***Red text are instructions to the drafter and must be removed prior to execution.***

***Please note that this is a sample agreement and may be revised according to Project-specific requirements.***

|  |  |
| --- | --- |
| FDP Collaborative Data Transfer and Use Agreement (“Agreement”) | |
| Project Title: | |
| Agreement Term | Start Date: |
| End Date: |

**Terms and Conditions**

**This Agreement is binding upon the following Parties who have executed the Signature Pages: *[Instruction to the drafter: Insert the full legal name of all Parties to this Agreement.]***

1. Each Party shall provide the data set(s) described in its respective Signature Page (the “Data”) to the other Parties for the research purpose set forth in Attachment 1 (the “Project”). Each Party is a Providing Party when providing Data and a Receiving Party when receiving Data. Providing Party shall retain ownership of any rights it may have in its Data and does not transfer any rights in the Data to the other Parties other than as set forth herein.
2. Receiving Party shall not use the Data except as authorized under this Agreement. The Data will be used solely to conduct the Project and solely by Receiving Party’s Scientist and Receiving Party’s faculty, employees, fellows, students, and agents (“Receiving Party Personnel”) and Third Party Personnel (as defined in Attachment 3) that have a need to use, or provide a service in respect of, the Data in connection with the Project and whose obligations of use are consistent with the terms of this Agreement (collectively, “Authorized Persons”).
3. Except as authorized under this Agreement or otherwise required by law, Receiving Party agrees to retain control over the Data and shall not disclose, release, sell, rent, lease, loan, or otherwise grant access to the Data to any third party, except Authorized Persons, without the prior written consent of Providing Party. Receiving Party agrees to establish appropriate administrative, technical, and physical safeguards to prevent unauthorized use of or access to the Data and comply with any other special requirements relating to safeguarding of the Data as may be set forth in the applicable Attachment 2.
4. The Parties agree to use the Data in compliance with all applicable laws, rules, and regulations, as well as all professional standards applicable to such research.
5. ***[Instruction to the drafter: The following sample language assumes that the Parties anticipate joint publications. If this is not the case, this section should be modified accordingly.]*** The Parties are encouraged to make publicly available the results of the Project. Before any Party submits a paper or abstract for publication or otherwise intends to publicly disclose information about the results of the Project, the other Parties will have thirty (30) days from receipt to review proposed manuscripts and ten (10) days from receipt to review proposed abstracts to ensure that the Data is appropriately protected. The Parties contributing to each jointly authored publication will together make decisions on authorship of such publications. Authorship will be in accordance with academic and/or scholarly standards.
6. Publishing Parties agree to recognize the contribution of the Providing Parties as the source of the Data in all written, visual, or oral public disclosures concerning research using the Data, as appropriate in accordance with academic and/or scholarly standards and in any specific format that has been indicated in the applicable Providing Party’s Signature Page.
7. Receiving Party shall follow all Special Instructions included in the relevant Providing Party’s Signature Page applicable to the Data that Receiving Party receives.
8. This Agreement shall be effective upon the Start Date set forth above. Unless terminated earlier in accordance with this section or extended via a modification in accordance with Section 13, this Agreement shall expire as of the End Date set forth above. All provisions which by their nature are intended to survive termination or expiration of this Agreement shall survive. ***[Instruction to the drafter: The below sample language assumes that the Data can be associated with the original Providing Party and separated from the other data sets provided under the Agreement. If the data will be linked in such a way that the Data from each Providing Party cannot be identified, this section should be modified accordingly.]***
