

NOTE RE USE OF FORM: After filling out the form (i.e., the highlighted sections), consultation with university legal counsel is recommended before providing the agreement to the recipient institution for signature. This form should not be shared with others outside BYU.

DATA SHARING AGREEMENT

This Data Sharing Agreement (“Agreement”) is entered into by and between Brigham Young University, a Utah nonprofit corporation and higher education institution, (“BYU”) and [name of recipient institution] (“Recipient”) with an effective date of [date] (“Effective Date”)

RECITALS

- A. Whereas, [name of BYU researcher] is an employee of BYU and in the course of such employment has [conducted research, worked, provided services, etc.] in the area of [topic area, subject matter];
- B. Whereas, such [research, work, services, etc.] resulted in the collection of data related to [basic description of subject and form of data] (the “Data”);
- C. Whereas, [name of key representative of Recipient of Data], an employee of Recipient, has requested Data from BYU to be used [brief description of how Data will be used]; and
- D. Whereas, BYU will share with Recipient the requested Data in accordance with this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and agreements exchanged between the parties, as well as the Recitals stated above, which are considered part of and are fully incorporated into this Agreement, BYU and Recipient agree as follows:

AGREEMENT TERMS

1. Ownership of Data. BYU owns and will own all right, title, and interest in and to the Data, including the right of immediate possession. BYU has not and does not transfer, assign, or in any other way forfeit any of its rights of ownership of the Data to Recipient. Except as otherwise expressly provided in the Agreement, BYU owns and shall own all right, title, and interest in and to all Intellectual Property, as that term is defined in Section 9 below, that is developed using the Data, and BYU has not and does not transfer, assign, or in any other way forfeit any rights of ownership of Intellectual Property to Recipient. Recipient acknowledges and agrees that Recipient neither has nor shall have any right in or to the Data. Recipient and [name of Recipient’s representative] shall not access the Data, regardless of media type upon which the Data is stored, except as described under this Agreement.

2. Grant. BYU hereby grants Recipient, free of cost, a nonexclusive, non-transferable license to use the [de-identified] Data for the purpose of [describe purpose]. [BYU may de-identify the Data before Recipient uses the Data, which means BYU may remove all

personally identifiable information from the Data or provide to Recipient only that portion of the Data that does not contain personally identifiable information.] BYU will share the [de-identified] Data by [describe method of sharing, such as posting the data to a site made accessible to Recipient, sending electronic or paper files to Recipient, etc.]. [If BYU inadvertently provides identifiable information among the Data, Recipient will immediately notify BYU and disregard and/or destroy the identifiable information as applicable.]

BYU will mark and identify all Data, including any de-identified Data, transferred to Recipient, and Recipient will maintain the Data such that the Data are readily identifiable as belonging to BYU.

3. Data Protection. Recipient will safeguard the Data using at least the degree of care it uses to protect its similarly sensitive information. Notwithstanding the foregoing, in no event will Recipient fail to safeguard the Data at the highest industry standards applicable at any given time. Recipient further agrees that neither [name of Recipient's representative], nor any other employee, volunteer, agent, or any other person shall use the Data for any purpose other than the purpose described in Section 2 of this Agreement. Recipient further agrees that no employee, volunteer, agent, or any other person associated with Recipient will have access to the Data except for [name of Recipient's representative] and Recipient's other personnel working directly with [name of Recipient's representative] for the purpose described in Section 2. [If applicable, "Recipient further agrees that it will not download or otherwise acquire a copy of the Data for use during or after the agreed purpose described in Section 2."]

Recipient agrees that it assumes full responsibility for how it stores, accesses, and uses the Data, including any de-identified Data and, to the maximum extent permitted by law, assumes full liability for claims based upon or arising out of any use or misuse of the Data by its personnel, including faculty, employees, volunteers, students, and agents.

