

“**TRE Data**” means any Customer Data that is proprietary or regulated omics files, biometric datasets, clinical information, workflows, or analytical pipelines uploaded to, or generated within, a designated TRE project environment.

“**Trusted Research Environment**” or “**TRE**” means a specialized secure Module within the Service designated to permit controlled access to TRE Data and Customer Materials (including omics data).

“**Usage Data**” means diagnostic, performance, telemetry, and related data collected or obtained in connection with Customer’s use of the Service, Client Software, and any Tools, provided that such data is in aggregated de-identified form.

“User” means a user that: (i) (a) is an employee of Customer or a Customer Affiliate, or (b) an individual or entity that is not an employee of Customer or a Customer Affiliate and has been expressly approved in writing by DNAnexus, or (c) an individual that is a TRE Authorized User, as applicable; and (ii) Customer has provisioned with access to Projects associated with Customer’s Account. For clarity, Users expressly excludes any third party entity or individuals that have not been expressly approved in writing by DNAnexus in DNAnexus’ sole discretion.

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

2. DNANEXUS SERVICE

2.1. 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 15) 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.

2.2. 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”**).

2.3. 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 control User access permissions at the Account or Project level) as further described in the Documentation (**“Administrators”**). Customer will, through its Administrators, assign user IDs and passwords for each User to access the Service. Customer shall require that all Users keep user ID and password information strictly confidential and not share such information with any unauthorized person. Customer 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.

2.4. Trusted Research Environment. If Customer purchases a subscription to a TRE Module as indicated on an applicable Order Form, the terms and conditions set forth in the Trusted Research Environment (TRE) Addendum available at <https://www.dnanexus.com/terms> shall supplement the terms of this Agreement and automatically apply to Customer’s and/or any User’s use of and access to such TRE Module.

2.5. 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.

2.6. 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.

2.7. 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 to the Service, except to the extent expressly permitted by applicable law (and then only upon advance notice to DNAnexus); (d) copy or modify the Service or any Documentation (including any underlying workflows, algorithms, procedures or hierarchies), or create any derivative work from any of the foregoing; (e) remove or obscure any proprietary or other notices contained in the 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.

2.8. [Reserved]

2.9. Trial Subscriptions. If Customer receives a trial, proof of concept, 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

3.1. 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.

3.2. Submitting Customer Materials. Customer may Submit Customer Materials to a Project using the upload features of the Service or available integrations with External Platforms (as further set forth in Section 5 (External Platforms) below).

3.3. Project Roles. Customer, through its Administrators, will assign a role to each User of a Project as further described in the Documentation. A User's role will dictate the permissions such User has with respect to such Project.

3.4. Third-Party Users. Customer may invite unaffiliated third parties who are who are not competitors of DNAnexus 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.

3.5. 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

4.1. Choice of Tools. Customer is solely responsible for determining which Tools to use with a Project and assessing the suitability of Tools and their configuration for Customer's purposes. As between DNAnexus and Customer, Customer assumes all risk and liability regarding use of any Tools with the Service, including any use of or access to Customer Data by such Tools.

4.2. 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.

4.3. 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

5.1. 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 conditions of the External Platforms and maintaining appropriate accounts in good standing with the providers of the External Platforms.

5.2. No Responsibility for External Platforms. Customer acknowledges and agrees that DNAnexus is only responsible for providing and operating the Service and not any External Platform. DNAnexus has no obligation with respect to any 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

6.1. Customer Obligations.

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

b) Responsibility for Customer Materials. 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 Customer's accounts with any External Platforms or (iv) the AUP.

c) Private Health Information. 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.

6.2. Backups of Customer Materials. Except for disaster recovery measures described in the Documentation, the Service does not archive or backup Customer Materials. DNAnexus shall not of its own accord intentionally delete any Customer Materials from the Service prior to termination of Customer's applicable Subscription Term. Except for the foregoing, DNAnexus expressly disclaims all other obligations with respect to maintaining archives or backups of Customer Materials.

6.3. 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; (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 DNAnexus Security Policy available at <https://www.dnanexus.com/terms>.

