

Academic Data Contributor Agreement

This Data Contributor Agreement (the “Agreement”) is made and entered into as of
(the “Effective Date”) by and between
 (“Data Contributor”), with offices located at

and Vivli, a Massachusetts nonprofit corporation with an address of 14 Story Street, 4th Floor,
Cambridge, MA 02138 (“Vivli”).

Background/Recitals

WHEREAS, Vivli manages a research data repository in an effort to facilitate and encourage secondary research for the public good (the “Data Repository”);

WHEREAS, Data Contributor has rights in (i) the research related information described on Exhibit A (attached hereto and incorporated herein), and (ii) certain other research related information identified by Data Contributor at its sole discretion, that was generated from studies in the field of biological research, clinical research or biotechnology ((i) and (ii), collectively, the “Data”); and

WHEREAS, Vivli desires to receive a copy of the Data, in anonymized form, from Data Contributor to incorporate into the Vivli Data Repository, and to provide access to the Data to certain users who have submitted requests for data to Vivli, and entered into a data use agreement with Vivli (each, a “Recipient” and collectively, the “Recipients”) that may be updated from time to time (the “Data Use Agreement”), and Data Contributor desires to provide a copy of the Data to Vivli for such purposes on the terms and conditions set forth herein;

NOW, THEREFORE, Data Contributor and Vivli (each, a “Party” and collectively, the “Parties”) agree as follows:

Data Contribution and Vivli’s Use of Data

Once a data package has been contributed, the data packages will be available for the requestor to download via the Vivli platform. Data Contributor will use reasonable efforts to ensure that the Data are complete and accurate in all respects. Data Contributor will provide reasonable cooperation to Vivli to correct any failures of the Data to conform to the form requested by Vivli. Data Contributor makes no representation or warranties, express or implied, to Vivli or any Recipient with respect to the accuracy or completeness of the Data.



Subject to the terms of this Agreement, Data Contributor hereby grants to Vivli a royalty-free, worldwide, non-exclusive, irrevocable (except in the event of the termination of the Agreement as hereinafter provided) license to store, host and otherwise use the Data for the purposes described in this Agreement. The license granted in the preceding sentence includes the right for Vivli to grant sublicenses to (i) the Recipients pursuant to the Data Use Agreements, subject to the limitations described in the next paragraph (ii) the Hosting Service or any other third party which assists in the establishment, administration or maintenance of the Data Repository or (iii) any other third party reasonably necessary in furtherance of clauses (i) and (ii) and that is under an obligation of confidentiality to Vivli.

Vivli may sublicense the use of such Data to Recipients solely for the research purposes set forth in the request. For purposes of this agreement, “research” means one or more systematic investigations, including research development, testing and evaluation, that is designed to develop or contribute to generalizable knowledge. For the avoidance of doubt, Recipients may consist of both not-for-profit and for-profit entities. Prior to making the Data available to Recipients, Vivli shall require such Recipients to enter into a Data Use Agreement with Vivli, as further discussed below under the heading “Data Access.”

Data Repository Hosting

The Parties acknowledge and agree that the Data Repository may be hosted by a third-party service provider (the “Hosting Service”), and that the Hosting Service shall not be permitted to use the Data or Protocols (as hereinafter defined) for any purpose other than facilitating access to the Data by Authorized Users. Vivli will employ and maintain, and require the Hosting Service to employ and maintain, reasonable technical and administrative measures to prevent unauthorized or unlawful access or use of any Data or the accidental loss, destruction of, or damage to the Data. In the event Vivli discovers or is notified of an intentional or unintentional release of the Data to a party not authorized to have such access under the terms of this Agreement (a “Data Breach”), Vivli shall promptly notify Data Contributor of such Data Breach.

Data Ownership and Rights in Data Repository

Vivli does not claim any rights of ownership in the Data, and Data Contributor will continue to maintain any pre-existing ownership rights that it has in the Data (including all intellectual property rights therein except for the license granted pursuant to this Agreement).

Notwithstanding the foregoing, in order to allow Vivli to fulfill its purpose of facilitating and encouraging secondary research, Vivli and Recipients may use and disclose the Data as permitted pursuant to the terms of this Agreement and the Data Use Agreement. The rights granted by the Data Contributor to Vivli and the Recipients under this Agreement and any Data Use Agreement are non-exclusive and Data Contributor shall be free to enter similar or other data contributor or data sharing agreements involving the Data with other individuals or entities without any obligation to extend the rights granted under such agreements to Vivli, any Recipient or sublicensee of Vivli.



