NIGHTINGALE DATA USE AGREEMENT

Partner	**Partner Name**	
	Partner Address	
	Partner Email	
Partner Data	**Data Description**	
Term	**Effective Date**	

This Nightingale Data Use Agreement (this "**Agreement**" or "**DUA**") is made as of the Effective Date identified above, by and between the University of Chicago ("**UChicago**"), and the Partner identified above ("**Partner**", and, together with UChicago, the "**Parties**").

RECITALS

WHEREAS, UChicago hosts a data platform project known as Nightingale, (the "**Platform**"), including software, and other technologies, for managing, analyzing and sharing de-identified health-related data;

WHEREAS, Partner desires to: (i) provide access to certain datasets (the "**Partner Data**") through the Platform, as further described above, and (ii) permit UChicago to provide researchers and others with access to the Partner Data, subject to the restrictions set forth in this Agreement; and

WHEREAS, UChicago is willing to accept such Partner Data.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and the mutual promises and covenants contained herein, the parties agree as follows:

1. **Definitions**. Capitalized terms used in this Agreement have the meaning set forth on Exhibit A.

2. **Partner Responsibilities**.

   a. **Provision of Data**. Subject to the terms and conditions of this Agreement, Partner will provide UChicago with the Partner Data for the purpose of providing Authorized Users with access thereto subject to the terms and conditions hereof.

   b. **License**. Partner hereby grants to UChicago a non-exclusive, worldwide, fully paid-up and royalty free license during the Term solely to: (i) store the Partner Data on the Platform; (ii) provide Authorized Users with access through the Platform to the Partner Data for research purposes and other non-commercial use; and (iii) use the Partner Data to operate, support, maintain and improve the Platform, in each case subject to the terms and conditions hereof.

   c. **Partner Data**.

      i. **Deidentification**. Without the prior written consent of UChicago, Partner will not provide UChicago with any Restricted Data. Without limitation to the breadth of the foregoing,

Partner represents, warrants and covenants that all Partner Data has been de-identified in accordance with all Applicable Laws, including 45 C.F.R. § 164.514(b), prior to being provided to UChicago. In the event that the Partner Data has been de-identified through the use of a statistician, Partner represents, warrants and covenants that the certification provided by that statistician does not impose any restrictions on the use or disclosure of that Partner Data that would be violated by uses and disclosures of UChicago or Authorized Users contemplated by this Agreement.

ii. **Consents**. Partner shall be solely responsible for obtaining all necessary consents and otherwise complying with all Applicable Laws and other restrictions as required: (i) to transmit any Partner Data to UChicago; (ii) to permit UChicago to store such Partner Data as part of the Platform; (iii) to permit UChicago to provide Authorized Users access to such Partner Data; and (iv) to permit UChicago to otherwise perform its obligations and exercise its rights pursuant to this Agreement.

3. **UChicago Responsibilities**.

a. **Authorized User Terms**. UChicago will enter into an agreement with each Authorized User that requires such Authorized User to agree to comply with user terms and conditions (the "**Authorized User Terms**"). If at any time UChicago becomes aware that any Authorized User has materially violated any of the Authorized User Terms relating to the Partner Data, UChicago will: (i) promptly notify Partner of such violation; and (ii) promptly suspend such Authorized User's access to all Partner Data.

b. **Authorization of Authorized Users**. UChicago shall provide access to the Partner Data only to: (i) its Representatives, (ii) Authorized Users who have agreed to comply with the Authorized User Terms, and (iii) third party service providers that are (A) providing services to UChicago related to the Platform, and (B) bound by confidentiality and security obligations no less stringent than those set forth in this Agreement. UChicago shall not disclose, release, reveal, show, sell, rent, lease, loan or otherwise grant access to the Partner Data to any other person. UChicago shall not use or authorize any other person to use the Partner Data for any purpose other than Nightingale projects.

c. **Data Security**. The Platform will be managed and operated using the same reasonable and appropriate data security policies, processes and controls that are used to operate a system that contains sensitive biomedical data. Specific deviations from these policies, processes and controls will be documented and maintained in a System Security Plan.

d. **Security Incidents**. UChicago shall promptly notify Partner of any Security Incident.

e. **Prohibition of Reidentification**. UChicago shall not, and shall not attempt to, re-identify the Partner Data such that it could be linked to individuals. UChicago shall implement technical and business process safeguards to prevent and prohibit such re-identification.