8. OWNERSHIP; DATA USE.

8.1. Rights in Customer Materials. As between the parties, Customer shall retain all right, title and interest (including any and all intellectual property rights) in and to the Customer Materials as provided to DNAnexus. Subject to the terms of this Agreement, Customer hereby grants to DNAnexus a non-exclusive, worldwide, royalty-free right to use, copy, store, transmit and publicly perform and display the Customer Materials solely to the extent necessary to provide the Service to or as directed by Customer.

8.2. DNAnexus 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 DNAnexus 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, "**DNAnexus Technology**"). Except as expressly set forth in this Agreement, no rights in any DNAnexus 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.

8.3. Feedback. Customer, from time to time, may submit comments, questions, suggestions or other feedback relating to any DNAnexus product or service to DNAnexus ("**Feedback**"). DNAnexus may freely use or exploit Feedback in connection with any of its products or services.

8.4. Service Data. Notwithstanding anything to the contrary herein, Customer agrees that DNAnexus may collect Usage Data and other data pertaining to Customer's use of the Service, Client Software, and Library Tools, for a variety of reasons such as to identify, understand, and anticipate performance issues regarding the Service, Client Software, Tools, and the factors that affect them (collectively, "**Service Data**"), and DNAnexus may use and share the Service Data to improve, enhance, support, develop, provide and deliver the Service, Client Software, Library Tools, and any methods, techniques, or models, including in connection with providing updates and personalized experiences to customers, during and after the term of this Agreement provided that DNAnexus does not identify Customer as the source of such Service Data without Customer's prior written permission.

8.5. Customer Data.

- a) **Customer Obligations.** Customer is solely responsible for Customer Data including but not limited to: (a) compliance with all applicable laws and this Agreement; (b) any claims relating to Customer Data; and (c) any claims that Customer Data infringes, misappropriates, or otherwise violates the rights of any third party. Customer acknowledges and agrees that Customer Data may be irretrievably deleted if Customer's account is terminated.
- b) **Restricted Use of Customer Data.** DNAnexus may access and use Customer Data as necessary in connection with DNAnexus' performance of its obligations under this Agreement to, before and after the term of this Agreement provide, update, enhance, optimize, improve and support certain applications, the Services, models, Client Software, Tools, and the infrastructure used to provide the applications, Services, models, Client Software, and Tools.
- c) **Support Services.** DNAnexus does not request, require, or want Customer or its Users to submit personally identifiable information (PII) or PHI via a support channel in connection with requesting support for the Services. Customer is responsible to ensure that it and its Users do not submit PII or PHI in connection with obtaining support for the Services. Notwithstanding anything to the contrary, in the event that Customer or any of its Users submit PII or PHI via the support channel for the Services, DNAnexus may process and use such information in connection with providing support to Customer and its Users.

9. SUBSCRIPTION TERM, FEES & PAYMENT

9.1. Subscription Term and Renewals. Unless otherwise specified 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.

9.2. 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 12.1 (Limited Warranty), Section 13 (Availability and Service Credits) and Section 17 (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.

9.3. 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. In the case of (iii) advance notice is not required if urgent intervention is required 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. AI FEATURES

10.1. From time to time, DNAnexus may make available certain functionalities that allow Customer to utilize artificial intelligence, machine learning, or similar technologies through Client Software, DNAnexus APIs, and/or Tools in connection with the Services, including the processing of Customer Data and/or Service Data (collectively, the "AI Features"). Customer's use of such AI Features is optional. Customer or any User(s) may provide input, including Customer Data, for use with the AI Features ("AI Input") and receive output generated and returned by the AI Features based on the AI Input ("AI Output"). Other customers providing similar AI Input to the AI Features may receive the same or similar AI Output. Customer acknowledges and agrees that Customer is responsible for reviewing and validating AI Output for its needs and technical environment before electing to use AI Output. Customer agrees to comply with any applicable AI Feature restrictions described in the Documentation. NOTWITHSTANDING ANY CONTRARY PROVISION HEREIN, DNANEXUS DOES NOT REPRESENT OR WARRANT THAT THE AI OUTPUT WILL BE ACCURATE, COMPLETE, ERROR-FREE, OR FIT FOR A PARTICULAR PURPOSES.