4. Confidential Information. BYU may designate information within or related to the Data as "Confidential Information." "Confidential Information" means any of BYU's information that is identified in writing as "Confidential Information" concerning the Data. [If applicable, indicate here types of information designated as Confidential Information from the outset, such as human subjects names, ID numbers, initials, or other identifying information. For example, "Any human subjects names, ID numbers, initials, or other personal identifying information that may be contained in the Data, or in any information provided by BYU to Recipient, or that Recipient may access from BYU, is considered Confidential Information."] With regard to Confidential Information, Recipient hereby agrees;

- to safeguard Confidential Information against use and disclosure to others with the same degree of care as it exercises with its own information of a similar confidential nature;
- not to make a copy in any form of the Confidential Information;
- not to disclose Confidential Information to others, except to its employees, agents, or consultants who are bound to Recipient by a like obligation of confidentiality, without the express written permission of BYU; and

- to notify BYU promptly upon receipt of any legal request for the Confidential Information, such as a lawfully issued subpoena, and allow BYU a reasonable opportunity to object to the request before Recipient produces the Confidential Information. In producing any Confidential Information in response to a legal request, Recipient must make a reasonable effort to ensure the confidentiality of the information is maintained by the receiving party.

Recipient shall not be prevented from using or disclosing any of the Confidential Information that

- Recipient can demonstrate by written records was previously known to it;
- is now, or becomes in the future, public knowledge other than through acts or omissions of Recipient;
- is lawfully obtained by Recipient from sources independent of the disclosing party; or
- is independently developed by Recipient by those not having access to the Data and which can be proven through verifiable written records.

5. **Disclaimer of Warranty.** Access to the Data is provided on an “as is” and “where is” basis without warranty of any kind or description, whether express or implied, including but not limited to implied warranties of non-infringement, merchantability, and fitness for a particular purpose. BYU does not warrant that the Data will satisfy the requirements of Recipient, including of [Recipient’s representative] or of any other personnel of Recipient, or that the Data is without defect or error, or that use of the Data will be uninterrupted. Recipient is solely responsible for determining the suitability of the Data for its use and for evaluating such Data before any use of or reliance on it.

6. **Indemnification.** To the fullest extent permitted by law, Recipient will release, indemnify, hold harmless, and defend BYU and its officers, directors, employees, volunteers, students, agents, and affiliates from and against any and all liabilities, losses, claims, demands, liens, and actions of any nature whatsoever, including, but not limited to attorney fees and defense costs, arising out of Recipient’s use of the Data, including de-identified Data and/or Confidential Information.

7. **Term and Termination.** This Agreement commences on the Effective Date and continues for a period of [___ years (no more than 5 years)], or until otherwise terminated in accordance with this Agreement. Either BYU or Recipient may terminate this Agreement at any time, with or without cause, with ten days written notice. Upon expiration or termination of this Agreement, whichever occurs first, Recipient will, within sixty days, [return the Data to BYU, certify to BYU in writing that any Data in its possession has been destroyed, or terminate all access to the Data]. The Agreement may be extended in writing by BYU and Recipient. The right to use the Data, including de-identified Data, and/or Confidential Information under this Agreement shall expire immediately upon termination of this Agreement. All other provisions

shall remain in full force and effect from the Effective Date and beyond termination unless otherwise agreed in writing by BYU and Recipient.

8. Intellectual Property. As used in this Agreement, the term “Intellectual Property” includes any and all

- a. patents, patents pending, provisional patents, patent applications, patent disclosures, and inventions, including any reissues, continuations, continuations-in-part, divisions, revisions, extensions, or reexaminations thereof;
- b. trademarks, service marks, trade dress, trade names, corporate names, logos, slogans, tag lines, advertising materials, and Internet domain names, together with all adaptations or modifications of any of the foregoing, in whole or in part, and goodwill associated with each of the foregoing;
- c. copyrights and copyrightable works;
- d. registrations, applications, and renewals for any of the foregoing;
- e. trade secrets, know-how, ideas, formulae, compositions, manufacturing and production processes and techniques, research and development information, proposals, financial and accounting data, business and marketing plans, and customer and supplier lists;
- f. specifications (qualitative, quantitative, and otherwise) including descriptions, models, plans, and technical data describing the functionality of software, other products or the quality of services to be rendered hereunder; and
- g. any and all other property rights created, developed, and/or used, in whole or in part, by the parties under this Agreement, including, but not limited to, so-called rental rights, lending rights, fixation rights, reproduction rights, distribution rights, and neighboring rights.

If the Recipient’s use of the Data, including any de-identified Data, and/or Confidential Information in any way results in the development of Intellectual Property by Recipient, then Recipient will notify BYU of that development, and Recipient and BYU will negotiate in good faith and enter into an agreement on commercially reasonable terms and conditions for the equitable distribution of income from any commercial use, manufacture, or sale of the new Intellectual Property, taking into consideration the contribution of the Data to Intellectual Property.

