

SGI-DNA GENERAL TERMS OF SERVICE

PLEASE CAREFULLY READ THESE SGI-DNA GENERAL TERMS OF SERVICE ("**SGI-DNA GENERAL TERMS OF SERVICE**") AND EACH OF THE ADDENDUMS ATTACHED HERETO (ALTOGETHER, THE "**AGREEMENT**"). THIS AGREEMENT CONTAINS THE EXCLUSIVE TERMS AND CONDITIONS UNDER WHICH SGI-DNA, INC., A DELAWARE CORPORATION (TOGETHER WITH ITS AFFILIATES, "**SGI-DNA**") AGREES TO PROVIDE TO YOU (TOGETHER WITH THE ENTITY FOR WHICH YOU REGISTER ON BEHALF OF "**YOU**" OR "**CUSTOMER**") PRODUCTS THROUGH SGI-DNA'S PORTAL AT [HTTP://WWW.SGIDNA.COM](http://www.sgidna.com) (THE "**PORTAL**"). BY SELECTING THE "ACCEPT" BUTTON BELOW, YOU CREATE A LEGALLY ENFORCEABLE CONTRACT AND AGREE TO BE BOUND BY ALL TERMS AND CONDITIONS OF THIS AGREEMENT, EFFECTIVE AS OF THE DATE THE "ACCEPT" BUTTON IS SELECTED.

IF YOU CANNOT OR DO NOT AGREE TO ALL THE TERMS AND CONDITIONS IN THIS AGREEMENT, YOU ARE PROHIBITED FROM ACCESSING, USING, AND FROM PURCHASING PRODUCTS THROUGH THE PORTAL.

SGI-DNA RESERVES THE RIGHT TO AMEND THIS AGREEMENT AT ANY TIME WITHOUT SPECIFIC NOTICE TO YOU. THE LATEST AGREEMENT WILL BE POSTED ON THE PORTAL. AS SUCH, YOU SHOULD REVIEW THE AGREEMENT PRIOR TO EACH PURCHASE OF ANY PRODUCT AND/OR SERVICE. YOUR CONTINUED USE OF ANY PART OF THE PORTAL CONSTITUTES YOUR ACCEPTANCE OF SUCH CHANGES.

1. Ordering of Products and Services.

1.1 **Applicable Agreement Covering Customer's Orders.** Any products or other items ordered by Customer through the Portal which are to be made available, manufactured, assembled or otherwise produced by, or on behalf of, SGI-DNA or its Affiliates ("**Products**") shall be subject to this Agreement (including any applicable Product and/or Service Addendum attached hereto). To the extent there is a conflict between the terms of the SGI-DNA General Terms of Service and any Product and/or Service Addendum, the Product or Services Addendum which is specifically applicable to the Product that Customer ordered shall prevail. "**Affiliate(s)**" shall mean any organization that directly or indirectly controls or is controlled by or under common control with any party to this Agreement; for the purposes of this definition, "**control**" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of such organization, whether through the ownership of voting securities, by contract or otherwise; and the terms "affiliated," "controlling" and "controlled" have meanings correlative to the foregoing.

1.2 **Ordering and Price.** Customer shall purchase Products from SGI-DNA directly through the Portal or by submitting order forms to SGI-DNA, specifying the Products requested, quantities ordered and requested delivery dates (the "**Order Forms**"). The price for Products shall be the amount set forth in SGI-DNA's written quotation to Customer. Customer acknowledges that SGI-DNA's prices are subject to change from time to time and any written quotation provided by SGI-DNA shall expire no later than twenty (20) days after the same is provided to Customer. If SGI-DNA does not provide Customer with a written quotation (or the written quotation has expired), then the price shall be the list price stated on the Portal on the date SGI-DNA receives the order. Any terms contained within or attached to any request for quotation which are not set forth in the Order Form or this Agreement or are inconsistent with those set forth in the Order Form or this Agreement shall be void and of no effect unless mutually agreed to in writing by the parties. SGI-DNA's failure to object to any additional terms and conditions contained in any other document from Customer shall neither be construed as SGI-DNA's acceptance of such terms and conditions, or a waiver of this Agreement. All orders are subject to SGI-DNA's acceptance and the availability of any requested Products-In the event of a direct conflict or an inconsistency between this Agreement and an Order Form mutually executed by Customer and SGI-DNA, the executed Order Form shall control.

1.3 **Customer Information; Logon Credentials.** Prior to Customer placing an order as described in Section 1.2 and SGI-DNA accepting the same, Customer must register an account on the Portal. When registering, Customer agrees to provide SGI-DNA with accurate and complete customer account, billing and shipping information (the "**Customer Account Information**"). In addition, Customer will be required to create a user account, including a user name and password and other logon credentials (altogether, "**Logon Credentials**"). Customer is solely responsible for maintaining the confidentiality of its Logon Credentials, for updating its Customer Account Information and for all activities on the Portal (including purchases) that occur through the use of such Logon Credentials.

1.4 **Fees and Payment.** Customer may pay for any Products with a valid credit card when placing an order through the Portal. Otherwise, SGI-DNA shall invoice Customer for each shipment of Product (as defined in Section 3) at the time of delivery thereof (or as otherwise set forth in the applicable Product or Service Addendum). Invoices will be sent to the most recent billing address provided by Customer as part of the Customer Account Information. Customer shall pay the fees as specified in each such invoice by the date specified

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in such invoice and all payments shall be paid in United States Dollars. If no date is specified in an invoice, then Customer shall pay within thirty (30) days of the delivery of the Product to such invoice. Any late payments shall be subject to a service charge equal to 1.5% of the amount due (calculated on a monthly basis) or the maximum amount allowed by law, whichever is less. If SGI-DNA, in its sole discretion, finds it necessary to employ an attorney or collection agency to collect any past due sum owed hereunder, it may collect, in addition to any other sum owed hereunder, all applicable attorney's or collection agency's fees and costs.

1.5 **Taxes.** Except as specified in a price quote, fees do not include any local, state, federal or foreign taxes, levies or duties of any nature ("**Taxes**"). Customer is responsible for paying all Taxes, excluding only taxes based on SGI-DNA's net U.S. income. If SGI-DNA has the legal obligation to pay or collect Taxes for which Customer is responsible under this Section 1.5, the appropriate amount shall be invoiced to and paid by Customer unless Customer provides SGI-DNA with a valid tax exemption certificate authorized by the appropriate taxing authority. Customer shall indemnify and hold SGI-DNA harmless from and against any penalties, interest or other tax liability arising from any failure by Customer to pay any applicable Taxes.

2. Customer Responsibilities.

Customer acknowledges and agrees that Customer is solely responsible for: (i) ensuring that the Products are suitable for Customer's particular use; (ii) testing and using the Products hereunder in accordance with the practices of a technically qualified individual and in strict compliance with the documentation therefor, and not misusing the Products (iii) researching and warning Customer's clients, employees and any auxiliary personnel of any risks or hazards involved in using or handling the Products; (iv) ensuring Customer's use of the Products complies with all applicable laws, regulations and governmental policies, now and hereinafter enacted and (v) obtaining all necessary approvals, intellectual property rights, licenses and permissions necessary for any particular use or application. Without limiting the foregoing, Customer assumes responsibility for ensuring that the Products are approved for use under the Toxic Substances Control Act, if applicable. Customer acknowledges that SGI-DNA provides Material Safety Data Sheets ("**MSDS**") for certain of its Products, and that they are available upon request.

