

**PANDEMIC RESPONSE COMMONS
DATA USE AGREEMENT**

This Data Use Agreement (this “Agreement”) is made as of _____, 2020 (the “Effective Date”), by and between Center for Computational Science Research, Inc. (“CCSR”), which manages and operates the Pandemic Response Commons (“PRC”) through the Pandemic Response Commons Consortium, a Division of CCSR, and [_____] (“User”).

RECITALS

WHEREAS, various parties have developed an open source technology platform license under the Apache License, Version 2.0, (the “**Platform**”), including software, and other technologies, for managing, analyzing and sharing biomedical data;

WHEREAS as the biomedical data managed by the Platform is organized into one or more projects (“**Projects**”), and that project data (“**Project Data**”) may consist of both open access and controlled access data;

WHEREAS, the CCSR operates data commons services (“**Services**”), further described in Exhibit A, using the Platform that provides authorized researchers and other users with access to Project Data provided by various data contributors;

WHEREAS, various parties have contributed biomedical data to a Project, and permitted the CCSR to provide researchers and others with access to such contributed data, which will be Project Data hereunder, subject to the restrictions set forth in the Data Contributor Agreement;

WHEREAS, the Project Data contains no privacy restricted data; and,

WHEREAS, User desires to utilize the Services and Project Data for its own internal business purposes.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and the mutual promises and covenants contained herein, the parties agree as follows:

1. Services and Project Data

1.1. **Services.** The CCSR shall provide the Services and Project Data to User as set forth on Exhibit A.

1.2. **Privacy and Security Policy.** User’s use of the Services and Project Data are subject to User’s compliance with the Privacy and Security Policy (the “Privacy and Security Policy”) applicable to the Services as set forth on Exhibit B.

1.3. Accounts.

1.3.1. The principal investigator or scientific lead designated by User (the “Project Lead”) will have the sole authority to designate Authenticated Individuals (as

defined in Exhibit A) within User’s organization. The CCSR may provide User with account keys, passwords, or other means for Authenticated Individuals to access accounts assigned to User (“Accounts”).

1.3.2. Any Authenticated Individual who wishes to use the Services will, as a condition of such use be required to (a) accept terms of use substantially similar to the terms set forth in Sections 2 and 3 of this Agreement and (b) meet CCSR’s qualification requirements.

1.3.3. User is solely responsible for all activity occurring in connection with such Accounts and all activity by Authenticated Individuals and the CCSR shall have no responsibility or liability with respect thereto.

The Project Lead will promptly notify CCSR if any person's status as an Authenticated Individual is terminated or revoked for any reason.

1.4. **Third Party Materials.** As part of the Services, the CCSR may provide User with access to software or other materials provided by third parties. User's use of such third party software or materials is at User's sole risk and the CCSR shall have no responsibility or liability with respect thereto.

1.5. **Availability.** While the CCSR's goal is to make the Services available at all times during normal business hours, the CCSR shall not be responsible for any damages or costs incurred by User for any downtime of the Services.

2. **User's Responsibilities**

2.1. **User's Responsibilities.** User is solely responsible for its data, applications, operations, content, and use of the Services and Project Data by User and Authenticated Individuals, including, without limitation:

2.1.1. the technical operation of User's software, algorithms, data, or materials run or stored on or in connection with the Services (collectively, "User Materials");

2.1.2. any claims relating to any User Materials or User's or Authenticated Individual's use of the Services; and

2.1.3. ensuring that any person or entity accessing the Services through User's Accounts is an Authenticated Individual.

2.2. **User's Activities.** User shall:

2.2.1. comply with the Privacy and Security Policy;

2.2.2. notify CCSR upon becoming aware of a breach of this Agreement or the Privacy and Security Policy by User or an Authenticated Individual;

2.2.3. take all steps reasonably necessary to preserve the confidentiality of Project Data including without limitation information concerning research participants;

2.2.4. take all steps reasonably necessary to limit the possibility of identification of research participants in any research papers or publications;

2.2.5. not link or combine Project Data to other information or archived data in a way

that could re-identify any individual or attempt to re-identify any individual;

2.2.6. follow the Publication Policy established by OCC, including respecting the moratorium period for the data producers to publish the first peer-reviewed report describing and analyzing the Project Data; and

2.2.7. if User's use of Project Data is subject to a protocol, notify CCSR prior to any significant changes to the protocol.