Subject to Data Contributor's ownership rights to the Data, Vivli shall own all right, title and interest (including all intellectual property rights) in and to the Data Repository, and nothing herein shall be construed as granting any rights in the Data Repository to Data Contributor. Vivli will grant access to the Data Repository pursuant to a Data Use Agreement, as described below.

This section shall survive the termination of this Agreement.

Data Access

Vivli shall require each Recipient to execute a Data Use Agreement prior to allowing access to the Data by any Recipient. The Data Use Agreement shall specify the terms that govern the Recipient's Data access. Vivli reserves the right to modify the Data Use Agreement at any time without consultation with or without notice to the Data Contributor

Privacy Laws

Data Contributor represents and warrants that all Data have been collected and submitted in accordance with all applicable laws, regulations and standards of the jurisdictions where the data were collected or where Data Contributor has processed such data, and in effect on the date such Data were collected or processed (as applicable) including without limitation all applicable national, state/provincial, and local laws and regulations of such jurisdictions regarding (i) patient/subject privacy (ii) the collection, storage, processing, disclosure and use of personally identifiable information and (iii) other uses and disclosures of the Data. Data Contributor specifically represents and warrants that: (i) Data Contributor has all rights necessary to provide the Data to Vivli pursuant to this Agreement; (ii) neither the Data nor Vivli's use of the Data to fulfill its obligations under this Agreement will infringe any third party's intellectual property rights or rights of privacy; (iii) to the extent required by applicable law, the Data have been obtained with the knowledge and consent/authorization of the individual(s) to which the Data relate or the waiver of any such consent requirement by a body empowered under applicable law to waive such requirement; (iv) to the extent there are limitations on the use of the Data on the basis of the consent/authorization, Data Contributor shall notify Vivli of any such limitations at the time of the contribution of the Data to Vivli; and (v) neither Data Contributor, its owners, or any other person providing Data on behalf of Data Contributor under this Agreement is located in, ordinarily resident in, or owned or controlled by entities or persons located in or ordinarily resident in any country that is, at any time that Data Contributor (or such other person providing Data on behalf of Data Contributor) contributes Data to Vivli, subject to sanctions by the U.S. Government or other applicable government as may be notified by Vivli or are identified on any list of restricted parties maintained by the United States government or other applicable government, including, but not limited to, the Specially Designated Nationals List administered by the U.S. Treasury Department's Office of Foreign Assets Control or the Denied Persons List, Unverified List or Entity List maintained by the U.S. Commerce Department's Bureau of Industry and Security.

With respect to any state or federal laws or regulations regarding notification to affected individuals in the event of the unauthorized access to or acquisition of personally identifiable information, Data Contributor shall be considered the "owner" of the Data, and Vivli is deemed only to "maintain" the Data on behalf of the Data Contributor.

Anonymization

In order to ensure compliance with its legal and ethical obligations, Vivli requires that for all contributed data, measures have been taken to reduce the risk of re-identification of individual study participants.

The Data Contributor will take reasonable measures to ensure that the Data provided under this Agreement will be provided in an anonymized form.

Data Contributor bears sole responsibility for appropriate anonymization of the Data; however, Vivli reserves the discretionary right to reject, delete or quarantine from the Data Repository, or deny Recipients access to, any submitted Data, in whole or in part, Vivli believes contain any information that would enable the identification of an individual or otherwise violate current best practices for anonymization. Upon any such rejection, deletion, quarantine or denial of access, Vivli shall take reasonable efforts to notify Data Contributor of the problems that led to the rejection, deletion or denial of access.

Publications and Presentations

Contribution of Data to Vivli does not affect the Data Contributor's right to publish those Data, which may be done entirely at Data Contributor's own discretion.

Vivli shall require Recipients through the Data Use Agreement to follow the publication plan included in the approved data request, if applicable. Recipient shall provide Vivli with that a reference citation upon publication which Vivli shall share with the applicable Data Contributor(s).

The Data Use Agreement shall also require Recipients to provide Vivli with a reference citation to any publication that is published.

Contribution to any publication submitted by Vivli itself will be acknowledged in accordance with the guidelines of the International Committee of Medical Journal Editors.