3. Delivery.

After acceptance of an Order Form, including through the Portal, SGI-DNA shall use commercially reasonable efforts to deliver the Product as applicable. SGI-DNA reserves the right to make changes to the specifications for any ordered Products that do not materially affect the quality or performance of the Products. Customer shall pay all delivery and shipment costs incurred by SGI-DNA hereunder. SGI-DNA shall select the method of shipment of, and the carrier for the Products. Customer acknowledges that any delivery and/or shipment cost set forth on any price quote is an estimate only. SGI-DNA may, in its sole discretion, without liability or penalty, make partial shipments of an accepted order to Customer. Each shipment will constitute a separate sale and Customer shall pay for the units shipped whether such shipment is in whole or partial fulfillment of an accepted order. Unless otherwise agreed to by the parties in writing, SGI-DNA shall deliver the Products to the Customer's address provided in the Customer Account Information or any other address provided through the Portal and approved in writing by SGI-DNA, using SGI-DNA's standard methods for packaging and shipping Products and/or Service Deliverables. Any time quoted by SGI-DNA for delivery in a quote is an estimate only. SGI-DNA is not liable for or in respect of any loss or damage arising from any delay in filling any accepted order, failure to deliver or delay in delivery. No delay in the shipment or delivery of any Products relieves Customer of its obligations under this Agreement, including without limitation accepting delivery of any remaining installment(s) of Products. Except as otherwise set forth in an applicable Product or Service Addendum, title and risk of loss for any Products shall pass to Customer upon delivery to the carrier (provided that Customer acknowledges it only receives a license to any software provided hereunder and title to such software remains with SGI-DNA). If Customer requests that SGI-DNA hold and/or store any Products ordered by Customer which are ready for shipment, Customer shall reimburse SGI-DNA for all costs associated with the same. Special packaging requirements, if agreed to in writing by SGI-DNA, shall be at Customer's expense. Customer will be responsible for inspecting all Products shipped hereunder, and Customer will give SGI-DNA written notice of non-conforming or damaged Products within ten (10) days following receipt. If Customer fails to notify SGI-DNA of non-conformance within such 10 day period, the Product will be deemed accepted by the Customer. However, such acceptance will not be considered a waiver under the warranty provided in this Agreement.

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4. Ownership; No Reverse Engineering.

4.1 **Ownership.** Customer acknowledges that, as between Customer and SGI-DNA, all intellectual property rights relating to the Products and all materials, articles, technologies, works of authorship, software, specifications, designs, plans, processes, know-how, data and other results, work products and/or information and any intellectual property rights associated therewith that are used by SGI-DNA to manufacture, assemble or otherwise produce the Products (the “**Tools**”) are solely and exclusively owned by SGI-DNA. To the extent Customer nonetheless obtains rights in and/or to any such Tools or any improvements thereto (including by way of providing any Feedback (as defined in Section 0)), Customer hereby transfers and assigns all of Customer’s right, title and interest in and to the Tools and will assist SGI-DNA, at SGI-DNA’s request and at SGI-DNA’s expense, in securing and recording SGI-DNA’s intellectual property rights in such Tools.

Notwithstanding anything in this Agreement to the contrary, SGI-DNA claims no ownership interest, and the Tools shall not include, (a) any pre-existing materials, specifications, know-how, information, data or DNA sequences provided to SGI-DNA by Customer (“**Customer Materials**”) or any derivatives or modifications of Customer Materials that are generated by SGI-DNA or (b) any DNA sequences generated by Customer’s use of the Products and/or Service Deliverables.

Unless otherwise provided in an applicable Service and/or Product Addendum, and not including the DNA sequences generated by Customer’s use of the Products, SGI-DNA’s sale of Products to Customer only grants Customer a limited, non-transferable right under such intellectual property for Customer to use the quantity of Products that Customer has bought from SGI-DNA only for Customer’s internal research purposes. No right to resell the Products or any of their components is conveyed expressly, by implication or by estoppel. Unless SGI-DNA expressly states otherwise in a Services or Product Addendum, SGI-DNA provides no rights to use its Products in commercial applications of any kind including, without limitation, manufacturing, quality control or commercial services such as reporting the results of Customer’s activities for a fee or other form of consideration. If Customer needs commercial use rights to use the Products (including the right to perform fee-for-services), Customer should contact SGI-DNA’s licensing department at info@sgidna.com. To the extent that Customer’s use of the Products is outside the scope of this Agreement, it is solely Customer’s responsibility to acquire additional intellectual property rights related to such use. Nothing in the Agreement limits SGI-DNA’s ability to enforce its intellectual property rights, or Customer’s rights to exploit the DNA sequences generated by Customer’s use of the Products.

4.2 **Feedback.** Customer acknowledges that SGI-DNA may from time to time solicit from Customer feedback or comments regarding the Products, including the results of any testing or benchmarking thereof (“**Feedback**”). If Customer elects to provide any Feedback to SGI-DNA (whether solicited or unsolicited) all of Customer’s Feedback shall be the sole and exclusive property of SGI-DNA and SGI-DNA shall have the right to use and disclose such Feedback in any manner and for any purpose in SGI-DNA’s discretion without remuneration, compensation or attribution to Customer, provided that SGI-DNA is under no obligation to use such Feedback.

4.3 **No Reverse Engineering.** Notwithstanding anything to the contrary herein, Customer shall not reverse engineer or attempt to reverse engineer, or encourage any third party to reverse engineer or attempt to reverse engineer, any of the Tools, Products.

5. Notices.

Customer shall set forth its email address for communication and notice purposes relating to this Agreement on the Portal access page. Customer agrees to accept emails from SGI-DNA at the e-mail address specified under this Section 5. Any notice provided under this Agreement must be in writing and shall be deemed to have been given on the earlier of the date when actually delivered by personal delivery, e-mail, commercial courier or three (3) days after being deposited in the United States mail, certified or registered mail, postage prepaid, return receipt requested, and in the case of SGI-DNA, addressed as follows, unless and until SGI-DNA notifies Customer of a change of address: SGI-DNA, Inc., 11099 North Torrey Pines Rd., La Jolla, CA, 92037, Attention: Legal Department. SGI-DNA’s email address for notices is info@sgidna.com.

6. Confidentiality.

It is anticipated that in the performance of this Agreement each party is likely to disclose (the “**Disclosing Party**”) to the other party (the “**Receiving Party**”) certain information that the Disclosing Party considers valuable, proprietary and confidential. “**Confidential Information**” shall mean any information, including but not limited to data, techniques,

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protocols, results and regulatory, clinical, business (including but not limited to the identity of, and information relating to, each party's customers, prospects, vendors, affiliates and employees), financial, commercial and technical information, disclosed by the Disclosing Party to the Receiving Party and is identified in writing as confidential at the time of disclosure. Customer's Confidential Information shall include the Customer Materials. SGI-DNA's Confidential Information shall also include information and data regarding the performance, capabilities and benchmarking results from use of the Products, Services and the Tools. If such information is disclosed in non-tangible form (including without limitation orally or visually), it must be identified as confidential at the time of disclosure and summarized by the Disclosing Party with specificity in a writing marked "Confidential" and given to the Receiving Party within thirty (30) days after such disclosure; *provided, however*, Confidential Information orally disclosed by or on behalf of the Disclosing Party that a reasonable person would understand to be confidential or proprietary in nature shall be treated as Confidential Information even if such Confidential Information is not subsequently reduced to a tangible form and delivered to the Receiving Party.

The Receiving Party shall maintain Confidential Information of the Disclosing Party in strict confidence, and shall use such Confidential Information only for the purpose of this Agreement and shall disclose such Confidential Information only to its employees, agents and contractors that have a reasonable need to know such Confidential information and who are bound by obligations of confidentiality and non-use no less restrictive than those set forth herein. The Receiving Party shall protect all such Confidential Information against unauthorized disclosure to third parties using the same degree of care that it uses to protect its own confidential and proprietary information of a similar nature and importance (but in any event, no less than reasonable care).

Confidential Information shall not include information that (i) is or becomes publicly known through no fault of the Receiving Party; (ii) is learned by the Receiving Party from another entity (other than directly or indirectly by the Disclosing Party) in lawful possession of such information that is entitled to disclose it without restriction, where another entity does not include a party's affiliates; (iii) is already known by the Receiving Party before its receipt from the Disclosing Party, as evidenced by the Receiving Party's written records; or (iv) is independently developed by or for the Receiving Party as evidenced by the Receiving Party's written records independently of and without reliance upon or reference to the Disclosing Party's Confidential Information; *provided, however*, in each case that Confidential Information to be held in confidence under the terms of this Agreement is not deemed to be within any of the foregoing exceptions merely because such information is embraced by more general information in the public domain or in the possession of the Receiving Party, and a combination of features is not deemed to be within the foregoing exceptions merely because individual features are in the public domain or in the Receiving Party's possession unless the combination itself is in the public domain or in the Receiving Party's possession.

