**To be printed, filled, signed, scanned, and emailed to:**

**Dr. Beata Beigman Klebanov**

**660 Rosedale Road**

**Educational Testing Service**

**Princeton, NJ 08541**

***bbeigmanklebanov@ets.org***

**Please fill in the details in the sections highlighted in yellow in the document.**

**DATA LICENSE AGREEMENT**

THIS AGREEMENT is entered into by and between EDUCATIONAL TESTING SERVICE, a nonprofit, nonstock corporation organized and existing under the Education Law of the State of New York, with principal offices at Princeton, New Jersey 08541 (hereinafter “ETS”), and [\_\_\_\_\_\_\_\_\_\_\_\_], a [researcher/professor/student] at [\_\_\_\_\_\_\_\_\_\_\_] with the following address: [insert address] (hereinafter the “Researcher”), and is effective as of the date that ETS receives a copy of this Agreement that has been duly executed by the Researcher (the “Effective Date”).

WHEREAS, ETS is the owner of all right, title and interest in and to certain data as described in the attached Exhibit A (hereinafter, the “Data”);

WHEREAS, ETS is willing to make the Data available as part of certain research activities related to research on metaphor in non-native writing

WHEREAS, Researcher desires access to the Data for the sole purpose of non-commercial, academic research on metaphor in non-native writing, and ETS is willing to agree to such use of the Data, subject to the terms and conditions of this Agreement;

WHEREAS, subject to Researcher’s signature below, ETS’s acceptance of the terms and conditions set forth herein is deemed to have been provided upon ETS’s delivery of the Data to Researcher.

NOW, THEREFORE, in consideration of the foregoing premises and mutual covenants contained herein, ETS and Researcher, intending to be legally bound hereby, agree as follows:

1. **LICENSE**
2. **Grant.**  Subject to the terms and conditions of this Agreement, ETS hereby grants to Researcher a limited, non-exclusive, revocable, non-transferable, non-sublicensable license to use and reproduce the Data, and to publish results derived by Researcher from his or her analysis of the Data (“Results”), solely for the purposes of conducting non-commercial, academic research solely on metaphor in non-native writing (“Non-Commercial Research”).  Any other use or reproduction of the Data is prohibited.
3. **Additional Terms.**  Researcher, in furtherance of the Non-Commercial Research, shall be permitted to make the Data available to other individuals, provided that (i) such individuals are acting under the direction and control of Researcher; (ii) such individuals may only use the Data in furtherance of the Non-Commercial Research being performed by Researcher; and (iii) Researcher shall be solely responsible for ensuring such individuals comply with the requirements of this Agreement including, without limitation, Sections 3, 4, and 6.
4. **Attributions.**In the event that Researcher produces a written work that incorporates the Results or limited excerpts of the Data (with prior written consent from ETS), Researcher agrees to acknowledge the Data as property of ETS by displaying the following attributions:

**Source:** Derived from data provided by ETS

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**Disclaimer.**Researcher must also include the following disclaimer language in all publications:

***“The opinions set forth in this publication are those of the author(s) and not ETS.”***

1. **FORMAT OF DATA**

The Data will be provided to Researcher by ETS in the format described in Exhibit A.

1. **RESTRICTIONS.**  The rights to the Data granted to Researcher pursuant to this Agreement shall be subject to the following restrictions:
2. The license set forth in Section 1 shall permit research to be conducted only by, or under the direction and control of, the Researcher solely for non-commercial, academic research purposes.  Access to the Data shall not be permitted to anyone, except Researcher or as expressly set forth in Section 1(b), provided that Researcher remains liable for the acts and omissions of any individual who accesses or uses the Data pursuant to Section 1(b).
3. Researcher shall not reproduce the Data as a whole in any format.  Researcher may reproduce limited excerpts of the Data solely in furtherance of the non-commercial, academic research authorized by this Agreement.
4. Except as otherwise expressly permitted by this Agreement, Researcher shall not disclose, publish, retransmit, display, redistribute, reproduce, or otherwise transfer the Data in any form to any third party.
5. Researcher shall not, and shall not permit or allow third parties to, commercialize, attempt to commercialize, or otherwise obtain commercial gain or benefit from his or her use of the Data.
6. Researcher acknowledges and agrees that the Data he or she is receiving is not, and does not include personally-identifiable data.  Researcher agrees that he or she will not attempt, and shall not instruct or encourage third parties, to compile or match up Data with other personal data so that any individual(s) may be identified.
7. Researcher shall use, and permit the use of, the Data solely for the purpose of and in accordance with this Agreement, and shall not otherwise use or disclose any of the Data to any third party.
8. Researcher shall have no right, and shall not permit any third parties, to modify the Data and/or create any derivative works of the Data.
9. **PROPRIETARY RIGHTS**
10. **Ownership of Data.**  Except for the non-commercial, research license set forth in Section 1, ETS shall be and remain the sole and exclusive owner of all right, title, and interest in and to the Data, and all intellectual property rights therein and thereto, and no other rights or interests in the Data are transferred by or through this Agreement from ETS to Researcher, or any other third party.
11. **Security and Notification.**  Researcher shall ensure that the Data is secure and kept confidential at all times, and shall take necessary steps to prevent any unauthorized disclosure or use of such Data.  Researcher shall immediately, upon discovery of any actual or suspected disclosure not authorized hereunder, notify ETS and take reasonable steps to prevent any further disclosure or unauthorized use.
12. **Destruction of Data.**  Upon termination or expiration of the Agreement, or upon ETS’s request, Researcher shall permanently destroy the Data and any and all copies thereof, and, upon request from ETS, shall send written certification to ETS that all Data have been permanently destroyed.
13. **EXCLUSION OF WARRANTIES**

