

DATA USE AGREEMENT FOR DATA COMMONS (DUA-DC)

DATA USE AGREEMENT FOR DATA COMMONS

This Data Use Agreement for Data Commons, including its attachments (this “**Agreement**”), is entered into between [●], [●], and [●], (each an “**Original Contributor**”), each new contributor that becomes party to this Agreement in accordance with Section 2.2 (each a “**New Contributor**”) (each Original Contributor and New Contributor, a “**Commons Contributor**” and collectively, the “**Commons Contributors**”), and [●] (the “**Operator**”), as of [●] (“**Effective Date**”). The Commons Contributors and Operator may also be referred to individually as “a party” or collectively as “the parties.” Unless otherwise indicated, capitalized terms used in this Agreement are defined in Attachment A. The parties hereby agree as follows:

1. Purpose.

The parties desire to develop, use and operate a hosted database to facilitate the collection and sharing of data pertaining to the Subject Matter among the Commons Contributors through the use of Database APIs (such database, together with the data contained in that database, including the Commons Contributor Data, the “**Database**”). The purpose of this Agreement is to establish the terms governing (a) the development, use and operation of the Database and Database APIs, (b) the provision of Services (as defined in Section 4) by the Operator, and (c) the formation and operation of a Governance Committee (as defined in Section 2.1) to oversee the activities described in this Section 1 and as set forth more fully in this Agreement.

2. Governance Committee Formation and Authority.

2.1 Governance Committee Formation. The Commons Contributors will form and maintain a committee in accordance with Attachment B to oversee the Operator’s performance of its obligations and to address other matters, in each case as set forth in this Agreement (the “**Governance Committee**”). The Governance Committee will (a) act in accordance with Attachment B, (b) serve as the primary point of contact between the Commons Contributors and the Operator with respect to this Agreement, and (c) direct the Operator’s performance of the Services and its other obligations in accordance with Attachment B.

2.2 New Contributors. The Governance Committee may, in accordance with Attachment B, elect to grant New Contributors access to the Database and such other rights granted to Commons Contributors under this Agreement, provided that such New Contributors join this Agreement by executing a joinder agreement, substantially in the form of Attachment C (the “**Joinder Agreement**”). Pursuant to the Joinder Agreement, New Contributors will agree to be bound by this Agreement and to accept all corresponding rights and obligations of a Commons Contributor. Each party authorizes any member of the Governance Committee to execute, on its behalf, such a Joinder Agreement with a New Contributor that has been approved by the Governance Committee in accordance with this Agreement.

3. Commons Contributor Qualifications and Obligations.

3.1 Qualifications. Each Commons Contributor will ensure that it satisfies the Eligibility Criteria.

3.2 Commons Contributor Data. Each Commons Contributor will, using the applicable Database API, deliver to the Operator for inclusion in the Database the data related to the Subject Matter as described in Attachment D (“**Contributor Data**”).

3.3 [OPTIONAL Personal Data]. Personal Data included in the Contributor Data is as described in Attachment D.

4. Obligations of Operator.

4.1 Performance of Services. Subject to the terms and conditions of this Agreement, the Operator, will perform the services as set forth in Attachment E (the “**Services**”) (a) in accordance with the directives of the Governance Committee, Attachment E and the other terms of this Agreement, and (b) in a professional and workmanlike manner using qualified and appropriately trained personnel and in a manner that meets or exceeds applicable industry standards.

4.2 Compliance with Governance Committee. The Operator shall comply with the Governance Committee’s directives.

5. Data Rights; Access to the Database and Services.

5.1 Operator Rights to Contributor Data. Subject to the terms and conditions of this Agreement, each Commons Contributor hereby grants to the Operator, for [INSERT DURATION], an [irrevocable, non-assignable, worldwide, non-exclusive] right to use its Contributor Data, solely for the purpose of providing the Services in accordance with this Agreement, including without limitation, to enable the Permitted Purposes set forth in Attachment H. The Operator may not grant these usage rights to any entity except other Commons Contributors, solely for purposes of enabling such Commons Contributors to exercise their rights in the Database (as defined in Section 5.2).

5.2 Commons Contributor Rights to Database. Subject to the terms and conditions of this Agreement, the Operator hereby grants to each Commons Contributor, for [INSERT DURATION], an [irrevocable, non-assignable, non-sublicensable, worldwide, non-exclusive] right to access and use the Database and Database APIs for the Permitted Purpose (the “**Database Right**”). Each Commons Contributor will access the Database using the following Database API: [●].

