

SUPPLEMENTAL TERMS AND CONDITIONS OF SALE FOR SARS-COV-2 GENOME SERVICES AND RNA CONTROLS

THIS SUPPLEMENTAL TERMS AND CONDITIONS OF SALE FOR SARS-COV-2 GENOME SERVICES AND RNA CONTROLS (“**SARS-COV-2 GENOME SERVICES SUPPLEMENTAL TERMS**”) IS APPLICABLE TO CUSTOMER'S PURCHASE OF SARS-COV-2 GENOME SERVICES AND CUSTOM RNA CONTROLS AND IS INTENDED TO BE PART OF AND INCORPORATED INTO THE CODEX DNA GENERAL TERMS AND CONDITIONS OF SALE. ALL TERMS, CONDITIONS, DISCLAIMERS, RESTRICTIONS AND LIMITATIONS SET FORTH IN THE CODEX DNA GENERAL TERMS AND CONDITIONS OF SALE 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 CODEX DNA GENERAL TERMS OF SERVICE:

1. THE SERVICES.

Customer may request that Codex DNA perform a project pursuant to which Codex DNA shall construct and/or modify a Sars-CoV-2 genome, including genome variants or custom RNA controls (collectively, the “**Sars-CoV-2 genome Services**”). Before commencing any such project, Customer shall complete a biosecurity screening form describing Customer’s planned use of the services product and any potential collaborators on its project. After performing biosecurity screening of customer’s proposed project per IGSC requirements, Codex DNA will prepare a written quotation or statement of work (a “**Quotation**”) describing the Sars-CoV-2 genome Services to be performed by Codex DNA, the fees, and the projected timeline. Each Quotation shall include project-specific terms and conditions, including, but not limited to, pricing, payment terms, and specific deliverables associated with the project. To the extent not specifically defined in a quotation, the deliverables of the Sars-CoV-2 genome Services shall be those which are customary for Codex DNA’s similar services, in Codex DNA’s reasonable discretion. Each Quotation shall be subject to the Codex DNA General Terms and Conditions of Sale and these Sars-CoV-2 Genome Services Supplementary Terms (collectively, the “**Terms**”). Upon written approval of the Quotation by Client, Codex DNA will use commercially reasonable efforts to perform the Services in accordance with Terms and the Quotation. If the Terms are in conflict with a Quotation, the Terms shall govern, except to the extent such conflicting term in the Quotation is expressly stated to be an amendment to the Terms.

2. CUSTOMER MATERIALS.

Customer shall provide any information and/or materials identified in a Quotation or otherwise reasonably required in order for Codex DNA to perform the Sars-CoV-2 Genome Services, including, without limitation, any data, designs, programs, specifications, management decisions, approvals, access to systems, feedback, biological materials and chemical materials (collectively “**Customer Materials**”). Codex DNA shall use Customer Materials solely to perform the Sars-CoV-2 Genome Services. Customer retains all rights, title and interest in and to the Customer Materials, except Codex DNA has the limited right to use the Customer Materials solely for the purpose of performing Sars-CoV-2 Genome Services under this Agreement. Codex DNA shall not transfer or distribute any of the Customer Materials to any third party except as otherwise expressly authorized in writing by Customer or permitted under the Terms and any Quotation.

3. COMMERCIAL RIGHTS.

- **Research Use Limited License.** The purchase of SARS-CoV-2 Genome Services conveys to Customer, solely a limited, non-exclusive, non-transferable right, without the right to grant sub-

licenses, to use the purchased amount of service product **FOR INTERNAL RESEARCH USE ONLY AND NOT FOR HUMAN, ANIMAL, THERAPEUTIC OR DIAGNOSTIC USE.**

- **Restrictions.** Without express written permission from Codex DNA, any commercial use of the Services product is strictly prohibited. Customer agrees not to conduct any of the following activities with respect to Services products:
- 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 experimental results for a fee or other consideration to a third party, or as part of a commercial manufacturing process; nor
- Use as an ingredient in a therapeutics or drugs or in humans or animals for any purpose or in a diagnostic product.
- For information on purchasing a license to the Service product for purposes other than internal research use, Customer may send a written request to the Codex DNA licensing department at help@codexdna.com.
- **No Modification.** To maintain its compliance with IGSC biosecurity screening protocols, Codex DNA must be made aware of and perform an evaluation of Customer's intended use of the product of the Sars-CoV-2 Genome service. For this reason, Customer must adhere strictly to the intended uses described by Customer on the biosecurity screening form that Customer submitted. Without prior authorization of Codex DNA, Customer may not make modifications to the Sars-CoV-2 genome services product or RNA controls received and may not use such products for applications that have not been reviewed by Codex DNA.
- **Non-exclusivity.** Unless otherwise expressly stated in a written agreement between the parties, any use rights for the Sars-CoV-2 Genome Service product conveyed to Customer are non-exclusive. Codex DNA shall retain the right to use the Sars-CoV-2 Genome Service product and commercialize the same or similar product for itself or for other parties, commercialize the same or similar product in its catalog or as a service, or utilize any information generated by itself or other parties for promotional purposes.

4. TERMINATION.

If Customer is found to be in material breach of the Terms, and does not cure such breach within thirty (30) days of receipt of written notice of such breach, Codex DNA may terminate Customer's rights to use the Sars-CoV-2 Genome Service product, and Customer shall, at the direction of Codex DNA, promptly discontinue its use of the Sars-CoV-2 Genome Service product and destroy any products generated through the use of the Sars-CoV-2 Genome Service product.

