**IBM Client Data License Agreement**

This IBM Client Data License Agreement (“**Agreement**”) is between [Client Legal Name] (“**Client**”) [ Address], and International Business Machines Corporation ("**IBM**”), a New York corporation, with offices at 1 New Orchard Road, Armonk, NY 10504. Client and IBM may be individually referred to herein as a “**Party**” or collectively as the “**Parties**.” The effective date of this Agreement will be the date of the last Party’s signature (“**Effective Date**”) and will remain in effect until terminated.

**1. Definitions**

“**Affiliates**” are entities that control, are controlled by, or are under common control with, a Party to this Agreement.

**“Foundation Model”** means an AI model that can be adapted to a wide range of downstream tasks that is trained, tuned, tested or developed using large amounts of data, which may include the Client’s Data. Foundation Models are typically large-scale generative AI models that are trained on unlabeled data using self-supervision and can include billions of parameters and may be referred to as large language models or generative artificial intelligence.

“**Data**” or **“Client’s Data”** means all data, software, information and other related materials that Client provides to IBM under this Agreement including the Data described in any attachment.

“**Derivative Work**” means a work that is based on any Data that would constitute a copyright infringement if prepared without the authorization of the owner of the Data.

“**Personal Data**” means any information relating to an identified or identifiable natural person, including any personal data subject to European data protection laws.

“**Results**” means the outputs or outcomes generated by a Foundation Model. Results may include portions or snippets of the Data.

**“Synthetic Data”** means data that has been created artificially through computer simulation or that algorithms can generate to take the place of real-world data.

**2.** **Responsibilities of the Parties**

**2.1** **Delivery.** Client will provide the Data described in any attachment to this Agreement.

**2.2 Data Selection.** Client is solely responsible for the collection of Data and for determining which Data it will provide to IBM under this Agreement.

**3. Ownership and Licenses**

**3.1** All intellectual property rights and ownership in the Data provided by Client are retained by Client and its third party licensors, as applicable. IBM will own all intellectual property rights it creates under this Agreement, including in any Foundation Models created by IBM.

**3.2**  **License**. Client hereby grants IBM a nonexclusive, world-wide, fully paid-up, perpetual, irrevocable, license to use, modify, copy, summarize, aggregate, excerpt, translate, transmit, abstract or reformat the Data for the purposes of training, developing, testing and tuning Foundation Models, including using the Data as seed data to generate Synthetic Data. This license shall include the right for IBM to sublicense to its Affiliates and contractors to do any or all of the foregoing, provided IBM shall sublicense the Data under terms and conditions at least as restrictive as the terms and conditions set forth in this Agreement. Client acknowledges that Foundation Models may produce a Result that includes portions or snippets of the underlying training data used to train such model, and to the extent the Result reproduces, displays or outputs any portion or snippet of Client Data, Client, on behalf of itself, its Affiliates, its employees and contractors, hereby (i) waives any rights it may have to attribution, acknowledgement or other similar right in the Result and portion or snippet of Data, and (ii) grants IBM, its Affiliates and successors, its customers, and partners a non-exclusive, perpetual, irrevocable, fully-paid up license to fully exploit the Results and portions or snippets of the Client Data, including, but not limited to the right to modify, distribute, reproduce, and sublicense.

**4. Representations, Warranties, and Indemnification**

**4.1** Client represents warrants and covenants that i) its performance of the Agreement will comply with all applicable laws and the terms of any contracts applicable to it (including licensing agreements); ii) it has the necessary rights, consent or authorization to grant IBM the rights set forth; iii) Client’s Data does not knowingly infringe any privacy, intellectual property or other right of a third party; and iv) Client has endeavored to exclude regulated data, including Personal Data, but, to the extent such Data is incidentally included or included for accuracy, such sharing of the Data complies with applicable law. Unless agreed to in writing by IBM and authorized by applicable government license or regulation, Client will not provide to IBM any articles, materials, services or any components thereof that Client knows or has reason to believe originated in, or was sourced from, a country subject a comprehensive U.S. embargo as described in applicable export, embargo, and economic sanctions regulations (including, without limitation Cuba, Crimea region of Ukraine, Iran, North Korea, Sudan or Syria).

**4.2** THE WARRANTIES IN THE AGREEMENT ARE IN LIEU OF ALL OTHER WARRANTIES AND CONDITIONS, EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

**5. Limitation of Liability**

**5.1** Neither Party will be liable to the other for special, incidental, exemplary, indirect, or economic consequential damages, or lost profits, business value, revenue, goodwill, or anticipated savings.

