

## TAKARA BIO USA, INC.

### EMBGENIX ANALYSIS SOFTWARE AGREEMENT

Last Modified: 08/02/2022

#### Acceptance of the Terms of the Agreement.

This Embgenix Analysis Agreement (“**Agreement**”) is entered into by and between you (“**you**”, “**your**”, or “**Customer**”) and Takara Bio USA (“**Takara Bio USA**”, “**we**”, or “**us**”). The following terms and conditions, together with our Privacy Policy at takarabio.com (“**Privacy Policy**”) and any documents incorporated by reference, govern your access to and use of the Embgenix Analysis Software at takarabio.com (“**Website**”), including any content, functionality, and software-as-service offered on or through the Website (collectively, “**Embgenix Analyzer Software**”).

**PLEASE READ THE TERMS AND CONDITIONS OF THIS AGREEMENT CAREFULLY BEFORE YOU START TO USE THE WEBSITE.** THIS AGREEMENT TAKES EFFECT WHEN YOU CLICK THE "I ACCEPT" BUTTON BELOW OR BY ACCESSING OR USING OUR EMBGENIX ANALYZER SOFTWARE (the "**Effective Date**"). BY CLICKING ON THE "I ACCEPT" BUTTON BELOW OR BY ACCESSING OR USING OUR EMBGENIX ANALYZER SOFTWARE YOU (A) ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND THESE TERMS OF THIS AGREEMENT; (B) REPRESENT AND WARRANT THAT YOU HAVE THE RIGHT, POWER, AND AUTHORITY TO ENTER INTO THIS AGREEMENT AND, IF ENTERING INTO THIS AGREEMENT FOR AN ORGANIZATION, THAT YOU HAVE THE LEGAL AUTHORITY TO BIND THAT ORGANIZATION; AND (C) ACCEPT THIS AGREEMENT AND AGREE THAT YOU ARE LEGALLY BOUND BY ITS TERMS.

IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, PLEASE CLICK THE "I DECLINE" OPTION. IF YOU DO NOT ACCEPT THE TERMS OF THIS AGREEMENT, YOU MAY NOT ACCESS OR USE WEBSITE OR THE EMBGENIX ANALYZER SOFTWARE.

#### 1. Embgenix Analyzer Software.

- (a) **Embgenix Analyzer Software.** Takara Bio USA will make the Embgenix Analyzer Software available to Customer on the terms and conditions set out in this Agreement. Customer shall:
  - (i) access and use the Embgenix Analyzer Software is to be used solely with the Embgenix™ PGT-A Kit (RUO) (96 reactions/Cat. No. 634760) and Embgenix™ PGT-A Kit (CE-IVD) (96 reactions/Cat. No. 634758) (“**Kits**”);
  - (ii) make commercially reasonable efforts to cooperate with the reasonable requests of Takara Bio USA;
  - (iii) provide Takara Bio USA with access to and use of any required systems of Customer or third-party contractors (“**Systems**”); provided that, Customer shall ensure that Takara Bio USA has the right to access to use such Systems; and
  - (iv) ensure that Customer has all necessary consents to use any data, information, Personal Information (as defined below), records, and files that Customer or any End User (as defined in Section 5(a)) loads, transmits to or enters on the Website, including data that the Website is configured to obtain from Customer’s servers or systems or from third parties on Customer’s behalf (collectively, “**Customer Data**”), provided that, Customer does not acquire any intellectual property rights related to the Embgenix Analyzer Software, Website, or any elements of the foregoing. For purposes of this Agreement, “**Personal Information**” means any information relating to an identified or identifiable natural person, including, but not limited to, personal health information and personal information defined under the Health Insurance Portability and Accountability Act

of 1996 (“**HIPAA**”), California Consumer Privacy Act (“**CCPA**”), and General Data Protection Regulation (EU) 2016/679 (“**GDPR**”), which Customer submits to Takara Bio USA on the Website or is received, accessed, and/or processed by Customer, in connection with the performance of the Embgenix Analyzer Software during the Term (as defined in Section 6).