The Data provided by ETS to Researcher under this Agreement is “as is” and without any warranty, of any kind.  ETS DISCLAIMS, AND RESEARCHER HEREBY WAIVES, ALL EXPRESS, IMPLIED AND/OR STATUTORY WARRANTIES, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE.

1. **LIMITATION OF LIABILITY**

In no event shall ETS be liable to Researcher or any individual receiving access to the Data pursuant to Section 1(b), regardless of the form of action or theory of recovery, in association with this Agreement, for (a) any indirect, special, exemplary, consequential, incidental or punitive damages, even if ETS has been advised of the possibility of such damages; (b) lost profits, lost revenue, lost business expectancy, benefit of bargain damages, business interruption losses or loss of data; or (c) direct damages or any kind.

1. **TERM**
2. **Term.**  This Agreement shall be effective as of the Effective Date and shall continue in full force and effect for one (1) year from the Effective Date, unless earlier terminated in accordance with this Section 7.
3. **Termination.**  ETS or Researcher may terminate this Agreement, for any reason, by providing written notice to each of the parties hereof of its intent to terminate this Agreement.  In the event such notice is provided, termination of this Agreement shall be effective on the 30th calendar day following receipt of such notice.
4. **IRREPARABLE HARM**

The provisions of Sections 1, 3, and 4 of this Agreement may relate to unique and valuable assets of ETS.  Breach or threatened breach of these sections may result in irreparable harm to ETS and remedies at law for such breach or threatened breach will be inadequate.  In the event of a breach or threatened breach of Sections 1, 3, or 4, ETS shall be entitled to seek specific performance and/or injunctive relief, without any requirement to post a bond or other security.  Such remedy may not be deemed to be the exclusive remedy for any such breach of this Agreement, but may be in addition to all other remedies available at law or equity.

1. **REPRESENTATIONS AND WARRANTIES**
2. Researcher represents and warrants that he or she is empowered under applicable laws to enter into and perform this Agreement and that he or she has caused this Agreement to be executed and delivered to ETS.
3. Researcher further represents and warrants that he or she will comply with any and all laws, rules and regulations, throughout the world, which are applicable to the performance of his or her obligations under this Agreement, including all applicable laws, rules, and regulations relating to privacy and data protection.
4. Researcher represents and warrants that entering into or performing obligations under this Agreement shall not breach an agreement Researcher has entered into with a third party or violate any third party rights.

1. **GOVERNING LAW**

This Agreement shall be governed by the federal laws of the United States and the state laws of the State of New Jersey.  In the event of any litigation related to this Agreement, the parties agree and consent to the exclusive jurisdiction of the State and Federal Courts located in the State of New Jersey, USA.

1. **ASSIGNMENT**

Researcher may not assign this Agreement without the prior written permission of ETS.  Any attempt to assign any rights, duties, or obligations that arise under this Agreement without such permission shall be void.

1. **SURVIVAL BEYOND TERMINATION OR EXPIRATION**

The provisions of Sections 3 (Restrictions), 4 (Proprietary Rights), 5 (Exclusion of Warranties), 6 (Limitation of Liability), 8 (Irreparable Harm), and 10 (Governing Law), shall survive the termination or expiration of this Agreement.

IN WITNESS WHEREOF, Researcher hereunder has executed this Agreement of the day and year written below.

**RESEARCHER**

Signature:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Email: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(A username and password for accessing the corpus will be sent to this email address.)

**EXHIBIT A**

**FORMAT AND DESCRIPTION OF DATA**

**Description of Data:**

The data set for the 2020 Metaphor Detection Shared Task consists of written responses provided by non-native speakers of English during a high-stakes global assessment of English language proficiency, the Test of English as a Foreign Language (TOEFL iBT®). The data set contains 240 written responses to the first item in the Writing section sampled in a stratified fashion from high and medium-scoring responses from speakers of 3 different native languages (Arabic, Italian, Japanese). This is a subset from the TOEFL 11 distribution (<https://catalog.ldc.upenn.edu/LDC2014T06>).

**Data Format:**

The data will be released in the following format:

The text files containing the written responses will be released in plain text format.  A separate CSV file contains the metadata for each written response (the test taker ID, native language, English proficiency (high or medium), and prompt text).