The Receiving Party may disclose and utilize Confidential Information of the Disclosing Party (i) to the limited extent such disclosure is reasonably necessary to prosecute or defend litigation; (ii) in connection with financing and acquisition diligence activities; *provided, however*, any third party has agreed in writing or is otherwise bound to maintain the information in confidence for the period of time specified herein and not to use such information except for such limited purposes; (iii) to comply with applicable laws, governmental regulations or court orders, the International Gene Synthesis Consortium ("IGSC") Harmonized Screening Protocol, or in submitting mandatory information to tax or other governmental authorities; *provided, however*, if the Receiving Party is required to make any such disclosure, it shall give reasonable advance notice to the Disclosing Party of such disclosure and shall use its reasonable efforts to secure confidential treatment of such information in consultation with the Disclosing Party prior to its disclosure (whether through protective orders or otherwise); or (iv) to the extent necessary for advising or for receiving advice from its advisors, investors, auditors and legal counsel, all on a need to know basis and provided that any such third party has agreed in writing or is otherwise bound to maintain the information in confidence for the period of time specified herein and not to use such information except for the limited purpose of conducting audit services or providing such advice or assistance to the Receiving Party.

Upon termination or expiration of this Agreement, each party shall promptly return the other party's Confidential Information and any copies and extracts thereof. The confidentiality obligations and restrictions in this Agreement, as they apply to Confidential Information disclosed prior to termination, shall survive any termination or expiration of this Agreement for a period of five (5) years.

7. **Privacy.**

Customer's access to the Portal (or any Service thereunder) may require Customer to provide certain personal information about Customer and/or its users (hereinafter referred to as "**Personal Data**"). Such Personal Data may include Customer's Logon credentials, name, I.D. number, email address, telephone number, mailing address, organization name, employment title, payment information and/or certain technical information about the system hardware and software that is being used by Customer. Without limiting the foregoing, such Personal Data may include certain other information collected via SGI-DNA's Archetype Cloud Service (as defined in the Archetype Services Addendum attached hereto) and as set forth in SGI-DNA's Privacy Policy, which is available at sgidna.com. SGI-DNA

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will collect, use and in certain limited circumstances disclose Customer's Personal Data (e.g., to contractors and service providers who are assisting SGI-DNA in the operation or hosting of the Archetype Cloud Service) in accordance with SGI-DNA's Privacy Policy. As a condition to uploading any Personal Data through the Portal and/or otherwise purchasing or using SGI-DNA's Products through the Portal, Customer is required to accept the terms of SGI-DNA's Privacy Policy, which is incorporated herein by reference. Customer hereby acknowledges and agrees that Customer has read SGI-DNA's current Privacy Policy. Customer also acknowledges and agrees that SGI-DNA processes such information, including Personal Data, in its capacity as data processor and that Customer remains at all times the data controller of such processing. Notwithstanding anything to the contrary, in Customer's capacity as data controller, it is Customer's exclusive responsibility to obtain all necessary consents to such processing, to convey the information notices as required by applicable law, to make any necessary filings with the appropriate data protection authority(ies), to enforce and comply with any request to access and/or rectify and/or delete any Personal Data of Customer's Authorized Users. Customer agrees to indemnify and defend SGI-DNA against any suits, actions, claims or proceedings, whether originating from Customer, its employees, a data protection authority and/or a third party in this respect.

8. Warranties and Indemnification.

8.1 **Limited Warranties for Products and Service Deliverables, Generally.** Unless a different written warranty is included (or is disclaimed in its entirety) in any Service and/or Product Addendum, SGI-DNA warrants that the Products provided pursuant to an accepted order shall meet the specifications set forth in the applicable documentation provided by SGI-DNA (or otherwise mutually agreed upon by the parties in writing). If, through no fault or delay of Customer, the Products do not materially conform to the foregoing warranty and Customer provides SGI-DNA with written notice within thirty (30) days of SGI-DNA's delivery to Customer of the Products, as applicable, Customer's sole and exclusive remedy shall be for SGI-DNA at its sole discretion to replace and re-deliver the Products. If Customer fails to notify SGI-DNA of non-conformance within such thirty (30) day period, the Products shall be deemed accepted by the Customer.

8.2 **Exclusions.** SGI-DNA shall have no obligation to replace or refund any Product to the extent it is the result of (i) misuse, fault or negligence of or by Customer, (ii) use of the Product and/or Service Deliverable in a manner for which it was not designed, (iii) improper storage and handling of the Product and/or Service Deliverable, (iv) alterations or modifications made to the Product and/or Service Deliverable by a party other than SGI-DNA or its duly authorized service representative, (v) manufacture of the Product and/or Service Deliverable in accordance with specifications provided by Customer, (vi) normal wear and tear and (vii) external sources such as short circuits or incorrect voltages. Shipment to Customer of replacement Product and/or Service Deliverable shall be made in accordance with the applicable delivery terms set forth in this Agreement. SGI-DNA shall have no liability or obligation to Customer if (x) Customer is unable to generate a DNA synthesis through use of a Product, or (y) Customer inputs a genomic sequence into a Product but is unable to achieve the correct size DNA as determined by gel electrophoresis, except in each case if the foregoing is a direct result of a Product failing to meet the specifications set forth in the applicable documentation provided by SGI-DNA.

8.3 **Disclaimer of Warranties.** EXCEPT FOR THE WARRANTIES EXPLICITLY STATED IN SECTION 8.1 HEREOF OR ANY APPLICABLE SERVICES OR PRODUCT ADDENDUM, THE PORTAL, THE SERVICES AND ANY PRODUCTS ARE PROVIDED "AS IS" AND "AS AVAILABLE" AND SGI-DNA (FOR ITSELF, ITS LICENSORS AND SUPPLIERS) HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR AS TO THE ACCURACY OF ANY RESULTS. ANY WARRANTY GRANTED HEREUNDER IS VALID ONLY WHEN USED BY PROPERLY TRAINED INDIVIDUALS AND EXTENDS ONLY TO CUSTOMER, THE ORIGINAL PURCHASER, AND CUSTOMER CANNOT TRANSFER SUCH WARRANTY. WITHOUT LIMITING THE FOREGOING, CUSTOMER ACKNOWLEDGES THAT ANY PRODUCTS PROVIDED BY SGI-DNA ARE EXPERIMENTAL IN NATURE AND THAT SGI-DNA CANNOT GUARANTEE THE SUCCESS OF SUCH PRODUCTS NOR THAT SUCH PRODUCTS, WILL RESULT IN THE ACCOMPLISHMENT OF ANY DESIRED RESULTS. ANY FAILURE BY SGI-DNA TO MEET ANY INTENDED RESULTS SHALL NOT IN AND OF ITSELF BE DEEMED A BREACH OF THIS AGREEMENT OR CAUSE FOR NON-PAYMENT.

8.4 **SGI-DNA Indemnification.** SGI-DNA will indemnify, defend and hold harmless Customer from and against any claims, liabilities, damages, fines and penalties finally awarded in any legal action brought by a third party against Customer to the extent that the action is based on a claim that Customer's use of a Product in the manner permitted

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under this Agreement infringes any patent, copyright, trademark or other intellectual property right of such third party, provided that SGI-DNA had actual knowledge of such intellectual property right and the actual infringement at the time of delivery of the Product to Customer. This indemnity does not apply to claims that arose based on (i) any matter for which Customer is obligated to indemnify SGI-DNA pursuant to Section 8.5 below, (ii) any products that SGI-DNA made, assembled or produced in reliance upon Customer's instructions, specifications, or other directions, (iv) Customer's resale of Products, or (v) modifications to the Products, or combinations of the Products with other items, by Customer or any third party in a manner not authorized by SGI-DNA. This indemnity does not apply to products originating from third parties. THIS INDEMNITY IS SGI-DNA'S ONLY LIABILITY TO CUSTOMER, AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY, FOR ANY INFRINGEMENT OR CLAIMED INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS BY OR IN CONNECTION WITH ANY PRODUCT. If SGI-DNA believes a Product may be subject to a claim for intellectual property infringement, then Customer will first allow SGI-DNA, at SGI-DNA's option and expense, to either: (a) secure for Customer the right to continue using the Product; (b) substitute the Product with another suitable Product with similar functionality; or (c) require Customer to return the Product to us for a refund of the purchase price paid, provided that in the case of Instruments, SGI-DNA will deduct a reasonable amount for the Instrument's use and damage.