- (b) **Subcontractors.** You acknowledge and agree that we may use subcontractors in the performance of analyzing Customer Data using the Embgenix Analyzer Software; provided that, the use of a subcontractor will not release us from any of its obligations pursuant to this Agreement. Any subcontractors that are considered sub-processors will process any Customer Data in accordance with a Data Processing Agreement.
- (c) **Customer Support Services.** We will provide you and End Users 24-hour support services via electronic mail. You or End Users may initiate a helpdesk ticket through our ticketing system which is available by email at [takara-support@basepair.com](mailto:takara-support@basepair.com). We will use commercially reasonable efforts to respond to all Helpdesk tickets within one business day of such request. We will respond no later than two business days from the date you submitted the Helpdesk ticket. We may require additional information from the Customer or End User which will be requested by the email you provided when you registered for an account or call you to understand the scope of the ticket.
- (d) **Website Updates and Scheduled Downtime.** We may update the functionality and user interface from time to time in our sole discretion as part of our ongoing services to improve scope of the Embgenix Analyzer Software and use of the Website by our customers. We may from time-to-time schedule downtime for maintenance and upgrades. We will provide advance notice for scheduled downtime, except for scheduled downtime during the hours of Sunday at 5:00 am PT to 11:00 am PT, or where such downtime is required, in our sole discretion, to conduct urgent maintenance or upgrades.
- (e) **No Responsibility for Data Storage and Backup.** We cannot guarantee that we will provide regular data backups of any Customer Data or data that is stored on the Website platform. It is your sole responsibility to backup onto your own local system all Customer Data that you submit to Takara Bio USA through the Website.

## 2. License Grants.

- (a) **License Grants by Takara Bio USA.** Subject to the terms and conditions of this Agreement, Takara Bio USA grants to Customer a revocable, non-exclusive, non-transferable license during the Term to use the Embgenix Analyzer Software User Manual available through the then-available standard interface for the Website in connection with receiving the Embgenix Analyzer Software services in accordance with this Agreement.
- (b) **License Grant by Customer.** Subject to the terms and conditions of this Agreement, including Takara Bio USA’s confidentiality obligations, Customer grants to Takara Bio USA a limited, transferrable (only in accordance with Section 12(a), Assignment), sublicensable, or service providers that provide services on behalf of Takara Bio USA), royalty-free, fully paid-up, worldwide license to copy, use, reproduce, modify, develop, access, collect and store the Customer Data solely for the purpose of analyzing Customer Data using our Embgenix Analyzer Software during the Term.

## 3. Reservation of Rights.

(a) **Rights Reserved by Takara Bio USA.** Takara Bio USA expressly reserves all rights in the Embgenix Analyzer Software, Website, and all materials (other than Personal Information) provided by Takara Bio USA hereunder and not specifically granted to Customer (“**Takara Bio USA Property**”). All right, title, and interest in the Takara Bio USA Property, as well as any update, modification, adaptation, translation, customization, or derivative work thereof, and all intellectual property rights therein will remain with Takara Bio USA (or Takara Bio USA’s third-party service providers, as applicable). The Takara Bio USA Property is available to be used with only the Kits on the terms and conditions of this Agreement.

(b) **Trademarks.**

Takara Bio USA name, the terms Embgenix Analyzer, the Takara Bio USA logo, and all related names, logos, product and service names, designs, and slogans are trademarks of Takara Bio USA or its affiliates or licensors. You must not use such marks without the prior written permission of Takara Bio USA. All other names, logos, product and service names, designs, and slogans on this Website are the trademarks of their respective owners.

(c) **Rights Reserved by Customer.** Customer expressly reserves all rights in Customer Data provided by Customer hereunder and not specifically granted to Takara Bio USA.

#### 4. **Privacy Policy; Internet Security Disclaimer; Limitation, Suspension or Termination of Access.**

(a) **Personal Information.** To the extent that Customer Data may contain any Personal Information, Takara Bio USA will collect, use, disclose such Personal Information for the purposes authorized under this Agreement and in accordance with our Privacy Policy and Data Processing Addendum, and Takara Bio USA will not (i) collect or otherwise use Customer Data for any purpose other than providing the Embgenix Analyzer Software under this Agreement or as permitted under Section 7(d); or (ii) sell or use Customer Data as defined by the California Consumer Privacy Act (“**CCPA**”).