2.3. **Compliance with Laws.** User is solely responsible for ensuring that User's use of the Services and Project Data, and any use of the Services and Project Data made through User's Accounts, complies with all laws, regulations, court orders, and other rules of any governmental or regulatory authority ("Applicable Laws").

2.4. **Restrictions on data.** It is understood that (a) Project Data may only be downloaded if permitted on Exhibit A and (b) if Project Data is downloaded by User or Authorized Individuals, it will be treated as sensitive data by User and Authorized Individuals. The Project Data will be stored in system that is specifically designed to store sensitive data. Access is only granted for researchers working on the particular study. User and other researchers accessing Project Data will use User managed systems that provide full disk encryption and contain anti-virus, malware detection and digital loss prevention software. The data will be transferred encrypted. The systems that hold the Project Data and systems that User and researchers use to access the Project Data will be centrally managed and adhere to the User's policies, such as hardening, patching, authentication etc.

2.5. User agrees to notify CCSR of any unauthorized data sharing, breaches of data security, or inadvertent data releases that may compromise data confidentiality within 24 hours of when the incident is identified. As permitted by law, notifications should include any known information regarding the incident and a general description of the activities or process in place to define and remediate the situation fully. Within 3 business days of the notification, User agrees to submit to CCSR a more detailed written report including the date and nature of the event, actions taken or to be taken to remediate the

issue(s), and plans or processes developed to prevent further problems.

3. User Materials

3.1. **Compliance with Laws.** User will not provide any User Materials to the CCSR in violation of any Applicable Law. User will not provide to the CCSR any User Materials the possession of which by the CCSR would cause the CCSR to be in violation of any Applicable Law.

3.2. **Privacy Restricted Data.** Without the prior written consent of the CCSR, User will not provide to the CCSR any Privacy Restricted Data or permit any User Materials containing any Privacy Restricted Data to be stored on or processed by any equipment or Services operated by the CCSR. For the purposes of this Agreement, “**Privacy Restricted Data**” means any information that: (i) is categorized as “personal data,” “protected health information,” “personal information,” “personally identifiable information” or any similar term in any applicable national, federal, state or local law, rule, directive or regulation relating to the privacy of personal information, including, without limitation, the Health Insurance Portability and Accountability Act of 1996, Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 (the “**General Data Protection Regulation**” or “**GDPR**”), any subordinate legislation passed under the GDPR and any other similar law or regulation; and the California Consumer Privacy Act; (ii) is restricted under any privacy policy or practice applicable to any personal information that User accesses, uses, collects, or maintains hereunder, including, without limitation any practice required in connection with the processing of credit card data; or (iii) is restricted under any law or regulation concerning the notification to data subjects, law enforcement or other third parties of the occurrence of any actual or suspected disclosure of restricted data or personally identifiable information. **NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, CCSR WILL HAVE NO LIABILITY FOR STORAGE OR DISCLOSURE OF ANY PRIVACY RESTRICTED DATA.**

4. Price and Payments

4.1. **Total Price.** User shall pay to the CCSR the amounts set forth on Exhibit A (the “Fees”).

4.2. **Taxes.** All Fees are exclusive of taxes and service charges. User shall pay any and all applicable taxes, however designated, incurred as a result of or otherwise in connection with the Services or Project Data, excluding taxes based upon or measured by the net income of the CCSR.

5. Proprietary Rights.

5.1. **Services and Project Data.** All intellectual property and other proprietary rights in and to the Services shall at all times remain the sole and exclusive property of the CCSR.

5.2. **User Data and Materials.** All User Materials are and shall remain the sole and exclusive property of User. User hereby grants the CCSR a limited, non-exclusive license to use such User Materials for the purpose of providing the Services and Project Data.

6. Warranties and Remedies

6.1. **Warranties.** User represents and warrants to the CCSR that:

6.1.1. **Authority.** User has the right and authority to enter into and perform this Agreement.

