**Memorandum of Understanding:**

**The City University of New York and**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

This Memorandum of Understanding (the “MOU”) is made as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_, by and between The City University of New York, having an address at 205 E. 42 St.

New York, NY  10017 (“CUNY”), and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, having an address at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Institution”) on behalf of its employee \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Principal Investigator” and collectively with “Institution,” the “Recipient”) for Data that may be provided under the terms of this MOU.

1. Data. The study data to be furnished by CUNY to Recipient consist of the items listed in Exhibit A to this MOU (the “Data”). CUNY retains ownership of the Data.

2. Permitted Uses. Recipient shall use the Data solely for teaching or not-for-profit research purposes by the Principal Investigator at the Institution as further described Exhibit A to this MOU (“Research”). Any other use of the Data is prohibited.

3. No Disclosure. Except as CUNY shall authorize in writing, the Recipient shall not disclose or distribute the Data to any other person or organization, other than those individuals affiliated with and working within the Institution under the supervision of Principal Investigator who have also accepted the terms of this MOU. Recipient shall refer to CUNY any request for access to the Data from anyone other than such individuals working under the Principal Investigator.

(a) CUNY and DOE will preserve the confidentiality of all personally identifiable information about individual students obtained pursuant to this Memorandum of Understanding in accordance with applicable law, including the New York State Social Services Law, the Federal Social Security Act, the Family Educational Rights and Privacy Act and any regulations promulgated thereunder. This memorandum serves as advice to Recipient and all staff who have access to the Data provided pursuant to this MOU of their obligation to keep the data confidential. All transmissions of data will be by secure electronic transfer.

4. Safeguards and Notification. The Recipient shall use appropriate administrative, technical and physical safeguards to ensure the confidentiality and security of the Data and to prevent any unauthorized use or disclosure of the Data. The Recipient shall promptly report to CUNY any unauthorized use or disclosure of which Recipient becomes aware.

1. Access to the Data is limited to Recipient and to the following offices or their successor entities: \_\_\_\_\_\_\_\_\_\_\_\_\_
2. Employees of these offices may access the Data for the purposes specified in this MOU. If Recipient wishes to use the data governed by this MOU for any other purpose(s), either agency may do so only pursuant to a written agreement specific to such additional purpose(s).
3. Recipient has full and final responsibility for the security of the restricted-use data, and will name a system security officer (SSO) who is responsible for maintaining the day-to-day security of the system on which the licensed data reside. The SSO’s duties shall include the implementation, maintenance, and periodic update of the security plan to protect the Data in strict compliance with statutory and regulatory requirements.
4. The SSO shall retain the original version of the restricted-access Date at a single location and may make no copies or extracts of the data available to any third parties except as provided herein.
5. The SSO shall maintain restricted-use Data (whether maintained at a mainframe facility, remote terminals, personal computers, or on printed or other material) in a space that is limited to access by authorized personnel only.
6. The SSO shall ensure that access to restricted-use Data maintained in computer memory is controlled by password protection. For restricted use data maintained on a mainframe computer, password protection will be required at the file level. The SSO shall maintain all printouts, portable storage devices (eg, flash drives), personal computers with restricted-access data on hard disks, or other physical products containing individually identifiable information derived from Data in locked cabinets, file drawers, or other secure locations when not in use.
7. Restricted-use Data may not be removed from the designated location.
8. The SSO shall establish procedures to help ensure that restricted-access Data cannot be extracted from a computer mainframe, remote terminal or separate personal computers by unauthorized individuals. Such procedures are attached hereto as Exhibit A.
9. The SSO will ensure that there is no disclosure of individually-identifiable data in any manuscript submitted for publication review, publication or other dissemination that includes results based on a fine sample size of individual students. This requirement is intended to ensure that no possible disclosure of identifiable student data occurs.