5.3 Authorized Users. Each Commons Contributor can designate up to [●] Authorized Users to receive access to and use of the Database. Each Commons Contributor will provide Operator with a list of its Authorized Users, which may be updated upon fifteen (15) days’ notice to the Operator.

5.4 Commons Contributor Rights to Services. Subject to its payment of the fees set forth in Section 7.1, each Commons Contributor is entitled to receive the Services from Operator as set forth in Attachment E.

5.5 Required Systems. Each Commons Contributor is solely responsible for obtaining all Systems necessary to enable it and its Authorized Users to access and use the Database, except for the Database APIs.

5.6 Responsibility For Authorized Users. Each Commons Contributor will (a) be responsible for the acts and omissions of its Authorized Users undertaken in connection with this Agreement, and (b) not authorize any Person that is not an Authorized User to access or use the Database or Database APIs.

6. Restrictions on Use of the Database.

6.1 General Restrictions. The parties will not, and will not authorize any Authorized Users or other Person to: (a) access or use the Database or Database APIs except as expressly permitted in this Agreement; (b) tamper with, or introduce any viruses, worms, or other malware into, the Database, Database APIs, or other technical systems used in connection with the Database or Database APIs; (c) interfere with, or attempt to interfere with, the Database, Database APIs or the provision of any Services; or (d) alter, remove, or obscure any disclaimers or notices included in the Database or Database APIs.

6.2 Corrective Action and Notice. If a party or its Authorized Users become aware of any actual or threatened breach of this Section 6 (a “**Breach**”), that party will: (a) notify the other parties of the Breach

and assist the Operator with its investigation of the Breach; and (b) take all reasonable and lawful measures within its control (at its own expense) that are necessary to stop the Breach or mitigate its effects.

6.3 Suspension. The Operator or Governance Committee may, in accordance with Attachment B, suspend a Commons Contributor's or any Authorized User's access to or use of the Database, without liability, if the Governance Committee or Operator determines in its reasonable discretion that suspension is warranted under the circumstances, provided that suspension will be limited to the extent made necessary by the events giving rise to the suspension and access and use will be restored promptly following the resolution of such events.

6.4 Commons Contributor Control and Responsibility; Security. Each party has and will retain sole responsibility for its Systems. Each Commons Contributor will use commercially reasonable measures to maintain the confidentiality and security of its and its Authorized Users' access credentials.

7. Fees and Payments.

7.1 Fees and Payment Terms. Each party will pay to the Operator the fees or other consideration in accordance with Attachment F (the "**Fees**").

7.2 Taxes. The Fees and other payment obligations set forth in this Agreement do not include, and each Commons Contributor will pay, any sales, use, property, value-added or other taxes relating to, resulting from, or based on the rights granted or Services performed hereunder.

8. Data Ownership.

8.1 Data Ownership. Subject to the limited rights granted in this Agreement, each party's data (including, in the case of Commons Contributors, Contributor Data) is and will remain the property of such party. No party will, by virtue of this Agreement, have any ownership rights in any other party's data or in any other party's Results, beyond the rights to use Contributor Data as specified in Attachment H.

9. Confidentiality.

9.1 Each party agrees to take reasonable steps to protect the confidentiality of the Contributor Data made available to it pursuant to this Agreement by any of the other parties while in such party's possession or control; except that such party may freely use or disclose any portion of the Contributor Data that: (a) was lawfully in such party's possession prior to such party accessing it under this Agreement; (b) becomes publicly available without a breach of this Agreement by such party; (c) is received by such party lawfully from another source without any corresponding obligation of confidentiality; or (d) is independently developed by or for such party. Each party may also disclose Contributor Data if and as required by law; but only after it notifies the Governance Committee, the affected other party, and the Operator to enable any of them, as applicable, to seek a protective order or other appropriate remedy.

9.2 A party may not disclose Contributor Data to any third party, except to its Authorized Users, employees, contractors and consultants ("**Representatives**") or as otherwise contemplated in this Agreement, and then only on a need-to-know basis under confidentiality obligations at least as protective as this Agreement. Each party will be responsible and liable for the use and disclosure of Confidential Information by its Representatives.

10. Data Protection.

10.1 While Contributor Data is in the possession of any party, such party agrees to implement and maintain reasonable physical, administrative, and technical safeguards to protect the Contributor Data from inadvertent or unauthorized access, disclosure, use, or modification.

10.2 All use and storage of Contributor Data by any party will be consistent in all material respects with the data handling guidelines set forth in Attachment G, if any.