(b) **Internet Security Disclaimer.** As between Takara Bio USA and Customer, Customer is responsible for the accuracy, integrity, legality, and appropriateness of all Customer Data it provides to Takara Bio USA. Customer understands that the technical processing and transmission of Customer Data is fundamentally necessary to use the Embgenix Analyzer Software. Therefore, Customer expressly consents to Takara Bio USA’s storage of Customer Data, which will involve transmission over the Internet, and over various networks, only part of which may be owned and/or operated by Takara Bio USA. Customer acknowledges and understands that Customer Data may be accessed by unauthorized persons when communicated across the Internet, network communications facilities, telephone, or other electronic means. Takara Bio USA is not responsible for: (i) any Customer Data which is delayed, lost, altered, intercepted or stored during the transmission of any data whatsoever across public networks not owned or operated by Takara Bio USA, including, the Internet, third-party websites, and Customer’s local network; or (ii) for any interference with Customer’s use of or access to the Embgenix Analyzer Software or security breaches arising from or attributable to the Internet, and Customer waives any and all claims against Takara Bio USA in connection therewith.

(c) **Limitation, Suspension or Termination of Access.** In addition to any other suspension or termination rights of Takara Bio USA pursuant to this Agreement, certain extraordinary circumstances may require Takara Bio USA to suspend, terminate or limit (as appropriate and

as determined in Takara Bio USA's sole discretion) Customer's access to or use of the Website or the Embgenix Analyzer Software, or any component thereof, without notice in order to: (i) prevent any misuse or abuse of the Embgenix Analyzer Software; (ii) prevent any damage to, or degradation of the integrity of Takara Bio USA's systems or Website; (iii) comply with any law, regulation, court order, or other governmental request or order; or (iv) otherwise protect Takara Bio USA from potential legal liability or harm to its reputation or business. Takara Bio USA also reserves the right to approve, reject, cancel, or remove any Customer Data or other content that is posted on, provided or uploaded to, or transmitted through the Website or the Embgenix Analyzer Software at any time and for any reason in Takara Bio USA's sole discretion, and Takara Bio USA will not be liable or responsible for exercising this right. Takara Bio USA will use commercially reasonable efforts to notify Customer of the reasons for such limitation, suspension, or termination action as soon as reasonably practicable. In the event of a limitation or suspension, Takara Bio USA will promptly restore Customer's access to the Website as soon as the event giving rise to the limitation or suspension has been resolved, as determined in Takara Bio USA's discretion. Nothing contained in this Agreement will be construed to limit Takara Bio USA's ability to take action or invoke remedies, or act as a waiver of Takara Bio USA's rights in any way with respect to any of the foregoing activities. Takara Bio USA will not be responsible for any loss or damages incurred by Customer as a result of any limitation, termination, or suspension of access to or use of the Website or the Embgenix Analyzer Software under this Section.

## 5. **Customer Responsibilities and Restrictions.**

- (a) **Customer ID.** Upon Customer's request, Takara Bio USA will issue user identification and password ("User ID") for each end user that is a partner, employee, or contractor ("End User") who has been authorized by Customer to have access to and use of the Embgenix Analyzer Software; provided, however, that each End User must comply with the terms and conditions of this Agreement and confidentiality restrictions at least as restrictive as this Agreement. End Users may only access and use the Website and the Embgenix Analyzer Software through a User ID issued to Customer. Customer will not allow End Users to share their User ID with any other person. Customer is responsible for all activity occurring under the User IDs associated with End Users. Customer is responsible and liable for all use of the Embgenix Analyzer Software by End Users and for maintaining the confidentiality of their User ID and will promptly notify Takara Bio USA of any actual or suspected unauthorized use of the Embgenix Analyzer Software. Takara Bio USA reserves the right to replace any User ID if it determines it may have been used for an unauthorized purpose.
- (b) **Customer Responsibilities and Restrictions.** Customer agrees that Customer is responsible for the compliance by any End User and for the End Users' use of the Embgenix Analyzer Software, as well as for ensuring that such End Users maintain the confidentiality of their User IDs. Customer agrees that Customer is responsible for any activity occurring through a User ID. Without limiting the generality of any of the foregoing, Customer agrees that Customer will not, and will not permit any person to:
  - (i) Use the Embgenix Analyzer Software other than as permitted by the terms of this Agreement;
  - (ii) Use the Embgenix Analyzer Software to send, store, publish, post, upload or otherwise transmit any Customer Data in violation of any warranty, representation, or obligation of Customer under this Agreement;