6.1.2. **User Materials.** The User Materials and the use by User of the User Materials in conjunction with the Services and Project Data will not infringe, misappropriate, or otherwise violate the intellectual property or other proprietary rights of any other person or entity.

6.2. **Disclaimer of Warranties.** **ALL SERVICES AND PROJECT DATA ARE PROVIDED AS-IS. THE CCSR HEREBY DISCLAIMS ALL WARRANTIES WITH RESPECT TO THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. USER’S AND ITS USERS’ USE OF THE SERVICES AND PROJECT DATA ARE AT USER’S SOLE RISK AND USER IS SOLELY RESPONSIBLE FOR ITS AND ITS USERS’ USE OF THE SERVICES AND PROJECT DATA.**

6.3. **Limitation of Liability.** Neither party shall be liable hereunder for consequential or punitive damages (including lost profits or

savings), even if it has been advised of their possible existence, except that the foregoing shall not restrict a party's ability to recover actual damages for breach hereof, including the costs of obtaining replacement services. CCSR's total and cumulative liability for any claim or claims hereunder concerning performance or nonperformance hereunder shall be one dollar (US\$1.00).

6.4. **Indemnification.** To the extent permitted by law, User shall pay, defend, indemnify and hold harmless the CCSR and its Trustees, officers, employees, agents and representatives from and against any and all claims, liabilities, losses, causes of action, or other damages based on any allegations made by any third party that: (i) any User Materials, whether alone or in combination with the Services or Project Data, infringe, misappropriate, or otherwise violate the intellectual property or other rights of any third party; (ii) any User Materials, or User's or any Authenticated Individual's use of the Services or Project Data violate any Applicable Law; (iii) otherwise result from User's or any Authenticated Individual's use of the Services or Project Data or the use by any person or entity of any User Account; (iv) relates to any Privacy Restricted Data contained in any User Materials or the disclosure of any Privacy Restricted Data by User, the CCSR, or any person or entity accessing such Privacy Restricted Data through User's Account; or (v) User's gross negligence or willful misconduct.

7. Term and Termination

7.1. **Term.** The initial term of this Agreement shall commence on the Effective Date and continue until the first anniversary thereof. The parties may extend the term of this Agreement upon mutual agreement.

7.2. **Termination.** Either party may terminate this Agreement by written notice to the other party, upon the occurrence of any of the following events:

7.2.1. The other party becomes insolvent or subject to any proceeding under the federal bankruptcy laws or other similar laws for the protection of creditors; or

7.2.2. The other party materially breaches any term, provision, representation or warranty of this Agreement and such breach

or default is not cured within such ten (10) business days of written notice thereof.

7.3. **Effect of Termination.** The terms and conditions of the following Sections will survive any termination or expiration of this Agreement: Sections 5, 6.2, 6.3, 6.4, 7.3 and 8. The use of the Services by User and each Authenticated Individual will terminate, provided that Authorized Users will be permitted to continue to use results from studies and work done with Project Data. All Project Data in possession of User and each Authenticated Individual must be destroyed.

8. Miscellaneous

8.1. **Amendments.** Except as otherwise expressly provided herein, this Agreement may not be modified, amended or altered in any way except by a written agreement signed by the parties hereto.

8.2. **Assignment.** Neither party may assign this Agreement or delegate any of its duties, in whole or in part, without the prior written consent of the other party; provided, however, that the CCSR may assign this Agreement and delegate its duties to an entity that controls, is controlled by, or is under common control with the CCSR. If any assignee refuses to be bound by all of the terms and obligations of this Agreement or if any assignment is made in breach of the terms of this Agreement, then such assignment shall be null and void and of no force or effect.

8.3. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which together shall be deemed the same agreement.

8.4. **Entire Agreement; Order of Precedence.** This Agreement, together with the exhibits constitutes the complete and exclusive statement of the agreement of the parties with respect to the subject matter hereof and supersedes all prior proposals, understandings, and agreements, whether oral or written, between the parties with respect to the subject matter hereof, including but not limited to any non-disclosure agreements previously entered into by and between the parties. In case of conflict the order of precedence of the documents constituting this Agreement is as follows, each listed document superseding in the event of any conflicting provision in a later listed document: (1) Agreement text and (2) the exhibits.

