

DNAexus, Inc.

Business Associate Agreement

This Business Associate Agreement (“Agreement”) is made as of [date] (“Effective Date”) by and between DNAexus, Inc. (“Business Associate”) and [Company Name] (“Covered Entity”), together referred to as “Parties,” which [CHOOSE ONE: [have entered into an agreement dated [previous agreement effective date] for [previous agreement name] (“Underlying Agreement”)] [may enter into one or more agreements under which Business Associate provides certain products or services to Covered Entity (“Underlying Agreement(s)”)].

In consideration of the mutual promises and conditions in this Agreement, Business Associate and Covered Entity hereby agree as follows:

1. **Definitions.**

- 1.1. “HIPAA” refers to the Health Insurance Portability and Accountability Act of 1996, as amended by Subtitle D of the Health Information Technology for Economic and Clinical Health Act, and their implementing regulations.
- 1.2. The following terms used in this Agreement have the same meaning as those terms are defined in 45 CFR Parts 160, 162 and 164, as amended: Breach, Designated Record Set, Disclosure, Individual, Information System, Notice of Privacy Practices, Protected Health Information, Secretary, Security Incident, Unsecured Protected Health Information, and Use.
- 1.3. “Business Associate” has the same meaning as the term “business associate” at 45 CFR 160.103, and in reference to the Party to this Agreement, will mean DNAexus, Inc.
- 1.4. “Covered Entity” has the same meaning as the term “covered entity” at 45 CFR 160.103, and in reference to the Party to this Agreement, will mean [Company Name].
- 1.5. “Protected Health Information” means “protected health information,” as defined at 45 CFR 160.103, that is received by Business Associate from or on behalf of Covered Entity and that is in a HIPAA Project.
- 1.6. “HIPAA Project” means a Business Associate platform project under the Underlying Agreement: (i) that uses the Business Associate Service to store or transmit any Protected Health Information, (ii) that Covered Entity has identified as required under Section 3.1 of this Agreement, and (iii) to which Covered Entity has applied the required security configurations, as specified in Section 3.2 of this Agreement.
- 1.7. “Site” and “Service” have the same meaning as these terms are or will be defined in the Underlying Agreement(s).

2. **Applicability.** This Agreement applies only to HIPAA Projects. Covered Entity acknowledges that this Agreement does not apply to any other projects that it may have

now or in the future, and that any of its projects that do not satisfy all of the HIPAA Project requirements are not subject to this Agreement.

3. **Duties and Responsibilities of Covered Entity.**

3.1. **Identification of HIPAA Projects.** Covered Entity, using the Business Associate user interface, shall explicitly identify as a HIPAA Project any of its projects that contain Protected Health Information and to which it intends that this Agreement apply. Covered Entity shall not include Protected Health Information in any projects that are not explicitly identified by Covered Entity as a HIPAA Project as required under this Section 3.1.

3.2. **Project Configurations.** Covered Entity shall configure and shall be solely responsible for configuring all HIPAA Projects identified under Section 3.1 of this Agreement, as follows:

3.2.1. **Encryption.** Covered Entity must encrypt all Protected Health Information stored in or transmitted using the Business Associate Service in accordance with the Secretary of Health and Human Services' Guidance to Render Unsecured Protected Health Information Unusable, Unreadable, or Indecipherable To Unauthorized Individuals, available at <http://www.hhs.gov/ocr/privacy/hipaa/administrative/breachnotificationrule/brguidance.html>, as it may be updated from time to time, and as may be made available on any successor or related site designated by the US Department of Health and Human Services.

3.3. **Safeguards.** Covered Entity shall be responsible for implementing appropriate privacy and security safeguards in order to protect its Protected Health Information in compliance with HIPAA and this Agreement.

3.4. **Limitation of Access.** Covered Entity shall use its best efforts to limit access to the minimum amount of Protected Health Information, to the minimum number of personnel for the minimum of amount of time necessary for Business Associate to accomplish the intended purpose of such use, disclosure, or request, respectively.

3.5. **Limitations in Notice of Privacy Practices.** Covered Entity shall notify Business Associate of any limitations in its Notice of Privacy Practices to the extent that such limitations affect Business Associate's Use or Disclosure of Protected Health Information.

3.6. **Restrictions in Notice of Privacy Practices.** Covered Entity shall not agree to any restriction requests or place any restrictions in any Notice of Privacy Practices that would cause Business Associate to violate this Agreement or any applicable law.

