



RESEARCH DATA USE AGREEMENT

This Agreement is made effective as of [DATE] (“Effective Date”) between [NAME], a [STATE OF INCORPORATION] [ENTITY TYPE] with an address at [ADDRESS] (“Provider”), and the Massachusetts Institute of Technology, a nonprofit Massachusetts educational corporation with an address at 77 Massachusetts Avenue, Cambridge, Massachusetts 02139-4307 USA (“MIT”), in anticipation of Provider’s disclosure of the data identified in Attachment A (the “Data Set”), for the following purpose (the “Purpose”): analysis and interpretation of the data, alone or in combination with data from other sources, in connection with the Research Project identified in Attachment A.

Primary Technical Contact(s) for disclosure of Confidential Data on behalf of Provider:

- 1. _____ Email: _____
- 2. _____ Email: _____

Primary Technical Contact(s) for receipt of Confidential Data on behalf of MIT:

- 1. _____ Email: _____
- 2. _____ Email: _____

This Agreement applies to data disclosed between the Effective Date and [DATE] (“End Date”), unless earlier terminated or extended by mutual written agreement.

In consideration of Provider making the Data Set available to MIT, the parties hereby agree as follows:

1. **CONFIDENTIAL DATA.** When used in this Agreement, the term “Confidential Data” means confidential and proprietary data and/or information disclosed by Provider to MIT that (i) prior to disclosure, is marked with a legend indicating its confidential status or (ii) if disclosed orally or visually is identified by Provider as confidential at the time of disclosure and is summarized to MIT’s Primary Technical Contact by Provider within 30 days following such disclosure. Notwithstanding the foregoing, in no event is data or information Confidential Data if it (a) was in MIT’s possession before receipt from Provider; (b) is or becomes a matter of public knowledge through no fault of MIT; (c) is received by MIT, without restriction as to further disclosure, from a third party having an apparent bona fide right to disclose the data and/or information to MIT; or (d) is independently developed by MIT without use of Provider’s Confidential Data. For purposes of this Section on Confidential Data, MIT students and fellows are not third parties vis á vis MIT.
2. **NO PERSONALLY-IDENTIFIABLE INFORMATION.** Notwithstanding anything to the contrary in this Agreement, Provider shall not provide MIT with any Personally-Identifiable Information. For purposes of this Agreement, “Personally-Identifiable Information” is any information that, when used alone or combined with other data, may be used to identify individuals, including Provider employees, clients, suppliers, or other third parties and which includes, but is not limited to, an individual’s name, mailing address, email address, phone number, account information, title, birth date, gender, occupation, or other information that is unique to or permits identification of that individual.
3. **LIMITATIONS ON USE.** MIT shall use Confidential Data solely for the Purpose. Disclosure by Provider of its Confidential Data does not constitute a grant to MIT of any right or license to such Confidential Data, except as set forth herein.
4. **CARE OF CONFIDENTIAL DATA.** MIT shall exert reasonable efforts, including but not limited to the Data Safeguards identified in Attachment A, to maintain Confidential Data in confidence, except that MIT may disclose or permit disclosure of any Confidential Data to members of the MIT Corporation and MIT’s officers, faculty, employees, consultants, advisors, students and fellows who need to know such Confidential Data to fulfill the Purpose and who have been advised of the confidential nature of the Confidential Data. MIT will not be deemed to have disclosed Confidential Data if the Confidential Data, when disclosed, is aggregated with data or other information and cannot be reconstituted from the aggregate form.

5. **NON-DISCLOSURE OF SOURCE.** MIT shall not identify Provider as the provider of the Confidential Data in any publication or public presentation of research in which Confidential Data is used (each a “Publication”) without obtaining Provider’s prior written consent.
6. **REQUIRED DISCLOSURES.** Nothing in this Agreement may be construed to prevent MIT from disclosing Confidential Data as required by law or legal process, as long as MIT, if permitted by applicable law, promptly notifies Provider of its obligation to disclose and provides reasonable cooperation to Provider in any efforts to contest or limit the scope of the disclosure.
7. **PUBLICATIONS.** Provider acknowledges that MIT is receiving Confidential Data in anticipation of preparation and publication of scholarly papers (“Scholarly Work”). Prior to publication of any Scholarly Work, Provider will have a fourteen-day period to review the publication for any disclosure of Confidential Data. Provider shall, within the fourteen-day period, give MIT notice identifying specifically any Confidential Data it believes would be disclosed in the Scholarly Work. If Provider does not provide timely notice, it will be deemed to have waived any objection to disclosure of Confidential Data.
8. **USE OF NAMES.** Provider shall not make any press or media announcements concerning this Agreement, or use MIT’s names, trademarks, logos, or insignia, or any version, abbreviation, or representation of them, or the name of any of MIT’s trustees, officers, faculty members, students, employees, or agents, in any advertising, publicity, promotional materials or other public announcement without the prior written consent of MIT’s Technology Licensing Office, which consent MIT may withhold in its sole discretion.
9. **DISCLAIMERS.**
- 9.1. Provider Disclaimer. All Confidential Data is provided “as is.” Provider makes no warranty, expressed or implied, regarding the accuracy, completeness, suitability or performance of Confidential Data disclosed under this Agreement.
- 9.2. MIT Disclaimer. MIT DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS OR IMPLIED, RELATING TO THE PURPOSE, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF MIT OR THIRD PARTIES, AND THE ABSENCE OF LATENT OR OTHER DEFECTS, WHETHER OR NOT DISCOVERABLE.
- 9.3. Limitation of Liability. IN NO EVENT SHALL EITHER PARTY, ITS TRUSTEES, DIRECTORS, OFFICERS, EMPLOYEES, FELLOWS, STUDENTS OR AFFILIATES, BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, ECONOMIC DAMAGES OR LOST PROFITS, REGARDLESS OF WHETHER THE PARTY WAS ADVISED, HAD OTHER REASON TO KNOW OR IN FACT KNEW OF THE POSSIBILITY OF THE FOREGOING.
- 9.4. Survival. THIS SECTION 9 SHALL SURVIVE THE EXPIRATION OR ANY EARLIER TERMINATION OF THIS AGREEMENT.
10. **TERM AND TERMINATION.** Either party may terminate this Agreement with or without cause by providing at least ninety days’ prior written notice to the other party. MIT’s obligations with respect to use and nondisclosure of Confidential Data will survive for a period of three years following receipt of the particular Confidential Data.
11. **RETURN OR DESTRUCTION OF CONFIDENTIAL DATA.** Following termination of this Agreement, MIT shall, if directed by Provider, undertake reasonable efforts to destroy or return to Provider all documents and other tangible manifestations of Confidential Data and destroy any electronic or digital manifestations of Confidential Data, except that MIT may retain one copy of the Confidential Data solely for the purposes of monitoring its obligations under this Agreement and validating research based upon the Confidential Data.
12. **NOTICES.** Any notices to be given under this Agreement, other than those contemplated by Section 1, must be in writing and addressed to the parties at the addresses shown below or to such other address as a party may substitute by notice to the other. Notices must be sent by commercial courier, such as FedEx or DHL, via express, priority or similar service and will be deemed to have been given on the next business day following tender to the courier if the sender’s