4. **Platform Contributions**. In the event Partner or any of its Representatives provides any software, source code, feedback, or Intellectual Property Rights to the Platform in the course of this Agreement (other than any Partner Data) ("**Partner IP**"), and unless otherwise agreed in writing between the Parties, Partner hereby grants to UChicago a perpetual, irrevocable, worldwide, non-exclusive, fully

transferable, fully sublicenseable, fully paid-up and royalty free license to use such Partner IP solely to incorporate such Partner IP into the Platform and use such Partner IP with the Platform.

5. **Publicity**. Either party may disclose the other party's participation in the Project, provided such disclosure does not state or imply any endorsement by or affiliation with such other party. UChicago may use Partner's trademark, service mark, logo or other designation of origin solely to describe Partner's participation in the project and in accordance with any branding guidelines provided by Partner. Partner shall not use any trademark, service mark, logo or other designation of origin of UChicago or any of its Affiliates without UChicago's prior written consent or the applicable Affiliate.

6. **Applicable Laws**.

   a. **Compliance with Laws**. Each Party will comply with all Applicable Laws in its performance of this Agreement.

   b. **Savings Clause**. Notwithstanding anything to the contrary in this Agreement, neither Party shall have any obligation to do any act, or refrain from doing any act, in violation of any Applicable Law or obligation to any Governmental Authority.

7. **Warranties and Remedies**

   a. **Warranties**.

      i. **Authority**. Each Party represents and warrants to the other that such party has the right and necessary corporate authority to enter into this Agreement.

      ii. **Partner Data**. Partner represents and warrants to UChicago that Partner has obtained all necessary consents, waivers, and other rights necessary to transmit to UChicago, or for UChicago to receive, store, use and provide Authorized Users with access to, any Partner Data.

   b. **Disclaimer of Warranties**. **EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, (A) EACH PARTY HEREBY DISCLAIMS ALL WARRANTIES WITH RESPECT TO THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND (B) THE PLATFORM AND THE PARTNER DATA ARE PROVIDED "AS IS."**

   c. **Indemnification**.

      i. **Partner Indemnification**. To the maximum extent permitted by law, Partner shall pay, defend, indemnify and hold harmless UChicago and its Affiliates and Representatives from and against any and all claims, liabilities, costs, expenses (including reasonable attorneys' fees), fines, settlements, losses, causes of action, or other damages (collectively, "**Claims**") based on any allegations made by any third party (including any Governmental Authority): (i) related to or arising from the disclosure of any Partner Data to UChicago by Partner or UChicago's possession of such Partner Data; (ii) alleging that any Authorized User's access to Partner Data was unauthorized or violated any Applicable Law or other obligation; or (iii) that the Partner Data or UChicago's possession thereof or provision of access to Authorized Users violates any Applicable Law or any right of any other person.

      ii. **Exceptions to Partner Indemnification**. Notwithstanding the foregoing, Partner's obligations pursuant to Section 6.c.i will not apply to the extent the applicable Claims arise

from: (i) UChicago's gross negligence or willful misconduct; or (ii) UChicago's material breach of this Agreement.

    iii. **Mutual Indemnification**. To the maximum extent permitted by law, each Party shall pay, defend, indemnify and hold harmless the other Party and its Affiliates and Representatives from and against any and all Claims based on any allegations made by any third party (including any Governmental Authority) from: (i) the indemnifying Party's gross negligence or willful misconduct; or (ii) the indemnifying Party's material breach of this Agreement, in each case ((i) and (ii)) except to the extent arising from the indemnified Party's gross negligence, willful misconduct or breach of this Agreement.

  d. **Limitation of Liability**. Except with respect to each Party's indemnification obligations pursuant to this Agreement, to the maximum extent permitted by law, (A) neither Party shall be liable hereunder for consequential, exemplary, or punitive damages (including lost profits or savings), even if it has been advised of their possible existence, and (B) neither Party's total and cumulative aggregate liability for any claim or claims hereunder will exceed ten thousand dollars (US$10,000.00).