10.3 Each Commons Contributor will cooperate with the Operator to ensure that the provision, use and storage of Contributor Data is in compliance with applicable law.

10.4 In the event of any unauthorized access, disclosure, use or modification of the Database or Database APIs, the parties will cooperate to remediate and resolve the issue to the reasonable satisfaction of the Governance Committee.

10.5 No party will attempt to identify any natural person from any anonymized or de-identified Personal Data included in the Database.

11. Warranties.

11.1 Each party represents and warrants to the other parties that: (a) it has full right, power and authority to enter into this Agreement and to perform its obligations under this Agreement; (b) the execution of this Agreement by such party, and the performance by such party of its obligations under this Agreement (including use of its Contributed Data as contemplated in this Agreement) do not and will not violate any other agreement to, or obligation by, which such party is bound; (c) when executed and delivered by the parties, this Agreement will constitute the legal, valid and binding obligation of such party, enforceable against such party in accordance with its terms; and (d) it will perform its activities in this Agreement in compliance with applicable laws, including data protection laws.

11.2 NO PARTY MAKES ANY REPRESENTATIONS OR WARRANTIES IN CONNECTION WITH THIS AGREEMENT THAT ARE NOT EXPRESSLY SET FORTH IN THIS AGREEMENT.

12. Remedies and Indemnification.

12.1 LIMITATION ON LIABILITY. THE [CUMULATIVE] LIABILITY OF EACH PARTY AND ITS REPRESENTATIVES TO ALL OTHER PARTIES AND THEIR REPRESENTATIVES FOR ANY ACTUAL OR ALLEGED DAMAGES ARISING OUT OF, BASED ON OR RELATING TO THIS AGREEMENT, WHETHER ARISING OUT OF, BASED ON OR RELATING TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), WARRANTY OR ANY OTHER LEGAL THEORY, SHALL BE [●].

12.2 Indemnification. Each party (an "indemnifying party") agrees to indemnify, defend and hold each other party and its affiliates, and its and their respective directors, officers, employees, successors and permitted assigns, harmless from and against any loss, damages, costs, penalties, fines and expenses (including reasonable attorneys' fees and court or similar costs and amounts paid in settlement) (collectively, "**Losses**") arising out of a claim brought or asserted by a third party to the extent arising from or relating to (a) any violation by such indemnifying party of applicable law, (b) any willful misconduct or gross negligence of such indemnifying party, or (c) any breach by such indemnifying party of this Agreement.

13. Term and Termination.

13.1 Term. This Agreement is binding on the Original Contributors and the Operator as of the Effective Date (and, with respect to each New Contributor, as of the date that each New Contributor becomes a party to this Agreement pursuant to a Joinder Agreement) and will remain in effect until [●] (the "**Initial Term**"), unless terminated sooner pursuant to this Agreement. Following the Initial Term, subject to this Section 13, this Agreement shall automatically renew for successive [one (1)] year terms (each a "**Renewal Term**" and collectively with the Initial Term, the "**Term**").

13.2 Termination by the Governance Committee. The Commons Contributors acknowledge and agree that the Governance Committee may terminate this Agreement (as determined by the Governance Committee in its sole discretion) upon ninety (90) days' notice to all Commons Contributors.

13.3 Non-Renewal With Respect to Individual Parties. Each party has the right to have this Agreement terminate with respect to such party at the end of the Initial Term or any Renewal Term by giving the

other parties notice at least one hundred and eighty (180) days prior to the expiration of the Initial Term or then-current Renewal Term.

13.4 Termination by Majority Opt-Out. If [a majority] of the Commons Contributors] opt-out of renewing this Agreement pursuant to Section 13.3, then this Agreement shall not automatically renew in accordance with Section 13.1.

13.5 Termination for Breach. The Governance Committee may terminate this Agreement with respect to any individual party upon written notice to such party (the “**Terminated Party**”) and to the other parties if the Terminated Party materially breaches this Agreement and fails to cure the material breach within thirty (30) days following written notice from the Governance Committee specifying the material breach and demanding its cure. In the event that the Terminated Party is the Operator, the Operator hereby agrees to assign to the Governance Committee’s designee, all agreements concerning or related to the Database or this Agreement to which Operator is a party.

13.6 Effect of Termination. Upon termination or expiration of this Agreement [●].

13.7 Survival. The parties’ respective rights and obligations under Sections [●] will survive termination or expiration of this Agreement.