- (iii) License, sublicense, sell, resell, rent, lease, transfer, assign, distribute, time share or otherwise commercially exploit or make the Embgenix Analyzer Software (in whole or in part) available to any third-party, other than to the End Users, or as otherwise expressly contemplated in accordance with this Agreement;
  - (iv) Use the Website to upload, collect, transmit, store, use or process, or ask Takara Bio USA to obtain from third-parties, any Customer Data: (A) that Customer does not have the lawful right to copy, transmit, distribute, and display (including any Customer Data that would violate any confidentiality or fiduciary obligations that Customer might have with respect to the Customer Data); (B) for which Customer does not have the authority, consent or permission from the individual(s) to whom the Personal Information relates in accordance with applicable privacy legislation; (C) that infringes, misappropriates or otherwise violates any intellectual property or other proprietary rights of any third-party (including any copyright, trademark, patent, trade secret, or other intellectual property right, or moral right or right of publicity); (D) that is tortious, defamatory, obscene, or offensive; or (E) that violates, or encourages any conduct that would violate, any applicable law or regulation (including applicable privacy and anti-spam legislation) or would give rise to civil or criminal liability;
  - (v) Use the Website to send, store, publish, post, upload or otherwise transmit any viruses, Trojan horses, worms, time bombs, corrupted files or other computer programming routines that are intended to damage, detrimentally interfere with, surreptitiously intercept, or expropriate any systems, data, personal information, or property of another;
  - (vi) Continue to use the Website in a manner that interferes with or disrupts the integrity or performance of the Embgenix Analyzer Software following a notice from Takara Bio USA of such use;
  - (vii) Attempt to gain unauthorized access to the Website or its related systems or networks;
  - (viii) Use or knowingly permit the use of any security testing tools to probe, scan, or attempt to penetrate or ascertain the security of the Website except with prior notice to Takara Bio USA;
  - (ix) Use any data mining, robots or similar data gathering or extraction methods (including electronic address harvesting);
  - (x) Access the Website for the purpose of building a similar or competitive product or service or for the purpose of obtaining unauthorized access to the Website or Embgenix Analyzer Software; or
  - (xi) Copy, translate, create a derivative work of, reverse engineer, reverse assemble, disassemble, or decompile the Website or any part thereof or otherwise attempt to discover any source code or modify the Website, except as expressly provided for in this Agreement.
- (c) **Customer Responsibility for Customer Data.** Without limiting Takara Bio USA's responsibility to provide its Embgenix Analyzer Software in accordance with its specifications and comply with all applicable laws including, privacy laws Customer has sole

responsibility for providing all notices, making all disclosures and otherwise obtaining all necessary consent and authority required by and in accordance with applicable laws regarding Customer Data (including any Personal Information). Takara Bio USA will use the Customer Data it is provided by Customer or third parties in performing the Embgenix Analyzer Software “as is”, and is not responsible for reviewing, validating, or otherwise confirming the accuracy, appropriateness, or completeness of Customer Data.

- (d) **Removal of Customer Data on Request by Customer.** Customer may control the Customer Data stored by the Embgenix Analyzer Software, including (subject to Section 7(d) by deleting or requiring Takara Bio USA to delete all or part of the Customer Data (including Personal Information) at any time.

## 6. Term.

Subject to the terms of this Agreement, this Agreement will commence on the Effective Date and continue in effect until terminated.