(http://www.icmje.org/ethical_1author.html).

Aggregated Data Publication

Vivli may publish and make transparent, for example by posting to the Vivli website, descriptive statistics regarding the Data and Protocols (if applicable). Vivli's publication of descriptive statistics regarding the Data and Protocols may include, but is not limited to, publishing:

- (i) The number of datasets that are hosted or indexed on the Vivli Data Repository;
- (ii) The number of Data Contributors that have contributed to the Data Repository; and
- (iii) The number of requests for access to the Data received by Vivli, including the number of such requests approved, conditionally approved, or denied both in the aggregate and at the level of a particular Data Contributors.

Reports and analyses created by Vivli involving solely descriptive statistics may be published or otherwise made publicly accessible, including through the Vivli website.

This section shall survive the termination of this Agreement.

Term and Termination

Termination without Cause. Either Party shall have the right to terminate this Agreement without cause following written notice to the other Party.

Effect of Termination. Upon termination, Vivli shall notify the Data Contributor that the Data and Protocols (if applicable) will be removed from the Data Repository. If, after ninety (90) days, the Data Contributor has not made arrangements to export and store Data and Protocols (if applicable) in another repository, the Data and Protocols will be removed from the Data Repository and destroyed. If requested by Data Contributor in writing, Vivli will provide written confirmation that Vivli has destroyed the Data and Protocols.

Notwithstanding the termination of this Agreement for any reason, to the extent that Recipients have entered into Data Use Agreements related to the use of the terminating Data Contributor's Data and/or Protocols (if applicable) prior to the termination of this Agreement (whether in its entirety or for only a specific portion of the Data or specific Protocols), such Recipients shall be entitled to continue to use such Data and/or Protocols in accordance with the terms of the Data Use Agreement until the termination of such Data Use Agreement unless continued use of the Data and/or Protocols is otherwise restricted by applicable law or regulation.

This section shall survive the termination of this Agreement.

Limitation on Liability

IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY LOST PROFITS, LOSS OF DATA, LOSS OF BUSINESS OR LOSS OF OPPORTUNITY OR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, WHETHER BASED ON BREACH OF CONTRACT, NEGLIGENCE, OR ANY OTHER THEORY REGARDLESS OF WHETHER VIVLI HAS BEEN ADVISED OF THE POSSIBILITY OF ANY SUCH DAMAGES. IN ADDITION, EXCEPT WHERE CAUSED BY THE NEGLIGENCE OR WILLFUL MISCONDUCT OF A PARTY OR ITS DIRECTORS, OFFICERS, AGENTS, AND EMPLOYEES, NEITHER PARTY WILL BE LIABLE FOR ANY BREACH OR OTHER MISUSE OF THE DATA OR PROTOCOLS BY ANY THIRD PARTY, INCLUDING A RECIPIENT.

This section shall survive the termination of this Agreement.

Authority to Enter Agreement

Each party represents and warrants that it has the full right, power, and authority to enter into this Agreement. Each party represents and warrants that it does not have, and agrees that it will not enter



into, any legal or contractual obligations that would prevent it from complying with its obligations under this Agreement.

No Agency/Partnership

This Agreement does not create a partnership, joint venture, or any other relationship or obligation whatsoever between the Parties, save the relationship and obligations specifically set out herein before and solely for the limited purposes described herein.

Severability

If any provision of this Agreement is found to be illegal, void or invalid, that fact shall not affect the legality and validity of the other provisions of the Agreement.

Notice

All notices provided hereunder shall be made in writing to the addresses set forth below via next-day delivery service:

If to Vivli:

Vivli, Inc.
Attention: Executive Director 14 Story Street
Cambridge, MA 02138

If to Principal Investigator:

Governing Law/Venue

This Agreement shall be governed and construed in accordance with the laws of the State of New York, without regard to its conflict of laws principles. Any disputes arising under or related to this Agreement shall be brought in the state or federal courts of the State of New York.

This section shall survive the termination of this Agreement.

Signature Page Follows



IN WITNESS WHEREOF the parties have executed this Agreement as of the date first set forth above.

Vivli Inc.

By:

Name:

Title:

Date:

Institution Official

By:

SIGN HERE

Name:

Title:

Date:

READ AND ACKNOWLEDGED

Name:

Title:

Date:

Exhibit A

<https://vivli.org/academic-dua/>