8.5 Customer Indemnification. Customer shall indemnify, defend and hold harmless SGI-DNA, its licensors, and suppliers and their employees, officers, directors, stockholders, agents and affiliates from and against any claims, liabilities, damages, losses, costs, expenses (including but not limited to settlements, judgments, court costs, and reasonable attorney's fees), fines and penalties arising out of or resulting from any claims made or proceedings brought against SGI-DNA to the extent arising out of or resulting from: (i) Customer's use of the Products (including claims of infringement of third party intellectual property); (ii) Customer's failure to secure any governmental import or export permit or authorization for the receipt of any Products; (iii) Customer's failure to comply with any applicable laws; (iv) Customer's gross negligence or willful misconduct; or (v) Customer's material breach of this Agreement.

8.6 Indemnification Procedure. As a condition to the indemnity obligations set forth in Sections 8.4 and 8.5 above, the party seeking indemnification ("**Indemnatee**") must (i) notify the indemnifying party in writing, as soon as the Indemnatee becomes aware of any claim; (ii) not admit any liability or take any other action in connection with the claim that could affect the defense or settlement; (iii) allow the indemnifying party to solely control the defense or settlement of the claim; and (iv) provide reasonable information, co-operation and assistance to the indemnifying party. The indemnifying party may not settle or consent to the entry of a judgment of a claim without the Indemnatee's prior written consent, which consent shall not be unreasonably withheld or delayed.

9. Limitations of Liability.

9.1 TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, SGI-DNA SHALL NOT BE LIABLE UNDER ANY LEGAL THEORY (INCLUDING BUT NOT LIMITED TO CONTRACT, NEGLIGENCE, INDEMNIFICATION, STRICT LIABILITY IN TORT OR WARRANTY OF ANY KIND) FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, MULTIPLE, EXEMPLARY OR CONSEQUENTIAL DAMAGES (INCLUDING BUT NOT LIMITED TO COSTS OF COVER, LOST PROFITS, LOST DATA, LOSS OF BUSINESS, LOSS OF GOODWILL, LOSS OF PROFITS DUE TO INSTRUMENT DOWN TIME OR LOSS OF REVENUE) THAT CUSTOMER MIGHT INCUR UNDER THE AGREEMENT, OR THAT MAY ARISE FROM OR IN CONNECTION WITH THE PRODUCTS EVEN IF SGI-DNA HAD NOTICE OF THE POSSIBILITY OF SUCH DAMAGES. SGI-DNA WILL NOT BE LIABLE FOR ANY LOSS OR INJURY THAT IS THE RESULT OF THE FAILURE OF ANY PRODUCT TO PERFORM IN ACCORDANCE WITH ITS SPECIFICATIONS. WITHOUT LIMITING THE FOREGOING, SGI-DNA'S TOTAL CUMULATIVE LIABILITY IN CONNECTION WITH THIS AGREEMENT, INCLUDING WITHOUT LIMITATION WITH RESPECT TO ANY PRODUCTS SOLD AND/OR ANY SERVICES RENDERED HEREUNDER, SGI-DNA'S LIABILITY UNDER ITS INDEMNIFICATION OBLIGATIONS, OR SGI-DNA'S BREACH HEREOF OR FAILURE TO PERFORM IN CONTRACT, TORT, WARRANTY, OR OTHERWISE, WILL NOT EXCEED THE AMOUNT OF FEES CUSTOMER ACTUALLY PAID TO SGI-DNA FOR THE SPECIFIC PRODUCT THAT GAVE RISE TO THE APPLICABLE CLAIM(S). THE CUSTOMER ACKNOWLEDGES THAT THESE LIMITATIONS OF LIABILITY REFLECT THE ALLOCATION OF RISK SET FORTH IN THIS AGREEMENT AND THAT SGI-DNA WOULD NOT ENTER INTO THIS AGREEMENT WITHOUT THESE LIMITATIONS ON ITS LIABILITY.

9.2 DELIVERY DATES AND TIMES ARE ESTIMATES ONLY AND SGI-DNA WILL NOT BE LIABLE (IN CONTRACT, DELICT, TORT OR OTHERWISE) FOR ANY LOSSES, EXPENSES, CLAIMS OR DAMAGES CAUSED BY A LATE DELIVERY.

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10. Independent Contractor.

SGI-DNA's relationship with Customer pursuant to this Agreement shall be that of an independent contractor. Neither party shall have any authority to bind the other, to assume or create any obligation, to enter into any agreements, or to make any warranties or representations on behalf of the other. Nothing in this Agreement shall be deemed to create any agency, partnership or joint venture relationship between the parties, although SGI-DNA reserves the right to name Customer as a user of the Products. SGI-DNA reserves the right to use third parties (who have agreed in writing to confidentiality provisions with SGI-DNA that are no less protective of Customer than those in this Agreement), including, but not limited to, offshore subcontractors to assist with the Products.

11. Permits/Authorizations.

Customer acknowledges that it may require a permit, approval or other authorization from relevant government entities in order to import or export the Products. Customer shall obtain all permits, authorizations and/or approvals necessary to receive the Products in accordance with all applicable laws related to the importing and exporting of Products (and upon request from SGI-DNA shall provide sufficient evidence to demonstrate that it has obtained such permits, authorizations and approvals). SGI-DNA shall not be responsible for obtaining any such permits, authorizations, and/or approvals on behalf of Customer and no amounts shall be refunded to Customer.

12. Termination.

12.1 Termination for Cause. Except as otherwise provided in this Agreement, in the event that Customer breaches any of the terms, obligations, conditions or undertakings of this Agreement and fails to cure such breach within sixty (60) days (or ten (10) days for non-payment) after receiving written notice of such breach, SGI-DNA, at its option, may by written notice to Customer, terminate this Agreement. Such termination shall be effective upon Customer's receipt of the termination notice.

12.2 Termination for Insolvency. SGI-DNA may terminate this Agreement immediately by providing written notice to Customer if Customer becomes insolvent, if a petition in voluntary or involuntary bankruptcy is filed by or against the other party under any chapter of the United States bankruptcy laws and not bonded or discharged within thirty (60) days of the date a receiver or trustee is appointed, or if Customer makes an assignment for the benefit of creditors.

12.3 Obligations upon Termination or Expiration. The termination or expiration of this Agreement will not relieve either party from any obligation that accrues pursuant to this Agreement before the effective date of the termination or expiration nor will it release the parties from any obligation that may have been incurred as a result of operations conducted under this Agreement.

13. General Provisions.

13.1 Entire Agreement. This Agreement together with the applicable Services and Product Addendum and any accepted orders, constitute the entire agreement and understanding between the parties relating to the subject matter of this Agreement and supersede all proposals, oral or written, all negotiations, conversations, memoranda, or discussions, whether written or oral, between or among parties relating to the subject matter of this Agreement and all past dealing or industry custom. Under no circumstances shall the terms, conditions or provisions of any order, accepted order, invoice or other administrative document issued by Customer or SGI-DNA in connection with this Agreement be deemed to modify, alter or expand the rights, duties or obligations of the parties under, or otherwise modify, this Agreement, regardless of any failure of SGI-DNA or Customer, respectively, to object to such terms, provisions, or conditions. This Agreement shall not be modified or amended, except as expressly set forth herein, or in writing and signed or accepted electronically by the party against whom the modification or amendment is to be asserted.

13.2 Invalidity/Waiver. If any provision of this Agreement is, for any reason, held to be invalid or unenforceable, the other provisions of this Agreement shall be unimpaired and the invalid or unenforceable provision shall be deemed modified so that it is valid and enforceable to the maximum extent permitted by law. A waiver of any breach under this Agreement should not constitute a waiver of any other breach or future breach. Either party's failure to enforce, or waiver of a breach of, any provision contained herein shall not constitute a waiver of any other breach or of such provision.

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13.3 **Assignment.** This Agreement may not be assigned by Customer to a third party whether by operation of law or otherwise. SGI-DNA shall have the right to assign this Agreement to one or more affiliates or related entities. In addition, SGI-DNA shall have the right to assign this Agreement in its entirety to the successor of all or substantially all of its business or assets to which this Agreement relates. Any assignment not expressly permitted by this Section 13.3 shall be null and void.