5. Intellectual Property; Limitations on Commercial Use.

(a) Institution and Principal Investigator agree that neither shall apply or file for any intellectual property protection, including without limitation, copyright or patent protection, in any jurisdiction, for the Data or derivative work of the Data or creation, development or discovery resulting from use of the Data, without the express prior written permission of CUNY.

(b) Recipient is expressly prohibited from making any profit-making or commercial use of the Data, whether alone or in collaboration with any party, without express prior written permission of CUNY. CUNY retains the unrestricted right to distribute the Data to commercial or noncommercial entities. If Recipient desires to use or license the Data for profit-making or commercial purposes, Recipient agrees, in advance of such use, to negotiate in good faith with CUNY to establish the terms of a commercial license. It is understood by Recipient that CUNY shall have no obligation to grant such a license to Recipient, and may grant exclusive or non-exclusive commercial licenses to others, or sell or assign all or part of the rights in the Data to any third party(ies), subject to any pre-existing rights held by others and obligations to the Federal Government.

6. Publication.

(a) Recipient agrees not to publicly disclose the results of the Research using the Data to any third party, company or any investigator, or publish any data or information relating to the Data or studies conducted with it, prior to disclosure in writing to CUNY. The Principal Investigator will provide CUNY with a copy of all manuscripts or abstracts reporting such results not less than 30 days prior to submission thereof to publisher, for CUNY’s review and comment. If CUNY determines that the proposed publication or presentation contains an invention involving the Data (“Invention”) to which CUNY is co-owner and for which CUNY desires patent protection, then Recipient will delay publication or presentation for up to an additional 45 days to permit the filing of patent applications. Recipient agrees to acknowledge the source of the Data in all publications and presentations based on the use of the Data. This MOU shall not be interpreted to prevent or delay publication of results of research using Data.

(b) Recipient agrees to promptly disclose all Inventions to CUNY in confidence. Inventorship of any Inventions shall be determined in accordance with U.S. patent law, or by mutual agreement between the parties, taking into account the role and contributions of the parties to the Invention. Ownership shall follow Inventorship. The parties agree to negotiate an inter-institutional agreement which shall include terms regarding the equitable sharing of patent costs, licensing income, and invention management responsibility based on the respective parties’ contributions to each Joint Invention. If either Recipient or CUNY is the sole inventor of any Invention, that party shall be free to dispose of such Sole Invention as it deems appropriate. CUNY will have the right to use for academic research and teaching purposes all Inventions developed by Recipient under this MOU without payment of license or royalty fees.

7. No Warranties; Limitation of Liability. The data are provided “as is” and without any warranty express or implied, including any warranty of merchantability or fitness for a particular purpose or that the use of the data will not infringe or violate any patent, copyright, trademark or proprietary rights of any third party. To the full extent allowed by law, recipient agrees to waive all claims against CUNY, its trustees, officers, employees, faculty, agents or representatives, and recipient agrees to defend, indemnify, and hold harmless CUNY and its trustees, officers, employees, faculty, agents or representatives from any loss, claim, damage, or liability of any kind or nature, which may arise from or in connection with this MOU or from recipient’s acceptance, use, storage or disposal of the data, except loss, claims, damages, or liability arising directly from the gross negligence or willful misconduct of CUNY.

8. Compliance with Law. Recipient agrees to use the Data in compliance with all applicable federal, state and local laws, rules and regulations.

9. Termination of MOU. Unless extended in writing by the parties, this MOU shall terminate upon the earlier of: (a) completion of the Research, or (b) two years from the date of this MOU. Upon termination, Recipient shall discontinue its use of the Data and shall return or dispose of all Data as directed by CUNY, unless permission to retain the Data is specifically provided in writing by CUNY to Recipient. This MOU shall terminate automatically upon any use of the Data by Recipient in violation of this MOU. Upon such termination, Recipient shall return or dispose of all Data as directed by CUNY. Recipient may terminate this MOU at any time upon notice to CUNY, provided, however, that such termination shall not modify in any way Recipient’s obligations under this MOU and termination shall constitute Recipient’s intention to terminate the Research.