8. **Term and Termination**

  a. **Term**. The initial term of this Agreement shall commence on the Effective Date, continue until the date that is two (2) years from the Effective Date (the "**Initial Term**") and will automatically renew for successive one (1) year periods, unless terminated earlier pursuant to the terms hereof (the "**Term**").

  b. **Termination by Either Party**. Either Party may terminate this Agreement by written notice to the other Party, upon the occurrence of any of the following events:

    i. After the Initial Term, for any reason upon not less than one hundred eighty (180) days prior written notice to the other Party;

    ii. The other Party becomes insolvent or subject to any proceeding under the federal bankruptcy laws or other similar laws for the protection of creditors;

    iii. The other Party materially breaches any term, provision, representation or warranty of this Agreement and such breach or default is not cured within ten (10) business days of the breaching Party's receipt of written notice thereof; or

    iv. Upon not less than thirty (30) days prior notice if the terminating Party reasonably believes that a continued relationship with the other Party would materially and adversely impact the terminating Party's reputation. Both Parties agree to work in good faith to resolve the terminating Party's issues and concerns during the thirty (30) day notice period.

  c. **Effect of Termination**. The terms and conditions of the following Sections will survive any termination or expiration of this Agreement: Sections 1, 4, 6.b - 6.d, 7.c, and 8. The license to Partner Data shall terminate upon termination of this Agreement, provided that Authorized Users will be permitted to continue to use Partner Data for pending research and for purposes of reproducing results of completed and/or published research.

9. **Miscellaneous**

   a. **Amendments**. Except as otherwise expressly provided herein, this Agreement may not be modified, amended or altered in any way except by a written agreement signed by the Parties.

   b. **Assignment**. Neither Party may assign this Agreement or delegate any of its duties, in whole or in part, without the prior written consent of the other party; provided, however, that: (i) either Party may assign this Agreement and delegate its duties to an Affiliate; and (ii) either Party may assign this Agreement to an entity that acquires all or substantially all of the assets or business of such Party. If any assignee refuses to be bound by all of the terms and obligations of this Agreement or if any assignment is made in breach of the terms of this Agreement, then such assignment shall be null and void and of no force or effect.

   c. **Counterparts**. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which together shall be deemed the same agreement.

   d. **Entire Agreement**. This Agreement constitutes the complete and exclusive statement of the agreement of the Parties with respect to the subject matter hereof and supersedes all prior proposals, understandings, and agreements, whether oral or written, between the Parties with respect to the subject matter hereof.

   e. **Force Majeure**. Neither Party shall be liable for any failure or delay in performing its obligations under this Agreement, or for any loss or damage resulting therefrom, due to acts of God, the public enemy, terrorist activities, riots, fires, and similar causes beyond such Party's control.

   f. **Independent Contractor**. The Parties are independent contractors; nothing in this Agreement shall be construed to create a partnership, joint venture, or agency relationship between the Parties. Each Party is solely responsible for payment of all compensation owed to its Representatives, as well as employment related taxes.

   g. **Governing Law**. This Agreement shall be governed by and interpreted in accordance with the internal substantive laws of the State of Illinois. Application of the U.N. Convention on Contracts for the International Sale of Goods is hereby excluded. The parties agree that all actions and proceedings arising out of or related to this Agreement shall be brought only in a state or federal court located in Cook County, Illinois, and the parties hereby consent to such venue and to the jurisdiction of such courts over the subject matter of such proceeding and themselves. **EACH PARTY HEREBY WAIVES ITS RIGHT TO A JURY TRIAL IN CONNECTION WITH ANY DISPUTE OR LEGAL PROCEEDING ARISING OUT OF THIS AGREEMENT OR THE SUBJECT MATTER HEREOF**.

   h. **Insurance**. Each party will maintain the types and amounts of insurance coverage that is commercially reasonable for the industry.

   i. **Notice**. Any notice or other document or communication required or permitted hereunder to the parties hereto will be deemed to have been duly given only if in writing and delivered by any of the following methods: (i) certified U.S. mail, return receipt requested, postage prepaid, to the address of the receiving party as set forth below or such other address as such party may dictate according to the notice provisions hereof (for notice being transmitted entirely within the United

