

**PRIMARY DATA SHARING AGREEMENT BETWEEN THE
ASSOCIATION AND INSTITUTION**

THIS PRIMARY DATA SHARING AGREEMENT (“Agreement”) is effective _____ (the “Effective Date”) between _____ (“Association”) and _____ (“Institution”), for facilitating data sharing activities between the parties.

The parties agree as follows:

1. Data Sharing Activities

The parties shall engage in certain data sharing activities subject to the terms of this Agreement. For each data sharing activity, the parties shall execute a data sharing schedule (“Schedule”) that, at minimum, specifies:

- (a) The data to be shared (the “Data”);
- (b) Which party is sending the Data (the “Sending Party”) and which party is receiving the Data (the Receiving Party”), noting if both parties are fulfilling both roles;
- (c) The purpose for which the Data are being shared (“Purpose”);
- (d) The method of transfer of the Data between the parties;
- (e) The data contacts at both parties for the data sharing activity;
- (f) What fee (if any) a party pays to the other party for the Data; and
- (g) Any other details relating to the data sharing activity.

Sample data sharing schedules for general (Exhibit 1) and research (Exhibit 2) data sharing activities are attached for reference.

2. Use of the Data by the Receiving Party

Receiving Party shall only use the Data for the Purpose and, by way of illustration and not of limitation, Receiving Party shall not (1) publish the Data as its own or otherwise appropriate the Data for its own use other than as permitted herein, or (2) except as otherwise permitted herein, disseminate, expose or publish the Data to third parties or the public in general. Receiving Party will not, and will not attempt to, identify, re-identify, or deduce the identity of any specific individuals or institutions in any Data that has been provided under this Agreement in de-identified or aggregate form. It is expressly understood and agreed that the Sending Party’s rights, including, but not limited to, common law and statutory rights of literary property and copyright, in the Data are not assigned or released as a result of this Agreement, but are at all times reserved and retained by the Sending Party, subject to the limited uses permitted under this Agreement, and only during the term hereof, unless otherwise agreed. Receiving Party shall not use the Sending Party name, logo or brand without specific written authorization from Sending Party, except as set forth in Acknowledgements Section.

3. Restrictions of the Transfer of the Data to Third Parties

Receiving Party agrees that the Data shall reside only with the parties involved in the Purpose at the Receiving Party, and that the Data will not be shared or transferred to any other researcher, or any third-party person or organization, or posted in a public forum, including, but not limited to, the internet or a poster presentation, without express written permission of Sending Party, except that Receiving Party may share the Data with service providers for which Receiving Party agrees to be fully responsible for the service provider’s use and misuse of the Data and the service provider is under contractual obligations as good or better than the Receiving Party’s obligations in this Agreement.

Notwithstanding the foregoing, Receiving Party’s obligations of non-use and non-distribution hereunder with regard to the Data shall not apply with respect to information which:

- (a) Is publicly available prior to the Effective Date or becomes publicly available thereafter through no wrongful act of the Receiving Party;
- (b) Was known to Receiving Party prior to the date of disclosure or becomes known to the Receiving Party thereafter from a third-party having an apparent bona fide right to disclose the information;
- (c) Is disclosed by the Receiving Party in accordance with the terms of Sending Party's prior written approval;
- (d) Is disclosed by Sending Party without restriction on further disclosure;
- (e) Is independently developed by the Receiving Party; or
- (f) The Receiving Party is obligated to produce pursuant to an order of a court of competent jurisdiction or a valid administrative or Congressional subpoena, provided (i) that the Receiving Party promptly notifies Sending Party and (ii) cooperates reasonably with Sending Party's efforts to contest or limit the scope of such order.

4. Data Security and Destruction.

Receiving Party shall use commercially reasonable efforts to maintain reasonable security standards to protect the confidentiality and integrity of the Data entrusted to Receiving Party under this Agreement. Receiving Party shall promptly notify the Sending Party of any known or suspected unauthorized disclosure, or loss, of Sending Party's Data and cooperate with any applicable notification, investigation and remediation efforts.

On the expiration or termination of this Agreement, if requested by the Sending Party, the Receiving Party shall return or destroy any Data it holds within ninety (90) calendar days of receipt of such request.