and recipient's addresses are in same country or on the fourth business day following tender to the courier if the addresses are in different countries.

FOR:	MIT	FOR:	PROVIDER
Name:	_____	Name:	_____
Title:	_____	Title:	_____
Organization:	Office of Sponsored Programs	Organization:	_____
Address:	77 Massachusetts Ave., NE18-901	Address:	_____
City, State, Zip:	Cambridge, MA 02139	City, State, Zip:	_____
Phone:	_____	Phone:	_____
Email:	_____	Email:	_____

13. MISCELLANEOUS PROVISIONS

- 13.1. Export Control. Provider will not knowingly disclose to MIT, and will use commercially reasonable efforts to prevent disclosure to MIT of, any information subject to ITAR controls or in the Commerce Control List (EAR Part 774 and Supplements) or 10 CFR Part 810 Restricted Data or Sensitive Nuclear Technology. If Provider intends to disclose export-controlled information to MIT in connection with this Agreement, Provider will not disclose such information to MIT unless and until a plan for transfer, use, dissemination, and control of the information has been approved by MIT's Export Control Officer.
- 13.2. CREATE Act. For the purposes of the Cooperative Research and Technology Enhancement Act of 2004, the parties agree that this Agreement is not considered a joint research agreement.
- 13.3. Assignment. Neither party may assign this Agreement or any of its rights or obligations hereunder to a third party, including, without limitation by merger with a third party, without the prior written consent of the other. Any attempted assignment in violation of this Section will be void.
- 13.4. Severability. In the event any provision of this Agreement or portion thereof is determined by a court or arbitrator of competent jurisdiction to be invalid or unenforceable, any enforceable portion of the provision and the remainder of this Agreement will remain in effect and the parties will request the court or arbitrator to reform the provision to a form that is valid and enforceable and reflects as closely as possible the intent of the original provision.
- 13.5. Waiver. A party may waive one or more of another party's obligations or its own rights under this Agreement, provided that it does so in writing. A party's waiver shall be read narrowly to apply only to the rights or obligations described in the waiver, and the waiver may not be construed to waive any future obligation or exercise of rights.
- 13.6. Governing Law. This Agreement will be governed by the laws of the Commonwealth of Massachusetts and the federal laws of the United States of America, without regard to any applicable conflict of laws principles.
- 13.7. Counterparts. This Agreement may be executed in two or more counterparts, each of which will be deemed to be an original, and all of which together constitute one and the same instrument.
- 13.8. Entire Agreement/Amendment. This Agreement (1) represents the entire understanding between the parties with respect to its subject matter and (2) supersedes all contemporaneous and previous statements, representations, agreements, and understandings between the parties, however expressed, that relate to the subject matter of this Agreement. This Agreement may be amended only by a writing signed by all parties to this Agreement.

Executed as of the Effective Date:

PROVIDER

MASSACHUSETTS INSTITUTE OF TECHNOLOGY

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

SAMPLE

ATTACHMENT A

DESCRIPTION OF CONFIDENTIAL DATA SET

DATA SET

The Data Set consists of the following:

[Insert here a detailed description of the Data Set, including (1) overall descriptive topic or field of the data set; (2) source(s) from which Data Set has been derived; (3) top-level list of data classes/types in the data set; and (4) as applicable, time and/or geographical limits of data set.]

RESEARCH PROJECT

The Research Project is as follows:

[Describe the Research Project.]

DATA SAFEGUARDS

MIT shall deploy the following Data Safeguards:

[Describe any agreed Data Safeguards.]

SAMPLE