13.4 **Governing Law.** This Agreement shall be governed in accordance with the internal laws of the State of California (without regard to any conflicts of laws principles) and any controlling U.S. federal law. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement. Any disputes, actions, claims or causes of action arising out of or in connection with this Agreement (or the Products) shall be subject to the exclusive jurisdiction of the state and federal courts located in California. In the event of any litigation of any controversy or dispute arising out of or in connection with this Agreement, its interpretations, its performance, or the like, the prevailing party shall be awarded reasonable attorneys' fees and/or costs.

13.5 **Third Parties.** There are no third-party beneficiaries to this Agreement. This Agreement shall not limit in any manner Customer's ability to use other third parties to provide services similar to those contemplated by this Agreement. SGI-DNA may subcontract any or all of its obligations hereunder to an affiliate or employees or contractors of an affiliate; *provided, however*, SGI-DNA shall remain solely liable for its obligations hereunder. Notwithstanding anything to the contrary herein, neither party shall be liable for failing to meet any obligations set forth herein if such obligation is contingent upon the acts of the other party and such other party has failed to satisfy such contingency.

13.6 **Publicity.** Customer shall not disclose that SGI-DNA has been engaged to provide, is providing, or has provided the Products, as applicable without the prior written consent of SGI-DNA. Customer shall not use SGI-DNA's name in any publicity, advertising or announcement without SGI-DNA's prior written approval.

13.7 **Data Errors and Omissions.** SGI-DNA makes every effort to ensure the accuracy of the information published in its catalogs, by its distributors and on its Portal. The documents and graphics published may be outdated or contain technical inaccuracies or other errors. SGI-DNA makes no representations about the information and graphics presented. All such documents and graphics are provided "as-is" and "as-available" without warranty of any kind.

13.8 **Force Majeure.** SGI-DNA shall not be liable for any loss or delay resulting from any force majeure event, including, but not limited to, acts of God, fire, natural disaster, terrorism, labor stoppage, internet service provider failures or delays, civil unrest, war or military hostilities, criminal acts of third parties or any other event beyond SGI-DNA's reasonable control, or provision of Products shall be extended to the extent of any delay resulting from any force majeure event.

13.9 **Headings and Construction.** The headings of the articles and paragraphs of this Agreement are for convenience only and in no way limit or affect the terms or conditions of this Agreement. The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation." The words "herein", "hereof" and "hereunder" and words of similar import refer to this Agreement (including the applicable Services and Product Addendum) in its entirety and not to any part hereof unless the context shall otherwise require.

13.10 **Survival.** Sections 1.4, 1.5, 2, 4, 5, 6 (for the period specified therein), 7, 8, 9, 10, 11 and 13 of this Agreement shall survive the termination or expiration of this Agreement. This Agreement may be executed in counterparts and/or by facsimile or electronic signature and if so executed shall be equally binding as an original copy of this Agreement executed in ink by both parties.

CUSTOMER ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT, UNDERSTANDS IT AND AGREES TO BE BOUND BY ITS TERMS, AND THE PERSON ACCEPTING ON BEHALF OF CUSTOMER HAS BEEN AUTHORIZED TO DO SO.

Agree/Decline

**SCHEDULE 1
INSTRUMENT RENTAL/PURCHASE ADDENDUM**

This Instrument Rental/Purchase Addendum (“**Instrument Rental/Purchase Addendum**”) is applicable to Customer’s purchase of instrument systems through the Portal and is intended to be part of and incorporated into the SGI-DNA General Terms of Service. All terms, conditions, disclaimers, restrictions and limitations set forth in the SGI-DNA General Terms of Service which are not in direct conflict with the terms and conditions set forth in this Instrument Purchase Addendum are incorporated herein. Capitalized terms not defined herein shall have the meaning set forth in the SGI-DNA General Terms of Service.

1. **Instrument Sales.** Customer can purchase through the Portal certain Instruments. Such purchase can either be made via an upfront payment or by entering into a Reagent subscription lease (“Reagent Subscription Lease Form”).
2. **Instrument Use and Restrictions.** Except as otherwise agreed in writing by our authorized representative (for additional information, please contact SGI-DNA’s licensing department at info@sgidna.com), all Instruments are for INTERNAL RESEARCH USE ONLY AND NOT FOR HUMAN, ANIMAL, THERAPEUTIC OR DIAGNOSTIC USE. Customer agrees to not conduct any of the following activities with respect to any such Instruments:
 - Distribute any nucleotide sequences and/or any derivatives thereof generated by any Instruments to third parties (either alone or as incorporated into a finished product);
 - Use any Instruments to create therapeutics or drugs or in humans for any purpose; and/or
 - Reverse engineer or attempt to reverse engineer or encourage any third party to reverse engineer or attempt to reverse engineer any Instruments or any components thereof.
3. **Installation, Maintenance and Training.** When Customer purchases an Instrument, SGI-DNA can install it and provide training, maintenance, repairs and any other services that SGI-DNA expressly agrees to perform pursuant to Schedule 2 (Instrument Services Addendum).
4. **Utilities.** Customer shall provide, at its sole expense, all utilities (e.g. electricity and Internet) required to operate the Instrument.
5. **Delivery.** After receipt of an Order Form, including through the Portal, SGI-DNA shall use commercially reasonable efforts to deliver the Instrument. SGI-DNA reserves the right to make changes to the product specifications for any ordered Instrument that does not materially affect the quality or performance of the Instrument. Customer shall pay all delivery and shipment costs incurred by SGI-DNA hereunder. SGI-DNA shall select the method of shipment of, and the carrier for, the Instrument. Customer acknowledges that any delivery and/or shipment cost set forth on any price quote is an estimate only. Unless otherwise agreed to by the parties in writing, SGI-DNA shall deliver the Instrument to the Customer’s address provided in the Customer Account Information or any other address provided through the Portal and approved in writing by SGI-DNA, using SGI-DNA’s standard methods for packaging and shipping Instruments. Any time quoted by SGI-DNA for delivery in a quote is an estimate only. SGI-DNA is not liable for or in respect of any loss or damage arising from any delay in filling any accepted order, failure to deliver or delay in delivery. No delay in the shipment or delivery of any Instrument relieves Customer of its obligations under this Agreement, including without limitation accepting delivery of any remaining installment(s) of Instrument. If, following SGI-DNA’s delivery of an Instrument to Customer pursuant to this Section 6, Customer fails to provide SGI-DNA with a delivery acceptance certificate or otherwise fails to accept title to such Instrument as set forth in Section 7 below, SGI-DNA shall have the right to repossess such Instrument and Customer shall pay SGI-DNA a restocking fee equal to 20% of the price reflected in the applicable Order Form. Customer shall reimburse SGI-DNA for any other reasonable costs incurred in connection with a returned Instrument to the extent that such costs are not otherwise recovered by SGI-DNA and are supported with backup documentation.