5. Data Ownership

All Data provided by the Sending Party to the Receiving Party pursuant to this Agreement shall be and remain the sole and exclusive property of the Sending Party. Nothing contained in this Section shall be construed as granting to or conferring the Receiving Party, expressly or impliedly, any rights or license to the Data of the Sending Party, and any such obligation or grant shall only be as provided by other provisions of this Agreement. Unless otherwise agreed in the Schedule, all derivatives of the Data that are generated by the Receiving Party are the sole and exclusive property of the Receiving Party.

6. Research Conduct, Publication, and Presentation

For research data sharing activities only:

- (a) Each party agrees to conduct the research in an ethical manner consistent with its own research policies, requirements or guidance of any applicable institutional review board, and general principles for the ethical conduct of research.
- (b) A party may decide to disseminate research findings in peer reviewed journals, presentations to relevant audiences and/or any other forms of public media. The authorship of any academic papers or presentations to disseminate any research findings will be in accordance with usual academic publishing standards regarding contribution, acknowledgment, and authorship.
- (c) Before a party submits a paper or abstract for publication, or otherwise intends to publicly disclose any findings made in the course of analysis of Data, it shall allow the other party a thirty (30) day period in which to review the publication for confidential information and both parties must mutually agree to proceed with publication or to publicly disclose any findings. In the parties' discretion, they alternatively may set forth the terms for authorized publication and presentation-related uses for a particular data-sharing activity in each Schedule.
- (d) The parties agree that any data reported publicly or otherwise will be aggregated and such parties will not present or publish any Data in such a form that identification of individuals or institutions (i.e., member schools) is possible either directly or from contextual data (e.g., age, gender).

7. Acknowledgements

All publications and presentations that use the Data provided under this Agreement must contain the following (or equivalent) acknowledgement and disclaimer:

If the Association is the Sending Party:

"This material is based upon data provided by _____ ("Association"). The views expressed herein are those of the authors and do not necessarily reflect the position or policy of the Association."

If Institution is the Sending Party:

"This material is based upon data provided by the _____ ("_____"). The views expressed herein are those of the authors and do not necessarily reflect the position or policy of the _____."

Receiving Party must receive prior written approval from the Sending Party Data Contact before listing any Sending Party staff member as an author and that such listing is consistent with the ICMJE guidelines on authorship (<http://www.icmje.org/recommendations/browse/roles-and-responsibilities/defining-the-role-of-authors-and-contributors.html>). Any acknowledgement should state, where appropriate, that the conclusions expressed are solely those of the author(s).

8. Fees

Unless otherwise specified in the Schedule, neither party shall charge the other party for the provision of Data under this Agreement, and each party is responsible for its own costs to fulfill its obligations under the Agreement.

9. Duration of the Agreement

This Agreement is for a one (1) period from the Effective Date and shall automatically renew on the anniversary of the Effective Date until terminated. Receiving Party or Sending Party may terminate the agreement for any reason with thirty (30) calendar days written notice to the other party. Data may not be used by Receiving Party beyond the agreement expiration date, except upon mutual written agreement between Sending Party and Receiving Party.

10. Warranty

THE SENDING PARTY PROVIDES THESE DATA "AS IS" AND "AS AVAILABLE" WITHOUT WARRANTY OF ANY KIND WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE OR AS TO COMPLETENESS OR ACCURACY OF ANY INFORMATION OR DATA PROVIDED UNDER THIS AGREEMENT. RECEIVING PARTY RELEASES THE SENDING PARTY FROM ANY AND ALL LIABILITY FOR INACCURATE OR INCOMPLETE INFORMATION.

11. Defense and Indemnification

To the extent allowed by law, Receiving Party agrees to indemnify, defend and hold harmless Sending Party, its officers, agents, trustees and employees against all judgments, losses and expenses arising from claims by third parties, including reasonable attorney's fees, for which Sending Party, its officers, agents, trustees or employees may become liable on account of injury which may result from or arise out of breach of this Agreement or the negligent acts or omissions of Receiving Party, its employees and agents.

12. Force Majeure

Neither party shall be responsible for any resulting loss if the fulfillment of any of the terms of this agreement is delayed, compromised, or prevented by riot, war, national emergency, flood, fire, act of God, public health

emergency, statutory or regulatory enactment, or by any other cause not within the control of the party whose performance is interfered; provided that, said party takes all reasonable steps to accommodate and to prevent a delay or failure to perform.