(a) The MOU will terminate on \_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_. Either party may terminate this MOU for convenience in writing upon one full academic year notice to the other. For purposes of this MOU, the academic year commences on July 1st.

(b) In the event of a material breach of this MOU, the non-breaching party may terminate this MOU upon 30 days’ notice provided the other party has been given notice of the breach in writing and failed to satisfactorily cure the breach within 30 days. Upon termination for cause, the breaching party shall immediately cease the use of all data and shall within 30 days return or destroy all data released to them pursuant to this MOU. The non-breaching party shall be authorized to continue to use the data supplied to them for one additional full academic year.

(c) To ensure compliance with all laws, either party upon reasonable notice to the other shall have the right to reasonably examine the use of the data by the receiving party and the security protocols employed to prevent unauthorized access or disclosures.

10. Transmittal Fee. Recipient agrees to pay $\_\_\_\_\_ as a Transmittal Fee to reimburse CUNY for Data preparation and distribution costs. Payment of the Transmittal Fee shall not be deemed a sale of Data by CUNY and no other right or license is granted or implied as a result of the transfer of Data to Recipient.

11. Miscellaneous.

(a) Recipient’s obligations under this MOU may not be assigned, subcontracted, or transferred without the prior written consent of an authorized representative of the CUNY.

(b) This MOU, including its exhibits, all of which are hereby incorporated herein, contains the entire understanding of the parties hereto, supersedes all previous oral or written understandings, representations, or agreements to the extent that they relate to the subject matter hereof, and may not be modified by either party unless such modification is in writing and signed by an authorized representative of each party.

(c) Waiver by either party of a breach of any provision of, or right under, this MOU shall not operate or be construed as a waiver of any other or subsequent breach of the same provision or right, or of any other provision or right under this MOU.

(d) If any provision of this MOU, or the application thereof to any person or circumstance, is held invalid, such invalidity shall not affect any other provision that can be given effect without the invalid provision or application, and to this end the provisions hereof shall be severable.

(e) This MOU may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

(f) This MOU is governed and construed in accordance with the laws of New York State, without regard to principles relating to conflicts of law, except where the Federal supremacy clause requires otherwise. The courts of the State of New York in New York County and the United States District Court for the Southern District of New York shall have exclusive jurisdiction over the parties hereto with respect to any dispute or controversy between them arising under or in connection with this MOU.

IN WITNESS WHEREOF, the parties hereto have executed this MOU as of the day and year first written above.

**RECIPIENT**

**Institution**

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

While not a party to this MOU, I acknowledge that I have read this MOU and understand my obligations as an Institution employee:

**Principal Investigator**

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**THE CITY UNIVERSITY OF NEW YORK**

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**EXHIBIT A**

Description of Data:

Description of research to be conducted with Data (“Research”):

**EXHIBIT B**

**PROJECT INVESTIGATORS**

1. Each of the undersigned Project Investigators, in consideration of their use of the Data, agrees that:

 (a) s/he has read the Data Transfer & Non-Confidentiality Agreement from The City University of New York to which this Exhibit B is attached (the “Agreement”) and the Permitted Use described in Exhibit A to that Agreement.

 (b) s/he is a “Project Investigator” and an “Authorized User” within the meaning of the Agreement.

 (c) s/he shall comply fully with the terms of the Agreement.

**PROJECT INVESTIGATOR:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Signature Date

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Typed Name Institution Affiliation

**PROJECT INVESTIGATOR:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Signature Date

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Typed Name Institution Affiliation

**PROJECT INVESTIGATOR:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Signature Date

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Typed Name Institution Affiliation

2. The Principal Investigator agrees that the persons designated herein are Project Investigators and Authorized Users within the meaning of the Agreement.

**PRINCIPAL INVESTIGATOR:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Signature Date

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Typed Name Institution Affiliation