**5.2** The following, if a Party is legally liable for them, are not subject to the above limitation: i) damages for bodily injury (including death); ii) damages to real property and tangible personal property; and iii) damages that cannot be limited under applicable law.

**6. Confidentiality and Publicity**

**6.1** Except for portions or snippets of the underlying training data that appear in a Result, IBM will keep the Data as Confidential Information pursuant to the Parties’ non-disclosure agreement (CDA/NDA#\_\_\_\_\_\_\_\_\_). Client grants IBM permission to generally describe the Client’s Data, without disclosing Client’s name or otherwise identifying Client, as having been used to train, develop, test or tune the Foundation Models in connection with any published papers or articles describing the model or any model information documentation or model cards distributed or published with a Foundation Model.

The terms of this Agreement (including any attachments) are confidential and neither Party may share the Agreement with a third party without the non-disclosing Party’s prior written permission, except to a Party’s respective attorneys, accountants, financial advisors, in a court of law, or as required by law.

If the Parties need to share any other Confidential Information with each other, such disclosures made under the above referenced non-disclosure agreement. Any feedback or suggestions that Client provides to IBM related to this Agreement shall be considered IBM’s Confidential Information.

**7. General Provisions**

**7.1** Except as explicitly provided in this Agreement, this Agreement does not grant any licenses, either directly or indirectly, by implication, estoppel or otherwise, to either Party under any patent, copyright or other intellectual property right of the other Party.

**7.2** Other responsibilities may be mutually agreed to in writing by the Parties. Each Party agrees to bear its own costs with respect to this Agreement and all activities undertaken thereunder.

**7.3** This Agreement does not create a joint venture, partnership, employment relationship or other agency relationship between the Parties.  Each Party remains free to negotiate or enter into similar relationships with others. Neither Party will rely on the successful conclusion of a business relationship.

**7.4** Neither Party may assign, or otherwise transfer, its rights or delegate its duties or obligations under this Agreement without prior written consent of the other Party, such consent not to be withheld unreasonably, except that either Party may assign this Agreement in conjunction with the sale of a substantial part of its business utilizing this Agreement. Any unauthorized assignment of this Agreement is void.

**7.5** Neither Party may bring an action, regardless of form arising out of the performance of this Agreement more than two (2) years after the cause of action has accrued.

**7.6** If any provision of this Agreement is held to be unenforceable, the enforceability of the remaining provisions will in no way be affected as long as the intent of the Parties can be preserved.

**7.7** This Agreement is governed by the laws of the State of New York, without regard to its conflict of laws provisions. Any proceedings to resolve disputes relating to this Agreement will be brought in a U.S. federal court in New York if there is jurisdiction.

**7.8** All notices will be in writing and will be valid if sent by:

a) registered or certified mail, return receipt requested, postage paid; b) by email (provided the receipt of the email is evidenced by a printed record of completion of transmission); or, c) by express mail or courier service providing receipt of delivery. Notice will be effective upon receipt. All notices should be addressed as follows:

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| --- | --- |
| **IBM:** | **Licensor:** |
| International Business Machines Corporation  [Address] | [Licensor Name]  [Address] |
| [Address] | [Address] |
|  |  |
| Attn: | Attn: |
| Mobile: | Mobile: |
| Office: |  |
| Email: | Email : |
|  |  |
| With a copy to : | With a copy to : |
| IBM Office of the General Counsel |  |
| IBM Corporation |  |
| 1 New Orchard Road |  |
| Armonk, NY 10504-1722 |  |
| United States |  |

**7.9** **Survival.** Any rights and obligations which by their nature survive and continue after the end of this Agreement, including those set forth in Sections 3 through 6, will survive and continue and bind the Parties and their successors and assigns, until such obligations are fulfilled.

**7.10** This Agreement, including any other attachments and appendices specifically referenced, is the complete and exclusive agreement between the Parties regarding its subject matter and supersedes any prior oral or written communications or understandings between the Parties related to its subject matter, excluding any confidentiality agreements. Once signed, any reproduction of this Agreement made by reliable means (for example, electronic image, photocopy or facsimile) is considered an original. By the signatures of the authorized representatives below, the Parties agree to the terms of this Agreement.

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| --- | --- |
| **International Business Machines Corporation** | **[Client Name]** |
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| Name: | Name: |
| Title: | Title: |
|  |  |
| Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

**ATTACHMENT \_\_**

Client agrees to deliver the following Data to IBM subject to the IBM Client Data License Agreement dated \_\_\_\_\_\_\_\_\_.

[enter description of data Client wishes to submit and format for data delivery – include description of the provenance of the data.]