11. TERM AND TERMINATION

11.1. Term. This Agreement is effective as of the Effective Date and continues for a period of three (3) years (the "Initial Term"), and unless terminated in accordance with this Section 11, this Agreement will renew automatically for additional and successive of one (1) year (each a "Renewal Term") unless and until one party provides the other party with sixty (60) days written notice prior to the end of the then-current Initial Term or Renewal Term, as applicable, of its intent not to renew this Agreement. DNAnexus may terminate this Agreement in its sole discretion by providing sixty (60) days written notice to Customer.

11.2. Termination for Cause. Either party may terminate this Agreement (including all related Order Forms) if the other party (a) fails to cure any material breach of this Agreement (including a failure to pay fees) within thirty (30) days after 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).

11.3. 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.

11.4. 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), 12.2 (Warranty Disclaimer), 16 (Limitation of Remedies and Damages), 17 (Indemnification), 18 (Confidential Information) and 20 (General Terms).

12. LIMITED WARRANTY

12.1. Limited Warranty. DNAnexus warrants, for Customer's benefit only, that the Service will operate in substantial conformity with the applicable Documentation. DNAnexus' sole liability (and Customer's sole and exclusive remedy) for any breach of this warranty shall be, at no charge to Customer, for DNAnexus to use commercially reasonable efforts to correct the reported non-conformity, or if DNAnexus determines 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 12.1 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 Trial Subscription basis.

12.2. Warranty Disclaimer.

(A) EXCEPT FOR THE LIMITED WARRANTY IN SECTION 12.1, TO THE MAXIMUM EXTENT PERMITTED BY LAW, 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 CUSTOMER IS SOLELY RESPONSIBLE, FOR ASSESSING WHETHER THE SERVICE (INCLUDING DNANEXUS' EXPRESS SECURITY OBLIGATIONS) WILL MEET CUSTOMER'S REGULATORY OR OTHER LEGAL OBLIGATIONS. DNANEXUS DOES NOT REPRESENT OR WARRANT THAT THE SERVICE OR ANY TOOLS WILL ACHIEVE CUSTOMER'S DESIRED 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.

13. AVAILABILITY AND SERVICE CREDITS. The Service is subject to any applicable service levels agreement executed in writing between Customer and DNAnexus, which shall upon execution be incorporated herein as Exhibit B (Service Levels).

14. SUPPORT. During the Subscription Term of the Service, DNAnexus shall provide end user support in accordance with the terms set forth in any applicable support level addendum executed in writing between Customer and DNAnexus, which shall upon execution be incorporated herein as Exhibit A (Customer Support).

15. 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. Customer will reimburse DNAnexus for reasonable travel and lodging expenses as incurred. Customer may use anything delivered as part of the Professional Services in support of authorized use of the Service and subject to the terms regarding Customer's rights to use the Service set forth in Section 2 (DNAnexus Service) and the applicable SOW, but DNAnexus shall 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).

16. LIMITATION OF REMEDIES AND DAMAGES

16.1. Consequential Damages Waiver. EXCEPT FOR EXCLUDED CLAIMS (DEFINED BELOW), TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, 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.

16.2. Liability Cap. EXCEPT FOR EXCLUDED CLAIMS, EXCEPT AS SET FORTH BELOW IN THIS SECTION 16.2, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, 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. NOTWITHSTANDING ANYTHING THE CONTRARY HEREIN, DNANEXUS' LIABILITY TO THE OTHER PARTY ARISING OUT OF OR RELATED TO THIS AGREEMENT SHALL IN NO EVENT EXCEED ONE MILLION US DOLLARS (\$1,000,000 USD).

16.3. Excluded Claims. "**Excluded Claims**" means any claim arising (a) from Customer's breach of Section 2.6 (General Restrictions); (b) under Section 6 (Customer Materials); or (c) from a party's breach of its obligations in Section 18 (Confidential Information) (but excluding claims related to Customer Materials).

16.4. Nature of Claims and Failure of Essential Purpose. The parties agree that the waivers and limitations specified in this Section 16 apply regardless of the form of action, whether in contract, tort (including negligence), strict liability or otherwise and will survive and apply even if any limited remedy specified in this Agreement is found to have failed of its essential purpose.