## 7. Confidential & Proprietary Information.

- (a) **Definitions.** For purposes of this Section 7, a party receiving Confidential & Proprietary Information (as defined below) will be the “**Recipient**” and the party disclosing such information will be the “**Discloser**”. “**Confidential & Proprietary Information**” includes all information disclosed by Discloser to Recipient during the Term of this Agreement and marked as “confidential” or “proprietary” or which a reasonable person would understand to be confidential or proprietary; provided that: (a) the terms and conditions of this Agreement and all parts of the Website, whether marked as “confidential” or “proprietary” or not, will be considered to be Takara Bio USA Confidential & Proprietary Information; and (b) all Customer Data, whether marked as “confidential” or “proprietary” or not, will be considered Customer’s Confidential & Proprietary Information; and further provided that Discloser’s Confidential & Proprietary Information (other than Personal Information) does not include: (i) information already known or independently developed by Recipient outside the scope of this relationship by personnel not having access to any Discloser’s Confidential & Proprietary Information; (ii) information that is publicly available through no wrongful act of Recipient; or (iii) information received by Recipient from a third-party who was free to disclose it without confidentiality obligations.
- (b) **Covenant.** Recipient hereby agrees that during the Term and at all times thereafter it will not: (i) disclose such Confidential & Proprietary Information of the Discloser to any person or entity, except to its own personnel, affiliates or contractors having a “need to know”, to its accountants, auditors or other professional advisors relating to its business, to Recipient’s subcontractors having a “need to know” for purposes relating to the provision of the Embgenix Analyzer Software to Customer, and to such other recipients as the Discloser may approve in writing; (ii) use Confidential & Proprietary Information of the Discloser except to exercise its license rights or perform its obligations under this Agreement; or (iii) alter or remove from any Confidential & Proprietary Information of the Discloser any proprietary legend. Recipient will use at least the same degree of care in safeguarding the Confidential & Proprietary Information of the Discloser as it uses in safeguarding its own confidential information of a similar nature, but in no event will less than due diligence and reasonable care be exercised. Each party will be deemed to have fulfilled its confidentiality obligations under this Section 7, if it affords the other party’s Confidential & Proprietary Information at least the same degree of care it takes in protecting its own confidential information from

unauthorized disclosure (but in no event using less than a reasonable degree of care). Upon the earlier of: (A) Discloser's written request; and (B) the termination or expiration of this Agreement, regardless of whether a dispute may exist, Recipient will return or destroy (as instructed by Discloser) all Confidential & Proprietary Information of Discloser in its possession or control and cease all further use thereof. Either party may retain a copy of such Confidential & Proprietary Information for the sole purpose of and to the extent necessary for it to comply with applicable and legal, regulatory, or reasonable internal back-up or archival policies and requirements. Notwithstanding the foregoing, Recipient may disclose Discloser's Confidential & Proprietary Information to the extent that such disclosure is necessary for the Recipient to enforce its rights under this Agreement or is required by law or by the order of a court or similar judicial or administrative body, provided that the Recipient promptly notifies the Discloser in writing of such required disclosure and cooperates with the Discloser to seek an appropriate protective order.

- (c) **Injunctive Relief.** Recipient acknowledges that violation of the provisions of this section would cause irreparable harm to Discloser not adequately compensable by monetary damages. In addition to other relief, it is agreed that injunctive relief will be available without necessity of posting bond to prevent any actual or threatened violation of such provisions.
- (d) **Analytics.** Subject to complying with the warranty terms set for in Section 8(a), Takara Bio USA its subcontractors, agents and third-party service providers shall be permitted to access, collect, analyze and use the Customer Data and other Customer information solely for the purposes of analyzing such data using Embgenix Analyzer Software and in accordance with the DPA to improve and enhance our Embgenix Analyzer Software or the Website and for other development, diagnostic and corrective purposes and disclose such data solely in aggregate or other de-identified form in connection with its business; provided that, Takara Bio USA agrees that it shall be solely responsible and liable for processing such Customer Data, including aggregate or de-identified data.