6. **Title and Risk of Loss.** Risk of loss for the Instrument shall pass to Customer upon delivery. Title for the Instrument shall also pass to Customer upon delivery provided that (a) if Customer requests SGI-DNA to provide installation services then title for the Instrument shall only pass to Customer upon execution by Customer of a delivery acceptance certificate (provided for sign-off to Customer upon completion of the Instrument's installation), provided further that (b) if Customer has entered into a Reagent Subscription Lease Form, then title for the Instrument shall only pass to Customer upon Customer's fulfillment of all of its obligations such as Reagent Subscription Lease Form (altogether, "**Title Transfer**"). Notwithstanding the foregoing, Customer acknowledges it only receives a license to any software provided hereunder and title to such software remains with SGI-DNA. If Customer requests that SGI-DNA hold and/or store any Instrument ordered by Customer which is ready for shipment, Customer shall reimburse SGI-DNA for all costs associated with the same. Special packaging requirements, if agreed to in writing by SGI-DNA, shall be at Customer's expense.
7. **Invoicing.** SGI-DNA shall invoice Customer for the purchase price of the Instrument upon Title Transfer, provided that if Customer has entered into a Reagent Subscription Lease Form, SGI-DNA shall invoice Customer in accordance with the Reagent Subscription Lease Form as applicable.
8. **Instrument Operation, Maintenance and Security.** Customer shall operate and maintain the Instrument in accordance with SGI-DNA's instructions and documentation. In addition, Customer is solely responsible for maintaining the security of the Instrument and preventing the unauthorized access, use and/or disclosure of information stored on the Instrument, and Customer acknowledges that SGI-DNA will not be liable for any loss or damage of any nature arising from Customer's failure to adequately secure the Instrument and/or comply with applicable security laws, regulations or policies. Prior to Title Transfer, Customer will hold any Instruments in its possession as a bailee only and will not permit any lien or other encumbrance to be placed against any such Instruments when in Customer's care, custody and control, and shall take reasonable precautions to safeguard and protect such Instruments from loss or damage.
9. **Accessories and Supplies.** Customer is solely responsible for inputting the appropriate Reagents into the Instrument. Customer shall only use Reagents and other supplies required to operate or in connection with the Instrument which meet the specifications of the Instrument as provided by SGI-DNA. Customer may purchase Reagents directly through the Portal.
10. **Internet Connectivity; Fail Safe.**
 - Customer acknowledges that in order for certain Instruments, including the BioXp, to work correctly, such Instruments must be connected to the Internet and be able to communicate intermittently with SGI-DNA's servers.
 - Customer agrees that neither it nor its employees and/or agents will attempt to, encourage or assist any other person to circumvent or modify any security or remote access technologies included as part of the Instrument. Customer acknowledges and agrees that the Instrument and its included software may include security and other technology designed to prevent unauthorized use. In addition, Customer acknowledges and agrees that the Instrument may include technology designed to permit SGI-DNA to access (manually, automatically and/or remotely) the Instrument in order to monitor, repair or update the Instrument or to access and download data resulting from its usage (provided such access shall not include access to any patient medical information or other personal information covered by the Health Insurance Portability and Accountability Act of 1996 or any other applicable federal or state privacy laws). SGI-DNA shall own and have the unfettered right to access and use the aggregate data and metrics derived from Customer's use of the Instrument (provided such right shall not include the right to use any specific genomic sequences input by Customer, all of which shall remain Customer's Confidential Information).
 - Customer acknowledges that any sequence which is input into the Instrument will be sent to SGI-DNA for screening and analysis. In particular, SGI-DNA shall subject any sequences to be synthesized by the Instrument to a screening protocol for certain pathogenic or potentially dangerous sequences. If, in the reasonable discretion of SGI-DNA, such sequences submitted by Customer hereunder are pathogenic, toxigenic, present a danger if synthesized, or would be in violation of any applicable law (each a "**Potentially Dangerous Sequence**") then SGI-DNA may, in its sole and absolute discretion, notify Customer of such result and may cause the Instrument to refuse to perform such synthesis. For

the avoidance of doubt, SGI-DNA's failure to notify Customer of a Potentially Dangerous Sequence or performance by the Instrument of any genomic sequencing shall not constitute a representation or warranty as to the safety of such sequence and Customer acknowledges that the results of screenings may not be accurate and that SGI-DNA's classification as a Potentially Dangerous Sequence does not constitute a representation, warranty or guarantee of any kind as to whether a sequence does or does not contain pathogenic or toxigenic material or whether or not a sequence would present a danger if synthesized, or violate applicable law if synthesized. Notwithstanding anything to the contrary, SGI-DNA may, without notice or other obligations pursuant to Section 5 of the SGI-DNA General Terms of Service, report a Potentially Dangerous Sequence and any Confidential Information relating thereto to applicable governmental entities in accordance with applicable laws including the IGSC Harmonized Screening Protocol, provided that to the extent not inconsistent with such applicable laws, regulations and the IGSC Harmonized Screening Protocol, SGI-DNA shall notify Customer and afford Customer the reasonable opportunity to seek confidential treatment (e.g., via protective order or otherwise) of any confidential relating to said Potentially Dangerous Sequence(s) prior to its disclosure.

- If Customer inputs a genomic sequence into the Instrument but SGI-DNA determines in its sole discretion that the complexity threshold of the sequence is such that the Instrument does not have a significant likelihood of assembling nucleotides to achieve the correct size DNA as determined by gel electrophoresis, SGI-DNA will provide notice of the same to Customer. In such case Customer may attempt to build the sequence on the Instrument. Customer acknowledges that any attempt to run such sequence will be at Customer's sole risk and expense, and SGI-DNA makes no warranty, representation or guarantee as to the results of such nucleotide synthesis and assembly.

11. **Limited Warranties for Instruments.** Notwithstanding Section 8.1 of the SGI-DNA General Terms of Service, and subject to SGI-DNA performing the Maintenance Services (as defined in Schedule 2 (Instrument Services Addendum)) as scheduled by Customer:

- SGI-DNA warrants that any Instrument provided pursuant to an accepted order is warranted to be free of defects in materials and workmanship for a period of twelve (12) months after it is installed, provided however, regardless of installation date, this warranty will not last longer than fifteen (15) months from the date of shipment.
- SGI-DNA warrants that for a period of twelve (12) months after it is installed, the Instrument will perform in accordance with SGI-DNA's published specifications at the time of delivery.
- SGI-DNA warrants that any Instrument upgrades, spare parts and replacement parts Customer purchases from SGI-DNA and that SGI-DNA installs will be free of defects in materials and workmanship for three (3) months from the date SGI-DNA delivers them, or if longer, the original warranty period of the Instrument in which the part is installed. SGI-DNA does not warrant as to parts that Customer does not purchase from SGI-DNA or that SGI-DNA does not install, and such parts are provided "As-Is" and "As-Available".

If, through no fault or delay of Customer, the Instrument or part does not materially conform to any of the foregoing warranties, Customer's sole and exclusive remedy shall be, at SGI-DNA's sole discretion, the repair or replacement of such nonconforming Instrument or part (pursuant to the Repair and Replacement Services set forth in Schedule 1 (Instrument Services Addendum)) or refund of the purchase price of the Instrument or part, provided that such notice of the material non-conformity is received by SGI-DNA within the warranty periods specified above and SGI-DNA's inspection reveals the Instrument or part to be materially nonconforming within the terms of this warranty. The warranty provided herein is valid only when used by properly trained individuals and does not extend to anyone other than Customer. ANY WARRANTY GRANTED HEREUNDER EXTENDS ONLY TO CUSTOMER, THE ORIGINAL PURCHASER, AND CUSTOMER CANNOT TRANSFER SUCH WARRANTY.

SGI-DNA shall have no liability or obligation to Customer if (i) Customer is unable to generate a DNA synthesis through use of an Instrument, or (ii) Customer inputs a genomic sequence into an Instrument but is unable to achieve the correct size DNA as determined by gel electrophoresis, except in each case if the foregoing is a direct result of an Instrument failing to materially conform to the foregoing warranties.

Notwithstanding anything to the contrary herein, SGI-DNA shall have no obligation to replace or refund any Instrument or part as the result of (i) misuse, accident fault or negligence or damage to acts of nature, (ii) use of

the Instrument in a manner for which it was not designed, (iii) improper storage, maintenance and/or handling of the Instrument, (iv) repair, alterations or modifications, installation, de-installation or transport of the Instrument or part by a party other than SGI-DNA or its duly authorized service representative, (v) installation of software or interfacing, or use of the Instrument in combination with software or products SGI-DNA has not approved; (vi) manufacture of the Instrument in accordance with specifications provided by Customer, (vii) normal wear and tear and (viii) external sources such as short circuits or incorrect voltages. Shipment to Customer of a replacement Instrument shall be made in accordance with the applicable delivery terms set forth in this Agreement.

12. **Software License; Restrictions on Transfer.** Any software embedded in or provided in connection with the Instrument is owned by and proprietary to SGI-DNA and is protected by United States copyright laws and international treaty provisions. Such software may not be copied without the prior written consent of SGI-DNA. Such software is hereby licensed to Customer for Customer's internal use and is not sold. Customer may not sell, rent, lease, loan, transfer or assign any Instrument that contains or requires software for operation or other use unless Customer first permanently deletes or uninstalls the software. Licenses to SGI-DNA software products are not transferable. SGI-DNA reserves the right to make corrections or improvements to such software at any time without notice (including by providing remote updates periodically), provided SGI-DNA shall have no responsibility to provide these changes absent an appropriate Instrument service plan.