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States); (ii) overnight courier service by Federal Express or other international courier of similar standing and reputation to the address of the receiving party as set forth below or such other address as such party may dictate according to the notice provisions hereof; (iii) hand delivery to the person specified below or any other person so designated according to the notice provisions hereof; or (iv) facsimile directed to the person specified below at the facsimile number listed below, or such other person or facsimile number so designated according to the notice provisions hereof; with a copy of all such notices delivered to counsel specified below or as such party may dictate in accordance with the notice provisions hereof. Notices shall be deemed delivered when received by the Party being notified.

    i.   If to UChicago, all notices shall be addressed and delivered to: The Nightingale Project, The Center for Applied Artificial Intelligence, The University of Chicago, Booth School of Business, 5807 South Woodlawn Avenue, Chicago, IL 60637, United States of America. With a copy to: The University of Chicago, 5801 S Ellis Ave, Suite 619, Chicago, IL 60637, Attn: VP and General Counsel.

    ii.   If to Partner, all notices shall be addressed and delivered to the address in the table on the first page of this Agreement.

j.   **Waivers**. No purported waiver by any Party of any default by any other Party of any term or provision contained herein (whether by omission, delay or otherwise) shall be deemed to be a waiver of such term or provision unless the waiver is in writing and signed by the waiving Party. No such waiver in any event shall be deemed a waiver of any subsequent default under the same or any other term or provision contained herein.

k.   **No Third Party Beneficiaries**. There are no intended third party beneficiaries to this Agreement. Without in any way limiting the foregoing, it is the Parties' specific intent that nothing contained in this Agreement gives rise to any right or cause of action, contractual or otherwise, in or on behalf of the Authorized Users who access the Partner Data or individuals whose information is contained in the Partner Data pursuant to this Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have caused this agreement to be executed and delivered by their respective, duly authorized representatives.

PARTNER   **THE UNIVERSITY OF CHICAGO**

By: _____   By: _____

Name: _____   Name: _____

Title: _____   Title: _____

Date: _____   Date: _____

Exhibit A

Definitions

"**Affiliate**" of an entity means any entity which, directly or indirectly, controls, is controlled by or is under common control with such entity, where control means the ability to direct the affairs of an entity through ownership of voting interest, contract rights or otherwise.

"**Applicable Laws**" means all applicable laws, regulations, court orders, and other rules of any Governmental Authority.

"**Authorized User**" means a user of the Platform that has been authorized to access the Partner Data.

"**Governmental Authority**" means any transnational, domestic or foreign national, state or local, governmental authority or any court, administrative agency or regulatory authority constituted or administered thereby, including any political subdivision thereof.

"**Intellectual Property Rights**" means all forms of intellectual property rights and protections including all: (i) patents and patent applications; (ii) copyrights, whether or not registered, mask works, and any other similar rights; (iii) trade secrets and other similar rights; (iv) trademarks, service marks, domain names, and other indications of origin and any and all goodwill associated therewith; (v) data and database rights; and (vi) any rights that are equivalent or similar to the foregoing.

"**Representatives**" means a Party's or the Party's Affiliates respective directors, officers, partners, members, employees, experts, accountants, counsel, financial advisors, agents and consultants.

"**Restricted Data**" means:

(i) any information that is (A) categorized as "personal data," "protected health information," "personal information," "personally identifiable information" or any similar term in any applicable national, federal, state or local law, rule, directive or regulation relating to the privacy of personal information, including, without limitation, the Health Insurance Portability and Accountability Act of 1996, the General Data Protection Regulation 2016/679, any legislation passed under that Regulation and any other similar law or regulation; (B) subject to any privacy policy or practice applicable to any personal information that Partner accesses, uses, collects, or maintains hereunder, including, without limitation any practice required in connection with the processing of credit card data; or (C) subject to any law or regulation concerning the notification to data subjects, law enforcement or other third parties of the occurrence of any actual or suspected disclosure of restricted data or personally identifiable information, including, without limitation, Section 1798.82 of the California Civil Code; or

(ii) any information or data that is owned by or exclusively licensed to any person or entity, or in respect of which the use, retention, duplication, or disclosure thereof, is restricted by any person or entity (including any Governmental Authority), other than Partner.

"**Security Incident**" means any incident in which UChicago confirms that Partner Data has been accessed without authorization or in violation of the terms of this Agreement.