14. General Provisions.

14.1 Entire Agreement; Amendments. This Agreement is the entire agreement and understanding between the parties with respect to the subject matter described in this Agreement and supersedes all prior agreements, understandings, promises and representations with respect thereto. Any amendment to the Agreement must be in writing and executed by authorized representatives of both parties.

14.2 Counterparts; Electronic Signatures. This Agreement may be executed in any number of counterparts, which, when taken together, will constitute one original. This Agreement may be executed by PDF format via email or other electronically transmitted signatures and such signatures will be deemed to bind each party to this Agreement as if they were original signatures

14.3 No Third-Party Beneficiaries. No person or entity who is not a party to this Agreement will have the right to enforce any provision of this Agreement.

14.4 Relationship of the Parties. The parties are independent contractors and the relationship between the parties under this Agreement will not constitute a partnership or agency. Except for the rights of the Governance Committee and Operator set forth in this Agreement, no individual party will have the authority to take any action that will be binding on the other parties.

14.5 No Joint and Several Liability. The parties acknowledge and agree that the obligations and liabilities under this Agreement shall not be joint and several, and each party shall be liable only for its own liability under this Agreement.

14.6 Assignment. No party may assign this Agreement, in whole or in part, to any third party without the prior written consent of the Governance Committee.

14.7 Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of [●], without giving effect to its principles or rules of conflicts of laws. Each Commons Contributor irrevocably submits to the exclusive jurisdiction, for the resolution of disputes arising under this Agreement, of the state and federal courts sitting within the State of [●].

REVIEWED AND AGREED

[OPERATOR]

Signature

Printed Name

Title

**[COMMONS CONTRIBUTOR 1
NAME]**

Signature

Printed Name

Title

**[COMMONS CONTRIBUTOR 2
NAME]**

Signature

Printed Name

Title

[COMMONS CONTRIBUTOR 3 NAME]

Signature

Printed Name

Title

**[COMMONS CONTRIBUTOR 4
NAME]**

Signature

Printed Name

Title

**[COMMONS CONTRIBUTOR 5
NAME]**

Signature

Printed Name

Title

Attachment A

Certain Definitions

“**Authorized User**” means a Person who (a) is employed by a Commons Contributor, (b) has been designated by a Commons Contributor as being an Authorized User under this Agreement, and (c) has entered into an end user agreement in the form provided by the Operator from time to time (the “**EULA**”) and which EULA remains in full force and effect.

“**Database APIs**” means certain application programming interfaces developed or procured by or on behalf of the Operator for use in accessing and using the Database or contributing data to the Database.

“**Eligibility Criteria**” means [●].

“**Feedback**” means any suggestions, feedback, ideas, and other inputs in any form or media, known now or later developed, relating to the Database and the arrangement established by this Agreement.

“**Permitted Purposes**” means the purposes set forth in Attachment H.

“**Person**” means an individual or a partnership, corporation, limited liability company, bank, association, joint stock company, trust, joint venture, unincorporated organization or any other entity or governmental entity.

“**Personal Data**” means any information relating to an identified or identifiable natural person and any other information that constitutes personal data or personal information under any applicable law. An identifiable natural person is one who can be identified, directly or indirectly, in particular by referencing an identifier such as a name, an identification number, location data, an online identifier, or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural, or social identity of that natural person.

“**Result**” means anything that an Authorized User develops or improves from the use of the Database that does not include more than a de minimis portion of the Database on which the use is based. Result may include de minimis portions of the Database necessary to report on or explain use that has been conducted with the Database, such as figures in scientific papers, but do not include more. Artificial intelligence models trained on a Database (and which do not include more than a de minimis portion of the Database) are Result.

“**Subject Matter**” means [●]

“**Systems**” means hardware, systems, software and other infrastructure and devices.