3.7. **Permissions.** Covered Entity warrants that it has obtained any necessary authorizations, consents and other permissions that may be required under applicable law prior to placing Protected Health Information on the Business Associate Site.

- 3.8. **Change in Permissions.** Covered Entity shall notify Business Associate of any changes in or revocation of permission by an individual regarding the Use or Disclosure of Protected Health Information, to the extent that such changes may affect Business Associate's Use or Disclosure of Protected Health Information.
- 3.9. **Noncompliant Use or Disclosure.** Covered Entity shall not request or cause Business Associate to make a Use or Disclosure of Protected Health Information in a manner that does not comply with HIPAA or this Agreement.
4. **Duties and Responsibilities of Business Associate.**
- 4.1. **Use and Disclosure.**
- 4.1.1. **Limitation to HIPAA Projects.** Business Associate shall have no obligations under this Agreement for any of Covered Entity's projects that are not HIPAA Projects.
- 4.1.2. **Services.** Business Associate may Use or Disclose Protected Health Information for or on behalf of Covered Entity as specified in the Underlying Agreement, and will do so only as permitted by this Agreement or as required by law, provided that any such Use or Disclosure would not violate HIPAA if done by a Covered Entity, unless permitted under HIPAA for a Business Associate.
- 4.1.3. **Management and Administration.** Business Associate may use and disclose Protected Health Information as necessary for the proper management and administration of Business Associate. Any Disclosures under this section will be made only if Business Associate obtains reasonable assurances from the recipient of the Protected Health Information that the recipient will hold the Protected Health Information confidentially and will Use or Disclose the Protected Health Information only as required by law or for the purpose for which it was disclosed to the recipient, and that the recipient will notify Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- 4.2. **Safeguards.** Business Associate will use reasonable and appropriate safeguards to prevent Use or Disclosure of the Protected Health Information other than as provided for by this Agreement, consistent with the requirements of Subpart C of 45 CFR Part 164 (with respect to Electronic Protected Health Information) as determined by Business Associate and as reflected in the Underlying Agreement.
- 4.3. **Reporting.** For all reporting obligations under this Agreement, the Parties acknowledge that, because Business Associate does not know the nature of Protected Health Information contained in any of Covered Entity's accounts, it will not be possible for Business Associate to provide information about the identities of the Individuals who may have been affected, or a description of the type of information that may have been subject to a Security Incident, impermissible Use or Disclosure, or Breach.

- 4.3.1. **Impermissible Uses and Disclosures.** Business Associate shall report to Covered Entity any Use or Disclosure of Protected Health Information not permitted or required by this Agreement of which Business Associate becomes aware.
- 4.3.2. **Security Incidents.** Business Associate shall report to Covered Entity on no less than a quarterly basis any Security Incidents involving Protected Health Information of which Business Associate becomes aware in which there is a successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an Information System in a manner that risks the confidentiality, integrity, or availability of such information. Notice is hereby deemed provided, and no further notice will be provided, for unsuccessful attempts at such unauthorized access, use modification, or destruction, such as pings and other broadcast attacks on a firewall, denial of service attacks, port scans, unsuccessful login attempts, or interception of encrypted information where the key is not compromised, or any combination of the above.
- 4.3.3. **Breaches.** Business Associate shall report to Covered Entity any Breach of its Unsecured Protected Health Information that Business Associate may discover to the extent required by 45 CFR 164.410. Business Associate will make such report without unreasonable delay, and in no case later than 60 calendar days after discovery of such Breach.
- 4.4. **Subcontractors.** Business Associate shall ensure that any subcontractors that create, receive, maintain, or transmit Protected Health Information on behalf of Business Associate agree to restrictions and conditions consistent with those found in this Agreement, and agree to implement reasonable and appropriate safeguards to protect Protected Health Information.
- 4.5. **Access to Protected Health Information.** Business Associate shall make Protected Health Information in a Designated Record Set available to Covered Entity in accordance with 45 CFR 164.524.
- 4.6. **Amendment to Protected Health Information.** Business Associate shall make Protected Health Information in a Designated Record Set available to Covered Entity for amendment and incorporate any amendments to the Protected Health Information as may reasonably be requested by Covered Entity in accordance with 45 CFR 164.526.
- 4.7. **Accounting of Disclosures.** Business Associate shall make available to Covered Entity the information required to provide an accounting of Disclosures in accordance with 45 CFR 164.528 of which Business Associate is aware, if requested by Covered Entity. Because Business Associate cannot readily identify which Individuals are identified or what types of Protected Health Information are included in Covered Entity's HIPAA Project, Covered Entity shall be solely responsible for identifying those Individuals, if any, whose Protected Health

Information may have been included in a HIPAA Project that Business Associate has disclosed and for providing a brief description of the Protected Health Information disclosed.