9. Publication. Recipient agrees to submit, by and through [name of Recipient’s representative], any publication resulting from Recipient’s use of the Data, including any de-identified Data, and/or Confidential Information to BYU for its review at least thirty (30) days prior to the scheduled disclosure of the results to any third party. BYU will complete its review within thirty (30) days of receipt of the submitted documents. BYU may request that Recipient

and/or [Recipient's representative] delete from the publication any Confidential Information or reference to the same, and Recipient agrees to comply. If, during its thirty (30) day review period, BYU notifies Recipient or [Recipient's representative] that it desires a patent application to be filed on any Intellectual Property disclosed in the documents, Recipient and/or [Recipient's representative] shall defer publication/disclosure for up to sixty (60) additional days from the date of submission of the document to BYU.

10. **Audit.** Upon five days written notice, Recipient and [Recipient's representative] shall permit BYU to inspect and audit Recipient's operations, procedures, and records related to Recipient's use of the Data for the purpose of ensuring Recipient's compliance with this Agreement. Any audit shall be conducted during normal business hours and in a manner to reasonably minimize interruption of Recipient's operations. Recipient shall maintain such books and records as are necessary for BYU to verify Recipient's compliance with this Agreement for a period of six years after the expiration or termination of this Agreement.

11. **Notices.** Any notice required or permitted to be given under this Agreement be deemed to have been properly given if delivered, in writing, in person or mailed by certified first-class mail to the following addresses, or such other addresses as may be designated in writing by the parties from time to time during the term of this Agreement:

To Recipient:

Name:

Address:

Phone Number:

To BYU:

Name:

Address:

Phone Number:

12. Miscellaneous

13.1. **Non-use of Names.** Neither party shall use the name of the other party, or the other party's staff in any news, publicity, advertisement, or commercial communication without the express written permission of the other party.

13.2. **Waiver.** It is agreed that no waiver by either party hereto of any breach or default of any of the covenants or agreements set forth herein shall be deemed a waiver as to any subsequent and/or similar breach or default.

13.3. **Assignment.** This Agreement is binding upon and shall inure to the benefit of the parties hereto, their successors or assignees, but this Agreement may not be assigned by either party without the prior written consent of the other party.

- 13.4. **Entire Agreement.** It is understood and agreed between Recipient and BYU that this Agreement constitutes the entire agreement, both written and oral, between the parties, and that all prior agreements respecting the subject matter hereof, either written or oral, expressed or implied, shall be abrogated, canceled, and are null and void and of no effect. This Agreement may not be amended or modified except in writing signed by BYU and Recipient.
- 13.5. **Captions.** The titles and captions to each of the sections of this Agreement are included for convenience or reference only and have no binding effect on the parties, and shall not be deemed as a part of the text of this Agreement
- 13.6. **Severability.** If any provision of this Agreement shall be unlawful, void, or for any reason unenforceable, then that provision shall be deemed severable from this Agreement and shall not affect the validity and enforceability of the remaining provisions of this Agreement.
- 13.7. **Independent Contractors.** The relationship of the Parties is that of independent contractors. Neither Party is the partner, joint venturer, or agent of the other and neither Party has authority to make any statement, representation, commitment, or action of any kind which purports to bind the other without the other's prior written authorization.
- 13.8. **Governing Law and Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the state of Utah, excluding any choice of law provisions that would otherwise apply the laws of any other jurisdiction. The parties to this Agreement will submit to the jurisdiction of and venue in the federal and state courts located within the State of Utah for any legal action arising out of or related to this Agreement. Any legal action arising out of or related to this Agreement, including torts, must be initiated exclusively in the federal courts of the United States located in Salt Lake City, or the courts of the State of Utah located in Utah County.
- 13.9. **Authority.** Each person signing this Agreement warrants that the person has full legal authority to sign this Agreement for and on behalf of the respective party and to bind said party.

IN WITNESS WHEREOF, BYU and Recipient have executed this Agreement by their respective officers hereunto duly authorized as of the Effective Date.

[RECIPIENT]

[BYU]

By: _____

By: _____

[NAME]
[TITLE]

[NAME]
[TITLE]

READ AND UNDERSTOOD:

PI Signature

Date