Data Use Agreement for Open AI Model Development
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DATA USE AGREEMENT FOR OPEN AI MODEL DEVELOPMENT

This AI Data Sharing Agreement ("Agreement") is entered into between [●] ("Data Provider") and [●] ("Data User") as of [●] ("Effective Date"). Data User and Data Provider may also be referred to individually as "a party" or collectively as "the parties".

1. **Defined Terms**

    a. "AI Model" means the machine learning algorithm described in <u>Attachment A</u>, including associated parameters and associated weights, if present.

    b. [OPTIONAL "NDA" means a non-disclosure agreement governing the exchange of confidential information between the parties.]

    c. "Open Source License" means a license that meets all of the requirements of the "The Open Source Definition" as published by the Open Source Initiative at https://opensource.org/osd.

    d. "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.

    e. "Train" means to provide the AI Model with Training Data for the purpose of enhancing the predictive capabilities of the AI Model.

    f. "Trained Model" means the AI Model as modified following Training, including associated weights.

    g. "Training Data" means the dataset described in <u>Attachment A</u> to be provided by the Data Provider to the Data User for the purpose of Training the AI Model.

2. **Provision of Data**

    a. Data Provider agrees to make the Training Data (and any updates if applicable) available to the Data User as described in <u>Attachment A</u>.

    b. All Personal Data (if any) included in the Training Data is as described in <u>Attachment A</u>.

3. **Use of Data**

    a. Data User agrees to use the Training Data solely for the purpose of Training the AI Model.

    b. Data User may retain the Training Data for the duration of this Agreement. Data User will delete all Training Data from its systems and records on termination of this Agreement (or based on

the retention period set forth in Attachment A, if specified), except as required by applicable law.

c. Data User agrees to make Trained Model publicly available under an Open Source License that includes a general disclaimer of liability in favor of the Data Provider.

4. Rights Related to Trained Model

a. If there are any rights Data Provider holds in the Trained Model by virtue of Data User's Training, Data Provider irrevocably grants Data User a sublicensable license to all such rights.

b. Data Provider has no rights or interest in any AI Models or other output developed using the Trained Model because of this Agreement. No implied rights are granted under this Agreement.

c. This Agreement does not impose any restrictions with respect to the use of the Trained Model.

5. Representation and Warranties; Disclaimer

a. Data Provider and Data User each represent and warrant that it will perform its activities in this Agreement in compliance with applicable laws, including data protection and privacy laws.

b. Data Provider represents and warrants that it is not aware of any contractual or other restrictions on the Training Data that would limit Data User's Training of the AI Model or use and distribution of the Trained Model as contemplated in this Agreement. Data Provider makes no representations or warranties in this Agreement with respect to Data User's rights to use and distribute the underlying AI Model.

c. Data User represents and warrants that it has sufficient rights with respect to the AI Model to Train the AI Model and distribute the Trained Model as required by this Agreement.

d. DATA PROVIDER MAKES NO REPRESENTATIONS OR WARRANTIES AS TO THE ACCURACY OR COMPLETENESS OF THE TRAINING DATA AND SPECIFICALLY DISCLAIMS ANY WARRANTIES OF MERCHANTIBILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE TRAINING DATA. EXCEPT AS SET FORTH IN THIS SECTION 5 OR IN ATTACHMENT A, THE TRAINING DATA IS PROVIDED TO DATA USER "AS-IS" AND WITH ALL FAULTS AND DEFECTS.

6. Confidentiality of Training Data

a. Data User agrees to take reasonable steps to protect the confidentiality of the Training Data while in Data User's possession or control; except that Data User may freely use or disclose any portion of the dataset described in Attachment A that: (i) was lawfully in Data User's possession prior to the time of disclosure by Data Provider; (ii) becomes publicly available without a breach of this Agreement by Data User; (iii) is received by Data User lawfully from another source without any corresponding obligation of confidentiality; or (iv) is independently developed by or for Data User.

b. Data User may disclose the Training Data if and as required by law; but only after it notifies the Data Provider (if legally permissible) to enable the Data Provider to seek a protective order or other appropriate remedy.

c. Data User may not disclose the Training Data to any third party, except to its employees, contractors and consultants ("Representatives") and then only on a need-to-know basis under nondisclosure obligations at least as protective as this Agreement. Data User will be responsible and liable for the use and disclosure of the Training Data by its Representatives, which use and disclosure is subject to the same limitations and requirements that apply to Data User.

d. [OPTIONAL If there is a conflict between the terms of the NDA and the terms of this Agreement with respect to Training Data, the terms of this Agreement shall govern.]