SCHEDULE 2 INSTRUMENT SERVICES ADDENDUM

This Instrument Services Addendum (“**Instrument Services Addendum**”) is applicable to Customer’s purchase of instrument services through the Portal and is intended to be part of and incorporated into the SGI-DNA General Terms of Service. All terms, conditions, disclaimers, restrictions and limitations set forth in the SGI-DNA General Terms of Service which are not in direct conflict with the terms and conditions set forth in this Instrument Services Addendum are incorporated herein. Capitalized terms not defined herein shall have the meaning set forth in the SGI-DNA General Terms of Service.

1. **Instrument Services.** SGI-DNA offers the repair, maintenance, installation, relocation, recertification, training, qualification, and technical services set forth in Exhibit A of this Schedule 2 (altogether, “**Instrument Services**”).
2. **Price.** The “**Annual Maintenance Fee**” shall be the amount set forth in SGI-DNA’s written quotation to Customer. Customer acknowledges that SGI-DNA’s Annual Maintenance Fee is subject to change from time to time (including with respect to any renewal term) and any written quotation provided by SGI-DNA shall only be applicable to the specific contract year for which Maintenance Services are being requested (“**Maintenance Period**”). If SGI-DNA does not provide Customer with a written quotation (or the written quotation has expired), then the price shall be the list price stated on the Portal on the date SGI-DNA receives the applicable Order Form. If Customer wishes to purchase Extended Maintenance Service for an instrument that is out of warranty, SGI-DNA must first inspect the instrument and verify that the instrument is in good working condition and functioning to manufacturing specification. The cost of such inspection, and any repairs, including parts, shall be billed separately at the then current rates, and are not included in the Extended Maintenance Service fees. SGI-DNA may also decline to renew a Maintenance Period commencing five (5) years after the installation of the applicable Instrument. In exchange for payment of the Annual Maintenance Fee, SGI-DNA shall perform the Maintenance Services and Repair and Replacement Services set forth below during the applicable Maintenance Period, except that SGI-DNA shall provide the Maintenance Services and Repair and Replacement Services at no charge during the warranty periods for the Instruments set forth in Section 12 of Schedule 2 (Instrument Purchases Addendum). If Customer is not paying an Annual Maintenance Fee and SGI-DNA reasonably determines that a defect or malfunction in an Instrument is outside of the scope or period of the applicable warranties set forth in Section 12 of Schedule 2 (Instrument Purchases Addendum), SGI-DNA shall provide an estimated cost to correct such problem and shall not commence Repair and Replacement Services until Customer agrees to pay such costs. Unless otherwise specified in Exhibit A or in a written quotation, the other Instrument Services (i.e., Installation Services, Relocation Services and Training Services) are offered on a time and materials basis. SGI-DNA’s prices do not include any taxes (including VAT), duties, levies or other government fees that may also apply to Customer’s order. ANY INSTRUMENT SERVICES PROVIDED HEREUNDER EXTEND ONLY TO CUSTOMER, THE ORIGINAL PURCHASER, AND CUSTOMER CANNOT TRANSFER THE RIGHT TO RECEIVE SUCH INSTRUMENT SERVICES TO A THIRD PARTY.
3. **Support.** SGI-DNA provides telephone, email and on-site Instrument Services Monday through Friday, 9:00 a.m. to 5:00 p.m. Pacific Standard Time, excluding federal holidays (“**Service Hours**”). SGI-DNA will work with Customer to schedule Instrument Services at a time that is mutually convenient for both parties. SGI-DNA will perform most Instrument Services on Customer’s premises, however SGI-DNA may perform some Instrument Services remotely or require Customer to mail in certain smaller instruments for servicing at SGI-DNA.
4. **Decontamination and Safe Working Environment.** Before SGI-DNA performs any Instrument Services on Customer’s Instrument or at Customer’s premises, Customer must fully decontaminate the applicable premises, and the Instrument or its component, of radioactive, biological, toxic or other dangerous materials or substances and, if SGI-DNA requests, Customer will submit to SGI-DNA an accurate and completed certificate of decontamination. If SGI-DNA requests, Customer agrees to move the applicable Instrument to another location that SGI-DNA reasonably deems is safe for SGI-DNA’s personnel to perform Instrument Services. SGI-DNA will not service Instruments in biosafety level-3 or level-4 laboratories unless SGI-DNA agrees otherwise in writing in advance. There may be an additional charge and additional terms for Instrument Services in such facilities. For Instruments to be installed, Customer shall also be responsible for moving the Instrument (uncrated) to the place of installation and onto any tabletop, where it will be installed, to avoid any additional manual handling by SGI-DNA personnel.

5. **Applicable Instruments.** The Instrument Services cover only SGI-DNA Instruments and do not include ancillary equipment, even if SGI-DNA has supplied such ancillary equipment, unless SGI-DNA stated otherwise in its quotation. The Instrument Services do not cover replacement of reagents or other consumables. Instrument Services do not cover replacement of parts or repairs needed for defects or damage resulting from (i) misuse, accident fault or negligence or damage to acts of nature, (ii) use of the Instrument in a manner for which it was not designed, (iii) improper storage, maintenance and/or handling of the Instrument, (iv) repair, alterations or modifications, installation, de-installation or transport of the Instrument or part by a party other than SGI-DNA or its duly authorized service representative, (v) installation of software or interfacing, or use of the Instrument in combination with software or products SGI-DNA has not approved; (vi) manufacture of the Instrument in accordance with specifications provided by Customer, (vii) normal wear and tear and (viii) external sources such as short circuits or incorrect voltages.
6. **Compliance with Law.** SGI-DNA makes no representation that the Instrument Services SGI-DNA provides to Customer will meet or satisfy standards of any governmental body, including the U.S. Food and Drug Administration. Customer agrees that it is its responsibility to ensure that such Instrument Services are adequate to meet its regulation or certification requirements and that all requirements of any governmental body or other organization, including, but not limited to, any requirement of the U.S. Food and Drug Administration are Customer's responsibility.
7. **Intellectual Property.** Nothing in this Instrument Services Addendum shall be deemed or construed as a license or grant of any intellectual property rights, whether express, implied, by estoppel, or otherwise to Customer, or to limit SGI-DNA's rights to enforce its patent or other intellectual property rights.

Exhibit A

Instrument Services

1. **Maintenance Services.** SGI-DNA will clean, lubricate, inspect, test and calibrate Instruments to ensure they function in accordance with the applicable specifications. Such Maintenance Services will be provided as SGI-DNA deems commercially reasonably necessary, but at least once per year, on dates and times scheduled by SGI-DNA and Customer during the Service Hours. It is the sole responsibility for Customer to schedule Maintenance Services. SGI-DNA shall not be liable or responsible for malfunctions or defects in the event an SGI-DNA requested Maintenance Service was not scheduled by Customer.
2. **Repair and Replacement Services.** If Customer believes that a part of an Instrument is defective or malfunctioning, Customer shall notify SGI-DNA, and SGI-DNA shall respond to Customer as soon as reasonably practicable during Service Hours after receiving such notice. Customer shall provide information on symptoms related to such defect or malfunction to assist SGI-DNA in diagnosing the reported problem. In correcting a defective or malfunctioning part, SGI-DNA may either repair such part, or replace it altogether with new, used or reconditioned parts. SGI-DNA will retain any replaced part as its own property. Shipment to Customer of a replacement part shall be made in accordance with the applicable delivery terms set forth in this Agreement.
3. **Installation Services.** At Customer's request, SGI-DNA will install and perform the initial set-up of the Instrument at a mutually agreed upon time following notification that Customer has received delivery of the Instrument.
4. **Relocation Services.** At Customer's request, SGI-DNA will de-install and re-install Customer's Instrument(s) but Customer is responsible for the transport of Customer's Instruments to the new location.
5. **Training Services.** At Customer's request, SGI-DNA will train Customer's personnel regarding the proper operation and use of the Instruments. Such training shall be provided at a mutually agreed upon time and location (including via webex). Customer will pay for the travel, accommodation and other charges of SGI-DNA in providing such training.