Attachment B

Governance Committee

- Formation: The Attachment can specify the composition of the Governance Committee, including (a) the number of members on the committee, (b) each party's right to representation on the committee, (c) qualifications of Governance Committee members, and (d) whether there will be an executive committee of the Governance Committee or other specialized committees to address technical, commercial, legal or other matters (and, if so, how such committee will be formed and function). This Attachment also can address replacement of members on the Governance Committee (and other committees, if applicable) and the duration of the Governance Committee (e.g., during the Term and for some appropriate wind-down period).
- Voting/Decision Making: The Attachment can specify whether decisions/directives of the Governance Committee will require a majority or supermajority vote, and if applicable, any tie-breaker, dispute resolution, or escalation procedures that should apply.
- Meetings: This Attachment can specify the frequency of Governance Committee (and, if applicable, other committee) meetings and whether those meeting will be conducted in person or telephonically.
- Governance Committee Approvals: This Attachment can specify actions of the Operator that require Governance Committee approval, including for example, (a) the retention or replacement of subcontractors, (b) the procurement of Database APIs, and (d) the ability to suspend Database access for Commons Contributors and Authorized Users who breach the agreement.
- Approval of New Contributors: This Attachment can address the maximum number of Commons Contributors that can be party to this Agreement and the criteria for the Governance Committee approving New Contributors.
- Authorized Users: The parties may place limits on the number of Authorized Users, including in the aggregate and/or for each party.
- Removal of Commons Contributors: The parties may establish criteria for the removal of Commons Contributors as well as any procedural steps required before a Commons Contributor is removed (e.g., appeals process, temporary suspensions, etc.).
- Removal of the Operator: The parties may establish criteria for removal of the Operator, including how a new Operator would be selected and how the transition from one Operator to another would be managed.
- Strategic Direction: This Attachment may require the Governance Committee to provide certain strategic direction to Operator.
- Wind-Down Processes: This Attachment may address matters arising in connection with termination or expiration of the Agreement.

Attachment C

Form Joinder Agreement

This Joinder Agreement (the “**Joinder Agreement**”) dated as of [●] (the “**Joinder Effective Date**”) among the Commons Contributors, the Operator and, [●], (the “**New Contributor**”). All capitalized terms used in this Joinder Agreement but not defined herein shall have the meanings given to such terms in the Data Use Agreement for Data Commons (as defined below).

WHEREAS, the Commons Contributors and Operator are party to that certain Multi-Stakeholder Data Use Agreement for Data Commons, dated [●] (as amended, supplemented or otherwise modified from time to time, the “**Data Use Agreement for Data Commons**”);

WHEREAS, the New Contributor desires to become a party to the Data Use Agreement for Data Commons as a Commons Contributor thereunder;

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Joinder to the Data Use Agreement for Data Commons. New Contributor hereby agrees that, by signing this Joinder Agreement, New Contributor unconditionally joins the Data Use Agreement for Data Commons and becomes a “Commons Contributor” for all purposes thereunder, with effect from and after the Joinder Effective Date. As of the Joinder Effective Date, New Contributor shall have all the rights and obligations of a “Commons Contributor” with respect to the Data Use Agreement for Data Commons and shall be bound by all the provisions thereof as a “Commons Contributor” thereunder.

2. Amendment. This Joinder Agreement may be amended, supplemented or otherwise modified only by a written instrument executed by each of the parties hereto.

3. Governing Law. [Conform to corresponding provision in Data Use Agreement for Data Commons].

4. Counterparts. This Joinder Agreement may be executed in one or more counterparts, each of which when executed shall be deemed to be an original, and all such counterparts shall together constitute one and the same instrument. Copies of executed counterparts transmitted by email with PDF attachment shall be deemed to be original executed counterparts.

REVIEWED AND AGREED

[NEW CONTRIBUTOR]

[OPERATOR]

[COMMONS CONTRIBUTOR 1]

Signature

Signature

Signature

Printed Name

Printed Name

Printed Name

Title

Title

Title

Attachment D

Data Requirements

- *The amount and type of Contributor Data that each Commons Contributor is required to contribute;*
- *The required format of Contributor Data;*
- *Required Information about the provenance and lineage of Contributor Data, as well as any legal, contractual, or other limitations on the right to transfer, process or otherwise use, or permit others to transfer, process or otherwise use, the Contributed Data;*
- *Requirements regarding the completeness or accuracy of Contributor Data;*
- *Requirements regarding rights clearance;*
- *Restrictions, if any, applicable to Personal Data;*
- *Requirements to update Contributor Data;*
- *The particular API that Commons Contributors will use in delivering the Contributor Data; and*
- *Deadlines for making data submissions, including updates and/or modifications, to the Operator during the period of time when such Commons Contributor is a party to this Agreement.*

Attachment E

Operator Services

[Insert description of the Services to be provided by the Operator. Template Users may decide to address certain of these matters, such as reporting, auditing, delivery and acceptance, in the body of the Agreement. This Exhibit also can identify specific Services that can be provided directly to Commons Contributors.]

Attachment F

Fees

Attachment G

Data Privacy and Security

[If relevant, insert applicable GDPR, HIPAA or other applicable privacy terms].

Attachment H

Permitted Purpose