## 8. The Parties' Warranties; Disclaimer; Indemnity.

- (a) **Takara Bio USA Warranty.** Takara Bio USA represents and warrants to, and covenants with Takara Bio USA that it will analyze Customer Data using the Embgenix Analyzer Software in a competent, professional, and workmanlike manner by personnel with adequate training and experience.
- (b) **Customer Warranty.** Customer represents and warrants to, and covenants with Takara Bio USA that: (i) the Customer Data will contain no Personal Information about an identifiable individual or information that is otherwise subject to privacy laws, except for Personal Information: (A) in respect of which Customer has provided all notices and disclosures and otherwise obtained all necessary consents and authority from all applicable individuals in accordance with applicable laws to enable Takara Bio USA to analyze Customer Data using our Embgenix Analyzer Software on behalf of Customer and to process Personal Information in the manner set out in the Takara Bio USA Privacy Policy; and (B) that complies with Customer's representations, warranties and obligations set out in this Agreement; and (ii) Customer will at all times agree to and comply with (and will cause each End User to agree to and at all times comply with) all third-party terms and conditions applicable in respect of the Embgenix Analyzer Software.
- (c) **Disclaimer.** ANY OTHER PRODUCTS AND SERVICES PROVIDED BY TAKARA BIO USA TO CUSTOMER ARE PROVIDED "AS IS", "AS AVAILABLE", WITH ALL

FAULTS AND WITHOUT ANY WARRANTIES, REPRESENTATIONS OR CONDITIONS OF ANY KIND. EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT, TAKARA BIO USA HEREBY DISCLAIMS ALL EXPRESS, IMPLIED, COLLATERAL OR STATUTORY WARRANTIES, REPRESENTATIONS OR CONDITIONS, WHETHER WRITTEN OR ORAL, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, NONINFRINGEMENT, SECURITY, RELIABILITY, COMPLETENESS, QUIET ENJOYMENT, ACCURACY, QUALITY, INTEGRATION OR FITNESS FOR A PARTICULAR PURPOSE. TAKARA BIO USA DOES NOT WARRANT THAT THE SERVICES OR WEBSITE WILL OPERATE WITHOUT INTERRUPTION OR BE ERROR FREE. WITHOUT LIMITING THE GENERALITY OF ANY OF THE FOREGOING, TAKARA BIO USA EXPRESSLY DISCLAIMS ANY REPRESENTATION OR WARRANTY THAT ANY DATA OR INFORMATION PROVIDED TO CUSTOMER IN CONNECTION WITH CUSTOMER'S USE OF THE SERVICES OR WEBSITE WILL BE ACCURATE, OR CAN OR SHOULD BE RELIED UPON BY CUSTOMER FOR ANY PURPOSE WHATSOEVER.

(d) **Indemnity.**

- (i) Takara Bio USA agrees to indemnify, defend, and hold harmless Customer from and against any and all losses, damages, liabilities, costs (including reasonable attorneys' fees) ("**Losses**") incurred by Customer resulting from any third-party claim, suit, action, or proceeding ("**Third-Party Claim**") alleging that the use of the Embgenix Analyzer Software as permitted hereunder infringes or misappropriates the intellectual property Rights of a third-party (an "**Infringement Claim**"), provided that, Customer (1) promptly gives Takara Bio USA written notice of the Infringement Claim; (2) gives Takara Bio USA sole control of the defense and settlement of the Infringement Claim (provided that Takara Bio USA may not settle any Infringement Claim unless the settlement unconditionally releases Customer of all liability); and (3) provides to Takara Bio USA all reasonable assistance, at Takara Bio USA' expense. The indemnification obligations do not apply with respect to portions or components of the Service that infringe or misappropriates such third party's intellectual property rights to the extent (A) supplied by Customer that cause such infringement, (B) that are based upon specifications that cause such infringement, (C) that are modified by Customer after delivery by Takara Bio USA of which such modifications cause infringement, (D) combined by Customer with other products, processes or materials where the alleged infringement relates to such combination, (E) where Customer continues allegedly infringing activity after being notified thereof or after being informed of modifications that would have avoided the alleged infringement, or (F) where Customer's use of the Service is not strictly in accordance with this Agreement and such use causes such infringement. In the event of an Infringement Claim, or if Takara Bio USA reasonably believes the Embgenix Analyzer Software may infringe or misappropriate, Takara Bio USA may in its discretion and at no cost to Customer (y) modify the Embgenix Analyzer Software so that they no longer infringe or misappropriate or (z) obtain a license for Customer's continued use of the Embgenix Analyzer Software in accordance with this Agreement. For clarity, this indemnity does not apply to Infringement Claims resulting from or arising out of Customer Data, third-party content, or third-party websites.
- (ii) Customer agrees to indemnify, defend, and hold harmless Takara Bio USA from and against any and all Losses incurred by Takara Bio USA to the extent resulting from