13. Assignment

Neither party may assign nor transfer its obligations or interest in this agreement without the express written Agreement of the other party. Any purported assignment or transfer shall be null and void.

14. Survival

Any rights or obligations contained herein that by their nature should survive termination or expiration of this agreement shall survive, including, but not limited to, limitation of liability, acknowledgments, indemnity obligations, and restrictions on data transfer.

15. Severability

Any term or provision of this Agreement which is found to be invalid or unenforceable by a court having jurisdiction will be deemed to be restated to reflect, as nearly as possible, the original intentions of the parties in accordance with applicable law, and the remainder of the agreement will remain in full force and effect.

16. Authority to Sign

By signing this Agreement, each of the parties is bound to the terms and conditions set forth herein and represents and warrants that the undersigned has the legal power, right and actual authority to sign this Agreement and bind that party to the terms and condition herein.

Association

Institution

Signature:

Signature:

Name:

Name:

Title:

Title:

Date:

Date:

EXHIBIT 1 – Sample General Data Sharing Schedule

Data Sharing Schedule No. ____

Name of Data Sharing Activity

This Data Sharing Schedule No. ____ is subject to the Data Sharing Agreement between the Association and Institution effective _____ (“Agreement”).

The parties agree as follows:

1. Description of Purpose

General Description of the Activity

Permitted Uses of the Data

Restrictions on the Use of the Data (if any)

2. Data to be shared

The data shall include the following de-identified/identified variables (Data) to be sent by _____ (Sending Party) to _____ (Receiving Party):

3. Transfer of Data

4. Fees *(if applicable)*

Receiving Party shall pay _____ to Sending Party for the provision of the Data under this agreement. The Sending Party will invoice (Net30) at time of delivery of the Data.

5. Project Contacts

Association Data Contact:

Name:

Title:

Email:

Phone:

Institution Data Contact:

Name:

Title:

Address:

Email:

Phone:

Effective as of _____, 202__

Institution

Name: _____
Title: _____
Date: _____

Association

Name: _____
Title: _____
Date: _____

EXHIBIT 2 – Sample Data Sharing Schedule for Research

Data Sharing Schedule No. ____

Name of Data Sharing Activity

This Data Sharing Schedule No. ____ is subject to the Data Sharing Agreement between the Association and Institution effective _____ (“Agreement”).

The parties agree as follows:

1. Description of Purpose

Brief Research Description

Permitted Uses of the Data

Restrictions on the Use of the Data (if any)

2. Data to be shared

The data shall include the following **de-identified/identified** variables (Data) to be sent by _____ (Sending Party) to _____ (Receiving Party):

3. Research Team

The Research Team shall be defined as individual(s) at the Receiving Party conducting research for the Purpose. The initial Research Team is comprised of the following individuals:

4. Specific use of the Data in the Research

5. Transfer of Data

6. Research Updates *(optional)*

The Receiving Party Data Contact shall submit quarterly progress reports to the Sending Party Data Contact. The progress report must include:

- a) An accurate list of members of the Research Team;
- b) A summary of what, if any, violations of the confidentiality provisions of the agreement have occurred (such as individuals not part of the Research Team accessing the Data);
- c) A summary of progress to date on the research for the Purpose including anticipated publication submissions
- d) A summary of anticipated progress in the coming quarter; and
- e) Proposals, if any, to modify or extend the scope of the Research (all Sending Party approved proposals will be ratified in an amendment to this Agreement).

7. Publications

The parties shall review and seek approval to publish findings pursuant to the process set forth in Section 6, Research Publications and Presentations of the Agreement.

8. Fees *(if applicable)*

Receiving Party shall pay _____ to Sending Party for the provision of the Data under this agreement. The Sending Party will invoice (Net30) at time of delivery of the Data.

9. Project Contacts

Association Data Contact:

Name:

Title:

Email:

Phone:

Institution Data Contact:

Name:

Title:

Address:

Email:

Phone:

Effective as of __ ____, 202__

Institution

Name: _____
Title: _____
Date: _____

Association

Name: _____
Title: _____
Date: _____