5. REPRESENTATIONS AND WARRANTY.

5.1 Codex DNA Representations and Warranties. Codex DNA represents and warrants to Customer that:

- (a) the Services hereunder shall be performed in a commercially diligent and professional manner consistent with commonly accepted professional standards for services such as the Services;
- (b) it shall perform the activities under this Agreement in accordance with the terms of this Agreement and the applicable Quotation and all applicable laws;

- (c) the terms of this Agreement are not inconsistent or in conflict with its other contractual agreements

5.2 Customer Representations and Warranties. Customer represents and warrants to Codex DNA that:

- (a) it has all necessary right, title and interest in and to all Customer-provided materials and Customer information that has or will be provided to Codex DNA for use in the performance of the Services;
- (b) it shall perform the activities under this Agreement in accordance with the terms of this Agreement and the applicable Quotation and all applicable laws;
- (c) the terms of this Agreement are not inconsistent or in conflict with its other contractual agreements;
- (d) it is duly incorporated or organized and qualified in its applicable jurisdiction and has full power to abide by the Terms

6. PUBLICITY.

- 6.1 Neither party shall use the name, trademark, trade name or other designation of the other party without the prior, express, written permission of the other party; *provided, however*, that Codex DNA may use Customer's name and logo in its marketing materials for the sole purpose of communicating Customer is or has been a client of Codex DNA.

7. DISCLAIMER.

EXCEPT AS EXPRESSLY SET FORTH HEREIN, CODEX DNA MAKES NO REPRESENTATIONS, WARRANTIES OR GUARANTEES REGARDING ANY RESULTS OR ANY INFORMATION SUPPLIED BY CODEX DNA TO CUSTOMER OR ANY USE THEREOF OR THE PERFORMANCE OF THE SERVICES. CODEX DNA, ITS AFFILIATES AND SUPPLIERS DISCLAIM ALL OTHER REPRESENTATIONS, GUARANTEES AND WARRANTIES, WHETHER EXPRESSED OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. CUSTOMER ACKNOWLEDGES THAT THE RESULTS OF THE SERVICES ARE INHERENTLY UNCERTAIN AND EXPERIMENTAL IN NATURE AND THAT, ACCORDINGLY, THERE CAN BE NO ASSURANCE, REPRESENTATION OR WARRANTY BY CODEX DNA THAT THE PERFORMANCE OF THE SERVICES WILL YIELD SUCCESSFUL RESULTS OR RESULTS OTHERWISE SOUGHT BY CUSTOMER. CUSTOMER SHALL DECIDE, IN ITS OWN DISCRETION, WHETHER OR NOT TO USE ANY OF THE RESULTS OR INFORMATION DERIVED FROM THE SERVICES, AND HOW TO USE SUCH RESULTS AND INFORMATION; CUSTOMER SHALL BE RESPONSIBLE FOR DETERMINING THE SUITABILITY, SAFETY, AND EFFICACY OF USING ANY OF SUCH RESULTS AND INFORMATION; AND CODEX DNA SHALL HAVE NO RESPONSIBILITY OR LIABILITY FOR ANY USE OF SUCH RESULTS OR INFORMATION.

8. LIMITATION OF LIABILITY.

In no event shall Codex DNA's liability for any claim exceed the compensation paid by Customer to Codex DNA under the Quotation giving rise to such claim.

9. INDEMNIFICATION.

- 9.1 **Customer Indemnification.** Customer shall indemnify, defend and hold harmless Codex DNA and its affiliates, and its and their directors, officers, employees and agents (collectively, with Codex DNA, “**Codex DNA Indemnitees**”), from and against any and all losses, damages, liabilities, reasonable attorney fees, court costs, and expenses (collectively “**Codex DNA Losses**”) arising from any actions, proceedings, investigations or litigation arising from any third party claims, actions, proceedings, investigations or litigation (“**Third Party Claims**”) to the extent arising from or in connection with the following by any Customer Indemnitee: (a) material breach or violation of the terms or obligations of this Agreement or any Quotation; (b) gross negligence or willful intentional misconduct; (c) Customer’s use of the Service product; and (d) the actual or alleged infringement, misappropriation or violation of a third party’s intellectual property arising from Codex DNA’s use of the any materials or information provided by Customer.
- 9.2 **Codex DNA Indemnification.** Codex DNA shall indemnify, defend and hold harmless Customer and its affiliates, and its and their directors, officers, employees and agents (collectively, with Customer, “**Customer Indemnitees**”), from and against any and all losses, damages, liabilities, reasonable attorney fees, court costs, and expenses (collectively “**Customer Losses**”), arising from any Third Party Claims to the extent arising from or in connection with the following by any Codex DNA Indemnitee: (a) materials breach or violation of the terms or obligations of the Terms or any Quotation; or (b) gross negligence or willful misconduct.
- 9.3 **Indemnification Procedure.** The indemnified party shall give the indemnifying party prompt notice of any such Third Party Claim (including a copy thereof) served upon it and shall fully cooperate with the indemnifying party and its legal representatives in the investigation of any matter subject to indemnification. The indemnifying party will conduct and control the defense of any such Third Party Claim or lawsuit and any related settlement negotiations with the cooperation of the indemnified party. The indemnifying party shall not enter into any settlement agreement without the prior written permission of the party or parties seeking indemnification, which permission shall not be unreasonably withheld, delayed or conditioned.

10. CHOICE OF LAW; DISPUTE RESOLUTION.

- 10.1 **Choice of Law.** The Terms shall be construed under and governed by the laws of the State of California, U.S.A. without regard to its conflict of law or choice of law rules.