any Third-Party Claim alleging that (1) Customer Confidential Information infringes or misappropriates the intellectual property rights of a third-party or (2) Customer failed to use the Embgenix Analyzer Software and Customer Data in compliance with the terms of this Agreement or applicable laws; provided that, Takara Bio USA (A) promptly gives Customer written notice of such Third-Party Claim; (B) gives Customer sole control of the defense and settlement of the Third-Party Claim (provided that Customer may not settle any Third Party Claim unless the settlement unconditionally releases Takara Bio USA of all liability); and (C) provides to Customer all reasonable assistance, at Customer's expense.

## **9. Limitation of Liabilities.**

The parties acknowledge that the following provisions have been negotiated by them and reflect a fair allocation of risk and form an essential basis of the bargain and will survive and continue in full force and effect despite any failure of consideration or of an exclusive remedy:

- (a) EXCEPT AS A RESULT OF EITHER PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, INDEMNIFICATION OBLIGATIONS OR TAKARA BIO USA'S OBLIGATIONS TO PROVIDE EMBGENIX ANALYZER SOFTWARE IN ACCORDANCE WITH ALL APPLICABLE LAWS OR CUSTOMER'S BREACH OF SECTION 8(b), NEITHER PARTY NOR ITS AFFILIATES SHALL BE LIABLE TO THE OTHER PARTY IN ANY WAY FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR EXEMPLARY DAMAGES, PUNITIVE DAMAGES OR PENALTIES (EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR PENALTIES), ARISING OUT OF THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO, LOSS OF REVENUE, CHANGE IN SHARE PRICE, LOSS OF ANTICIPATED PROFITS OR LOST BUSINESS. THIS LIMITATION OF LIABILITY APPLIES, WITHOUT LIMITATION, TO ANY FAILURE OF PERFORMANCE, ERROR, OMISSION, INTERRUPTION, DELAY IN OPERATION OR TRANSMISSION, WHETHER FOR BREACH OF CONTRACT, TORTIOUS CONDUCT, ACTS OR OMISSIONS, NEGLIGENCE, OR UNDER ANY OTHER CLAIM OR CAUSE OF ACTION.
- (b) IN NO EVENT SHALL TAKARA BIO USA'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE SERVICES, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED TWO (2) TIMES THE AMOUNTS ACTUALLY PAID BY AND DUE FROM CUSTOMER HEREUNDER IN THE TWELVE MONTHS PRECEDING THE INCIDENT GIVING RISE TO THE LIABILITY.

## **10. Notices.**

Any notices to us must be sent to our corporate headquarters address available below in Section 12 (l) "Contact Information" and must be delivered either in person, by certified or registered mail, return receipt requested and postage prepaid, or by recognized overnight courier service, and are deemed given upon receipt by us. Notwithstanding the foregoing, you hereby consent to receiving electronic communications from us.

## **11. Termination.**

- (a) **Generally.** Either party may, in addition to other relief, suspend or terminate this Agreement (i) for any reason upon 30 days' advance notice; (ii) commits a material breach of this

Agreement, and either: (A) fails within 30 days after receipt of notice of such breach to correct such material breach or to commence corrective action reasonably acceptable to the aggrieved party and proceed with due diligence to completion; or (B) such material breach is incapable of being cured; or (C) becomes insolvent, makes an assignment for the benefit of its creditors, a receiver is appointed, or a petition in bankruptcy is filed with respect to the party and is not dismissed within 30 days.

- (b) **Survival.** The following Sections will survive expiration or termination of this Agreement for any reason: Section 3 (Reservation of Rights), Section 5 (Customer Responsibilities and Restrictions), Section 7 (Confidential & Proprietary Information), Section 9 (Parties Warranty; Disclaimer; Indemnity), Section 9 (Limitation of Liabilities), and Section 12 (General Provisions).