17. INDEMNIFICATION. DNAnexus 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 DNAnexus (including reasonable attorneys' fees) resulting from such claim, provided that DNAnexus shall have received from Customer: (i) prompt written notice of such claim (but in any event notice in sufficient time for DNAnexus 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 DNAnexus' opinion is likely to be) enjoined, if required by settlement or if DNAnexus determines such actions are reasonably necessary to avoid material liability, DNAnexus 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 DNAnexus. The foregoing indemnification obligation of DNAnexus shall not apply: (1) if the Service is modified by any party other than DNAnexus, but solely to the extent the alleged infringement is caused by such modification; (2) if the Service is combined with platforms, data, products or processes not provided by DNAnexus, but solely to the extent the alleged infringement is caused by such combination; (3) to any unauthorized use of the Service; (4) to any action arising as a result of Customer Materials, Library Tools or any other third-party deliverables or components contained within the Service; (5) to the extent the 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 17 SETS FORTH DNANEXUS' AND ITS

SUPPLIERS' SOLE LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO ANY CLAIM OF INTELLECTUAL PROPERTY INFRINGEMENT.

18. 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 Information to its employees, agents, contractors and other representatives having a legitimate need to know (including, for DNAnexus, the subcontractors referenced in Section 20.9), provided that such representatives are bound to confidentiality obligations no less protective of the Disclosing Party than this Section 18 and that the Receiving Party remains responsible for compliance by any such representative with the terms of this Section 18. 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.

19. 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 marketing activities that promote the benefits of the Service to other potential customers and to use of Customer's name and logo on DNAnexus' web site and in DNAnexus promotional materials. Customer agrees that DNAnexus may disclose Customer as a customer of DNAnexus.

20. GENERAL TERMS

20.1. 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 20.1 will be null and void.

20.2. 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.

20.3. 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.

20.4. 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.

20.5. 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 other in accordance with this Section 20.5 and shall be deemed to have been received by the addressee (i) if given by hand, immediately upon receipt; (ii) if given by overnight courier service, the first business day following dispatch or (iii) if given by registered or certified mail, postage prepaid and return receipt requested, the second business day after such notice is deposited in the mail.

20.6. 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.

20.7. 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 (except to the extent in conflict with the TRE Addendum unless the Amendment specifically specifies its intent to modify the terms of the TRE Addendum); (2) Trusted Research Environment (TRE) Addendum (Exhibit E) solely with respect to the TRE Module and the TRE Data in the event of a conflict; (3) Storage Addendum (Exhibit F) solely with respect to Customer-Provided storage and any Customer Materials stored therein; (4) the Agreement including the exhibits; (5) quotes; and (6) 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.

20.8. Entire Agreement. This Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous and contemporaneous written and oral agreements, communications and proposals, including, but not limited to, DNAexus' responses to Client RFPs/RFIs or similar proposals and/or information processes, 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 DNAexus may make changes to the Service, and DNAexus will update the applicable Documentation accordingly. The support, service level availability, and security terms described in Exhibit A (Customer Support), Exhibit B (Service Levels) and the DNAexus Security Policy, respectively, may be updated from time to time upon reasonable notice to Customer to reflect process improvements or changing practices (but the modifications will not materially decrease DNAexus' obligations as compared to those reflected in such terms as of the Effective Date).

20.9. 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, epidemic, pandemic or other public health emergency, failure or diminishment of power or telecommunications or data networks or services (including those of Infrastructure Providers), or refusal of a license by a government agency.

20.10. Subcontractors. DNAexus may use the services of subcontractors and permit them to exercise the rights granted to DNAexus in order to provide the Service under this Agreement, provided that DNAexus 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.

20.11. Subpoenas. Nothing in this Agreement prevents DNAexus from disclosing Customer Data to the extent required by law, subpoenas, or court orders, but DNAexus will use commercially reasonable efforts to notify Customer where permitted to do so.

20.12. 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.

20.13. 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 services of the other party, irrespective of their similarity to any products or services offered by the other party in connection with this Agreement. Each party acknowledges that the other may already possess or have developed such materials. In addition, each party shall be free to use its general knowledge, skills and experience, and any ideas, concepts, know-how, and techniques within the scope of its 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.

20.14. 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.

20.15. 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.

20.16. Counterparts. This Agreement may be executed in counterparts, each of which will be deemed an original and all of which together will be considered one and the same agreement.