**SCHEDULE 3
REAGENT SUPPLY ADDENDUM**

This Reagent Supply Addendum ("**Reagent Supply Addendum**") is applicable to Customer's purchase of Reagents through the Portal and is intended to be part of and incorporated into the SGI-DNA General Terms of Service. All terms, conditions, disclaimers, restrictions and limitations set forth in the SGI-DNA General Terms of Service (located at www.sgidna.com/TOS) which are not in direct conflict with the terms and conditions set forth in this Reagent Supply Addendum, are incorporated herein and will apply to your use of the Reagents (as specified below). Capitalized terms not defined herein shall have the meaning set forth in the SGI-DNA General Terms of Service.

1. **Reagent Sales.** Customer can purchase through the Portal certain reagent Products that SGI-DNA offers for sale, including SGI-DNA's Gibson Assembly Kits and BioXp 3200 Reagent Kits (altogether "**Reagents**").
2. **Reagent Use and Restrictions.** Except as otherwise agreed in writing by our authorized representative (for additional information, please contact SGI-DNA's licensing department at info@sgidna.com), all Reagents are for INTERNAL RESEARCH USE ONLY AND NOT FOR HUMAN, ANIMAL, THERAPEUTIC OR DIAGNOSTIC USE. Customer agrees to not conduct any of the following activities with respect to any such Reagents:
 - Distribute any nucleotide sequences and/or any derivatives thereof generated by any Reagents to third parties (either alone or as incorporated into a finished product);
 - Manufacture or reproduce any Reagents;
 - Sell, distribute or transfer any Reagents to any third party either as a stand-alone product or as a component of or otherwise bundled with another product (e.g., as a reagent kit);
 - Use any Reagents for therapeutics or drugs or in humans for any purpose; and/or
 - Reverse engineer or attempt to reverse engineer or encourage any third party to reverse engineer or attempt to reverse engineer any Reagents.
3. **Indemnity.** Customer agrees to defend, indemnify and hold SGI-DNA harmless from and against all liabilities, damages, costs, expenses and claims arising from or based upon Customer's prohibited use of any Reagents.
4. **Retention of Rights.** Except as expressly set forth in Section 2 hereof, nothing in this Reagent Supply Addendum shall be construed as conferring, explicitly or by implication, estoppel or otherwise, any license, right or immunity under any patents or patent applications that SGI-DNA now owns or holds a license to, or acquires or obtains a license to in the future.
5. **Limited Warranties for Reagents.** Notwithstanding Section 8.1 of the SGI-DNA General Terms of Service, Reagents provided pursuant to an accepted order are warranted to be consistent with the Reagent requested by Customer pursuant to such order, up to the date of expiration of such Reagent (which can be found at SGI-DNA's website at <http://www.sgidna.com>) following the applicable date of shipment. If, through no fault or delay of Customer, the Reagent does not conform to the foregoing warranty, Customer's sole and exclusive remedy shall be, at SGI-DNA's sole discretion, the replacement of such nonconforming Reagent or refund of the purchase price of the Reagent, provided that such notice of the material non-conformity is received by SGI-DNA within the warranty period specified above and SGI-DNA's inspection reveals the Reagent to be nonconforming within the terms of this warranty. The warranty provided herein is valid only when used by properly trained individuals and does not extend to anyone other than Customer. ANY WARRANTY GRANTED HEREUNDER EXTENDS ONLY TO CUSTOMER, THE ORIGINAL PURCHASER, AND CUSTOMER CANNOT TRANSFER SUCH WARRANTY.

THE ABOVE WARRANTY DOES NOT APPLY TO INSTANCES WHEN YOU ARE PROVIDED A SAMPLE SUPPLY OF REAGENTS ON A FREE OF CHARGE BASIS ("SAMPLE"). IN SUCH INSTANCES, THE PROVISIONS OF SECTION 6 BELOW SHALL INSTEAD APPLY.

6. **Use of Reagents on a Sample Basis.** SGI-DNA is only making the Sample available to you on the condition that you agree that by ordering, accepting and/or subsequently using the Sample, you are hereby bound by the provisions of this Reagent Supply Addendum and the SGI-DNA General Terms of Service (located at www.sgidna.com/tos) which are not in direct conflict with the terms and conditions set forth in this Reagent Supply Addendum. Further you agree that:

- TO THE MAXIMUM EXTENT PERMITTED BY LAW, SGI-DNA AND ITS AUTHORIZED DISTRIBUTORS EXPRESSLY DISCLAIM ANY WARRANTY FOR THE SAMPLE. THE SAMPLE IS PROVIDED "AS IS", WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. CUSTOMER ASSUMES THE ENTIRE RISK ARISING OUT OF THE USE OR PERFORMANCE OF THE SAMPLE, OR ANY SYSTEMS CUSTOMER DESIGNS USING THE SAMPLE (IF ANY). NOTHING HEREIN MAY BE CONSTRUED AS A WARRANTY OR REPRESENTATION BY SGI-DNA OR ITS AUTHORIZED DISTRIBUTORS THAT THE SAMPLE OR ANY SYSTEM DEVELOPED WITH OR INCORPORATING THE SAMPLE WILL BE FREE FROM INFRINGEMENT OF THE INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES.
- IN NO EVENT WILL SGI-DNA OR ITS AUTHORIZED DISTRIBUTORS BE LIABLE, WHETHER IN CONTRACT, TORT, OR OTHERWISE, FOR ANY INCIDENTAL, SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR ANY LOSS OF USE, LOSS OF TIME, INCONVENIENCE, COMMERCIAL LOSS, OR LOST PROFITS, SAVINGS, OR REVENUES TO THE FULL EXTENT SUCH MAY BE DISCLAIMED BY LAW.

SCHEDULE 4
Limited Label Use License (“LLUL”) for Vmax™
Cell Products

This LLUL is applicable to Customer's purchase of Vmax cells (“Vmax Cell Products”) and is intended to be part of and incorporated into the SGI-DNA General Terms of Service. All terms, conditions, disclaimers, restrictions and limitations set forth in the SGI-DNA General Terms of Service (located at www.sgidna.com/TOS.pdf) which are not in direct conflict with the terms and conditions set forth in this LLUL, are incorporated herein and will apply to your use of the Cell Products. Capitalized terms not defined herein shall have the meaning set forth in the SGI-DNA General Terms of Service.

7. Cell Products Use and Restrictions.

- **Ownership.** As between SGI-DNA and Customer, SGI-DNA owns (a) the Vmax Cell Products, all parts, progeny, modifications, any derivatives (exclusive of expression products), and uses of the foregoing, (b) and all intellectual property rights to each of the foregoing (collectively (“SGI-DNA Rights”). To the extent Customer nonetheless obtains any rights in and/or to the foregoing, Customer hereby transfers and assigns to SGI-DNA all such rights, title and interest, and agrees to take such actions as may be reasonably necessary to vest, secure, perfect, protect or enforce SGI-DNA's Rights.
 - **Research Use Limited License.** The purchase of Vmax Cell Products conveys to Customer, solely a limited, non-exclusive, non-transferable right, without the right to grant sub-licenses, to use the purchased Vmax Cell Products **FOR INTERNAL RESEARCH USE ONLY AND NOT FOR HUMAN, ANIMAL, THERAPEUTIC OR DIAGNOSTIC USE.**
 - **Restrictions.** Any commercial use of the Vmax Cell Products is strictly prohibited. Customer agrees not to conduct any of the following activities with respect to any Vmax Cell Products, or any part, progeny, modification or derivative thereof, without the express written permission from SGI-DNA:
 - Propagate, reverse engineer or perform any genetic engineering activities that will result in genetic modifications of the chromosome;
 - Sell, distribute or transfer, for any purpose, for or without a fee or other consideration, to any third party;
 - Use as in commercial applications of any kind including, without limitation, manufacturing, quality control or in connection with providing a service or product or research results for a fee or other consideration to a third party, or as part of a commercial manufacturing process; nor
 - Use for therapeutics or drugs or in humans or animals for any purpose.
 - The Vmax Cell Products are or may be the subject of a patent application. Except as provided in this LLUL, no express or implied licenses or other rights are provided to Customer under any patents, patent applications, or other proprietary rights of SGI-DNA. Customer may not use the Vmax Cell Product to support the filing of a patent application in any country in the world that contains claims directed to the Vmax Cell Products or their uses.
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