## 12. General Provisions.

- (a) **Assignment.** Neither party may assign any of its rights or delegate any of its obligations hereunder, in each case whether voluntarily, involuntarily, by operation of law, nor may either party assign its rights or delegate its obligations, in whole or in part, to an entity that acquires all or substantially all of the business or assets of such party to which this Agreement pertains, whether by merger, reorganization, acquisition, sale, or otherwise, without the prior written consent of the other party, which consent shall not be unreasonably withheld, conditioned, or delayed. Any purported assignment or delegation in violation of this Section will be null and void. No assignment or delegation will relieve the assigning or delegating party of any of its obligations hereunder. This Agreement is binding upon and inures to the benefit of the parties and their respective permitted successors and assigns.
- (b) **Choice of Law.** This Agreement and any action related thereto will be governed by and construed in accordance with the laws of the State of California and the federal laws of the United States of America applicable therein, without regard to conflicts of law principles. The parties hereby irrevocably attorn to the exclusive personal jurisdiction and venue of the courts sitting in the State of California. The U.N. Convention on Contracts for the International Sale of Goods will not apply to this Agreement.
- (c) **Right to List as a Customer.** Takara Bio USA has the right to use Customer's name, logo, weblink, trademarks, or the like, in press announcements and/or in marketing materials.
- (d) **Feedback.** Takara Bio USA shall be free to use, disclose, reproduce, license, or otherwise distribute, make available and exploit any feedback, suggestions, enhancement requests, recommendations, or other feedback ("**Feedback**") provided by Customer to Takara Bio USA relating to the Website or the operation of the Embgenix Analyzer Software. Takara Bio USA may use any Feedback as it sees fit, entirely without obligation or restriction on account of any intellectual property rights or otherwise.
- (e) **Compliance with Export Regulations.** Customer has or will obtain in a timely manner all necessary or appropriate licenses, permits or other governmental authorizations or approvals; will indemnify and hold Takara Bio USA harmless from, and bear all expense of, complying with all foreign or domestic laws, regulations or requirements pertaining to the importation, exportation, or use of the Embgenix Analyzer Software. Customer will not directly or indirectly export or re-export (including by transmission) any regulated technology to any country to which such activity is restricted by regulation or statute, without the prior written consent, if required, of the administrator of export laws.

- (f) **Force Majeure.** Except for fees that are due to Takara Bio USE, if, and to the extent that a party's performance of any of its obligations pursuant to this Agreement is prevented or delayed by fire, acts of God, acts of war, terrorism, riots, epidemic, pandemic, or any other similar or dissimilar cause beyond the reasonable control of it (each, a "**Force Majeure Event**"), then it shall be excused for such non-performance, as applicable, of those obligations affected by the Force Majeure Event for as long as such Force Majeure Event continues. If such Force Majeure Event continues for a period of two months or more, either party shall have the right to terminate this Agreement, effective at any time during the continuation of such Force Majeure Event by giving the other party at least 30 days written notice to such effect.
- (g) **Severable.** Any provision hereof found by a tribunal of competent jurisdiction to be illegal or unenforceable will be automatically conformed to the minimum requirements of law and all other provisions will remain in full force and effect.
- (h) **No Waiver.** Waiver of any provision hereof in one instance will not preclude enforcement thereof on future occasions. Any waiver by one party of any default by the other party will not affect or impair any rights of the first party arising from any subsequent default by that other party.
- (i) **Independent Contractors.** Customer's relationship to Takara Bio USA is that of an independent contractor, and neither party is an agent or partner of the other. Customer will not have and will not represent to any third-party that it has, any authority to act on behalf of Takara Bio USA.
- (j) **Entire Agreement.** This Agreement, together with the Embgenix Analyzer Software Manual, Privacy Policy, any other documents related to the Embgenix Analyzer Software, constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all other communications, whether written or oral. This Agreement may be executed in one or more counterparts, each of which will be deemed an original and all of which will be taken together and deemed to be one instrument.
- (k) **Amendments.** No amendment, supplement, modification, waiver, or termination of this Agreement and, unless otherwise specified, no consent or approval by any party, will be binding unless executed in writing by the party or parties to be bound thereby.
- (l) **Contact Information.** Please contact us by mail: Attn: VP, Corporate Development, Takara Bio USA, Inc., 2560 Orchard Parkway, San Jose, California 95131, or email: [partnering@takarabio.com](mailto:partnering@takarabio.com), or by telephone at (650) 919-7300 or 1 (800) 662-2566