7. **Data Protection and Privacy**

a. While the Training Data is in the possession or control of Data User, Data User agrees to implement and maintain reasonable physical, administrative, and technical safeguards to protect the Training Data from inadvertent or unauthorized access, disclosure, use, or modification, taking into account the sensitivity of such Training Data.

b. All use and storage of the Training Data by Data User will be consistent in all material respects with the data handling guidelines or frameworks set forth in Attachment A, if any.

c. Each party will cooperate with the other to ensure the provision, use and storage of the Training Data is in compliance with applicable laws, including any applicable data protection or privacy laws, as further described in Attachment B.

d. Data User will promptly notify Data Provider in the event of any unauthorized access, disclosure, use or modification of the Training Data and will reasonably cooperate with Data Provider to remediate and resolve such security breach to the reasonable satisfaction of Data Provider.

e. Data User will not attempt to identify any natural person from any anonymized or de-identified Personal Data included in the Training Data.

8. **Term and Termination**

a. This Agreement is effective as of the Effective Date and will continue until the first anniversary of the Effective Date, at which time this Agreement will automatically terminate unless extended by mutual written agreement of the parties.

b. Either party may terminate this Agreement if the other party has materially breached the Agreement and has failed to cure such breach within thirty (30) days of written notification of such breach by the other party.

c. Either party may terminate this Agreement for any reason on ninety (90) days' prior written notice to the other party.

d. The following Sections of this Agreement will survive termination of this Agreement: Sections 1, 3b (for the duration of the retention period, if any), 3c (for one (1) year following termination or expiration of this Agreement and thereafter until such date as Data User ceases use of the Trained Model), 4, 6, 7 (for any period during which Data User has possession or control of the Training Data), 8d and 9.

9. **General**

a. **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 is executed by authorized representatives of both parties.

b. **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.

c. **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[, except that third party users of the Trained Model are third-party beneficiaries of Section 4(b)].

d. **Relationship of the Parties.** The parties are independent contractors and the relationship between the two parties under this Agreement will not constitute a partnership or agency. Neither party will have the authority to take any action that will be binding on the other party.

e. **Assignment.** Neither party may assign this Agreement, in whole or in part, to any third party without the prior written consent of the other party.

f. [OPTIONAL: **Limitations of Liability.** Except in the event of Data User's material breach of Section 6 or unauthorized use of the Training Data: (i) in no event will either party be liable for indirect, incidental, special, punitive, or consequential damages, including loss of use, loss of profits, or interruption of business, however caused or on any theory of liability in relation to this Agreement, and (ii) to the extent permitted by applicable law, each party's total liability for all claims relating to this Agreement will be limited to [●].]

Reviewed and Agreed

On behalf of [DATA PROVIDER]

By:

Name:

Title:

On behalf of [DATA USER]

By:

Name:

Title:

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ATTACHMENT A
Project Details

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Part I - Description of AI Model; License

Insert description of AI Model (including, if publicly accessible, the relevant URL), the source of the AI Model (if known), and identify the license (if applicable) under which it is made available to Data User. Specify any copyright notices or attribution requirements.

Part II - Description of Training Data

Insert description of Training Data and, if desirable, any limitations/disclaimers about the data (e.g., if it based on a subset of a particular population, collected during a specified time period, known to be incomplete, etc.).

[Optional: Insert information about the provenance and lineage of the Training Data, as well as any legal, contractual, or other limitations on Data Provider's rights to transfer, process or otherwise use, or permit others to transfer, process or otherwise use, the Training Data.]

[Optional: Insert any certifications as to the contents, quality, or other characteristics of the Training Data that should be a carve-out to the general disclaimer in Section 5d.]

[Optional: Insert any description of the methods/technologies used by the Data Provider to secure the data as well as any expectations about the Data User's obligations to provide the same or equivalent protection.

Part III - AI Project Specification

Insert description of delivery mechanism for the Training Data as well as any formatting requirements and (if applicable) the frequency of updates.

[Optional: Insert data retention period (i.e., the duration of time Data User is permitted to retain the Training Data following termination/expiration of the Agreement).]

[Optional: Insert any applicable data handling guidelines or frameworks that should apply to Data User's storage and use of the Training Data (e.g., ISO/NIST standards).]

Part IV - Location of Trained Model

Insert URL where Data User will make the Trained Model publicly available for download, and include any other relevant instructions for accessing the model.

ATTACHMENT B
Data Privacy

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