   1. Any Party may terminate their involvement in this Agreement with thirty (30) days written notice to the other Parties’ Authorized Official(s) as set forth in the Signature Pages. With regards to the non-terminating Parties, this Agreement shall continue unaffected, unless mutually agreed upon between the non-terminating Parties. The terminating Party shall reasonably attempt to allow the non-terminating Parties to use the Data to complete the Project, if possible and consistent with the terminating Party’s other obligations, and shall follow the reasonable written instructions of the non-terminating Parties regarding disposition of any Data obtained by it under this Agreement. The non-terminating Parties shall follow the reasonable written instructions of the terminating Party as to disposition of the terminating Party’s Data; provided, however, that each Receiving Party may retain one (1) copy of the Data to the extent necessary to comply with the records retention requirements under any law, and for the purposes of research integrity and verification.
   2. Any Party may terminate this Agreement at any time if such Party has reasonably determined that another Party has materially breached its obligations to appropriately use and secure the Data in accordance with this Agreement. If appropriate pursuant to applicable law, the non-breaching Party(ies) may provide the breaching Party a thirty (30) day period to cure the alleged breach. Otherwise, this Agreement shall terminate immediately upon receipt of notification from the terminating Party to the Contact for Formal Notices listed on the Signature Page for each of the other Parties. All Parties shall promptly return or destroy the Data received under this Agreement as directed by the relevant Providing Party(ies), unless such Parties have entered into a new Data Transfer and Use Agreement to permit their continued use of the Data.
9. EXCEPT AS PROVIDED BELOW OR PROHIBITED BY LAW, ANY DATA DELIVERED PURSUANT TO THIS AGREEMENT IS UNDERSTOOD TO BE PROVIDED “AS IS.” PROVIDING PARTY MAKES NO REPRESENTATIONS AND EXTENDS NO WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED. THERE ARE NO EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR THAT THE USE OF THE DATA WILL NOT INFRINGE ANY PATENT, COPYRIGHT, TRADEMARK, OR OTHER PROPRIETARY RIGHTS. Notwithstanding, Providing Party, to the best of its knowledge and belief, has the right and authority to provide the Data to Receiving Party for use in the Project.
10. Each Receiving Party shall be liable for damages, losses, claims, and demands which may arise from its use, storage, disclosure, or disposal of the Data except to the extent (a) prohibited by law and/or (b) caused by the negligence, willful misconduct, or violation of applicable privacy or security laws and regulations by the Providing Party. No indemnification for any damage, loss, claim, demand, or liability is intended or provided by any Party under this Agreement.
11. No Party shall use the other Parties’ names, trademarks, or other logos in any publicity, advertising, or news release without the prior written approval of an authorized representative of the Party whose name is to be used. The Parties agree that each Party may disclose factual information regarding the existence and purpose of the relationship that is the subject of this Agreement for other purposes without written permission from the other Parties provided that any such statement shall accurately and appropriately describe the relationship of the Parties and shall not in any manner imply endorsement by the Party whose name is being used.
12. Unless otherwise specified, this Agreement and the below listed Attachments embody the entire understanding between the Parties regarding the transfer of the Data for the Project:
13. Signature Page for each Party, including description of such Party’s Data and Disposition and Other Special Instructions
14. Attachment 1: Project Description and Public Access Requirements
15. Attachment 2: Data-specific Terms and Conditions
16. Attachment 3: Identification of Permitted Third Parties (if any)