8.5. **Force Majeure.** Neither party shall be liable for any failure or delay in performing its obligations under this Agreement, or for any loss or damage resulting therefrom, due to acts of God, the public enemy, terrorist activities, riots, fires, and similar causes beyond such party's control. User shall have no obligation to make any payments to the CCSR during any period of failure or delay by the CCSR.

8.6. **Governing Law; Currency; Language.** This Agreement shall be governed by and interpreted in accordance with the internal substantive laws of the State of Illinois. Application of the U.N. Convention on Contracts for the International Sale of Goods is hereby excluded. The parties agree that, subject to Section 8.7, all actions and proceedings arising out of or related to this Agreement shall be brought only in a state or federal court located in Cook County, Illinois, and the parties hereby consent to such venue and to the jurisdiction of such courts over the subject matter of such proceeding and themselves. **EACH PARTY HEREBY WAIVES ITS RIGHT TO A JURY TRIAL IN CONNECTION WITH ANY DISPUTE OR LEGAL PROCEEDING ARISING OUT OF THIS AGREEMENT OR THE SUBJECT MATTER HEREOF.** All amounts stated herein and all Fees determined hereunder are in United States Dollars.

8.7. **Arbitration.** All disputes arising under or in connection with this Agreement shall be submitted to JAMS or comparable organization for binding arbitration by a single arbitrator in Chicago, Illinois. The arbitrator shall be selected by JAMS in an impartial manner determined by it. The arbitrator shall have complete authority to render any and all relief, legal and equitable, appropriate under law. The arbitrator shall award costs of the proceeding, including reasonable attorney's fees, to the party determined to have substantially prevailed. This Section 8.7 shall not limit a party's right to seek temporary, preliminary, or permanent injunctive relief or any other form of equitable relief to protect its intellectual property or confidential information or to enforce an arbitration award, in each case in a court specified in Section 8.6.

8.8. **Independent Contractor.** The CCSR is an independent contractor; nothing in this Agreement shall be construed to create a partnership, joint venture, or agency relationship

between the parties. Each party is solely responsible for payment of all compensation owed to its employees and agents, as well as employment related taxes. Subject only to the terms of this Agreement, the CCSR shall have complete control of its agents and employees engaged in the Services.

8.9. **Notice.** Any notice or other document or communication required or permitted hereunder to the parties hereto will be deemed to have been duly given only if in writing and delivered by any of the following methods: (i) certified U.S. mail, return receipt requested, postage prepaid, to the address of the receiving party as set forth below or such other address as such party may dictate according to the notice provisions hereof (for notice being transmitted entirely within the United States); (ii) overnight courier service by Federal Express or other international courier of similar standing and reputation to the address of the receiving party as set forth below or such other address as such party may dictate according to the notice provisions hereof; (iii) hand delivery to the person specified below or any other person so designated according to the notice provisions hereof; or (iv) facsimile directed to the person specified below at the facsimile number listed below, or such other person or facsimile number so designated according to the notice provisions hereof; with a copy of all such notices delivered to counsel specified below or as such party may dictate in accordance with the notice provisions hereof. Notices shall be deemed delivered when received by the party being notified.

If to the OCC, all notices shall be addressed and delivered to:

Center for Computational Science
Research
541 North Fairbanks Ct #2200
Chicago, Illinois 60611
Attn: PRC Director

With a copy to:

info@occ-data.org

If to User, all notices shall be addressed and delivered to:

[]
[]

Attn: _____

With a copy to:

[_____]

[_____]

Attn: _____

8.10. **Publicity.** User shall not use any trademark, service mark, logo or other designation of origin of the CCSR without the prior written consent of the CCSR.

8.11. **Waivers.** No purported waiver by any party of any default by any other party of any term or provision contained herein (whether by omission, delay or otherwise) shall be deemed to be a waiver of such term or provision unless the waiver is in writing and signed by the waiving party. No such waiver in any event shall be deemed a waiver of any subsequent default under the same or any other term or provision contained herein.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed and delivered by their respective, duly authorized representatives.

Center for Computational Science Research, Inc.

[Name of Institution]

By: _____
Name:

By: _____
Name:

Its: _____

Its: _____