- 4.8. **Internal Records.** Business Associate shall make its internal practices, books and records relating to the Use and Disclosure of Protected Health Information available to the Secretary of the US Department of Health and Human Services for purposes of determining Covered Entity's compliance with HIPAA. Nothing in this section will waive any applicable privilege or protection, including with respect to trade secrets and confidential commercial information.

5. **Term and Termination.**

- 5.1. **Term.** The term of this Agreement will commence on the Effective Date and will remain in effect with respect to each project that Covered Entity identifies as being subject to this Agreement until the earliest of (a) the termination of the Underlying Agreement, (b) notification by Covered Entity that a project is no longer subject to this Agreement, or (c) termination of this Agreement pursuant to Section 6.2.
- 5.2. **Termination.** Either Party has the right to terminate this Agreement for any reason upon 90 days prior written notice to the other Party.
- 5.3. **Effect of Termination.** At termination of this Agreement, Business Associate, if reasonably feasible, will return or destroy all Protected Health Information that Business Associate still maintains in any form and retain no copies of such information or, if such return or destruction is not reasonably feasible (as determined by Business Associate), extend the protections of this Agreement to the information and limit further Uses and Disclosures to those purposes that make the return or destruction of the information infeasible.

6. **Miscellaneous.**

- 6.1. **Entire Agreement; Conflict.** Except as amended by this Agreement, the Underlying Agreement will remain in full force and effect. This Agreement, together with the Underlying Agreement as amended by this Agreement: (a) is intended by the parties as a final, complete and exclusive expression of the terms of their agreement; and (b) supersedes all prior agreements and understandings (whether oral or written) between the parties with respect to the subject matter hereof. If there is a conflict between the Underlying Agreement, this Agreement or any other amendment or addendum to the Underlying Agreement or this Agreement, the document later in time will prevail.
- 6.2. **Severability; Waiver.** In the event that any provision of this agreement (or any portion hereof) is determined by a court of competent jurisdiction to be illegal, invalid or otherwise unenforceable, such provision (or portion thereof) will be enforced to the extent possible consistent with the stated intention of the parties, or, if incapable of such enforcement, will be deemed to be severed and deleted from this agreement, while the remainder of this agreement will continue in full force. The

waiver by either party of any default or breach of this agreement will not constitute a waiver of any other or subsequent default or breach.

- 6.3. **Amendments.** Except as expressly provided herein, no modification of the Agreement will be effective unless contained in writing and signed by an authorized representative of each party.
- 6.4. **Governing Law.** This agreement is to be construed in accordance with and governed by the laws of the State of California without regard to its conflict of laws principles, and will not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is hereby expressly excluded. Any legal suit, action or proceeding arising out of or relating to this agreement will be commenced in state or federal court located in San Francisco, California.
- 6.5. **Assignment.** The Parties each will have the right to assign its rights and delegate its obligations under this Agreement to the successor in interest to that portion of its business to which this Agreement relates. Except as provided in the previous sentence, neither Party may assign its rights or delegate its obligations under this Agreement without the prior, written consent of the other Party, which will not be unreasonably withheld.
- 6.6. **No Agency Relationship.** As set forth in the Underlying Agreement, nothing in this Agreement is intended to make either Party an agent of the other. Nothing in this Agreement is intended to confer upon Covered Entity the right or authority to control Business Associate's conduct in the course of Business Associate's compliance with the Underlying Agreement and Agreement.
- 6.7. **Nondisclosure.** Covered Entity agrees that the terms of this Agreement are not publicly known and constitute Business Associate's Confidential Information under the Underlying Agreement.
- 6.8. **Counterparts and Electronic Delivery.** This Agreement may be executed in two or more counterparts, each of which will be deemed an original and all of which taken together will be deemed to constitute one and the same document. The Parties may sign and deliver this Agreement by electronic transmission.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

Business Associate

Covered Entity

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____