In the event of any conflict between the obligations set forth in the applicable Attachment 2 and this Agreement, the obligations set forth in the applicable Attachment 2 shall prevail.

1. No modification or waiver of this Agreement shall be valid unless in writing and executed by duly authorized representatives of all Parties.
2. In its performance of the Project, each Party shall be an independent entity and not an employee or agent of the other Parties.
3. This Agreement constitutes the entire understanding between the Parties concerning the use of and/or access to the Data transferred hereunder and supersedes any prior understanding or written or oral agreement. The illegality or invalidity of any provision of this Agreement shall not impair, affect, or invalidate the other provisions of this Agreement.

***Signature of the Authorized Official of each Party appears on the Signature Page attached for such Party.***

**Signature Page**

**[Project Title]**

**For:** ***[Insert name of relevant Party]***

This Party is a: Choose an item.

**Attachment 2 type that applies to Data Provided by this Party:** Choose an item.

**Description of Data Provided by this Party:**

***Instructions to the drafter; delete after completion of this section:***

*This section should provide sufficient information such that each Party understands the information that will be transmitted by this Party under this Agreement. If this Party will not be sharing any Data under this Agreement, simply indicate “None” in this section and select “None” from the above drop-down menu to indicate the Attachment 2 type. When this Party is sharing Data, examples of information that should be provided include:*

* *Format of Data and whether a Data dictionary is available (If a Data dictionary is available, provide instructions regarding access separately from this Agreement)*
* *If the Data is obtained from human subjects, a description of the population included in the Data*
* *If the Data is from animal subjects, the species of animal the Data was obtained using*
* *If not from human or animal subjects, a description of the focus of the Data*
* *The number of subjects and/or experiments included*
* *Name of the study that the Data was obtained under or any specific format that should be used to acknowledge use of the Data*

**Disposition Instructions:**

***Instructions to the drafter; delete after completion of this section:***

*Provide any specific disposition instructions for the Data at expiration or termination of the Project.*

**Other Special Instructions:**

***Instructions to the drafter; delete after completion of this section:***

*This section should provide any additional instructions for Data transfer and use but not the description of the Data. If no special instructions need to be provided, indicate “none” here. This section should not be used to impose additional requirements inconsistent with the other terms of this Agreement. Examples of information that could be provided include:*

* *If/how Data will be revised and resent if errors are found by the Receiving Party*
* *Specific instructions necessary to complete the transfer of the Data, if available/appropriate, and any support supplied by the Providing Party for the transfer*

**Signature Page for [Name of Party] continued**

**[Project Title]**

Scientist Name:

Scientist Email:

Send Data Choose an item. to:

Name:

Email:

Address:

Phone:

Contact Information for Formal Notices:

Name:

Email:

Address:

Phone:

The undersigned Authorized Official of [Name of Party from Above] expressly represents and affirms that the contents of any statements made herein are truthful and accurate and that the undersigned is duly authorized to sign this Agreement on behalf of this institution.

Signature:

Name:

Title:

Date:

**Attachment 1**

**Project Description and Public Access Requirements**

**Project Description:**

***Instructions to the drafter; delete after completion of this section:***

*This section should provide sufficient information such that each Party understands the Project to be performed by the Parties under this Agreement. Content of this section will be very similar to the Statement of Work used in other types of Agreements. Examples of information that should be provided include:*

* *Objective or purpose of the work*
* *A general description of the actions to be performed by the Parties using the Data and possibly the anticipated results*
* *Whether or not the Parties are permitted to link the Data with other data sets (If yes, be sure to include any special disposition requirements related to the linked data sets)*

**Public Access Requirements:**

***Instructions to the drafter; delete after completion of this section:***

*This section should provide sufficient information such that each Party understands the public access requirements that apply to this Project, if any. If none apply, indicate “None” here.*

**Attachment 2**

**Data-specific Terms and Conditions**

***Insert all versions of Attachment 2 that are referenced in any Party’s Signature Page and delete this placeholder page. Attachment 2 versions available at*** [***http://thefdp.org/default/committees/research-compliance/data-stewardship/***](http://thefdp.org/default/committees/research-compliance/data-stewardship/)***.***

**Attachment 3**

**Identification of Permitted Third Parties (if any)**

For all purposes of this Agreement, the definition of “Third Party Personnel” checked below will pertain:

* “Third Party Personnel” means: None. No Third Parties are permitted on the Project.

-OR-

* “Third Party Personnel” means as set forth below and agreed upon between the Parties:

***Sample definition language for the drafter; delete if the first option is checked or***

***after a final definition has been agreed between the Parties:***

*“Third Party Personnel” means: faculty, employees, fellows, or students of [NAME OF THIRD PARTY INSTITUTION], an academic institution, which institution (i) has agreed to collaborate in the Project, (ii) has faculty, employees, fellows, or students who have a need to use or provide a service in respect of the Data in connection with its collaboration in the Project,* ***and*** *(iii) has been made aware of the terms of this Agreement and agreed to comply, and to cause its personnel to comply, with such terms.*

*An alternative option for (iii): “has executed an agreement that is substantially similar to*

*this Agreement”*