

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] (“Recipient”), and the University of Notre Dame du Lac, an Indiana not for profit corporation with an address at Notre Dame, Indiana 46556 (“Provider”), 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.

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 Recipient, the parties hereby agree as follows:

1. **LIMITATIONS ON USE.** Recipient shall use Data Set solely for the Purpose. Disclosure by Provider of its Data Set does not constitute a grant to Recipient of any right or license to such Data Set, except as set forth herein.
2. **CARE OF DATA.** Recipient shall exert reasonable efforts, including but not limited to the Data Safeguards identified in Attachment A, to maintain Data Set in confidence, except that Recipient may disclose or permit disclosure of any Data Set to Recipient’s officers, faculty, employees, consultants, advisors, students and fellows who need to know such Data Set to fulfill the Purpose and who have been advised of the confidential nature of any of the Data Set.
3. **NON-DISCLOSURE OF SOURCE.** Recipient shall not identify Provider as the provider of the Data Set in any publication or public presentation of research in which Data Set is used (each a “Publication”) without obtaining Provider’s prior written consent.
4. **REQUIRED DISCLOSURES.** Nothing in this Agreement may be construed to prevent Recipient from disclosing Data Set as required by law or legal process, as long as Recipient, 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.
5. **PUBLICATIONS.** Provider acknowledges that Recipient is receiving Data Set in anticipation of preparation and publication of scholarly papers (“Scholarly Work”). Prior to publication of any Scholarly Work, Provider will have a thirty-day period to review the publication for any disclosure of Data Set. Provider shall, within the thirty-day period, give Recipient notice identifying specifically any portion of the Data Set it believes would be impermissibly contained in the Scholarly Work, for instance but without limitation, the disclosure of personally-identifiable information or the re-identification of previously de-identified information.
6. **USE OF NAMES.** Recipient shall not make any press or media announcements concerning this Agreement, or use Provider’s names, trademarks, logos, or insignia, or any version, abbreviation, or representation of them, or the name of any of Provider’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 Provider, which consent Provider may withhold in its sole discretion.

7. **DISCLAIMERS.**

7.1. Provider Disclaimer. All Data Set is provided “as is.” Provider makes no warranty, expressed or implied, regarding the accuracy, completeness, suitability or performance of Data Set disclosed under this Agreement. PROVIDER 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 RECIPIENT OR THIRD PARTIES, AND THE ABSENCE OF LATENT OR OTHER DEFECTS, WHETHER OR NOT DISCOVERABLE.

7.2. Limitation of Liability. IN NO EVENT SHALL PROVIDER, ITS TRUSTEES, DIRECTORS, OFFICERS, EMPLOYEES, 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.

7.3. Survival. THIS SECTION 9 SHALL SURVIVE THE EXPIRATION OR ANY EARLIER TERMINATION OF THIS AGREEMENT.

8. **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. Recipient’s obligations with respect to use and nondisclosure of Data Set will survive for a period of three years following receipt of the particular Data Set.

9. **RETURN OR DESTRUCTION OF DATA.** Following termination of this Agreement, Recipient shall, if directed by Provider, destroy or return to Provider all documents and other tangible manifestations of Data Set and destroy any electronic or digital manifestations of Data Set, except that Recipient may retain one copy of the Data Set solely for the purposes of monitoring its obligations under this Agreement and validating research based upon the Data Set.

10. **CONTACTS.** The following points of contact have been initially identified by the parties as responsible for the disclosure and receipt of Data Sets:

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

1. _____
2. _____

Primary Technical Contact(s) for receipt of Data Set on behalf of Recipient:

1. _____
2. _____

11. MISCELLANEOUS PROVISIONS

- 11.1 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.
- 11.2 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.
- 11.3 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.
- 11.4 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.
- 11.5 Governing Law. This Agreement will be governed by the laws of the State of Indiana and the federal laws of the United States of America, without regard to any applicable conflict of laws principles.
- 11.6 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.
- 11.7 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.

Agreed between the Parties as of the Effective Date:

University of Notre Dame du Lac

By _____

Name:

Title:

Recipient: _____

By _____

Name:

Title:

ATTACHMENT A

DESCRIPTION OF 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

Recipient shall deploy the following Data Safeguards:

[Describe any agreed Data Safeguards.]